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Gorazd Meško, Andrej Sotlar and Jack R. Greene

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Editorial

Between September 21–23, 2012, the Ninth Biennial International Conference "Criminal Justice and Security in Central and Eastern Europe: Contemporary Criminal Justice Practice and Research" (previously "Policing in Central and Eastern Europe") was held in Ljubljana, Slovenia. The conference was co-organized by the Faculty of Criminal Justice and Security, University of Maribor; Slovenia, the European Group of Research into Norms, Guyancourt, France; the Department of Criminology, University of Leicester, the United Kingdom; the College of Justice and Safety, Eastern Kentucky University, USA; the School of Criminal Justice, Michigan State University, USA; Transcrime - The Joint Research Centre on Transnational Crime of the Catholic University of the Sacred Heart of Milan and the University of Trento, Italy, ACUNS - The Academic Council on the United Nations Systems; and the Faculty of Law, Lomonosov Moscow State University, Russia. The conference was supported by the Slovenian Police and the Ministry of the Interior and sponsored by Slovenian Research Agency.

The conference is not only about bringing together scholars from different parts of the world to spend three days in a small European country at the crossroad of east and west and north and south. It is also about a story of successful co-operation among various academic and research institutions from Europe and the USA. The conference has never been a place reserved only for researchers. Quite the contrary, we have always been trying to bring together researchers and practitioners from the field of criminal justice and security to exchange views, concepts, and research findings as well as practical problems and to look for common solutions.

The editors decided to include 34 papers in this anthology, while some other conference papers will be published in the *Journal of Criminal Justice and Security* (issue 2013/2) and in the *Journal of Criminal Investigation and Criminology* (issue 2013/3). Not surprisingly the vast majority of papers come from countries of the former Yugoslavia, since the conference became an important "meeting point" of scholars from South-Eastern European countries. These countries share not only similar political, economic, security and historical experiences, but nowadays they are members of or are in process of entering EU and NATO, which leads to the harmonisation of their legislation and systems in the fields of criminal justice and security. The same process can be observed in the field of research where researchers from this region not only deal with similar research topics, but also share common research projects that have been conducted in recent years. This anthology covers a range of very diverse topics from policing, criminal justice, criminology, information security, and wider security issues. We hope that each

reader of this volume will find something interesting; comments should be sent to the lead editor, Professor Gorazd Meško (gorazd.mesko@fvv.uni-mb.si).

In the end, we would like to make a few acknowledgments. Firstly, we would like to thank the members of programme and organizing committees without whose efforts the 9th biennial conference would not have been possible. Secondly, we thank the authors for their papers and readiness to cooperate with editors throughout the process of making this volume. Thirdly, many thanks go to all peer reviewers for their helpful comments and suggestions which led to significant improvements of the papers. And finally we have to thank Ms. Maja Jere and Ms. Bernarda Tominc for their technical support in editing of this anthology.

Let us conclude this editorial with the only possible words: we hope to see you in Ljubljana in September 2014 at the 10th biennial conference Criminal Justice and Security in Central and Eastern Europe.

Co-editors:

Gorazd Meško
Andrej Sotlar
Jack R. Greene

1.
POLICING

INCOME INEQUALITY, WEALTH, AND TRUST IN THE POLICE – SLOVENIA VS. EUROPE

Authors:
Miran Mitar, Slavko Kurdija and Branko Ažman

ABSTRACT
Purpose:
The paper explores trust in the police analysed by levels of inequality and wealth in several European countries that participated in the European Social Survey 5 in 2011. In the background of exploration are theoretical perspectives of Bailey's social entropy theory as an explicit theoretical approach for an empirical assessment of security of contemporary societies.

Design/methods/approach:
The paper explores the relationship between inequality, wealth, and trust in the police by way of different statistical methods applied on international data on trust in the police for twenty countries taken from the European Social Survey Round 5 – Module: Trust in Police and the Criminal Courts - A Comparative European Analysis (2011), as well as data on wealth and income inequality taken from the Human Development Report of 2010 and 2011.

Findings:
It is clear that trust in the police and its dimensions (effectiveness, distributive fairness, procedural fairness, and police values and priorities) are significantly correlated with wealth (GDPppp) and income inequality (Gini). Trust in the police in Slovenia is low in comparison to Western European Countries. Trust in police values and priorities, as well as the trust in police fairness are the criteria that distinguish the countries with low trust in the police from others.

Research limitations/implications:
The paper is based on a secondary analysis of data of ESS5, so there are limited options for the exploration of additional hypotheses. Further, only a few possible concepts and their dimensions are explored, while many questions still remain unanswered. The paper represents a first step in our exploration of societal conditions and trust in the police. In further research, the results can be examined through structural equation modelling and multilevel analysis.

Originality/value:
The theoretical starting point of the paper is Bailey's social entropy theory. It enables one to see the relationship among various social phenomena at different levels (spanning individuals, groups, communities, organisations, and the like). The approach uses several statistical methods. The results are useful to social scientists,

political leaders, journalists, police chiefs, and, last but not least, professors in the field of criminal justice and security who could devote more time to a critical examination of values needed in police work in a democracy, especially those imbedded in the societal contexts of police work.

Keywords: Slovenia, wealth, income inequality, trust in police, European Social Survey 5

Without public trust in police, »policing by consent« is difficult or impossible, and public safety suffers (Goldsmith, 2005:443).

Those 'whose lives are more insecure can less afford to trust' (Offe and Patterson quoted in Warren, 1999:9).

As well as weakening the social fabric and damaging health, inequality increases crime rates and violence (Wilkinson, R., 1996: 1).

A strong and stable family structure and durable social institutions cannot be legislated into existence the way a government can create a central bank or an army. A thriving civil society depends on a people's habits, customs, and ethics – attributes that can be shaped only indirectly through conscious political action and must otherwise be nourished through an increased awareness and respect for culture (Fukuyama, 1995:5).

1 INTRODUCTION

In social sciences there are several approaches to description and explanation of different social phenomena (and social problems): some approaches emphasize the importance of social structures (contexts and factors), some the importance of agency (individual and collective actors, organisations and institutions), while others aim at conceptualizing different connections between agency and structure in the framework of different systems theories. The purpose of this paper is not to present a selection and discussion of the main perspectives on the concept of trust in different theoretical traditions (Barber, Luhmann, Coleman, Putnam, Bourdieu, Fukuyama and others), or its relations to other social phenomena (violence, control, cooperation, economic growth, development, democracy), but rather to use perspectives of social entropy theory [1] and explore whether or not trust in the police (as conceptualised in the European Social Survey by Jackson et

[1] Bailey(1990, 1994, 1997) formed a model of complex society in the frame of his social entropy theory (SET). Social entropy theory can be used for description and expalanation of social structures and processes, both "normal" and "deviant". It tries to grasp the problems of societies at the different interconnected levels (group, organisation, community, society and supranational system) and used entropy as the measure of the state of the system (instead of equilibrium). Macro societal level can be described and explained by theoretically defined macrovariables (P=population, L=level of quality of life, O=organisation, T= technology, I= Information, S =space). Each macrovariable can be measeured by several indicators. Two most important indicators of quality of life are wealth (or poverty) (usually measured by GDPppp) and income inequality (usually measured by Gini index of income inequality). Basic equation is L = f(POTIS).

al., 2011) is correlated with two basic indicators of social context (GDP PPP and GINI index of economic inequality) [2]. Such an approach does not imply that the quality of institutions is not important for the development of trust in complex human societies (as Bo Rothstein presented his institutional theory of trust in his books *Just Institution Matter* (1998) and *Social Traps and the Problems of Trust* (2005)[3], but that it is difficult to create, develop and maintain democracy and responsible institutions in difficult or strained social conditions (poverty, inequality, social crises; see classical Lipset hypothesis and some other political scientits about conditions for the establishment, maintenance and development of democracy [4].

The conceptual definition and the data on trust are taken from ESS Roound5: Trust in the police and the criminal courts - A comparative European analysis[5], where some details of the ESS, including the number of participating states, sample sizes, questionnaires and response rates, can be found[6]. The data on social context (GDP ppp and GINI index of income inequality)[7] are taken from the Human Development Report of 2010 and 2011. Our data analysis for selected 20 countries is cross-sectional.

The starting question of our analysis is to what extent trust in the police (as measured by way of one direct and twelve indirect questions about different aspects of police work, such as police effectiveness, police distributive fairness,

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2 Caroline Thomas in *Global Governance, Development and Human Security, The challenge of Poverty and Inequality* (2000) emphasized poverty and inequality as main obstacles to development and security. The mistrust can be added to the list of obstacles.

3 A 'social trap' is a situation where individuals, groups or organisations are unable to cooperate owing to mutual distrust and lack of social capital, even where cooperation would benefit all. People will cooperate only if they can trust that others will also cooperate. Rothstein argues (1998: 2005) that it is the existence of democratic and political institutions, together with public policies which enhance social and economic equality, that creates social trust.

4 Mitar(2008) in his work discussed wellknown Lipset hypothesis that it is difficult to develop democracies in deeveloping and undeveloped countries with high degrees of poverty and economic inequality.

5 Jonathan Jackson, Mike Hough, Ben Bradford, Tia Pooler, Katrin Kohl and Jouni Kuha (2011). *Trust in Justice: Topline Results from Round 5 of the European Social Survey*. ESS Topline Result Seires, 1 issue. .http://www.europeansocialsurvey.org/~european/images/downloads/Dec2012/Trust%20in%20Justice%20Topline%20Results%20round%205.pdf

6 The fifth round of the ESS – which includes 45 questions on Trust and Justice – was conducted at the end of 2010 in 28 European countries. In our analysis some data for 20 countries are compared (Belgium, Bulgaria, Switzerland, Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, United Kingdom, Hungary, Israel, Netherlands, Norway, Poland, Portugal, the Russian Federation, Sweden and Slovenia).

7 Gross domestic product (GDP) does not enable direct comparisons of national wealth, so corrections are made by calculations of purchasing power parity (PPP) per capita. PPP takes into account the relative cost of living and inflation rates, rather than just exchange rates which may distort the real differences in income. GDP PPP is often considered as an indicator of country's standard of living, although this can be problematic because GDP is not a measure of personal income. GDB PPP figures are estimates rather than hard facts, and should be used with caution. The Gini coefficient (also known as the Gini index) is a measure of statistical dispersion developed by the Italian statistician Corrado Gini in 1912. The Gini coefficient measures the inequality among values of a frequency distribution of income. A coefficient of zero expresses perfect equality, where all values are the same (for example, where everyone has an exactly equal income). A coefficient of one expresses maximal inequality among values (for example where only one person has all the income).

police procedural fairness, and police priorities and shared values) is correlated with country-level variables associated with wealth and inequality. Our hypotheses are that trust in police is correlated with wealth (positive correlation) and income inequality (negative correlation).

2 THEORETICAL STARTING POINT OF THE ANALYSIS

There are several conceptualisations (and operationalisations) of trust, springing from different theoretical perspectives (surveyed by Adam & Rončević, 2003). In addition, there are different interpretations and explanations of the causes and consequences of trust and distrust for individuals, groups, organisations, communities, states and societies. Our point of view highlights the idea that the correct interpretation and/or explanation of trust or distrust in the police (and other institutions) in different countries has to take into account social context (especially wealth/poverty and inequality). The role of the social context can be conceptualised as a constraining and/or an enabling factor for the development of vicious or virtuous circles of trust and/or distrust in modern societies. Even though assessments and interpretations of situations and predictions in societies differ depending on their theoretical frameworks (disciplines, paradigms), the neglect of contextual variables might result in the omission of otherwise important and sometimes powerful circumstances influencing trust and distrust on interpersonal and institutional levels.

Our theoretical starting point is based on Bailey's social entropy theory (Bailey, 1990; 1994; 1997) and its amendments (Mitar, 2010; 2008; 2006) that enable us to see the importance of trust not only in the reduction of complexity of social systems (Luhmann) and for lowering of "interactions costs" (Putnam, Fukuyama), but also in the reduction of "social entropy" that can be empirically measured by the number of heterogeneous unwanted social phenomena, ranging from homicide to suicide and ill health (a broad list of phenomena influenced by social inequality is provided by Willkinson & Pickett, 2009: 495; see also Willkinson & Pickett, 2010)[8].

3 OVERVIEW OF THE MAIN DATA ON TRUST IN THE POLICE

The data regarding trust in the police are taken from the European Social Survey 5 for the year 2010 (http://www.europeansocialsurvey.org/). Data for GDPppp and

[8] Wilkinson and Pickett (2009:495) presented a list of social problems associted with income inequality: homicide-adults, homicide-juvenile, violent crime, property crime, conflict-children, obeisity-adults,overweight-children, math and reading scores, school drop-out rate, racism, smoking, suicide, teenage births, child well-being, drug abuse, drug overdose deaths, alcohol abuse, mental ilness-adults, mental ilness-children, imprisonment rate, social capiatl, social mobility, status of women and trust.

Gini index of income inequality are taken from the Human DevelopmentReport of 2010 and 2011. The data in Table 1 below shows that trust in the police (direct question, answers measured by scale - 00, 01, 02, 03, 04, 05, 06, 07, 08, ...,09, 10) is low (under 5.00) in the Russian Federation (3.53), Bulgaria (3.85), Israel (4.80), the Czech Republic (4.91), and Slovenia (4.99). It can be seen also that the variances are greater in the countries with lower means of trust in the police.

Table 1: Trust in the police (means and standard deviations) for included countries*

	N of the sample	Trust in the police (Mean)	Trust in the police (SD)	GDPppp	Gini
Belgium	1701	6.01	2.057	36313	33.0
Bulgaria	2345	3.85	2.824	13870	54.3
Switzerland	1502	7.03	2.092	45224	33.7
Czech Republic	2530	4.91	2.399	25581	25.8
Germany	3020	6.86	2.214	36338	28.3
Denmark	1571	7.68	1.834	37720	24.7
Estonia	1762	6.17	2.426	19693	36.0
Spain	1875	6.25	2.221	32150	34.7
Finland	1869	8.03	1.663	35265	26.9
France	1727	5.64	2.328	33674	32.7
UK	2393	6.24	2.347	35155	34.3
Hungary	1531	5.11	2.513	20312	31.2
Israel	2240	4.80	2.681	27656	39.2
Netherlands	1822	6.26	1.901	40676	30.9
Norway	1545	7.20	2.016	56214	25.8
Poland	1704	5.39	2.387	18905	34.2
Portugal	2126	5.10	2.318	24920	38.5
Russian Fed.	2484	3.53	2.745	18932	42.3
Sweden	1484	6.98	1.925	37377	25.0
Slovenia	1372	4.99	2.605	27133	31.2
Total	38796	5.82	2.605		

*Soures of data: ESS5 2011 and Human development Report 2010 and 2011

The overview of the data shows there exist a group of countries with high levels of trust (more than average) in police (Finland, Sweden, Denmark, Norway, Switzerland, Germany, Netherlands, Spain, United Kingdom, Belgium), then there is a group of country with lower level of trust than average level (mean 5.82 for all respondents) (from the lowest upward: the Russian Federation- 3.53; Bulgaria – 3.85; Israel – 4.80; Czech Republic -4.91; Slovenia- 4.99; Portugal -5.10; Hungary -5.11; Poland -5.31 and France – 5.64) .

The examination (in Table 2) of correlations (states as units of analysis) shows that trust in the police is strongly positively correlated with wealth (measured by GDPppp) and strongly negatively correlated with Gini index of income inequality. All correlations are significant.

Table 2: Correlations between Trust in the police, GDPppp and Gini index of inequality

	Trust in the police	GDPppp	Gini
Trust in the police	1	0.758**	-0.738**
GDPppp	0.758**	1	-0.622**
Gini	-0.738**	-0.622***	1

**correlation is significant at the 0.01 level (2-tailed).

4 FOUR DIMESNSIONS OF TRUST IN POLICE

The authors of the questionnaire for the ESS5 distinguish four dimensions of trust in the police that can be measured with several (usually three) questions (Jackson et al., 2009:9). Partly following this original proposal, we selected the following indicators:

- trust in police effectiveness (trust in crime prevention, catching burglars, and the speed of arrival in the case of emergency);
- trust in police distributive fairness (different treatment of victims according to different income and ethnic group origin);
- trust in police procedural fairness (treating people with respect, making fair and impartial decisions, and explaining their decisions and actions - are similar to original proposal); and
- trust in police priorities/group engagement (the same sense of right and wrong with the police, the police standing up for values, the police being influenced by political pressures, and the belief of existence of corruption (bribes) in the police force.

All the selected indicators measured the attitudes of respondents about those aspects of police work that are essentially related to police values and priorities. The response set fort all questions is from 0-10 with 0 being the lowest and 10 being the highest.

Therefore, the four dimensions are represented by the next twelve indicators (questions):
How successful are the police in preventing crimes in the country? (from 0 to 10).
How successful are the police at catching house burglars in the country? (from 0 to 10)

How quickly would the police arrive at a violent crime/burglary scene near to where you live? (from 0 to 10).
How do the police treat rich/poor victims of crime? (rich people treated worse, poor people treated worse, rich and worse treated equally, refusal, don't know and no answer). We designated the percentage of answer of »poor people are treated worse« to be the indicator of trust in police distributive fairness toward poor people.[9]
How do the police treat victims belonging to different races/ethnic groups? Similarly (as above), we designatzed the percentage of answers (people of different races/ethnic groups are treated worse) as the indicator of trust in police distributive fairness toward different races/ethnic groups.[10]
How often do police treat people in the country with respect ? (1=not at all often; 2=not very often; 3=often, 4=very often; 7=refusal; 8=don't know, 9=no answer). We selected the sum of two answers (in percents) 'not at all often' and 'not very often' as the indicator of trust that the police treat people with low respect.[11]
How often do police make fair, impartial decisions? As above, we took the sum of two answers ('not at all often' and 'not very often') as indicators of trust in police fairness.
How often do the police explain their decisions and actions when asked? Similarly, we took the sum of two answers ('not at all often' and 'not very often') as the indicator of trust in police un-willingness to explain decisions.
Do the police have the same sense of right and wrong as I? The sum of percentages of persons who disagree and disagree strongly is taken as the indicator of trust in police sense of right and wrong.
Do the police stand up for values that are important to people like me? The sum of percentages of persons who disagree and disagree strongly is taken as the indicator of police standing for important values.
Are decisions and actions of the police unduly influenced by political pressure? The sum of percentages of persons who disagree and disagree strongly is taken as the indicator.
How often do the police in the country take bribes? (0= never to 10=always). The mean of all answers is taken as the indicator of police corruption.
The response set for the first three and the last question (variable) is from 0 - 10, with 0 being the lowest and 10 being the highest value. Other eight questions (answers) are percentages of agreements or disagreements with offered answer.

[9] Because of the need for a simplification of computation and understanding of results, only one possible answer is taken as an indicator (poor victims are treated worse).
[10] Because of the need for a simplification of computation and understanding of results, only one possible answer is taken as an indicator.
[11] Because of the need for a simplification of computation and understanding of results, two selected answers were summarized.

4.1 Trust in police effectiveness

There exist different measures of objective and subjective measure of police effectiveness and efficiency. Police organisations use different theoretical approaches and different methods for the purposes of organisation and evaluation of their work.[12] In our article, some subjective measures are explored.

Table 3: Trust in police effectiveness

	How successful are the police at preventing crimes? (M / SD)	How successful are the police at catching house burglars? (M/SD)	How quickly would the police arrive ? (M/SD)
Belgium	5.38/1.850	4.90/1.969	5.73/3.319
Bulgaria	4.65/2.235	4.21/2.359	7.97/10.947
Switzerland	5.71/1.867	5.60/1.937	7.51/7.120
Czech Republic	5.33/1.878	5.06/2.109	9.38/12.460
Germany	5.44/1.974	5.34/2.004	7.26/6.964
Denmark	5.73/1.803	4.37/2.021	6.76/6.410
Estonia	5.06/1.946	4.50/2.070	7.83/9.861
Spain	5.97/1.868	5.27/2.046	6.41/5.564
Finland	5.89/1.848	6.10/1.902	6.86/4.792
France	5.27/1.944	4.84/2.146	5.60/2.274
UK	5.30/1.980	4.43/2.110	6.14/4.100
Hungary	4.71/2.093	4.62/2.208	7.43/8.348
Israel	4.29/2.223	3.62/2.406	5.27/4.716
Netherlands	5.22/1.650	4.60/1.796	6.44/5.383
Norway	5.29/1.792	4.39/1.962	6.17/5.797
Poland	5.37/2.002	5.03/2.135	7.84/10.270
Portugal	4.88/1.830	4.44/1.998	6.62/1.998
Russian Fed.	4.26/2.082	3.91/2.178	6.13/7.541
Sweden	5.25/1.829	4.31/2.088	5.61/3.402
Slovenia	5.24/2.091	4.75/2.215	6.12/4.086
Total	5.18/2.011	4.70/2.173	6.94/7.881

The overview of the data (see Table 3 above) shows, that there exist different configurations of countries. There are four countries where subjective estimates of trust in police effectivenss (in the field of prevention, catching burglars and spped of intervention) are above average levels (Switzerland, Czech Republic, Germany and Poland). Higher than avrage are estimates of trust in police ef-

[12] Ben Vollard discussed some objective and subjective measures in his disseration Police Effectiveness, Measurement and Incentives (2006).

fectivenss in police prevention and catching burglars (but not in police speed of intevation) in five countries (Belgium, Spain, Finland, France and Slovenia). Estimations of higher speed (than average) (but lower estimates of effectiveness of prevention and catching burglars) are in Bulgaria, Estonia and Hungary. Higher trust in effectiveness in prevention (but lower trust in effectiveness of catching burglars and speed) are in Denmark, Netherlands, Norway, Sweden and UK. Lower leves (than average) of trust in police effectiveness (all three measures together) are in Israel, Portugal and the Russian Federation. The groupations of countries in different configurations showed different perception (or images) of police effectiveness in different countries.

The data on trust in police effectiveness (prevention, catching out burglars) show that the level of trust in this area is usually somewhere in the middle of the scale. The myth of police effectiveness cannot be supported by data from official statistics, neither can it be supported by data from opinion surveys.

Table 4: Correlations between indicators of the trust in police effectiveness, GDPppp and Gini

	Prevention	Catching	Arrival	GDPppp	Gini
Prevention	1	0.789**	0.134	0.543*	-0.632**
Catching	0.789**	1	0.353	0.261	-0.414
Arrival	0.134	0.353	1	-0.372	-0.043
GDPppp	0.543*	0.261	-0.372	1	-0.622**
Gini	-0.632	-0.414	-0.043	-0.622**	1

**Correlation is significant at the 0.01 level (2-tailed).
*Correlation is significant at the 0.05 level (2-tailed).

The overview of correlations shows that there are significant correlations between trust in police prevention and two indicators of social context. Correlation with wealth (GDPppp) is positive, while that with income inequality (Gini) is negative. Further, the trust in police prevention is correlated with trust in police successfulness in catching house burglars (r = 0.789). The speed of police intervention (arrival) has not significant correlations with other indicators in the table. So, we can accept hypotheses of correlations between perception of prevention and GDPppp and Gini index of income inequality.

4.2 Trust in police distributive fairness

Police officers are in contact with all strata of the population and members of different races and ethnic groups. Situations and social relations (conflicts, cooperation and isolation) in different countries can be heterogeneous due to

demographic, socioeconomic, political, cultural and historical circumstances: for example, Israel is a country in constant conflict with part of inhabitants, which may impact police work and trust in the police.

The data presented in Table 5 show that respondents in a majority of countries indicate low trust in police distributive fairness in the treatment of poor victims[13] and members of different races and ethnic groups. In some countries the level of trust in the treatment of poor victims is low, while in other countries, especially in some western countries, the Russian Federation and Israel, levels of the trust in equal treatment of victims from different race/ethnic groups is low.

Table 5: Trust in police distributive fairness

	Trust in the treatment of victims with different incomes (% of respondents that mean that poor victims are treated worse)	Trust in the treatment of victims from different race/ethnic groups (% of respondents that mean that victims from different race/ethnic groups are treated worse)
Belgium	37.12	48.06
Bulgaria	63.90	39.95
Switzerland	39.15	50.00
Czech Republic	55.57	32.37
Germany	36.71	37.87
Denmark	25.56	44.56
Estonia	31.79	16.40
Spain	50.00	45.65
Finland	29.54	38.76
France	56.88	57.49
UK	41.26	35.59
Hungary	56.56	40.85
Israel	65.11	67.22
Netherlands	22.58	38.39
Norway	39.88	47.85
Poland	62.84	43.46
Portugal	62.91	53.40
Russian Fed	72.29	52.38
Sweden	48.38	64.67
Slovenia	56.19	33.08
Total	48.16	44.20

[13] ESS5 questionnaire does not include a question of trust in fair treatment of offenders.

There are different configurations of countries regarding estimates of treatment of poor victims and treatment of people from different race/etnic groups. Distrust in equal tretament of poor victims and victims form different race/etnic group (higher percentage of anwsers that express distrust in equal treatment) are found in six countries (Spain, France, Israel, Portugal, the Russian Federation and Sweden) (note: a membership of Sweden in this group is unexpected). The distrust in equal treatment of poor victims (but not of victims of different race/etnic origin) are in Bulgaria, Czech Republic, Hungary, Poland and Slovenia. Here, the phenomen of social inequality can influence perception of estimation of police equal treatment of poor victims.There is a group of countries, where estimates showed distrust in equal treatment of victims form different race/etnic groups (but not poor victims). These countries are Belgium, Switzerland and Denmark. The estimates of equal treatment (both for poorer victims and victims from different race/ethnic groups) are present in Germany, Estonia, Finland, United Kingdom, Netherlands and Norway. These data shows the possible influences of social cleavages (poverty, race and ethnic differentiation, problems with immigration) in different countries.

Table 6: Correlations between trust in treatment of poor victims (victimpoor), victims that are members of different race/ethnic groups (Ethno), wealth (GDPppp) and income inequality (Gini)

	Victimpoor	Ethno	GDPppp	Gini
Victimpoor	1	0.392	-0.626*	0.589**
Ethno	0.392	1	0.228	0.093
GDPppp	-0.626*	0.228	1	-0.622**
Gini	0.589**	0.093	-0.622*	1

** Correlation is significant at the 0.01 level (two-tailed).

There are significant negative correlations between the wealth of a country (GDPppp) and trust in the treatment of poor victims of crime, and significant positive correlations with income inequality.

There are no significant correlations between trust in the treatment of victims-members of different race/ethnic groups and both social context indicators. It can be assumed that influences of some other unexamined factors are present (nature and history of race and ethnic structures and relations in different countries).

4.3 Trust in police procedural fairness

Table 7: Trust in police procedural fairness

	How often do police treat people with respect? (% of not at all and not very often)	How often do police make fair impartial decisions? (% of not at all and not very often)	How often do police explain their decisions and actions when asked? (% of not at all and not very often)
Belgium	15.65	21.55	47.25
Bulgaria	43.10	40.76	59.26
Switzerland	12.50	17.19	35.56
Czech Republic	41.12	35.11	54.31
Germany	14.88	15.23	27.90
Denmark	8.63	9.63	19.48
Estonia	25.75	24.97	32.29
Spain	10.54	14.17	33.28
Finland	10.69	9.15	25.91
France	35.12	33.65	58.74
UK	15.47	18.17	32.13
Hungary	35.69	36.79	49.81
Israel	53.61	52.02	52.79
Netherlands	18.61	23.02	34.90
Norway	12.28	16.63	31.33
Poland	34.62	37.16	45.57
Portugal	30.50	42.99	49.33
Russian Fed.	63.75	65.42	63.06
Sweden	12.97	18.03	33.16
Slovenia	29.99	30.71	32.92
Total	27.06	28.60	40.76

The overview of indicators of procedural fairness show that often the same countries show low levels of the trust (or of high distrust) that the police treat people with respect, make impartial decisions and are willing to explain decisions and actions. These statements (and agreements with them) are indicators of the style of police work and police culture.The highest levels of distrust in indicators of police fairness are present in the Russian Federation and Israel. The overview of configuration (higher/lower than average percentages) give next configurations of countries. In the groups of countries (with higher percentage of answers that disagreed with the statement of treatment the people with respect, of making impartial decisions and police willingness for explanation of

decisions) are eight countries (Bulgaria, Czech Republic, France, Hungary,Israel, Poland, Portugal, the Russian Federation). Five of them are former socialist countries, Israel is a state with internal problems, Portugal and France are western countries with internal problems (economic, immigration). These answers enable guesstimate of existence of paramilitary model of policing. In a group of nine countries (lower percentage of disagreement with statement of treatment the people with respect, making impartial decisions and police willingemss to explain decisions) are Switzerland, Germany, Denmark, Estonia, Spain, Finland, United Kingdom, Norway and Sweden. In configuration with low disagreement of statement of treatment people with respect and , making impartial decisions, but with high disagreement about willingness of police to explain decisions are Belgium and Netherlands. Special case is Slovenia, where data show (somewhat unexpectedly) that there is disagreement with statement of treatment of people with respect and making impartial decisions, but agreement that police is willing to explain their decision. This ambivalence can show possible transition in perceptions of police work in Slovenia in time of crisis.

Table 8: Correlations of indicators of the trust in police procedural fairness and wealth (GDPppp) and income inequality (Gini)

	Respect	Impartial	Explanation	GDPppp	Gini
Respect	1	0.969**	0.853**	-0.710***	0.635**
Impartial	0.969**	1	0.862**	-0.672**	0.693**
Explanation	0.853**	0.862**	1	-0.578**	0.635**
GDPppp	-0.710**	-0.672**	-0.578**	1	-0.622**
Gini	0.635**	0.693**	0.635**	-0.622**	1

**Correlation is significant at the 0.01 level.

All indicators of trust in police fairness are significantly correlated with one another. The correlation with the indicator of wealth is significant and negative because of the wording of the answer (% of not at all and not very often), yet there is a significant positive correlation with the indicator of income inequality. These results show important influence of income inequality on the perception of fairness of police work in contacts with people. Our hypotheses about the correlations of wealth (GDPppp) and income inequality with indicators of trust in police fairness are accepted.

4.4 Trust in police values and priorities

Table 9: Trust in police values and priorities

	Do the police have the same sense of right and wrong as I? (% of disagree and disagree strongly)	Do the police stand up for values that are important for people? (% of disagree and disagree strongly)	Are decisions and actions of police unduly influenced by political pressure? (% of disagree and disagree strongly)	How often do the police in the country take bribes? (from =0 to 10) M/SD
Belgium	17.00	8.79	21.48	3.90/2.52
Bulgaria	20.30	17.40	8.49	5.70/2.413
Switzerland	12.40	5.99	21.78	2.49/2.119
Czech Rep.	22.30	17.50	13.28	5.57/2.248
Germany	9.30	6.42	14.31	2.74/2.007
Denmark	9.57	5.16	23.75	1.61/1.800
Estonia	12.13	7.20	37.03	3.88/2.113
Spain	14.76	7.64	13.29	4.22/2.376
Finland	5.98	4.42	37.32	2.19/1.939
France	25.17	12.14	10.71	4.55/2.528
UK	15.52	11.84	15.45	3.06/2.215
Hungary	19.03	13.77	11.67	5.39/2.346
Israel	25.37	23.71	18.57	4.34/2.658
Netherlands	13.23	7.91	14.84	2.88/2.022
Norway	7.87	4.88	28.77	2.10/1.848
Poland	11.75	7.68	25.65	4.44/2.300
Portugal	18.12	6.76	10.50	4.96/2.309
Russ. Fed.	27.48	30.75	14.80	6.70/2.185
Sweden	7.55	3.83	30.17	2.20/1.848
Slovenia	22.49	16.05	13.75	4.23/2.441
Total	16.15	11.54	18.64	3.89/2.620

The overview of the data (Table 9 above) show expressions of disagreements of respondents (% of disagree and disagree strongly) with the statements, respectively, on the police sense of right and wrong, on the one regarding police endeavours for values which are important for people, and the one that that police decisions and actions are unduly influenced by political pressures or by corruption.

The overview of data in the first and second column (percentages of disagreement with statement of the police have same sense of right and wrong as peo-

ple and that the police stand for values that are important for people show a configuration of seven countries (Bulgaria, Czech Republic, France, Hungary, Israel, the Russian Federation and Slovenia), where there are disagreements with statements of sense of right and wrong and statements of the police standing for values. The next configuration consist of ten countries (with low percentages of disagreements with boith statements) (Switzerland, Germany, Denmark, Estonia, Spain, Finland, Netherlands, Norway, Poland and Sweden). In a group of mixed statements (higher disagreement with statement of on police sense of right and wrong lower disagreement with statement of police standing for values) are in Belgium and Portugal. A special case is United Kingdom, where lower disagreement exists regarding statement of police sense of right and wrong, but higher disagreement regarding statement with police standing for important values.

The data in the third and the fpurth column of the table show the perception of existence (or influence) of political pressures and corruption (bribes) on police work. The overview of configurations show four different groups. In the first group (called high disagreement with political pressures and corruption – consists of higher percentages of disagreements with existence of political pressures and lower means of estimatetd frequencies of bribes) are seven countries (Switzerland, Denmark, Estonia, Finland, Norway, Poland and Sweden). In the second group (missing disagreement regarding political pressures and higher means of frequencies of bribes) are eight countries (Bulgaria, Czech Republic, France, Hungary, Israel, Portugal, the Russian Federation andg Slovenia). The images of police integrity (political pressures from above, bribes from below) in these countries are bad. In a third group (higher estimation of bribes) are Belgium and Poland. The fourth group (image of political pressures) consists of Germany,United Kingdom and Netherlands.

Althoug the overview of groups is done by use of simple method of comparisons of averages (below and above selected values), it show some important consistencies regarding classification of countries in groups. The images of police values (sense of right and wrong; police standing for important values) and the images of police integrity (political pressures, bribes) are bad in divided societies (Israel and the Russian Federation) and in societies in crisis (transitions, political and economic crisis, immigration pressures, etc.).

Table 10: Correlations of indicators of the trust in police values and priorities with the indicators of context (wealth, income inequality)

	Wrong	Value	Pressure	Bribes	GDPppp	Gini
Wrong	1	0.860**	-0.406	0.756**	-0.542*	0.581**
Value	0.860	1	-0.651**	0.797**	-0.504*	0.570**
Pressure	-0.406	-0.651**	1	-0.512*	0.301	-0.421
Bribes	0.756**	0.797**	-0.512*	1	-0.803**	0.659**
GDPppp	-0.542*	- 0.504*	0.301	-0.803**	1	-0.622**
Gini	0.581**	0.570**	-0.421	0.659**	-0.622**	1

** Correlation is significant at the 0.01 level (2-tailed).
* Correlation is significant at the 0.05 level (2-tailed).

Disagreements with the statement on the police sense of right and wrong are correlated significantly with those on the police standing up for important values, as well as those on the beliefs in police corruption (bribes).[1] Disagreements are correlated negatively with wealth (GDPppp) and positively with income inequality (Gini). A similar pattern of correlations exist for the disagreement with police standing up for important values and the beliefs in police corruption (bribes). The disagreement with the statement of existence of unduly political pressures on police is correlated with wealth and income inequality, but the correlation with income inequality is negative and with wealth is positive (yet not significant). It is seen, that correlations with GDPppp and Gini idex of inequality are significant with perceptipion of police sense of right and wrong, police standing for important values and police corruption (bribes)[14]. There is no significant correlation with indicator of undue political pressures.

5 PRINCIPAL COMPONENT ANALYSIS OF INDICATORS OF TRUST

Principal component analysis (Varimax rotation with Kaiser Normalization) of the twelve indicators of trust extracted two components. The first component (called value component) explains 61.725 % of variance, and the second one (called effectiveness component) explains 15.279 % of variance. The role and position of the indicators in the two components are seen in Table 11 and Graph 1 (below). The indicators of the dimension of police effectiveness are part of the second component, while indicators of trust in procedural fairness and trust in shared values and priorities are part of the first component.

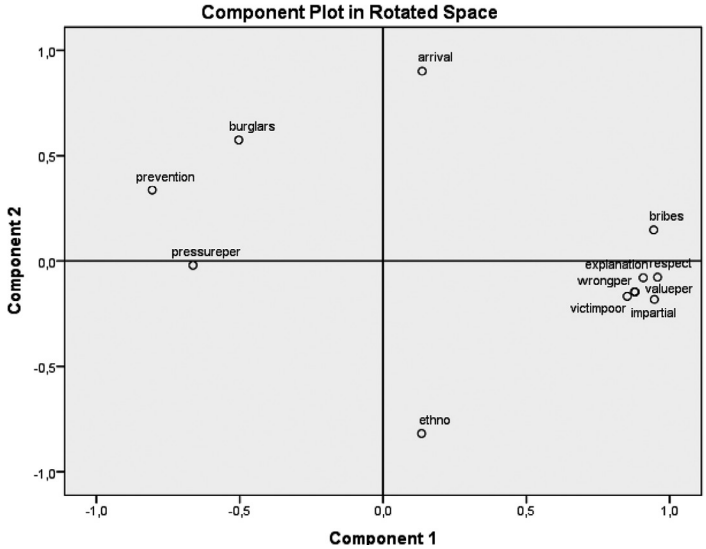
[14] There is a praxis of negative and positive wording of questions and answers in surveys. That praxis does enable that people consider question seriouslyand does not answer automatically. Such praxis requires more careful analysis and interpretations of results.

In the first component (value component) the most important indicators are indicators of police fairness (respect 0,958; impartial 0,947, explanation 0,908), indicator of police values and priorites (wrongper 0,879; valueper 0,877, presureper -0,633 and bribes 0,944) and indicator of victimpoor (0,852). These indicators shows the images of characteristics of police work that are important for subjective assessment of police. In the second component (called police effectiveness) the most important indicators are arrival (0,901), ethno (-0,818) and catching (0,575). Indicator ethno shows estimates of perception of equal treatment of persons from different race/ethnic groups.

Table 11: Rotated Component Matrix[a]

	Component 1	Component 2
Prevention	-0.805	0.337
Catching	-0.503	0.575
Arrival	0.136	0.901
Respect	0.958	-0.076
Impartial	0.947	-0.182
Explanation	0.908	-0.079
Ethno	0.134	-0.818
Victimpoor	0.852	-0.167
Wrongper	0.879	-0.147
Valueper	0.877	-0.146
Pressureper	-0.663	-0.020
Bribes	0.944	0.148

Rotation converged in 3 iterations.



Graph 1: Component Plot in Rotated Space

Table 12: Correlations of two components with two indicators of social context

	1 component (values)	2 component (effectiveness)	GDPppp	Gini
1 component	1	0.000	-0.729**	0.683**
2 component	0.000	1	-0.313	-0.093
GDPppp	-0.729**	-0.313	1	-0.622**
Gini	0.683**	-0.093	-0.622**	1

** Correlation is significant at the 0.01 level (2-tailed).

The correlation between the first component (called value component) and with wealth (GDPppp) is significant and positive, while that with income inequality is positive and significant. The second component (called police effectiveness) is correlated significantly (negative correlation) with income inequality. This pattern of correlations shows that the first component is connected with low wealth and high income inequality. The second component is not connected significantly with wealth and income inequality. These data show that perception of police work is associated with characteristics of countries (wealth/poverty and income inequality).

6 DISCRIMINANT ANALYSIS OF THE COUNTRIES WITH LOW AND HIGH TRUST IN THE POLICE

Discriminant analysis of the two groups of states in terms of a low (the first group = Mean of trust under 5.00) or a high level (the second group = mean of trust equals 5.00 and more; data in Table 1) of trust in the police shows the differences between these countries in terms of the twelve (12) indicators of trust.

Table 13: Tests of Equality of Group Means

	Wilks' Lambda	F	df1	df2	Sig.
Prevention	0.663	9.159	1	18	0.007
Catching	0.828	3.742	1	18	0.069
Arrival	0.984	0.301	1	18	0.590
Respect	0.431	23.756	1	18	0.000
Impartial	0.556	14.377	1	18	0.001
Explanation	0.707	7.451	1	18	0.014
Ethno	0.999	0.017	1	18	0.899
Victimpoor	0.634	10.385	1	18	0.005
Wrongper	0.300	42.029	1	18	0.000
Valueper	0.547	14.927	1	18	0.001
Pressureper	0.836	3.528	1	18	0.077
Bribes	0.627	10.726	1	18	0.004

The tests of equality of group means show significant differences between countries with low (Bulgaria, Czech Republic, Israel, the Russian Federation and Slovenia) and high trust levels (Belgium, Swwitzerland, Germany, Denmark, Estonia, Spain, Finland, France, UK, Hungary, Netherlands, Norway, Poland, Portugal and Sweden) in terms of the indicators or respect, impartial decision-making and explanation (these are indicators of police procedural fairness), victims poor (distributive fairness), and wrongper, valueper, bribes (three of four indicators of trust in police values and priorities).

In the next stage we exclude those indicators which do not discriminate between groups (prevention, catching, explain, ethno and pressureper) and get a high canonical correlation (0.891) and Wilk's lambda (0.235) that is significant (sig. = 004).

Table 14: Structure matrix (for seven important indicators)

	Function
Wrongper	0.847
Respect	0.637
Valueper	0.505
Impartial	0.495
Bribes	0.428
Victimpoor	0.421
Exlanation	0.357

Pooled within-groups correlations between discriminating variables and standardized canonical discriminant functions. Variables ordered by absolute size of correlation within function.

The structured matrix shows the rank order of importance of the indicators of the standardized canonical function. The three most important indicators of trust in the police are respondents' trust in police sense of right and wrong (wrongper), the trust in police respect of people, and the trust in police values and priorities.

Original casewise statistics showed that Bulgaria, the Czech Republic, Israel, the Russian Federation, and Slovenia are in the first group of countries (low trust), but in the cross-validated classification of countries (using the discriminant function) the Czech Republic and Slovenia are classified in the second group, and France in the first group of countries. The discriminant functions classified 85.0% of cases correctly.

The use of discriminant analysis show, that Slovenia and Czech Republic are somewhat ambivalent countries, discriminant analysis show their membership in a second groups of countries (high trust in police). A special case is also France, it is classified in a first group of countries.

7 TRUST IN THE POLICE IN SLOVENIA IN COMPARISON WITH ALL RESPONDENTS

The comparison of Slovenia with all respondents (all countries together) can show similarities and differences of subjective perception of police work in Slovenia.

Table 15: Profile of trust in the police, comparison of Slovenia with all respondents

	All	Slovenia
Trust in the police (from 0 to 10)	5.82	4.99
Trust in prevention (from 0 to 10)	5.18	5.24
Trust in catching house burglars (from 0 to 10)	4.70	4.75
Trust in speed of police intervention (from 0 to10)	6.94	6.12
Trust in the treatment of poor victims (% worse)	48.16	56.19
Trust in the treatment of different race /ethnic group (% worse)	44.20	33.08
Trust that the police treat people with respect (% not at all and not often)	27.06	29.99
Trust that the police make fair/impartial decisions (% not at all and not often)	28.60	30.71
Trust that police explain decisions and actions (% not at all and not often)	40.76	32.92
Trust in police sense of right and wrong (% disagree and strongly disagree)	16.15	22.49
Trust in police stand up for important values (% disagree and strongly dis.)	11.55	16.05
Existence of unduly political pressures (% disagree and strongly disagree)	18.64	13.75
Beliefs in police corruption (from 0 to 10)	3.89	4.23

The comparison of trust in the police between Slovenia and all respondents show that trust in the police in Slovenia is below the average (if we take into account all respondents without regardless of their country of origin).

The trust in police effectiveness (prevention, catching and speed) is somewhat about the average, although the results are low in comparison with the countries with greater trust.

The trust in police distributional fairness, especially the trust in the treatment of poor victims, is under the average. Again Slovenia respondents have critical perceptions of police work.

The trust in police procedural fairness (respect, impartiality, explanations) is weaker than the average, also the same is true of the indicators of the trust in police values in priorities.

Taken as a whole, the comparison shows that trust in the police (direct question) in Slovenia is low (Mean = 4.99), with trust in police effectiveness (prevention, catching and speed) slightly above the average (a deterrence model of policing) and the trust in distributional fairness showing elements of distrust in equal treatment of poor victims and victims that are members of different race/ethnic groups.

The trust in police procedural fairness (a model of procedural justice, based on Tyler, 2006) and that in police values and priorities (a model of people's moral alignment via shared values, based on Beetham, 1991) show unpleasant results as well. These results are in the process of theoretical reconsideration, exploration and testing, so they represent starting point for broader and deeper inquiries into the problems of perceptions of police work in countries with different circumstances regarding wealth (measured by GDP ppp) and income inequality (measured by Gini index of income inequality).

8 DISCUSSION

The overview of trust in the police and the dimensions of trust in the police show that conceptualisations of trust in ESS5 are appropriate for measuring levels of trust in the police. The data can be used for testing different theoretical approaches and hypotheses. There are found significant positive and negative correlations with wealth (trust in police, 0,758**, prevention 0,543*, treatment of poor victims -0,626*, perception of respect -0,710**, impartiality -0,672**, explanation -0,578**, perception of right and wrong -0,542*, standing for importand values - 0,504*, bribes -0,803**, the first value component -0,729**) and income inequalities (trust in the police -0,738, prevention -0,632**, treatment of poor victim 0, 589**, perception of respect 0,635**, impartiality 0,693**, explanation 0,635*, perception of right and wrong 0,581**, standing for values 0,570**, bribes 0,659** , the first value component 0,683**) showed important role of welth (and poverty) and income inequality as factors that can influence not only perceptions but also reality of police work.

The majority of calculations show an important influence (significance of correlations) of social context indicators (wealth, income inequality) on trust in the police. The discriminant analysis shows seven indicators that are important for discrimination of trust in the police between two groups of countries (low trust/high trust). Further analyses (for example Structural Equation Modelling and Multilevel Modelling) are needed for a more complete assessment of influence of other variables.

The results also show that perception of police effectiveness alone is not a sufficient condition for the development of trust in the police. It is more difficult to establish trust in police values and priorities, as well as trust in police procedural and distributive fairness in the context of social crises (decreases in wellbeing and growing inequality). We can assume that appropriate measures and reforms must be planned not only inside police organizations, but also within other political, economic, social and educational institutions.

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LEGAL AND ETHICAL PRINCIPLES IN PRACTICE – THE CASE OF THE SLOVENIAN POLICE

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ABSTRACT

Purpose:
The paper examines the results of an evaluation of a legal and ethical principles survey of Slovenian Police employees.

Methods:
Within the framework of the Targeted Research Project (*ciljni raziskovalni project, CRP*) "The establishment of a system for the measurement of efficiency, effectiveness and quality in the Slovenian Police Service", that was financed by the Ministry of the Interior, a survey on the evaluation of legal and ethical principles was conducted in the period from 27 February to 23 March 2012.

Based on an analysis of regulations and other acts governing the functioning of the police service, a list of 25 legal and ethical principles that constitute the guidelines for the functioning of police officers was compiled. The principles concern different relations, e.g. a) the relations of police officers to the general public and to persons against whom they take action; b) mutual relations among police officers; and c) relations between police officers as employees and the state as the employer.

All Police employees were invited by the authors of the study as well as the police management and trade unions to complete the questionnaire. They were sent an e-mail briefly presenting the study and including a link to the online questionnaire. An instruction page explaining the purpose of the study and ensuring confidentiality preceded each survey when the participants clicked on the link. Two reminder e-mails were sent to the employees. As at 31 December 2011 the Slovenian Police employed 8,808 staff, and 1,848 respondents (21.0 percent) answered at least one substantive question.

The analysis focuses on statistically significant differences in the evaluation of selected legal and ethical principles based on gender, age and work position.

The data were analysed using SPSS 19.0. An independent t-test was used to test the differences between the two sub-groups. A one-way ANOVA (F) test was used for the differences between three or more sub-groups.

Findings:
Female employees evaluated all of the principles higher than the males. Differences occurred with regard to the principles of humanity, economy, social responsibil-

ity, confidentiality, restrictions on strikes, restrictions on conducting other activities, preserving the good reputation of the police, loyalty and the prohibition of mobbing.

Certain principles were evaluated equally by all age groups (e.g. efficiency, confidentiality, prohibition of mobbing), while other principles were as a rule evaluated lower by younger employees (e.g. legality, professionalism).

Employees in the office evaluate certain principles differently to those who work in the field (e.g. economy, ethics, social responsibility).

Research Limitations:
Since the survey was conducted on-line, we assume that for some employees this probably meant that their anonymity could not be assured.

Originality:
The research shows how employees of the Slovenian Police evaluate certain legal and ethical principles regulated by legislation and highlights differences regarding gender, age and work positions.

Keywords: legal principles, ethic principles, values, police, Slovenia

1 INTRODUCTION

The state administration as part of the executive power performs two fundamental functions; namely, it participates in policy making and then implements the adopted policies (Tičar & Rakar, 2011).[1] The execution of law is never an automatic process but a choice between several alternatives – this is not only true for discretionary decision-making but also for legally bound decisions (Pitschas, 2008). The final result of the execution of law therefore depends on: 1) legal norms; 2) the available information; 3) the functioning of the organization; and 4) the people implementing the tasks.[2]

The people who implement the tasks need guidelines when making decisions, especially in those situations not regulated by the legal order (a legal gap) or when the decision-makers may choose from several options (discretion).

General guidelines for functioning are underpinned by values, namely the values of each individual and the organization they work for as well as legal values. Legal values are expressed in legal principles. A legal principle is a value criterion of how to act in legal relationships where someone should adhere to a specific type of behaviour or act. Legal principle serves as a value guideline for the implemen-

[1] Exhaustively on the role of public administration in: Pečarič (2011).

[2] Igličar (2009) believes that law is in any case executed with material acts – in some cases those addressed by the law comply with general legal norms (e.g. they repay their debts, refuse to steal etc.) and in other cases they adhere to individual concrete legal norms – e.g. pay a tax as determined by the tax administration in an order.

tation of legal rules and also defines them in substantive terms (Pavčnik, 2001). Whether to a smaller or larger extent, every legal decision is underpinned by values and thus enforces a country's broader moral standards that stem from regulations.

2 GUIDANCE FOR THE FUNCTIONING OF THE POLICE SERVICE

In today's modern society police activity is considered to be extremely complex, requiring a lot of knowledge and skill of those directly performing the tasks and those providing guidelines as well as supervising and evaluating its work (Pagon, Meško, & Lobnikar, 2003).

The police service forms part of the state administration, which is why all of the above statements about the execution of law also apply to it. At every level of police activity, be it even the highest professional level, there are different value elements and different possibilities for discretionary decision-making and action-taking (Kečanović, Klemenčič, Zidar, & Pavlin, 2006). In view of the above, it is very important to guide its functioning (the *ex ante* aspect) and to supervise it (the *ex post* aspect).[3]

Police work can be guided at several levels and in several ways. This contribution focuses on the guidance for the police service's functioning based on the legal and ethical principles stipulated in regulations and other acts.[4]

The principles of the police service's functioning can be divided into two main groups, regardless of their partial substantive and typological overlapping, namely: 1) legal; and 2) ethical. Legal principles are determined by legal acts and ethical principles by codes. The legal principles governing how the Slovenian Police functions are mainly defined in: 1) the Constitution of the Republic of Slovenia (CRS), Official Gazette of the RS, no. 33I/91 with amendments; 2) the Public Administration Act (ZDU-1), Official Gazette of the RS, no. 52/2002 with amendments; 3) the Police Act (ZPol), Official Gazette of the RS, no. 49/98 with amendments; and 4) the Civil Servants Act (ZJU), Official Gazette of the RS, no. 56/2002 with amendments. The ethical principles are largely defined in: 1) the Code of Conduct for Civil Servants (CCCS), Official Gazette of the RS, no.

[3] For more information about supervision and control over the police, see Kečanović (2003).

[4] or more information about the relationship between the police as a body within the ministry and the line ministry, see Kečanović et al. (2006: 145) and the subsequent.

8/2001[5] and 2) the Code of Police Ethics (CPE).[6] The principles of functioning are also stipulated in the internal regulations of the Police (IR)[7], while a comparison can also be made with the principles contained in the new Bill on Police Tasks and Authorities (ZNPP).[8]

The purpose of the study was to establish the meaning the police officers ascribe to the principles they have to adhere to and to identify any statistically significant differences in their evaluation of these principles based on gender, age and work position. In this sense, it is only about values. A value can be defined as an importance or worth. Given that the police service is considered to be a closed professional environment which only reluctantly opens up completely to academic research (Crank, 1998), our study represents an opening of this space and the results serve as a basis for better understanding the functioning of the police service. Namely, the decision of a police officer concerning how to respond in a specific situation not only depends on the regulations but also on their personal values.

The study of values is multi-disciplinary (Braithwaite & Scott, 1991) and therefore values in the police service are investigated from different perspectives.[9] A comparative perspective is very commonly used. Examples of compared items are as follows: 1) (moral) values of police officers in different countries (e.g. Meško, Ziembo-Vogl, Houston, & Umek, 2000; Walker & Kratcoski, 1985; Teahan, Adams, & Podany, 1980); 2) values of the public at large and the police service (e.g. Rokeach, Miller & Snyder, 1971; Griffeth & Cafferty , 1977; Cochrane & Butler, 1980; He, Zhao, & Lovrich, 2002); 3) values of police officers and other groups (e.g. Zedeck, Middlestadt, & Hayes, 1981); and 4) differences between the generations of police officers (e.g. Cheung, 2011). Many studies delve into the issue of value transfer (e.g. Engelson, 2008; Crank, 1998) and the relationship of the values of police officers and the organization (e.g. LaRose, Caldero, & Gonzalez-Gutierrez, 2006; Lilley & Hinduja, 2006). Moreover, some studies also investigate issues concerning the organizational values of the police service (e.g. Greene, Alpert, & Styles, 1992) and the influence of culture on the values of individual police officers (Jiao, 2001). A number of studies deal with integrity and corruption (e.g. Kutnjak Ivković, 2005; Lobnikar; Koporec, & Šumi, 2006;

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5 Similar provisions are also stipulated in the Ethical Code of Civil Servants in Public Authorities and Local Community Administrations, also adding the principle of social responsibility which was included in our study – see http://www.mpju.gov.si/fileadmin/mpju.gov.si/pageuploads/Uradniski_svet/Kodeks_Etike.pdf (retrieved July 13, 2012).

6 Retrieved from http://www.policija.si/index.php/component/content/article/113-predstavitev/203-kodeks-policijske-etike. Also see the European Code of Police Ethics accessible at http://www.svetevrope.si/res/dokument/download02ae.pdf?id=/res/dokument/1388-_1.pdf&url=/res/dokument/1388-_1.pdf&title=priporocilo_rec_2001_10_evropski_kodeks_.pdf (13 July 2012).

7 See Police Authorisations (Manual for senate members in appeal proceedings). Ministry of the Interior. Retrieved from http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/DPDVN/Pritozbe/PRIROCNIK_ZA_ CLANE_SENATA_V_PRITOZBENEM_POSTOPKU.ppt

8 Retrieved from http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/SOJ/2010/ZNPP13122010.pdf

9 For an analysis of studies in the 2000-2007 period, also see Mazeika, Bartholomew, Distler, Thomas, Greenman & Pratt, 2010.

Dobovšek & Škrbec, 2012). Despite a considerable shift in the values that took place upon the transition from an authoritarian to a democratic system, Nalla (2009) has established that there is little research that examines the democratization of the police that has occurred in these transitional democracies.[10]

3 METHODS

3.1 Participants

The data on the evaluation of principles were acquired through an online survey. The latter was part of a broader survey entitled "Study of job satisfaction and trust in the Slovenian Police Service" which was carried out in the period from 27 February to 23 March 2012.

All Police employees were invited by the authors of the study as well as the police management and trade unions to participate in the survey. They were sent an e-mail briefly presenting the study and including a link to the online questionnaire. An instruction page explaining the purpose of the study and ensuring confidentiality preceded each survey when the participants clicked on the link. Two reminder e-mails were sent to employees. As at 31 December 2011 the Slovenian Police employed 8,808 staff, and 1,848 respondents (21.0 percent) answered at least one substantive question.

Table 1: Basic demographic data on the sample of respondents

	Number	Percentage
Gender		
Female	312	17.3
Male	1491	82.7
Total answers	1803	100
No answer	45	
Total	1848	
Age of respondents	Number	Percentage
up to 30 years	293	16
between 31 and 35 years	351	19.2
between 36 and 40 years	416	22.8
between 41 and 45 years	395	21.6
above 46 years	371	20.3
Total	1826	100
No answer	22	
Total	1848	

[10] Some examples of studies include: Zekavica, Kešetović & Kesić, 2011; Nalla, 2009; Kutnjak Ivković, 2009; Mekinc, Anžič, Rep & Ovsenik, 2008 and Umek, Musek & Meško, 1996. For an overview of research, see Kutnjak Ivković, 2009.

Main place of work	Number	Percentage
In the field	793	45.4
In the office	955	54.6
Total answers	1748	100
No answer	100	
Total	1848	

3.2 Principles

Based on an analysis of the abovementioned regulations, 25 principles were selected that guide the functioning of the police officers (see Table 2).[11] The selection criteria included the following: 1) substantive affinity; and 2) a focus on one of the following aspects: a) regulating relations between police officers and the general public and the persons against whom they take action; b) regulating mutual relations among police officers; and c) regulating relations between the police officers as employees and the state as the employer.

Table 2: Principles guiding the functioning of the Slovenian Police

legality
expertise
mutual trust
equality before the law
impartiality
mutual co-operation
protection of professional interests
confidentiality
prohibition of mobbing
efficiency
humanity (respect for human rights)
collegiality
independence
ethics
responsibility for work results
protection of the Police's reputation
proportionality
social responsibility
public accountability
economy
loyalty to the employer

[11] The principle of social responsibility was added, which is included in the Ethical Code of Civil Servants in Public Authorities and Local Community Administrations.

political neutrality
restriction on the acceptance of gifts
restriction on the right to strike
restriction on performing other activities

The data were analysed using SPSS 19.0. An independent t-test was used to test the differences between the two sub-groups. A one-way ANOVA (F) test was used for the differences between three or more sub-groups.

4 FINDINGS

The respondents ascribed the abovementioned principles with the following level of importance:

Table 3: Importance of the principles of functioning

Import ance of individual principles of functioning	No. of answers	Arithm. mean	Stand. deviat.
Legality	1756	4.85	0.43
Expertise	1761	4.82	0.46
mutual trust	1738	4.72	0.59
equality before the law	1751	4.70	0.66
Impartiality	1744	4.70	0.64
mutual co-operation	1735	4.70	0.60
protection of professional interests	1732	4.61	0.69
Confidentiality	1737	4.57	0.69
prohibition of mobbing	1728	4.57	0.80
Efficiency	1762	4.56	0.64
humanity (respect for human rights)	1756	4.55	0.73
Collegiality	1732	4.54	0.74
Independence	1758	4.42	0.67
ethics	1729	4.40	0.81
responsibility for work results	1756	4.37	0.75
protection of the Police's reputation	1727	4.37	0.87
Proportionality	1725	4.32	0.71
social responsibility	1743	4.12	0.88
public accountability	1732	3.89	1.01
Economy	1757	3.88	0.99
loyalty to the employer	1726	3.81	1.10
political neutrality	1733	3.70	1.41
restriction on the acceptance of gifts	1724	3.51	1.25
restriction on the right to strike	1716	2.85	1.35
restriction on performing other activities	1732	2.74	1.30

1 – absolutely unimportant; *5* – very important

The table shows that the police officers ascribed the greatest importance to the principles of legality, expertise, mutual trust, mutual co-operation, equality before the law and impartiality, whereas the principles of loyalty to the employer, political neutrality, restriction on the acceptance of gifts, the right to strike and restriction on performing other activities were considered the least important.

Stemming from the fact that Slovenia is a so-called 'emerging democracy' and that in the former social and political system the police had a considerably different mission than today, we believe that the following two aspects should be highlighted in the general evaluation of the importance of the principles: 1) the high evaluation of the principles of legality, expertise, equality before the law and impartiality; and 2) the low evaluation of the principles of political neutrality and the restriction on accepting gifts.

The principle of legality is a basic principle of the rule of law and, from the point of view of the police service; it can be understood as a limitation on its practical functioning. Namely, it sets boundaries that cannot be crossed even when crossing them would help the police service attain its goal easier. The result of our survey is interesting because the literature reveals that the police (sub)culture is typically negatively inclined towards legal limitations on its functioning because they prevent it from effectively dealing with crime (i.e. *handcuffing the police*) (see Cochran & Bromley, 2003).

The principles of equality before the law and impartiality are elements of the principle of legality. With reference to these two principles, a study by Umek, Meško, & Abutovič (2003) is worth noting for having found that Slovenian police officers show high levels of prejudice towards ethnic minorities and marginal social groups; moreover, the negative attitude towards these minorities and groups was even more negative than observed in the sample of the Slovenian general public investigated in a study by Toš (1994). The authors of the study emphasise that it would be bold to use these results to claim that these prejudices lead to discriminatory practice; however, this could reveal a latent disposition for it (Umek et al., 2003). Likewise, it cannot be asserted on the basis of our results that the practice is non-discriminatory.[12]

Police officers must always work in the public interest. This means they cannot pursue private interests or someone else's private interests, or the interests of pressure groups or political parties. The principle of political neutrality stems from Article 42 of the Slovenian Constitution which states that permanent defence and police personnel may not be members of political parties, whereas the Police Act (ZPol) stipulates that a police officer's membership in a political party may constitute grounds for withdrawing their right to exercise police powers

[12] At the beginning of the new millennium, the excessive use of force in relation to minorities was brought to attention by non-governmental organizations and professionals as well as the UN and the *European Commission Against Racism and Intolerance* (see Meško & Klemenčič, 2007).

(Article 72 of the ZPol). As political neutrality is associated with legality the gap between the importance of these two principles is surprising (4.85 vs. 3.70).

Further analysis was geared towards finding differences in terms of gender, age and work position.

Table 4: Importance of the principles of functioning – gender differences

Importance of the principles of functioning	Gender				
	Female	Male	Difference	t-test	Sig
The biggest differences					
restriction on the right to strike	3.11	2.79	0.32	3.65	0.000
loyalty to the employer	4.05	3.76	0.29	4.02	0.000
economy	4.09	3.83	0.26	4.10	0.000
The smallest differences					
impartiality	4.71	4.70	0.01	0.21	0.834
equality before the law	4.71	4.70	0.01	0.27	0.787
mutual trust	4.73	4.72	0.01	0.29	0.774

Female respondents evaluated all principles higher than their male counterparts. Statistically significant differences ($p<0.05$) were seen in 16 of the total 25 areas. The largest differences (statistically significant differences at $p<0.001$) were observed in the principles of restriction on the right to strike, loyalty to the employer, economy, social responsibility, confidentiality, restriction on the right to strike and restriction on performing other activities. Men and women evaluated the principles of equality before the law, impartiality and mutual trust as equally important.[13]

Table 5: Importance of the principles of functioning – age-related differences

Importance of the principles of functioning	Age							
	up to 30 years	between 31 and 35 years	between 36 and 40 years	between 41 and 45 years	above 46 years	Difference (max-min)	F-test	Sig
The biggest differences								
restriction on the acceptance of gifts	3.18	3.22	3.54	3.66	3.84	0.66	16.81	0.000
restriction on performing other activities	2.64	2.49	2.65	2.86	3.01	0.52	8.590	0.000
political neutrality	3.48	3.5	3.69	3.77	3.96	0.48	6.637	0.000

[13] We had unequal sub-sample sizes: male (82.7 %), female (17.3 %). T test can still be performed with unequal sample sizes; but the smaller sub-sample will limit the statistical power of the test. In our research the number of correspondents in the smallest sub-sample is large enough (312 females in the sample) to perform t-test.

Importance of the principles of functioning	Age							
	up to 30 years	between 31 and 35 years	between 36 and 40 years	between 41 and 45 years	above 46 years	Difference (max-min)	F-test	Sig
mutual co-operation	4.68	4.71	4.69	4.69	4.73	0.05	0.447	0.774
confidentiality	4.54	4.54	4.54	4.6	4.62	0.08	1.182	0.317
protection of professional interests	4.57	4.62	4.65	4.63	4.59	0.08	0.642	0.633

Older respondents evaluated the importance of all principles statistically significantly higher than their younger counterparts. The biggest differences were observed (statistically significant differences at $p<0.001$) in the areas of restriction on the acceptance of gifts, restriction on performing other activities and political neutrality, whereas the smallest differences were observed in the areas of mutual co-operation, confidentiality and the protection of professional interests. As regards the principles of restriction on the acceptance of gifts and political neutrality, there is a strong upward trend in importance that correlates with the age of the respondents. This can be linked to the finding of Umek *et al.* (1996) that the values of the Slovenian detectives are not rigid but changeable.[14]

Table 6: Importance of the principles of functioning – differences related to the main place of work

Importance of the principles of functioning	Main place of work				
	in the field	in the office	difference	t-test	Sig
Higher evaluation in the office					
restriction on the acceptance of gifts	3.36	3.65	0.29	-4.64	0.000
political neutrality	3.54	3.81	0.27	-3.98	0.000
loyalty to the employer	3.66	3.93	0.27	-5.07	0.000
Higher evaluation in the field					
prohibition of mobbing	4.64	4.53	-0.11	2.76	0.006
collegiality	4.58	4.50	-0.08	2.02	0.044
independence	4.45	4.41	-0.04	0.99	0.324
The smallest differences					
confidentiality	4.58	4.56	-0.02	0.35	0.730
efficiency	4.55	4.57	0.02	-0.55	0.583
mutual co-operation	4.71	4.69	-0.02	0.84	0.404

The respondents who mainly work in the office ascribed more importance to most principles compared to those working in the field. The biggest differences with those working in the office are seen in the principles of restriction on the acceptance of gifts, loyalty to the employer and political neutrality.

[14] They found in their study that detectives' values change with experience depending upon years in service (ibid.).

Those who mainly work in the field more highly evaluated the principles of the prohibition of mobbing, collegiality and independence. As regards the principles of confidentiality, efficiency and mutual co-operation, there were no significant differences between the groups.

5 CONCLUSION

The results of the survey show that the police officers ascribed the greatest importance to the principles concerning: 1) relations with the general public and the persons against whom police officers take action; and 2) mutual relations among police officers, whereas the smallest importance was ascribed to the principles concerning the relations between police officers as employees and the state as the employer.

The principles receiving the highest evaluation in terms of importance included those which are usually stressed in the regulations (e.g. the principle of legality, equality before the law) or those which are more distinctive because of the nature of police work (e.g. mutual trust and mutual co-operation).

Some significant differences were identified in a comparison of the results by gender, age and place of work where, in terms of age, two principles with an ethical dimension are distinctly more pronounced (i.e. the acceptance of gifts and conflicts of interest).

It can be concluded that the results of this empirical analysis go towards confirming the findings in the literature, namely that the Slovenian Police has been transformed, since 1991, from a mechanism of coercion into a community service and that it is a relatively modern and expert organization that respects human rights and freedoms. However, the final confirmation of this finding can only be provided by empirical analyses of the actual functioning of the Slovenian Police.

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SERVANT LEADERSHIP IN SLOVENIAN POLICE

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ABSTRACT
Purpose:
The paper examines the appearance and the nature of the servant leadership style among Slovenian police managers on all three organizational levels.

Design/methodology/approach:
Data from 768 Slovenian police officers were obtained using the Servant Leadership Measure, which was originally developed in 2008 by Liden et al. The Chrombach α for this survey was .97.

Findings:
Results show that all seven dimensions of the servant leadership style (namely conceptual skills, empowering, helping subordinates grow, putting subordinates first, behaving, emotional healing and creating value for the community) are present among Slovenian police managers. There are statistically important differences between all three organizational levels (local, regional, national) and we also found that managers' age, leadership and work experiences and education level are correlated with the perception of the presence of the servant leadership style in organizations.

Research limitations/implications:
The survey was conducted on a sufficiently large and well-structured sample of police officers, thus the results can be generalized to the population. A research limitation is connected with data obtained by police officer's perceptions. The results can be used in developing contemporary approaches to management and leadership that can be associated with strategic goals of the Slovenian police (e.g. implementing community policing, professionalization of police work in Slovenia...).

Originality/value:
It is believed that this is the first paper focused on servant leadership in Slovenian Police.

Keywords: leadership, management, servant leadership, police, Slovenia

1 INTRODUCTION – SERVANT LEADERSHIP AND ITS RELATION WITH OTHER LEADERSHIP STYLES

The origins of the philosophical study of servant leadership date back to antiquity, when Aristotle said the purpose of life was to serve others and to do good (Nandram & Vos, 2010). Sendjaya, Sarros and Santora (2008: 406) established that the relation between notions servant and leader was explained already with ancient Greek words, for instance *diakonos, doulos, therapon, huperetes, sundoulos, oiketes in pais*, of which none indicates a lack of self-respect or a low self-image, but voluntary subordination to the benefit of others. In dictionaries the definition of servant in connection with leader is defined as being useful (Oxford, 1989), to help attain something useful, assure something necessary (Cambridge, 2003), or as a person that carries out tasks for others and a loyal and obliging person towards colleagues (Oxford, 2004).

The origin or etymology of the word "servant" therefore in our context focuses on management and leadership and is related to concepts supporting the moral behaviour of participants of the work process (Boyum, 2006). The servant leader model was designed by Robert Greenleaf in 1969 in his essay "The Servant as Leader (Spears 1998, 2002; Greenleaf, 2002a; Yukl, 2002; Smith, Montagno & Kuzmenko, 2004; Boyum, 2006; Washington, Sutton & Field, 2006; Barbuto, 2007; Carroll, 2009; Northouse, 2010; Trompenaars & Voerman 2010; Nandram & Vos 2010). According to Greenleaf (2002a; 2002b), the leader is first of all a servant, which means taking care of employees, clients and the community comes first (Spears, 1998; Yukl, 2002; Carroll, 2009). In the centre of his/her activities is care for the moral development of employees (Rickards & Clark 2006), which is the essence of ethical leadership (Yukl, 2002) and classifies servant leadership under ethical leadership. The most important aspect of servant leadership is the internal feeling and the individual's desire to serve, which slowly transforms into a wilful decision or effort to lead (Spears, 1998; Carroll, 2009). Greenleaf (2002b) stressed the difference between an individual, who is first a servant and then a leader, and an individual, who is first a leader and then a servant. He constantly supported the thesis that the most important step towards becoming a big leader is to first become a big "servant" (Spencer, 2007). He also distinguished between an authentic and false servant leader, because a leader, who is first of all a servant, does not have an interest in power, influence or gaining material benefits. The will to serve people is secondary for such leaders (Greenleaf, 2002b).

In practice, the model of a servant leader has become characteristically present over the last few years (Russell & Stone, 2002; Burkhardt & Spears, 2002; Sendjaya & Sarros, 2002; Ramsey, 2003; Sendjaya et al., 2008; Northouse, 2010). The reason lies in the development of the society and constant changes in it (Burkhardt & Spears, 2002; Ramsey, 2003), which is also true for leadership

models and comprehension of the role of leaders in profit as well as non-profit organizations. In addition to the already mentioned concern for employees, its anchorage is also in the moral activities of leaders (Schermerhorn, 2008), whereby Kohlberg places it within the framework of the highest level of moral development of leadership – so-called conventional leadership (Graham, 1995). In connection with this Whetstone (2001) established that the model of a servant leader is based on a complementary three-level ethical approach, namely teleological, which focuses on the consequences of actions; deontological, which focuses on obligations; and virtue, which is based on ethical principles and virtues. Bass (2000, in Sendjaya & Sarros, 2002; 57) stated at the turn of the new millennium that this leadership style will gain importance in the future.

Liden, Wayne and Zhao (2008) establish that servant leadership is an independent multidimensional construct, which has significant impact on the explanation of behaviour of employees in conformity with social norms, in-role performance and the community citizenship behaviour on the level of the individual. These authors believe that in this segment it offers more than the LMX leadership style and more than the transforming leadership style, which can be either good or bad, depending on the leader and the purpose of his actions. Bass and Steidlmeier (1999) established that authentic transformation leaders act morally, while pseudo-transformation (non-authentic) leaders lack integrity, can be immoral due to self-aggrandizement and vanity and place the satisfaction of own interests into the forefront.

On the other hand, Bass (1997) thinks the servant leadership model is overlapping with other leadership models, especially the transforming leadership model, whereby it is most symmetrical with the social dimension of transforming leadership. Ehrhart (2004) also thinks servant leadership is related to the concept of transforming leadership designed by Burns (2010). Bartholomew (2006) states that servant leadership is only a form/sub-group of transforming leadership, and she thinks Burns' findings are relevant also for servant leadership. She also found during the review of several studies that the characteristics of transforming leadership are also valid for servant leadership; while the opposite is not necessarily true. Liden et al. (2008) established that the models are most congruent in two out of four so-called dimensions of transforming leadership, namely in the idealized impact and intellectual stimulation. This means that servant leaders represent an example for colleagues, are a source of inspiration and enthusiasm and actively encourage them to challenge and express different views on different situations.

Graham (1991) also believes that servant leadership has the most common features with transforming leadership, whereby it supports the needs of employees, their development and autonomy more than the attainment of results above plans, which is the main guideline of transforming leadership. Graham (1991)

sets out differences between the two models in two segments, in which servant leadership exceeds or upgrades transforming leadership: (a) servant leaders are in addition to the development of employees and the attainment of organization goals susceptible also to the needs of other stakeholders, including the wider social environment; (b) servant leaders encourage colleagues to morally assess and be dedicated to their needs and interests, which means that the moral dimension of leadership is especially emphasized.

Boyum (2006) explains the difference between transforming and transaction leadership with the fact that transforming and transaction leadership primarily focus on the personal growth of leaders and the growth of the organization, and secondary on the personal growth of employees. Servant leadership, on the other hand, primarily focuses on the personal growth of employees or those being lead.

Barbuto and Wheeler (2006; 305) defined the characteristics of servant leadership in the relation towards transforming leadership and LMX theory. They established that there are similarities as well as differences between the subject leadership styles. The role of servant leaders is to serve employees to become more independent, autonomous and wiser, while the role of transforming leaders is to inspire employees to implement the goals of the organization. LMX theory supports the reinstatement of a positive relation between leaders and employees and their mutual exchange. The moral dimension is clearly expressed in servant leadership, but is not specifically exposed in transforming leadership and the LMX theory. The results of servant leadership are visible in the satisfaction of employees, their personal growth and the assumption of socially responsible obligations, while the results of transforming leadership are visible in the performance efforts of employees, their satisfaction and benefits of the organization. The LMX leadership style brings the satisfaction of employees, a higher level of mutual trust and higher work motivation. On the level of the group, servant leadership focuses on the realization of needs of all members, while on the organization and social level servant leaders provide for the sustainable and socially responsible actions of the organization. Transforming leaders follow the attainment of organization goals on the level of the group and organization, while on the social level they make sure that the public supports organization goals. The LMX theory foresees the formation of different exchanges between the leader and employees on the group level, but it does not foresee any specific activities on the organization and social level (ibid).

Smith and colleagues (2004) establish that in servant leadership the motivation for leadership is based on the principle of equality between the leader and employees, and on the implementation of the organization mission in transforming leadership. In this context, the servant leadership emphasises the individual, while transforming leadership is more focused on the benefits of the organization.

With regard to the above-mentioned, Liden and colleagues (2008) establish that the focus first on employees and then on oneself, care for the community, care for the spreading of servant behaviour among employees through the reinstatement of good mutual relations and exchanges with employees are factors, which are not an integral part of transforming leadership. In their opinion servant leadership is more closely related to the LMX leadership theory from the point of view of reinstatement of good mutual relations with employees. Compared to servant leadership, the LMX theory does not stress the concern for employees, their development into leaders as much and also does not encourage care for the community among employees to such extent.

So, having considered these various leadership models, which is the most appropriate for the police service? Perhaps more pertinently, what is most suitable for the challenges that policing faces today?

Doerner and Dantzker (2000) record how historically police leadership can best be described as authoritarian and reactive, a style that has arguably been relatively successful, especially in a quasi-military environment. They emphasise that community policing demands a different type of leadership and propose that four elements need to be incorporated into an individual's style for effective leadership: reactive, pro-active, anticipatory and adaptive. *"The police leader who can blend the appropriate leadership elements in the right amounts will be most successful"*, they suggest. However, they acknowledge that the traditional police leadership elements of reactive, classical and authoritative are still very much the norm. Vick (2000) also reflects upon the continuance of traditional leadership styles through the top-down, hierarchical approach of so many police leaders that has led in his view to a communication gap between the ranks. Morreale (2004) refers to the common mind-set that *"many believe that because they were promoted or appointed to positions of authority and responsibility they have a right to make all decisions unilaterally"*. Villiers (2002) concludes, *"... there is general agreement that the autocratic style of leadership is outdated and counter-productive, and the modern police service* (i.e. with the requirements of community policing) *requires a much more democratic and less dictatorial style. But the old style is extremely difficult to eradicate"*.

Pagon (2000) has also focused on this 'different times call for different people' requirement. He has explained why the new paradigm of policing needs a completely different approach to police organisation and leadership. Both police work and communities have changed, he observes, with the public becoming more critical of police effectiveness. *"People identify problems, and they want solutions. They want the police to be effective and accountable"*. He proposes that, to meet these demands, police leaders have to change themselves, their organisations and their people and in effect turn them into 'learning organisations'. There needs to be a continuing changing emphasis, he argues, from 'management by

control' towards 'management by commitment' and this involves the traditional commander's role evolving into that of facilitator, motivator and change agent.

Blair (2003; see also Lobnikar & Pagon, 2007), in anticipating some of the challenges ahead as part of this changing philosophy, points out that, together with executives in other parts of the criminal justice system and public sector, police leaders will increasingly have to lead teams *"across organisational boundaries, and in interaction with different communities"....* However, having said this he believes that there is still a place for all types of leader in the police service. He proposes that police leadership is actually not broadly different from leadership elsewhere: *"we need to increase the richness of our leadership culture, without claiming it to be so specially and exclusively our own".* He goes on to talk about four aspects of modern leadership that need to be emphasised in the police context: vision-based leadership, team-based leadership, cross-border leadership and leadership that learns.

Adlam (2002), however, has maintained that "*... there is still no appropriate, robust, inspiring and enduring model of leadership for the police".* He insists that policing is, at least in part, such a distinct form of practice that it necessitates its own, 'custom-built' model of leadership. "*Without such a model*", he concludes, "*the service will merely copy or 'appropriate' models developed in other contexts and for other occupations*". In a similar vein, Panzarella (2001) argues that the police service has yet to find an appropriate model of leadership, or cluster of models, to replace the military one that was first applied.

When considering different leadership models that would be appropriate for modern police organizations, we cannot overlook an important emphasis that police leaders must show a high level of integrity and implement high ethical standards in their work. Hauptman (2000) says we should reject the comprehension that a good leader is made *"by a shopping list of individual personal characteristics"*, and stress the importance of *"a clear moral compass"*, which gives the police leader and manager *"a clear vision, especially in times, when policing organizations face demands for change, and the capability to lead organization activities."* The author stresses the importance of implementing what police leaders and managers communicate (*"walking the talk"*). Management through own example is the most important for the police leader. *"If the behaviour of the police leader is not in conformity with what he is saying, the leader loses all trust. Efficient leaders therefore demonstrate complete harmony between what they say and what they do, and at the same time accept full responsibility for their activities".*

In order to determine if servant leadership is present among leaders in the Slovenian police and what its features are, we carried out a survey on a representative sample of Slovenian police officers in 2010. The results are presented below.

2 DESCRIPTION OF THE METHOD, SAMPLE AND APPLIED INSTRUMENTS

2.1 Description of the sample

The research was carried out on a sample of 768 Slovenian police officers on all three organizational levels, which represents 9.9 % of the overall population of all employees in the organization. 119 respondents (9.27 %) were employed on the national level, 134 (11.1 %) on the regional level and 515 respondents (97.7 %) on the local level. 84.2 % of respondents were men and 15.8 % were women. The average age was 35.28 years; the age range was from 21 to 58 years. 3.5 % of respondents finished post-graduate studies (M.A. or specialization), 29 % acquired B. A. education, 6 % had higher (associate) education and 61.5 % finished secondary school. The average years of service were 15.04 years, and the average number of years in the organization was 13.58 years. 9.2 % of all respondents performed leadership tasks, while 25.1 % participated in education for the acquisition of a higher education level. Table 1 presents statistical data on the demographic structure of employees in the Slovenian police force (www.policija.si).

Table 1: The police force in numbers

No. of employees in the police force (on 1. 10. 2011):	8.852
No. of police officers:	7.666
No. of criminal officers:	885
No. of members of the special forces:	91
Average age:	40,7 let
Average age of employees with police powers:	38,9 let
No. of women with police powers (2012):	1142 (17.8 %)
No. of employees with a PhD or M.A.:	167 (1.9 %)
No. of employees with university or high education:	2.042 (23.2 %)
No. of employees with higher education:	564 (6.2 %)
No. of employees with secondary education:	5.675(64.1 %)
No. of employees with lower education (primary, occupational):	404 (4.6 %)

The structure of the sample (all three organizational levels), its size and the demographic features of questioned police officers indicate that we can generalize the findings to the entire population of police officers in Slovenia.

2.2 Applied method

To measure the servant leadership style we used the Servant Leadership Measure instrument developed by Liden and colleagues (2008). The questionnaire is dedicated to the research of servant leadership as an autonomous and independ-

ent leadership model. It consists of seven factors (conceptual – abstract skill, empowerment, helping colleagues attain personal growth, putting colleagues first, ethical behaviour and actions, emotional support, care for the community), which we confirmed with factor analysis, just like Lidet et al. (2008). Every factor includes four variables, which means 28 variables assessed by respondents through the 7-level Likert scale. The calculated coefficient of internal consistency (Crombach α) for the used set of variables was .97.

We added own questions on demographic data of evaluated leaders and respondents to the questionnaire. Demographic data of evaluated leaders included data on gender, age and education. We also asked respondents to assess the work experience of the evaluated leader and his/her leadership experience through the five-level Likert scale. To this information we added the demographic data on respondents (gender, age, years of service, number of years in the organization and education). We also asked the respondents if they perform their tasks at a leadership work position or if they are trying to acquire a higher level of education.

2.3 Procedure

The original questionnaire was, after acquiring a permission to use it from the author, first translated from English to Slovenian by a professional translator. The translation was then translated back to English by a second professional translator in order to assure the accuracy of the translation. During the translation process we paid attention to the importance of equal comprehension of the content in a different cultural environment (Datta, 2005). We were also aware of the problem or danger of different comprehension of the measure instrument (Yukl, 2002), which was prepared and applied in the USA. The external validity test was carried out and we let everyone, who helped collect data at a later stage, read the questionnaire, and we asked them what individual claims or variables meant in their opinion. We established that the content of the questionnaire was correctly understood in Slovene cultural environment.

The questionnaires were personally handed over to 980 employees in the police force, who were scheduled for work on the day of the survey, in 2010. We enclosed a letter to the questionnaire explaining the aim of the research and asked them for their cooperation. We also asked the respondents to evaluate only one person through the entire questionnaire, namely their direct superior or leader. Respondents filled out the questionnaire anonymously, placed it into an envelope and put it in a box, which was placed in a before-known location. 78.4 % of distributed questionnaires were filled out. Anonymity and confidentiality of handling the acquired data was guaranteed.

3 THE RESULTS OF THE RESEARCH

The results of descriptive statistics for every individual factor of servant leadership are presented below, whereby we explain for each factor which variables determine it and whether there are statistically significant differences between organizational levels. In the results, the lowest value (1) means a low perception, and the highest value (7) represents the highest possible perception of a specific skill or activity of the leader.

Table 2: Difference in the average value among individual factors

Organizational level	**Police station (PS)**		**Regional Police Directorate (PD)**		**General Police Directorate (GPD)**	
Factors of Servant Leadership	**Mean**	**Standard deviation**	**Mean**	**Standard deviation**	**Mean**	**Standard deviation**
1. Conceptual skills	5.04	1.32	5.32	1.45	5.48	1.23
2. Empowering	4.35	1.26	4.91	1.46	4.52	1.50
3. Helping subordinates grow	3.81	1.45	4.35	1.61	4.38	1.50
4. Putting subordinates first	2.99	1.37	3.51	1.57	3.50	1.42
5. Ethical Behaviour	4.50	1.53	4.85	1.64	4.99	1.59
6. Emotional healing	3.93	1.55	4.30	1.62	4.43	1.55
7. Creating value for the community	4.39	1.39	4.71	1.44	4.84	1.26
N = 768 *1 – I completely disagree, 7 – I completely agree*						

It is evident from the previous table that respondents from all three organizational levels gave the best marks to the first factor of servant leadership, "conceptual skills", which means the leaders tells employees if something is not going right, that he is able to think efficiently as regards the settlement of complex problems, that he knows the organization and its goals, and that he is capable of settling work problems with new and creative ideas. Leaders at the general police directorate received the highest marks, while leaders on police stations received the lowest marks. This is true for all seven factors. A statistically significant difference, using ANOVA, (F=1.045; p= 0.00) was established between the state level (GPD) and the local level (PS).

The second factor of servant leadership "empowering" means that leaders leave the responsibility of reaching important decisions at work to employees and encourage them to reach such decisions on their own, that they give employees freedom in the handling of challenging situation in a way they find the best, and do not demand from employees to consult them before reaching an important decision. Leaders at the level of police directorate received the highest marks, and a statistically significant difference, (F= 3.323; p= 0.00) was established between the regional level (PD) and the local level (PS).

The third factor, "helping subordinates grow", which reflects the perception of respondents on how much leaders make sure that employees attain their personal career goals, to what extent the development of careers of employees is a priority, to what extent leaders make sure that employees gain work experience, which enable them to develop new skills, and whether leaders actually want to be acquainted with their career goals, received the highest marks by respondents from the general police administration. A statistically significant difference (F= 0.205; p= 0.00) was established between the state (GPD) and local (PS) organizational level as well as between the regional (PD) and local (PS) level (F= 1.883; p= 0.00).

The fourth factor, "putting subordinates first", which received the lowest marks by respondents on all three organizational levels, reflects the opinions of respondents on whether their leaders scarify their own interests to satisfy their needs, or if they place the most important interests of employees before their own, if they take care for the success of employees more than for their own success, and if they do anything in their power to make the work of employees easier. As regards the above-mentioned, respondents gave the highest marks to leaders from police directorates, whereby a statistically significant difference (F= 5.711; p= 0.00) was established between the regional (PD) and local (PS) as well as between the state (GPD) and local (PS) organizational levels (F= 1.690; p= 0.00).

The fifth factor, "ethical behaviour", reflects the opinion of respondents on the ethical actions of their leaders, namely whether the leaders have high ethical principles, are they always fair in their work, would they endanger ethical principles in order to be successful and if they think that leaders appreciate fairness more than benefit or profit. Leaders at the general police directorate received the highest marks, and a statistically significant difference (F= 0.442; p= 0.00) was established between the state level (GPD) and the local level (PS).

The sixth factor, "emotional healing", reflects the perception of respondents on whether employees would seek help from the leader if they had personal problems, whether leaders are working for the personal benefit of employees, are they available for personal talks with employees, and if respondents believe that leaders ascertain themselves when their colleagues are in trouble. Respondents gave the highest marks to leaders from the general police administration, whereby a statistically significant difference (F=0.092; p= 0.00) was established between the state (GPD) and local (PS) organizational levels as well as between the regional (PD) and local (PS) organizational level (F=0.569; p= 0.01).

The last, seventh factor of servant leadership, "creating value for the community", focuses on the concern of leaders for the community in which the organization functions, on the interest of leaders to help people in the community,

about their integration into community activities and possible encouragement of employees to volunteer in the community. Respondents again gave the highest marks to leaders at the general police administration and the lowest to leaders at police stations. A statistically significant difference (F= 2.349; p= 0.00) was established between the state level (GPD) and the local level (PS).

In continuation we wanted to establish how we could explain individual factors of servant leadership in the Slovenian police. We therefore carried out a regression analysis, in which we included individual factors as a dependent variable, and used socio-demographic variables, such as work experience of leaders, leadership experience of leaders, education of respondents and evaluated leaders, age of leaders and respondents and the work experience of respondents, as independent variables.

Table 3: Variance and the significance level of assessed regression models

Factors	R	R^2	Corrected R2	F	P
1. Conceptual skills	.724	.524	.522	206.235	.000
2. Empowering	.499	.249	.244	49.466	.000
3. Helping subordinates grow	.573	.328	.322	60.622	.000
4. Putting subordinates first	.518	.268	.261	38.876	.000
5. Ethical Behaviour	.611	.373	.369	89.035	.000
6. Emotional healing	.583	.340	.335	76.408	.000
7. Creating value for the community	.602	.362	.358	85.105	.000
p= < 0.05					

Table 3 presents the percentages of the explained variance of individual regression models (stepwise method was used) of factors considered as dependent variables in the regression analysis. Data helps us establish that independent variables or specific demographic data, presented below, can account for 24.4 % to 52.2 % of variability of all seven dependent variables. The remaining shares of variability (up to 100 %) remain unexplained and can be attributed to other factors not included in our analysis. Table 3 also shows that all regression models are statistically significant.

The first dependent variable, "conceptual skills", has a statistically significant and positive connection to the leadership experience of leaders (B= 0.46; p= 0.00), work experience of leaders (B= 0.29; p= 0.00) and the education of respondents (B= 0.12; p= 0.00), and a negative connection with the age of leaders (B= -0.15; p= 0.00).

The second dependent variable, "empowering", has a statistically significant and positive connection with the leadership experience of leaders (B= 0.32; p= 0.00), work experience of leaders (B= 0.15; p= 0.01), the years of service of respondents

in the organization (B= 0.16; p= 0.00), and the education of respondents (B= 0.13; p= 0.00), and a negative connection with the age of leaders (B= -0.11; p= 0.00).

With the third dependent variable, "helping subordinates grow", four independent variables have a statistically significant and positive connection, namely leadership work experience of leaders (B= 0.37; p= 0.00), work experience of leaders (B= 0.17; p= 0.00), education of respondents (B= 0.11; p= 0.00) and years of service of respondents (B= 0.09; p= 0.01). Two independent variables have a negative connection, namely the age of leaders (B= -0.06; p= 0.04) and the leadership work position of respondents (B= -0.09; p= 0.01). It was established that respondents, who have a leadership work position, give statistically higher marks for such activities of their leaders than respondents, who do not have a leadership work position (F= 8.438; p= 0.00).

The fourth independent variable, "putting subordinates first", also has a statistically significant and positive correlation with the same four independent variables, namely leadership work experience of leaders (B= 0.31; p= 0.00), work experience of leaders (B= 0.17; p= 0.00), education of respondents (B= 0.11; p= 0.00), and the years of service of respondents (B= 0.37; p= 0.00). It has a negative correlation with three independent variables, namely the age of leaders (B= -0.10; p= 0.00), age of respondents (B= -0.25; p= 0.02), and the leadership work position of respondents (B= -0.09; p= 0.02). Same as before it was also established that respondents on leadership work positions gave statistically higher marks to subject activities of leaders than respondents, who are not on leadership work positions (F= 0.566, p= 0.00).

The fifth dependent variable, "ethical behaviour", has a statistically significant and positive correlation to leadership work experience of leaders (B= 0.47; p= 0.00), work experience of leaders (B= 0.14; p= 0.00), years of service of respondents (B= 0.07; p= 0.01), and the education of respondents (B= 0.14; p= 0.00), and a negative correlation with the age of leaders (B= -0.10; p= 0.00).

The sixth independent variable, "emotional healing", has a statistically significant and positive correlation with four independent variables, namely the leadership work experience of leaders (B= 0.42; p= 0.00), work experience of leaders (B= 0.16; p= 0.00), education of respondents (B= 0.08; p= 0.01), and years of service of respondents in the organization (B= 0.15; p= 0.00). There is a negative correlation with one independent variable, namely the age of leaders (B= -0.10; p= 0.00).

The last, seventh dependent variable, "creating value for the community", has a statistically significant and positive correlation with four independent variables, namely leadership work experience of leaders B= 0.42; p= 0.00), work experience of leaders (B= 0.19; p= 0.00), education of respondents (B= 0.08; p= 0.01) and years of service of respondents (B= 0.09; p= 0.00). The same independent variable as before, namely the age of leaders (B= -0.11; p= 0.00) has a negative correlation.

4 DISCUSSION

The results of the research indicate that servant leadership is definitely present in the Slovenian police force despite the fact that the readiness to first provide for the needs and interests of colleagues and then for oneself, which is a basis of servant leadership, is the least present factor of servant leadership among leaders on all three organizational levels.

In conformity with expectations it was established that the conceptual skills of leaders are the most present factor of servant leadership. From the point of view of perception of ethical actions and behaviour of leaders, we established that the employees of the Slovenian police are relatively satisfied with it. The concern of leaders for the community, in which an individual unit functions, and the readiness of leaders to empower employees, was evaluated by the latter as relatively satisfactory or good. Employees gave slightly lower marks, but still higher than the average, to the readiness of leaders to help employees with their personal growth, and empathy or emotional support provided by leaders. Nevertheless the presented results indicate that police leaders in Slovenia are focusing more on the good performing of tasks than on the concern for employees.

As regards differences between organizational levels, we can establish that police officers on the local level in the Slovenian police force are the least satisfied with all characteristics of servant leadership. The place where the majority of police work is conduced is also the place where police supervisors were evaluated with the lowest level of servant leadership management style. In contrary, employees of the general police directorate are the most satisfied with presence of servant leadership style, with the exception of empowering and putting subordinates first. We believe that the reason is multifaceted and related to differences between levels in the nature and manner of work, leadership styles, experience and education of employees, level of police cynicism, experience of leaders, being used to everyday pressure caused by police work, etc. Or, we can repeat Morreale's statement (2004) about the common mind-set of police supervisors that *"many believe that because they were promoted or appointed to positions of authority and responsibility they have a right to make all decisions unilaterally".* It means that empowering subordinates or putting them first is out of their social construction of being efficient police manager or leader.

As regards the impact of demographic data of evaluated leaders and respondents on servant leadership we can establish that the leadership work experience of leaders, their work experience in general and sufficient age of leaders are the positive factor, which has the most important impact on the presence of servant leadership style among police supervisors. Our results reinforce the necessity to plan the career of police leaders and the need to strengthen the stability of leadership, which is especially true for the local level of police work. On the other

hand, this information confirms the still present problem of leadership in the Slovenian police, which in the last 20 years, due to different reasons, often faced the fact that leadership positions were occupied by people with insufficient experience, or not for a sufficient period of time.

In addition to the above-mentioned we believe that the findings of the research represent an important source of information for development of the strategic planning in the area of leadership in the Slovenian police, because for instance the concept of servant leadership is closely associated with the strategy of police work in the community, which represents the pillar of police activities.

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MANAGEMENT AND LEADERSHIP SKILLS IN POLICE HIERARCHY: TESTING COMPETING VALUES FRAMEWORK IN SLOVENIAN POLICE

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ABSTRACT

Purpose:
The purpose of this research was to examine the "Competing Values Framework" among managers at different organizational levels in the Slovenian Police. The main research question was: What is importance of personal skills, interpersonal skills, and group skills at different hierarchical levels in Slovenian Police?

Design/Methods/Approach:
The study took a quantitative approach to test the Competing Values Framework of management and leadership skills (Cameron & Quinn, 2006; Whetten & Cameron, 2007). Respondents ranked the importance of three clusters or categories of skills for their managerial position. Survey respondents included police managers at local (290), regional (122), and state (74) levels of the Slovenian Police.

Findings:
There are differences in the importance of management and leadership skills at different organizational levels. Police managers at the local level moat highly ranked the category of interpersonal skills while managers at regional levels also highly ranked categories of interpersonal skills and group skills, and managers at the state level highly ranked categories of group skills. Each managerial group prefers different skills as the most important: building relationships by communicating supportively (local level), motivating others (regional level), and building effective teams and teamwork (state level).

Research limitations/implications:
Gaining power and influence skills were ranked very low by all three managerial groups. Focus group interviews conducted following this study revealed a negative connotation of the words "gaining power" in the Slovenian Police culture. Participants associated "gaining power" with "gaining control" and "micromanagement".

Practical implications:
The results indicate which management and leadership skills are important for police managers at different organizational levels and can be useful input for police leadership training and development processes.

Originality/Value:
This study contributes to leadership literature and extends understanding of the importance of using the Competing Values Framework skills in police organizations.

Keywords: police, police hierarchy, management and leadership skills, Competing Values Framework

1 INTRODUCTION

There is a growing awareness that many managerial roles have become essential for organizational success and there is also an emerging appreciation that management development is fundamental to organizational renewal and the management of change – key driving forces for any organization (Dalton, 2010). Scientific evidence demonstrates how management skills are associated with personal and organizational success. Based on the studies of key management skills several models and methodologies are developed for helping to develop management skills (Whetten & Cameron, 2007). The general conclusions from studies seeking to identify what differentiates effective managers from ineffective ones have determined that successful managers use "people skills." Broader label "managements skills", while clearly inclusive of people skills also encompasses a fuller range of personal, interpersonal, and organizational knowledge and competence (Baldwin, Bommer, & Rubin, 2008). There are several typologies and models of management skills relevant for managerial success such as classic frameworks emphasizing conceptual skills, human skills, technical skills, and political skills (Katz, 1974), interpersonal skills of effective managers (Robbins & Hunsaker, 2009), and the Competing Values Framework of management and leadership skills (Whetten & Cameron, 2007). The models and methods that have been found to be most successful in helping individuals develop management skills are based on social learning theory (Bandura, 1977) and Kolb's experiential learning model (Kolb, 1984). Many organizations take the approach that in learning what successful managers and leaders do, a defined set of skills and competencies can be derived and these then form the basis of management development programs. Once in place, these programs develop leadership capabilities and thereby create a pipeline of successful leaders and managers (Carmichael, Collins, Emsell & Haydon, 2011: 28). However, things are never so simple, especially for big police organizations with several hierarchical levels. Empirical research of the management and leadership skills in Slovenian police organizations has been limited to date.

This study represents an attempt to fill in the empirical gap by examining the "Competing Values Framework" among police managers at different organizational levels in the Slovenian Police. We selected the Competing Values Frame-

work Model for several reasons. First, the model has been developed on the basis of extensive empirical research. Second, the model clearly integrates management and leadership conceptualizations. Finally, the Competing Values Framework Model is supported by a five-step learning model for helping individuals develop management skills.

The following research question has been posited for this study: What is the perceived importance of personal skills, interpersonal skills, and group skills at different hierarchical levels in the Slovenian Police?

1.2 Management and Leadership Skills

Many writers have differentiated between the concepts of "leadership" and "management". However, in most of the literature of management and leadership development, "leadership" and "management" are used interchangeably (Dalton, 2010, Carmichael et al., 2011, Whetten & Cameron, 2007). In this paper we do not differentiate between management and leadership roles and processes with an assumption that essentially requires behaviors for both roles to be distinct. "*Because our circumstances are constantly changing and expectations for performance are continually escalating, the traditional definition of management is outmoded and irrelevant today. Effective managers and leaders do much the same things in dealing effectively with constant change and constant stability.*" (Whetten & Cameron, 2007:17)

A skill, by definition, is "*the ability to demonstrate a system and sequence of behavior that is functionally related to attaining a performance goal*." (Boyatzis, 1982: 33) Whetten & Cameron note that there are several defining characteristics of management and leadership skills that differentiate them from other kinds of managerial characteristics and practices. Management and leadership skills are (Whetten & Cameron, 2007: 9-11):

- *Behavioral*. Management and leadership skills consist of identifiable sets of behaviors that individuals perform and that lead to certain outcomes.
- *Controllable*. The performance of these behaviors is under control of the individual.
- *Developable*. Skills are developable. Performance can improve. Individuals can progress form less competence to more competence in management and leadership skills.
- *Interrelated and overlapping*. It is difficult to demonstrate just one skill in isolation form others. Skills are not simplistic, repetitive behaviors, but they are integrated sets of complex responses.
- *Contradictory or paradoxical*. Core management and leadership skills are neither all soft and humanistic in orientation nor all hard-driving and directive. They are oriented neither toward teamwork and interpersonal relations

exclusively nor toward individualism and technical entrepreneurship exclusively. A variety of skills are typical do the most effective managers, and some of them appear incompatible. The most effective managers are required to demonstrate paradoxical skills. They are both participative and hard-driving, both nurturing and competitive (Whetten & Cameron, 2007: 11).

1.3 Competing Values Framework

One of the popular models of leadership is based on the "Competing Values Framework," an organizing framework for management and leadership skills. It was developed by examining the criteria used to evaluate organizational and managerial performance (Cameron, Quinn, DeGraff, & Thakor, 2006). Extensive research which has been conducted on this framework (Cameron & Quinn, 2006) has shown that management and leadership skills fall into four clusters or categories as illustrated in Figure 1.

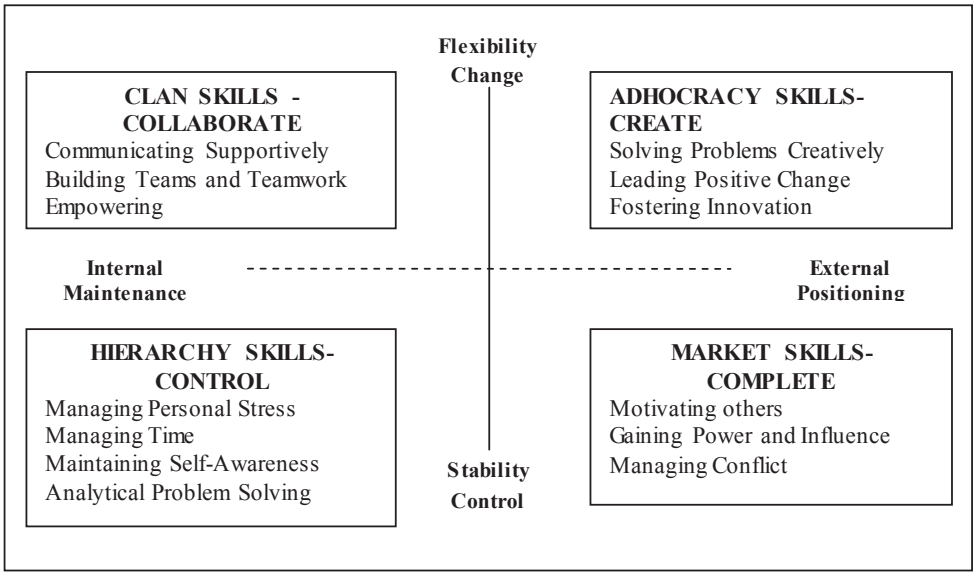

Figure 1: Leadership and Management Skills Organized by the Competing Values Framework (Source: Whetten & Cameron, 2007: 16)

Effective managers should be competent in: (1) clan skills, or a focus on collaboration; (2) adhocracy skills, or a focus on creation; (3) market skills, or a focus on competition, and (4) hierarchy skills, or a focus on control. *Clan skills* include those required to build effective interpersonal relationships and develop others (e.g., building teamwork, communicating supportively). *Adhocracy skills* include

those required to manage the future, innovate, and promote change (e.g., solving problems creatively, articulating an energizing vision). *Market skills* include those required to compete effectively and manage external relationships (e.g., motivating others, using power and influence). Hierarchy skills include those required to maintain control and stability (e.g., managing personal stress and time, solving problems rationally) (Cameron & Quinn, 2006; Whetten & Cameron, 2007: 17).

Whetten & Cameron explain that two top quadrants in the Competing Values Framework (clan and adhocracy) are usually associated with leadership and the two bottom quadrants (market and hierarchy) are usually associated with management.

"*In other words, traditionally, leadership has been used to describe what individuals do under conditions of change. When organizations are dynamic and undergoing transformation, people at the top are expected to exhibit leadership (i.e., pay attention to clan and adhocracy issues.) Management, on the other hand, has traditionally been used to describe what executives do under conditions of stability. Thus, management has been linked with the status quo (i.e., pay attention to market and hierarchy issues).*" (Whetten & Cameron, 2007: 17)

They conclude that based on the resent research is clear that such distinctions between leadership and management, which may have been appropriate in previous decades, are no longer useful. Managers cannot be successful without being good leaders, and leaders cannot be successful without being good managers. Effective management and leadership are inseparable. The skills required to do one are also required of the other (Whetten & Cameron, 2007: 17). For training and educational purposes Wheten & Cameron developed a Model of Essential Management Skills where skills are divided into three clusters or categories (Whetten & Cameron, 2007: 19):

- *Personal skills* – developing self-awareness, managing stress, solving problems,
- *Interpersonal skills* – managing conflict, motivating others, communicating supportively, gaining power and influence,
- *Group skills* – building effective teams, leading positive change, empowering and delegating.

Based on the above presented models and in line with research question for this study (*What is importance of personal skills, interpersonal skills, and group skills at different hierarchical levels in Slovenian Police?*), the following hypothesis was tested:

Hypothesis 1: For the Slovenian police, perceived personal skills, interpersonal skills, and group skills are equally important at all three organizational levels.

2 METHODOLOGY

2.1 Sample

The sample consisted of 290 leaders at the local level (police station commanders and deputy commanders), 122 leaders at the regional level (director, directors of directorates, directors of sectors/division from all 11 regional police directorates), and 74 leaders at the state level (directors of directorates, directors of sectors/divisions, heads of units). The sample size target was 407 leaders at the local level, 165 leaders at the regional level, and 118 leaders at the state level. The response rate was of 70.7 %.

At the local level there were 286 male and 4 female leaders. 169 (34.9 %) leaders at the local level were in age category between 36 and 45. 226 (46.7 %) leaders at the local level had a 3-year college degree or a 4-year university degree. 139 (28.6 %) leaders were in organizational tenure category between 11 and 20 years and 121 (24.9 %) in category between 21 and 30 years.

At the regional level there were 108 male and 14 female leaders. 60 (12.4 %) leaders were in age category between 36 and 45 years and 49 (10.1 %) in age category between 46 and 55 years. 97 (20 %) leaders had a 3-year college degree or a 4-year university degree and 20 (4.1 %) leaders had master degree. 90 (18.6 %) leaders at the regional level had more than 20 years of organizational tenure.

At the state level there were 69 male and 5 female leaders. Most leaders at the state level were in age category between 36 and 45 years (40) and between 46 and 55 years (24). 6 leaders were in age category between 56 and 65 years. There were 56 leaders with a 3-year college degree or a 4-year university degree, 14 leaders with master degree, and 2 leaders with doctoral degree. More than half leaders at the state level had more than 20 years of organizational tenure.

2.2 Instrument

A management and leadership skills questionnaire was developed based on the Competing Values Framework (Cameron & Quinn, 2006) and on the Model of Essential Management Skills (Whetten & Cameron, 2007) to record the importance of the following management and leadership skills: Maintaining Self-Awareness, Managing Personal Stress, Analytical Problem Solving (*Personal skills*), Communicating Supportively, Gaining Power and Influence, Motivating Others, Managing Conflict (*Interpersonal skills*), Empowering and Delegating, Building Effective Teams and Teamwork, Leading Positive Change (*Group skills*). In the current study, police managers, based on a description of each specific skill, ranked the importance of management and leadership skills for their job from the most important (10 score) to the least important (1 score).

2.3 Procedure

The present study was conducted in February 2009. Based on the approval from the General Police Directorate the management and leadership skills questionnaire with cover letters were sent to police managers in accordance with sample size target plan. Police managers were asked to rank the importance of skills for their job. They were assured of the confidentiality of their individual responses. The questionnaires were returned in envelopes enclosed with the questionnaires to Police Academy.

3 RESULTS

Table 1: Importance of Management and Leadership Skills by organizational level

	Local level	Regional level	State level
PERSONAL SKILLS			
Developing Self-Awareness	7	7	7
Managing Personal Stress	8	9	9
Solving Problems Analytically and Creatively	6	6	6
INTERPERSONAL SKILLS			
Building Relationships by Communicating Supportively	1	2	2
Gaining Power and Influence	10	10	10
Motivating Others	2	1	3
Managing Conflict	3	5	5
GROUP SKILLS			
Empowering and Delegating	9	8	8
Building Effective Teams and Teamwork	4	3	1
Leading Positive Change	5	4	4

Table 1 presents results of importance of skills by organizational level. Overall an importance rank from 1 (the most important) to 10 (the least important) was calculated for each skill. Visual representations of results by organizational level are presented in figures 2 to 4.

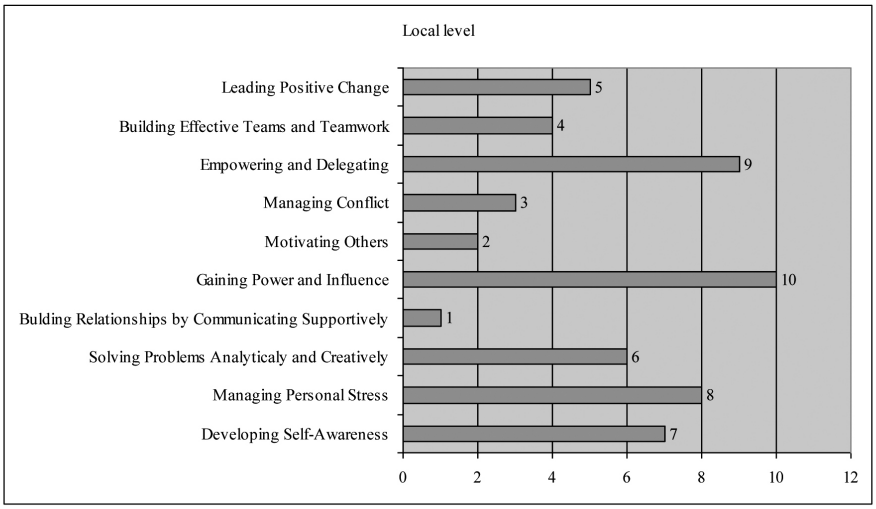

Figure 2: Importance of Management and Leadership Skills for Local level Managers

For police managers at the local organizational level the most important skills are *Building Relationships by Communicating Supportively*, *Motivating Others*, *Managing Conflict* (interpersonal skills), and Building Effective Teams and Teamwork (group skills). Among the least important skills for Police managers at the local level are *Gaining Power and Influence* (interpersonal skills), *Empowering and Delegating* (group skills), *Managing Personal Stress*, and *Developing Self-Awareness* (personal skills).

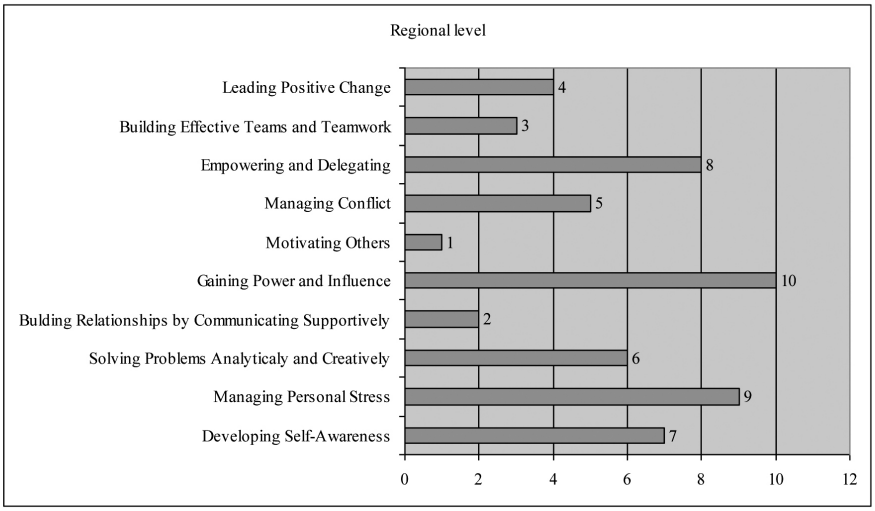

Figure 3: Importance of Management and Leadership Skills for Regional level Managers

For Police managers at the regional organizational level the most important skills are *Motivating Others*, *Building Relationships by Communicating Supportively* (interpersonal skills), *Building Effective Teams and Teamwork*, and *Leading Positive Change* (group skills). Among the least important skills for Police managers at the regional level are *Gaining Power and Influence* (interpersonal skills), *Managing Personal Stress* (personal skills), *Empowering and Delegating* (group skills), and *Developing Self-Awareness* (personal skills).

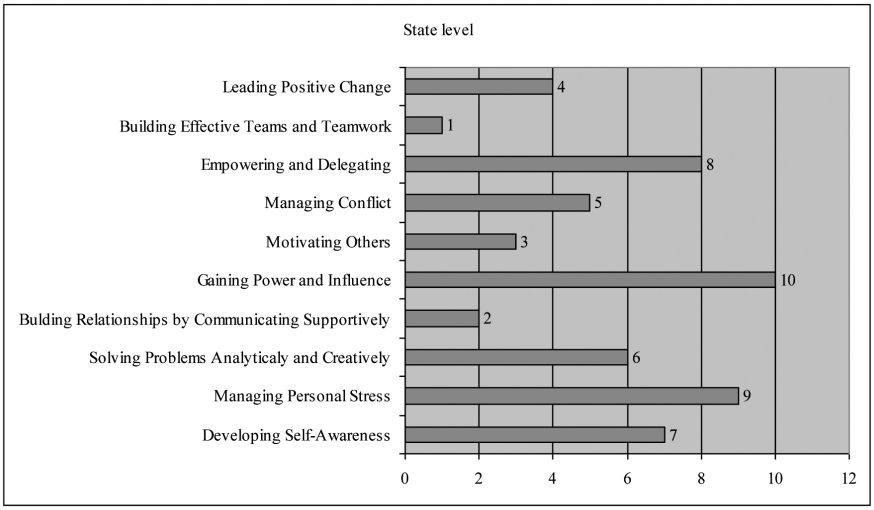

Figure 4: Importance of Management and Leadership Skills for State level Managers

For Police managers at the state organizational level the most important skills are *Building Effective Teams and Teamwork* (group skills), *Building Relationships by Communicating Supportively*, *Motivating Others* (interpersonal skills), and *Leading Positive Change* (group skills). Among the least important skills for police managers at the state level are *Gaining Power and Influence* (interpersonal skills), *Managing Personal Stress* (personal skills), *Empowering and Delegating* (group skills), and *Developing Self-Awareness* (personal skills).

4 DISCUSSION

The current study advanced our understanding of importance of management and leadership skills in the Slovenian Police hierarchy. The purpose of the study was to examine the "Competing Values Framework" among managers at different organizational levels in the Slovenian Police organization. Contrary to the study's hypothesis 1, the importance of personal skills, interpersonal skills, and

group skills was found to be not equally important at all three organizational levels. Common pattern of results shows that for three groups of police managers more important are the categories of interpersonal and group skill and less important is the category of personal skills. The most important skill for police managers at the local level is *Building Relationships by Communicating Supportively*, for police managers at the regional level the most important is *Motivating Others,* and the most important skill for police managers at state level is *Building Effective Teams and Teamwork.* Importance of group skills is increasing by organizational level. Most contrary to our expectations are the results about importance of personal skills. The least important skills for all three groups of police managers are *Gaining Power and Influence* (10, 10, 10), *Managing Personal Stress* (8, 9, 9), *Empowering and Delegating* (9, 8, 8), *and Developing Self-Awareness* (7, 7, 7). Gaining power and influence skills were ranked as least important skills by all three managerial groups. Preliminary results of the study were presented to a focus group of sample participants, police managers, who attended Management and Leadership training in Police Academy. Interviews reveled that the wording "gaining power" has negative connotation in Slovenian Police culture. A majority of interview police managers reported that they associate "gaining power" with "micromanagement" and "gaining control". Managing Personal Stress is not so important for Slovenian Police managers. Interpretation may be that police managers do not have stressful work or that due to strong male culture it is not desirable to express any weaknesses related to pressures of police work. Empowering and delegating was also not among the most important skills for Slovenian Police managers. It would be very useful to find out why. Do they trust to subordinates? Do they want to keep decision making in their hands? Maybe there is nothing to delegate? Developing self-awareness is also not so important skill for Slovenian Police managers. Again, we can only speculate about the reasons. Do they do not have developmental needs? Do they receive only positive feedback for their work? Are they so confident about the way how they manage and lead? All this questions could be focus in further research about relationships between police management and leadership skills and police organizational culture.

5 CONCLUSION

This study was part of the complex training needs analysis research on the Slovenian Police. With the aim to develop a tailor maid Police Management and Leadership curriculum several models and concepts were tested including transformational leadership styles (Durić, 2011). This study provides insight to the nature of police management and leadership skills. Findings were very useful for a curriculum development group. As already mentioned, after study focus groups and interviews revealed additional information how Slovenian Police managers understand their work and what is important for them. Based on overall findings

personal skills (developing self-awareness, managing personal stress, and solving problems analytically and creatively) where incorporated into curriculum. We agree with Whetten & Cameron (Whetten & Cameron, 2007) that highly developed personal skills is precondition for development of interpersonal and group skills, and consequently for effective police management.

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JOB SATISFACTION IN THE SLOVENIAN POLICE SERVICE: EXAMINING THE CHANGES OVER TIME

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ABSTRACT
Purpose:
The paper examines the results of a job satisfaction survey of employees of the Police Service in Slovenia, compared and analyzed from data collected in surveys conducted in 2002, 2009 and 2012.

Design/methodology/approach:
In the framework of a targeted research project entitled 'The establishment of a system for efficiency, effectiveness and quality measurement in the Slovenian Police Service', financed by the Ministry of the Interior, a survey on the job satisfaction and trust of police service employees was conducted in March 2012.

On the basis of earlier job satisfaction surveys (in 2002 and 2009) and their analysis, the 2012 survey was conducted after having been appropriately arranged and supplemented. All employees of the Slovenian Police Service were invited, including those from the General Police Directorate (GPD). In order to assure an adequate comparison over time, the employees from the General Police Directorate were excluded from the final sample. The analysis focuses on the impact of demographic characteristics on perceived job satisfaction on different levels of hierarchy.

Findings:
Using a secondary analysis of the database from 2002 and 2009, the data were acquired and then compared with the results of our survey. In a 10-year period the biggest drop in perceived satisfaction involved the possibility of performing work autonomously, the promotion system, the relationships among the staff. Compared to 2002 in 2012 Police employees were more satisfied with working hours, the leadership style in their organizational unit and job location. The 2012 analysis showed that most employees would like to see changes in the reward system and in working conditions (premises/equipment).

Research limitations/implications:
The current economic situation in the state, especially in the public sector and the police service, definitely impacts the results of the survey. The survey was conducted just before the announcement of savings measures in the Slovenian public sector. Since it was conducted on-line, we assume that for some employees this probably meant that anonymity could not be assured.

Originality/value:
The research reflects the attempt by those responsible at the Ministry of the Interior to introduce a systematic approach to measuring job satisfaction over time at different hierarchical levels of the police service in all police directorates.

Keywords: job satisfaction, Slovenian Police Service, police directorate, longitudinal analysis, reward system, promotion system, working conditions

1 INTRODUCTION

For some decades now caring for job satisfaction in private companies has been an important aspect of human resource management. Those managers who understand how important leadership is to ensure regulated and stress-free yet professional relations in the work environment are particularly aware of this. The emphasis should not only be on good relations but also on task-orientation as a primary way to effectively and efficiently achieve the goals set by the organization.

Many public organizations have become aware of the importance of job satisfaction but, regrettably, there are still too few examples of this issue being addressed truly systematically. Due to the limited financial resources in the public sector it is all the more important that job satisfaction is promoted through non-financial measures and incentives. However, in quite a few cases the scarcity of financial resources serves as an excuse for a failure to act in the area of increasing job satisfaction. The examples of effective and efficient organizations can teach us that, on one hand, it is necessary to establish a number of approaches to increasing job satisfaction and, on the other, trends and goal achievement rates should be periodically measured and monitored as well as some benchmark comparisons made. When opportunities for improvement are identified it is recommended to take measures as soon as possible and monitor the progress.

The vision and mission of the Slovenian Police Service (Ministry of the Interior – Police Service, 2012b) reveal no focus on employees (except for professional aspects) and their satisfaction; however, the aspects of interpersonal relations and commitment to the organization are mentioned in the values of the Police. The measurement of job satisfaction is a very delicate issue. This task is generally performed not by experts from within the organization but by external advisors, or it is carried out within various projects and prize-giving events, such as in Slovenia: ‚SiOK' (eng. Slovenian Organizational Climate) (2011), ‚Zlata nit' (eng. GoldenThread) (2011), and indirectly also ‚Družini prijazno podjetje' (eng. Family-Friendly Company) certificate (Ekvilib Institute, 2012) etc. In the case of management based on the EFQM (2012) or CAF models (EIPA, 2012), the meas-

urement of satisfaction and introduction of improvements both contribute importantly to organizations' effectiveness. Job satisfaction is generally measured using survey questionnaires with open-ended or closed-ended questions, where it is important to include in the questionnaire those satisfaction facets that are characteristic of the studied work environment.

The approaches to and methods for establishing job satisfaction differ, and are either direct or indirect in terms of the target group. The direct approach is based on interactive co-operation with the employees (structured questionnaire, interview or a combination of both), while the indirect approach consists of the observation of phenomena reflecting job satisfaction. Stare and Buzeti (2009) emphasize that the identification of job satisfaction should not serve its own purpose but should underpin an analysis that reveals any strengths and weaknesses in the operations and contributes to the (re)formulation of factors that influence job satisfaction.

2 JOB SATISFACTION

Job satisfaction represents one of the most widely studied constructs in industrial psychology (McShane & Von Glinov, 2007). It has most often been defined as a pleasant or positive emotional state resulting from the perception of work, conception and assessment of the work environment, work experience and the perception of all elements of the work and workplace (Mihalič, 2008). Spector (2003: 210) defines job satisfaction as "the extent to which people like their job". According to Weiss (2002), job satisfaction is an attitude toward one's job resulting from the net sum of the individual's positive and negative emotions experienced at work. Job satisfaction is a pleasant feeling a person has when their expectations from work have been fulfilled.

Despite a large number of studies of job satisfaction in the private and public sectors, e.g. the health sector (Spence Laschinger, Finegan, & Shamian, 2001) or among correctional staff (Boothby & Clements, 2002; Garland, McCarty, & Zhao, 2009; Griffin, Hogan, Lambert, Tucker-Gail, & Baker, 2010), there has been a paucity of studies in the area of job satisfaction in the police (Davey, Obst, & Sheenan, 2001). Regardless of the delicate nature of the subject, there are some interesting studies where job satisfaction has been discussed as a dependent variable. These studies have delved into the following:

- the influence of *demographic factors* on job satisfaction, e.g. sex, age, education, race, length of service (tenure), years of work experience, psychological personality characteristics etc. (Abdulla, Djebarni & Mellahi, 2011; Balci, 2011; Dantzker, 1992; Garland et al., 2009; Kakar, 2002; Ortega, Brenner, &

Leather, 2007; Zhao, Thurman, & He, 1999), where the results of the studies differ regarding the direction of the correlation (positive/negative), the size of the correlation coefficient and the size of statistically significant differences within specific characteristics, e.g. between males and females; and

- the influence of *organizational factors* (e.g. work-related factors (tasks and their significance, variety of work, autonomy etc.), the promotion and reward system, leadership, training, relationships, working conditions, administration, organizational commitment, organizational support) and *environmental factors* (e.g. public image, frustration with the judicial system) on job satisfaction (Abdulla et al., 2011; Boke & Nalla, 2009; Coman & Evans, 1988; Davey et al., 2001; Dick, 2011; Griffin & McMahan, 1994; Hwang, 2008; Johnson, 2012; MacKain, Myers, Ostapiej, & Newman, 2010; Miller, Mire, & Kim, 2009; Morris, Shinn, & Dumont, 1999; Nalla, Rydberg, & Meško, 2011).

In some studies job satisfaction has also been discussed as an independent variable, e.g. in those investigating the comprehension of stress among police officers (Gershon, Borocas, Canton, Li, & Vlahov, 2009). As mentioned above, one can also find studies where the independent and dependent variables have been replaced, e.g. a study on how job stress affects job satisfaction (Griffin & McMahan, 1994). Some studies have investigated overall job satisfaction (Davey et al., 2001; Garland et al., 2009; MacKain et al., 2010, Nalla et al., 2011). The primary purpose of these studies has been to define and establish the intensity of the influence of various factors (demographic, job-related, organization-related) on overall job satisfaction. Another group of studies has focused on individual facets of job satisfaction with concrete, narrower areas such as the work itself, salary, leadership, promotion, colleagues, working conditions etc. (Balci, 2011; Boothby et al., 2002; Johnson, 2012; Noblet, Rodwell, & Allisey, 2009; Verhaest & Omey, 2009).

3 LONGITUDINAL ANALYSIS OF JOB SATISFACTION OF POLICE SERVICE EMPLOYEES IN SLOVENIA

3.1 Methods

The aim of this contribution is basically to compare data on job satisfaction from three different studies conducted among Slovenian Police Service employees in the 2002-2012 period. Over the last decade, the population of the Slovenian Police Service has undergone considerable structural change. Therefore, the population and the samples of the conducted studies will first be presented in terms of gender, education and age. This is important because, at the very beginning, any limitations in the interpretation of results for a relatively long period of 10

years should be pointed out. The differences in the level of job satisfaction can also be a consequence of changes in the structure of the population and the sample of Slovenian Police Service employees and not simply a result of the deterioration or improvement of the facets of satisfaction.

The 2002 study was conducted by researchers of the College of Police and Security Studies (Visoka policijsko-varnostna šola) (Umek & Areh, 2002a; Umek & Areh, 2002b; Umek & Areh, 2002c; Baza podatkov raziskave (Study database), 2002). The study included about one-third of police stations (46) from all categories and all regions of the country, and the questionnaires were sent to all members of the uniformed police force. The sample included 1,850 employees and 880 of them from 32 police stations (PS) replied.

The 2009 study was conducted by the Faculty of Criminal Justice and Security (Fakulteta za varnostne vede) under the title "Study of Police Officers' Evaluations and Views about Job Satisfaction and Trust in the Slovenian Police Service" (Umek, Meško, Areh, & Šifrer, 2009; Study database, 2009). The sample included 70 percent of employees of 48 selected police stations, operational communication centres and criminal police departments, i.e. 1,649 employees. The survey was answered by 997 employees holding the status of a police officer.

The online survey "Study of Job Satisfaction and Trust in the Slovenian Police Service" was carried out in March 2012 by researchers from the Faculty of Administration (Fakulteta za upravo). The Ministry of the Interior and the Police Service made efforts to inform and motivate the employees to complete the online survey. All Slovenian Police Service employees were invited to participate in the survey (the management of the Police and the trade unions sent an e-mail to them). 2,353 employees of the Police Service registered on the website. 1,848 employees replied to at least one substantive question.

The sample of the 2002 study only included uniformed police officers (Umek et al., 2002a), while the 2009 study was conducted among all (uniformed and non-uniformed) police officers (Umek et al., 2009). In both studies, the sample was limited to the employees of police stations (PSs) and police directorates (PDs). None of the mentioned studies included the employees of the General Police Directorate (GPD). Demographic characteristics and job-related characteristics of the GPD employees differ from those of the PD employees because their work and tasks differ. The biggest differences are found in the structure in terms of (uniformed/non-uniformed) police officer status (Table 1).

Table 1: Number of Slovenian Police Service employees, 31 December 2011 (Source: MNZ, Policija, 2012)

	Number of employees			Share (%)		
Type of job	**Total GPD**	**Total PD**	**Total**	**Total GPD**	**Total PD**	**Total**
Uniformed police officers	570	5,341	5,911	39.2	72.6	67.1
Non-uniformed police officers	743	977	1,720	51.1	13.3	19.5
Employees without police officer status	141	1,036	1,177	9.7	14.1	13.4
Total	1,454	7,354	8,808	100.0	100.0	100.0

As of 31 December 2011 the GPD employed only 39.2 percent of uniformed police officers, whereas the share in the PDs was 72.6 percent. Due to these large differences in the structure of employees in the GPD and the PDs, all GPD employees (299 respondents) were excluded from the total realized sample of the 2012 study (1,848 respondents). Thus, a sample of employees of the PDs (1,549 respondents) was established and the results were compared with those of the 2002 and 2009 studies.

In the continuation of the study, the structures of the population of Slovenian Police Service employees were compared with the realized sample for 2012. The sample of respondents from PDs was divided into employees working mainly in the field and those working in the office.

Table 2: Basic demographic data on Slovenian Police Service employees from 2002 to 2011 and on the sample of respondents in the 2012 study (Source: MNZ, Policija, 2003; MNZ, Policija, 2010; MNZ, Policija, 2012; Study database, 2012)

Demographic data	**Population (number of employees as on 31 Dec.)**			**Sample for 2012 (Police Directorates) – job location**		
	2002	**2009**	**2011**	**Field**	**Office**	**Total**
Gender – share of women						
Uniformed police officers	6.8%	13.7%	14.5%	15.0%	17.4%	16.2%
Non-uniformed police officers	14.3%	17.5%	16.9%			
Employees without police officer status	76.7%	80.0%	82.2%			
Total	20.1%	25.1%	24.0%			
Education						
Share of employees with a secondary school education or less	78.7%	71.6%	68.3%	63.0%	30.1%	44.9%

Demographic data	**Population (number of employees as on 31 Dec.)**			**Sample for 2012 (Police Directorates) – job location**		
	2002	**2009**	**2011**	**Field**	**Office**	**Total**
Age (years)						
Uniformed police officers	27.0	35.0	36.3	36.0	40.7	38.4
Non-uniformed police officers	36.0	39.7	40.7			
Employees without police officer status	38.0	42.4	43.5			
Total	33.0	37.0	38.1			
Number of employees/respondents	8,931	9,349	8,808			

The relations in the population are best reflected in the partial sample of the study subjects who work in the field. In the structure by gender, the share of women was comparable (population 14.5 percent, sample 15.0 percent). In the structure by education, the most comparable was the share of those who constitute a majority of Police Service employees. Employees with a secondary school education or less account for 68.3 percent of the population, whereas their share in the sample of respondents who work on the field is 63.0 percent. The average age of the uniformed police officers in the Slovenian Police Service as at the end of 2011 and in the sample of respondents who mainly work in the field is also comparable (population: 36.3 years, sample 36.0 years).

A comparison of the structures of the samples of the studies conducted from 2002 to 2012 reveals that the sample of respondents (from 2012) who mainly work in the field is the one which is most similar to the samples of the 2002 and 2009 studies (Umek et al., 2002a; Umek et al., 2009) in terms of the structure by gender, education and age. The results of the assessment of job satisfaction for 2012 are therefore presented in three groups (Table 3):

– jointly for the group of PS and PD employees;
– for the group of employees who mainly work in the field and who are most similar to the 2002 and 2009 samples in substantive terms; and
– for the group of employees who perform the bulk of their work in the office.

Table 3: Basic demographic data on the samples of the 2002, 2009 and 2012 surveys (Source: Study databases, 2002, 2009 & 2012)

Demographic data	2002 survey	2009 survey	2012 survey		
			Field	Office	Total**
Number of respondents	880	997	708	745	1,453
Gender – share of women	4.9 %	12.7 %	15.0 %	17.4 %	16.2 %
Education – share of employees with a secondary school education or less*	-	63.7%	65.7%	33.5%	49.3%
Age – average age of the respondents (in years)	31.4	34.3	36.0	40.7	38.4

*The question about education level was not included in the 2002 survey

**96 respondents failed to answer where they mainly do their work.

The structure of the sample by gender shows that the share of women was on the increase throughout the period: from 4.9 percent in 2002 to 16.2 percent in 2012 (Table 3). Similar trends were also observed with all employees of the Police Service: at the end of 2002 the uniformed police officers included 6.8 percent of women and at the end of 2011 already 14.5 percent (Table 2). The structures of the sample and the population in the compared years were thus similar.

The education structures of the sample and the population can thus be compared only for 2009 and 2012 since the 2002 questionnaire did not include the question about education. In the period under scrutiny, the education structure of Slovenian Police Service employees improved which is also shown by the data on the population (Table 2) and the sample (Table 3). The share of employees with a secondary school education or less was 78.7 percent in 2002, then fell to 71.6 percent in 2009 and 68.3 percent in 2012. Similarly, in the study samples (the data for 2002 are not available) it dropped from 63.7 percent in 2009 to 49.3 percent in 2012.

The average age of Slovenian Police Service employees rose by 5.1 years from 2002 to 2012, namely to 38.1 years. At the end of 2012 the youngest employees belonged to the group of uniformed police (36.3 years), although this group also recorded the biggest increase in average age (by 9.3 years) in the observed period. The oldest group consists of employees without police officer status (43.5 years). Similar trends were observed in the study samples in terms of average age: in 2002 (when the sample included only uniformed police officers) the average age was 31.4 years, in 2009 (when the sample included all police officers) 34.3 years, whereas in 2012 it rose to 38.4 years (all PS and PD employees).

3.2 Results

Table 4: Assessments of job satisfaction facets by Police Service employees for 2002, 2009 and 2012 (Source: Study databases, 2002, 2009 & 2012)

			2012					
Facets	**2002**	**2009**	**2012 total**	**Mainly working in the field**	**Mainly working in the office**	**t-test**	**df**	**Sig. (2-tailed)**
Possibility of realizing one's abilities	-	3.09*	3.05	2.81	3.28	-8.5	1,450	.000
Possibility of participating in decision-making on organizing the work	2.73	2.80	2.92	2.60	3.24	-10.6	1,443	.000
Feeling of belonging to the staff	3.67	3.74	3.82	3.63	4.00	-6.6	1,451	.000
Working hours	2.73	3.20	3.68	3.34	4.01	-11.3	1,435	.000
Working conditions (equipment, premises)	2.51	2.46	2.56	2.37	2.73	-5.5	1,453	.000
Leadership style in the organizational unit	2.98	3.12	3.33	3.12	3.52	-6.3	1,447	.000
Variety of tasks	3.36	3.41	3.53	3.40	3.66	-4.9	1,448	.000
Volume of tasks	3.36	3.01	3.20	3.11	3.28	-2.9	1,440	.004
Promotion system	2.52	2.11	1.78	1.65	1.90	-4.8	1,454	.000
Public attitude to the police	2.57	2.46	2.35	2.16	2.54	-7.2	1,448	.000
Volume of regulations, work guidelines	-	2.29	2.18	2.17	2.19	-.5	1,446	.595
Professional training system	2.81	2.51	2.40	2.32	2.48	-3.3	1,429	.001
Work with people	3.45	3.48	3.55	3.53	3.58	-1.0	1,424	.319
Functioning of the police trade union	2.41	1.99	2.57	2.62	2.52	1.6	1,412	.119
Salary	2.62	2.29	2.01	1.88	2.13	-4.9	1,449	.000
Payment of overtime	2.13	2.75	2.09	2.09	2.09	.0	1,422	.975
Job location	3.50	3.69	3.84	3.63	4.05	-6.7	1,425	.000
Administrative tasks	-	2.43	2.25	2.10	2.39	-4.9	1,437	.000
Possibility of performing work autonomously	4.35	2.99	3.00	2.84	3.16	-5.9	1,422	.000
Psycho-hygienic care for police officers	-	2.17	2.54	2.31	2.76	-8.0	1,392	.000
Reward system	-	1.94	1.45	1.40	1.49	-2.5	1,442	.012
Supervision over work	2.85	2.93	2.86	2.77	2.94	-3.2	1,437	.002
Security of employment	-	3.20	3.09	2.87	3.30	-7.8	1,445	.000
Relationships among the staff	4.59	3.37	3.50	3.33	3.66	-5.4	1,444	.000
Satisfaction with performed work	3.51	3.64	3.73	3.59	3.85	-5.1	1,460	.000

* 1 – extremely dissatisfied, 5 – extremely satisfied.

A comparison of the most highly assessed facets shows that in 2012 the employees are the most satisfied with job location, feeling of belonging to the staff and with performed work. Those employees who mainly work in the office are also highly satisfied with the working hours. In 2012 the lowest assessed facets of job satisfaction included those related to rewarding and promotion (reward system, promotion system, salary and payment of overtime).

The differences between those mainly working in the field and those mainly working in the office were observed in most of the studied facets of job satisfaction. Employees working in the field assess the following facets of satisfaction much lower than their colleagues working in the office: working hours, possibility of participating in decision-making on organization of the work, possibility of realizing one's abilities, psycho-hygienic care for police officers, security of employment and job location.

Those working in the field are more satisfied than those working in the office only in the case of the facet ‚Functioning of the police trade union'. They assess slightly lower the following facets: work with people, volume of regulations and work guidelines as well as payment of overtime.

Table 5: The three highest and three lowest assessed facets of satisfaction for 2002, 2009 and 2012 (Source: Study databases, 2002, 2009 & 2012)

Facets	**2002**	**2009**	**2012 - field**	**2012 - office**	**2012 total**
Lowest assessed facets					
Payment of overtime	x			x	
Functioning of the police trade union	x	x			
Working conditions (equipment, premises)	x				
Reward system		x	x	x	x
Promotion system		x	x	x	x
Salary			x		x
Highest assessed facets					
Relationships among the staff	x				
Possibility of performing work autonomously	x				
Feeling of belonging to the staff	x	x	x	x	x
Job location		x	x	x	x
Satisfaction with performed work		x	x		x
Working hours				x	

A comparison between years shows that the order of the facets of satisfaction between 2009 and 2012 has changed only slightly, whereas the differences between 2002 and 2012 are somewhat bigger. In 2002 the lowest assessed facet was the payment of overtime, followed by the functioning of the police trade union (also assessed lowly in 2009) and the working conditions (equipment, premises). The lowest assessed facets of satisfaction in 2009 and 2012 included those related to rewards and promotion.

In 2002, those facets showing the feeling of belonging to the staff, the relationships among the staff and the possibility of performing work autonomously were assessed the highest. The best assessed facets in 2009 did not differ from those in 2012. A constant throughout the observed years has been the feeling of belonging to the staff which achieved high assessments in all years. In 2009 and 2012 the facets of job location and satisfaction with performed work were also assessed highly.

Table 6: The three facets of satisfaction where the assessment decreased or increased the most (Source: Study databases, 2002, 2009 & 2012)

The biggest changes	**2012 field /2002**	**2012 field /2009**	**2012 total /2002**	**2012 total /2009**
Facets where the assessment decreased the most				
Possibility of performing work autonomously	x		x	
Promotion system	x	x	x	x
Salary	x			
Reward system		x		x
Relationships among the staff			x	
Payment of overtime		x		x
Facets where the assessment increased the most				
Working hours	x	x	x	x
Functioning of the police trade union	x	x		x
Leadership style in the organizational unit	x		x	
Psycho-hygienic care for police officers		x		x
Job location			x	

An overview of the changes in the assessed facets of job satisfaction in the 2002-2012 period shows that the assessments of the following facets decreased the most: possibility of performing work autonomously, promotion system and relationships among the staff. In the group of employees who mainly work in the field satisfaction with the salary has plummeted over the 2002-2012 period. Compared to 2009, the assessments in the area of the reward system, promotion system and the payment of overtime decreased the most in 2012.

Compared to 2002, in 2012 the biggest increase was recorded in the assessments of satisfaction with working hours, the leadership style in the organizational unit and job location. Satisfaction with the functioning of the police trade union increased the most in the group of employees who mainly work in the field. Compared to 2009, satisfaction with working hours, the functioning of the trade union and psycho-hygienic care for police officers has risen.

The above overview shows in which facets of satisfaction the biggest changes occurred in the past period (according to the respondents). Below is a presentation of the areas for which in 2009 and 2012 the employees believed that changes in the police were necessary (Table 7).

Table 7: Share* of respondents believing that changes are necessary (in %) (Source: Study databases, 2009 and 2012)

Area of desired changes:	**2009**	**2012 – field**	**2012 – office**	**2012 total**
Interpersonal relations in the unit	40.4	27.3	21.2	24.2
Working conditions (equipment, premises)	57.2	57.9	60.7	59.3
Leadership of the unit	33.5	29.6	25.6	27.6
Reward system	50.5	74.7	75.2	74.9
Reputation of the police in the public	33.3	48.1	41.2	44.5
Psycho-hygienic care for police officers	23.1	12.2	11.6	11.8
Education and training	37.7	26.2	31.2	28.8

*Share (%) of those who answered individual questions

In both investigated years and in all groups, most respondents wanted to change the working conditions and the reward system. However, the shares of those wanting a change in the working conditions in 2009 and 2012 were similar, while the share of those aspiring for a change in the reward system grew from 50.5 percent in 2009 to 74.9 percent in 2012. The share of those wanting a change in the area of the reputation of the police in the public soared from 33.3 percent in 2009 to 44.5 percent in 2012.

In all other areas the share of those aspiring for a change decreased. In 2012, compared to 2009, the shares of those aspiring for a change in interpersonal relations in the unit and those aspiring for a change in the psycho-hygienic care for police officers decreased the most (from 40.4 to 24.2 percent and from 23.1 to 11.8 percent, respectively). These are the two areas where changes are desired by the smallest share of the employees.

4 CONCLUSION

In 1993, 2002, 2009 and 2012 the Ministry of the Interior or the Police ordered different studies on job satisfaction in the Slovenian Police. Only some of them were suitable for comparison. The decision of the Ministry of the Interior and the Slovenian Police Service to introduce a systematic and annually comparable measurement of job satisfaction at different levels of the hierarchy and in all police directorates is assessed very positively. Namely, such comparisons reveal trends in the studied phenomenon, in our case the job satisfaction of Slovenian Police Service employees. The study's results are in line with our expectations – the worst situation and the strongest downward trend over the years was observed in the areas of the salary, reward system, promotion system and working conditions of police employees.

This is not surprising as, over the last two decades, the Slovenian Police Service has undergone many changes, especially in the areas of goals, values, organization and infrastructure. Since 2008, when the public servants reward system was amended, the management of police service employees has become even more challenging. At the time all uniformed professions were classified in the same salary brackets, which is why – according to police representatives and many experts in the field of organization and payment systems – the police staff were inappropriately rewarded. In subsequent years, as part of streamlining measures in the public sector, promotion was also abolished and additional measures were adopted in spring 2012 that have caused a radical deterioration in the financial position of the police service as an institution (in terms of both equipment and infrastructure) and its employees.

The analysis has shown that there are many opportunities for improving job satisfaction in the Slovenian Police Service. Regrettably, given the current situation in the country, one cannot expect any big positive material changes in the short run, neither in the Police Service as an institution nor in terms of employees. However, the responsible persons in the Police Service could at least focus on activities that do not require high financial investments in order to increase cohesiveness within the police and constantly promote the feeling of belongingness to the police among all its members and on the selection and training of leaders so as to ensure good relationships among employees at different hierarchical levels and also on the same level in order to enhance commitment and a feeling of satisfaction. The latter is also related to the functioning of the trade unions that, in these current times of crisis, are an important factor for ensuring the feeling of security and satisfaction among the employees.

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THE EFFICIENCY OF POLICE AT REGIONAL LEVEL IN SLOVENIA IN 2010: AN APPLICATION OF DATA ENVELOPMENT ANALYSIS

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ABSTRACT

Purpose:
The purpose of the paper is to apply a non-parametric methodology for measuring public police performance in Slovenia at the regional level (for (all) eleven Police Directorates) in 2010.

Design/Methods/Approach:
The paper considers how previous studies have modelled the role of policing through specification of inputs and output. In particular, the multiple-stage Data Envelopment Analysis (DEA) technique is presented and then applied to measure the relative efficiency of police-work-related data for eleven police directorates (PDs) in 2010. The data obtained from the police databases is analyzed through the Frontier Analyst 4.0 and SPSS 19.0 statistical package software.

Findings:
The results show that the technical efficiency of the police varies significantly across the police directorates even when we allow for environmental factors and control for non-discretionary inputs. Most police directorates in Slovenia could attain a higher output if they were fully efficient. Indeed, all of the inefficient police directorates can learn how to improve their performance from the efficient ones (i.e. the Maribor PD and the Novo mesto PD) by observing how they are processing inputs and outputs.

Originality/Value:
The empirical results of the paper are important indicators of the relative efficiency (or inefficiency) of police directorates that can serve as a guide to the General Police Directorate when further investigating how to enhance performance efficiency.

Key words: performance measurement, efficiency, data envelopment analysis, police, Slovenia

1 INTRODUCTION

As has become the case across the entire public sector, the Slovenian police should adopt processes of adjusting to modern trends, especially those associated with improved efficiency. The global financial and economic crisis offers a window of opportunity for deep structural reforms to the police since police activity is a cornerstone of all other institutions of the rule of law, freedom and security; without the police service there can be no development, democracy, economic progress or social and legal equality. Slovenia does not have a modern system for objectively monitoring the state of security as well as the performance, efficiency and quality of the police's work. Therefore, a central goal of this study is to use additionalmodels and methods as guidelines for streamlining and reorganizating of the police in Slovenia.

The police carry out one of the main activities of public importance that is crucial for ensuring the uninterrupted functioning of modern society. The state allocates a relatively large amount of funding for police operations (e.g. in 2010 the Republic of Slovenia allocated about EUR 330 million to the police, accounting for 3.1 % of total budget expenditure) and a large share of public employees work in the police (i.e. 8,989 employees, accounting for 26.3 % of state administration staff in Slovenia in 2010). Due to the importance of this activity and the mentioned desire to improve the use of public funds, many countries have decided to transpose successful practices from the private sector into the police sphere, especially those concerned with efficiency and performance measurment.

In this paper we attempt to examine the relative efficiency of the Slovenian Police at the regional level. The paper considers how previous studies have modelled the role of policing in their specifications of inputs and outputs. In particular, a three-stage Data Envelopment Analysis (DEA) technique is presented and then applied to measure the relative efficiency of police-work-related data for (all) eleven Slovenian Police Directorates in 2010. This also involves a Tobit regression to control for external (environmental) factors. The data obtained from the police databases is analyzed through the Frontier Analyst 4.0 and SPSS 19.0 statistical package software.

This paper is organized as follows; the next section discusses prior studies that have influenced the current work. The methodology and data regarding the selection of the input and output measures for use in a three-stage DEA model is then presented. The empirical results obtained from the DEA assessment are presented and discussed in the third part of the paper. The paper concludes with a summary of the findings regarding the use of DEA to improve the performance of police services in Slovenia.

2 LITERATURE REVIEW

The literature review reveals that the techniques employed for estimating efficiency are usually divided into two major groups: frontier and non-frontier models. With these techniques we can measure efficiency absolutely or relatively, respectively. The early studies related to estimating the efficiency of the police sector were based on the application of econometric non-frontier models. Currently, analyses conducted to measure the performance of police authorities focus on the DEA concept, a non-parametric frontier estimation methodology (Gomes et al., 2006). The application of DEA methodology to measure the performance of police in efficiency terms is on the rise in Europe, such as in England and Wales (see Thanassoulis, 1995, Carrington et al., 1997, and various papers by Drake & Simper, 2000; 2002; 2003; 2005) and also in Spain (Diezticio & Mancebon, 2000; García-Sánchez, 2008). Given that our analyzed data are cross-sectional with multiple inputs and outputs we will also apply the DEA methodology to evaluate performance measures of the police sector.

Recently, García-Sánchez (2008) conducted DEA analysis to estimate the efficiency of Spanish local police in matters of public and road safety. The research included 113 towns on the mainland with over 50,000 inhabitants in the year 2000. The main purpose of this research was to reduce subjectivity in the statistical selection of variables prior to analysis and to apply the DEA technique to evaluate the influence each activity in the proposed area has on the overall performance of the police. Drake and Simper (2000; 2002; 2003) evaluate different measurement approaches of applying the DEA methodology to estimate the police sector. Drake and Simper (2005) conducted DEA analysis on 41 police forces in the United Kingdom in which they evaluated two outputs (civilian days lost and aggregate offenses cleared) against four inputs (burglaries, vehicle crimes and robberies, and total budget). In particular, this research introduced a new data set of environmental, socio-economic, and demographic variables that could have an impact on DEA relative efficiency scores and rankings of police performance. The authors in this research confirmed that the omission of environmental variables can produce biased performance measures with respect to some police forces. In contrast, Sun (2002) and Carrington et al. (1997) found that most police departments are not significantly affected by environmental variables.

To summarize, over the past few years a relatively high number of studies in the field of measuring the police efficiency were based on non-parametric methods (e.g. DEA). They mainly involved measuring efficiency at the national level which shows inputs from other systems into the police system (e.g. how much society invests in police work) and outputs from the police into other systems (e.g. the contribution of the police to social welfare, security etc. – how much society receives from the police system). In contrast with previous studies, the focus of our empirical study was primarily on measuring how the police responds to events which occur in society and to which by law they must respond.

3 METHODOLOGY AND DATA

To measure efficiency, Data Envelopment Analysis DEA (a non-parametric frontier estimation methodology) is the choice here because it does not require us to specify the functional form or distributional forms for errors. In essence, it is more flexible than the parametric approach. Further, DEA has been used extensively to measure public sector efficiency in many countries by a host of researchers, like Ouellette and Vierstraete (2004), Verma and Gavirneni (2006), Hauner (2008), or Adam et al. (2011) who point out that DEA is so popular because it is easy to draw on diagrams and easy to calculate. Apart from the above reasons, DEA is employed here because it is more reliable for measuring technical efficiency as it can be applied to multi-input and multi-output variables.

As an example, consider a situation that has F DMUs, with each having M inputs and N outputs. Let be the level of input l at DMU f and let be the level of output k at DMU f. Without loss of generality, it will be assumed that the inputs and outputs are defined in such a manner that lower inputs and higher outputs are considered better. The relative efficiency of DMU f, denoted by , is computed by solving the following linear programme (Verma & Gavirneni, 2006):

$$Maximize\ w_f = \sum_{k=1}^{N} \beta_k Y_k^f$$

Subject to:

$$\sum_{l=1}^{M} \alpha_l X_l^f$$

$$\sum_{k=1}^{N} \beta_k Y_k^f - \sum_{l=1}^{M} \alpha_l X_l^f \leq 0 \; \forall \; f = 1, 2, \ldots, F$$

$$\alpha_l, \beta_k \geq 0$$

The basic idea of this approach is that, through the use of weights α and β, the sets of inputs and outputs are converted into a single "virtual input" and a single "virtual output". The ratio of the virtual output to the virtual input determines the efficiency associated with the DMU. In addition, when the efficiency of a DMU is being computed the weights are determined in such a way that its virtual input is set equal to 1. The resulting virtual output for that DMU determines its relative efficiency. Due to the presence of multiple measures of performance, each DMU would like to choose weights that put it in the best light and this linear programming formulation does just that. That is, when solving for DMU f, the weights chosen are those which result in that DMU receiving the highest efficiency possible. Any other set of weights would only result in the DMU having

a lower efficiency rating. In order to complete the analysis, k linear programmes (one each for a DMU) need to be solved and the relative efficiencies of the DMUs can be tabulated. The technique is therefore an attempt to find the "best" virtual unit for every real unit. If the virtual unit is better than the real one by either making more output with same input or making similar output with less input, then we say that the real unit is inefficient. Thus, analyzing the efficiency of N real units becomes an analysis of N linear programming problems.

As the efficiency of a police unit to transform inputs into outputs is also influenced by external environmental factors, which are usually beyond its control, the three-stage approach is employed to obtain a measure of net technical efficiency. This approach estimates efficiency scores with the original DEA programme using only the discretionary inputs (i.e. controlled inputs). This produces a measure of the total inefficiency of the different DMUs comprising contributions from both the non-discretionary (i.e. uncontrolled) variables and from non-measurable management inefficiency. Subsequently, a regression analysis is used in the second stage to decompose both of them. Therefore, exogenous variables () are explanatory variables and the dependent variable is the first-stage efficiency score () (McCarty & Yaisawarng, 1993):

$$\widehat{w_f} = f(Z_f, \beta) + u_f$$

This regression can be estimated by ordinary least squares, although the use of a Tobit regression is more widespread since the dependent variable (the efficiency score) is bounded between 0 and 1 (McCarty & Yaisawarng, 1993). From the value of estimated coefficients it is possible to identify the influential variables and their sign (positive or negative) and also to weigh the importance of each external variable in the efficiency estimate. Further, the initial efficiency scores can be directly corrected in order to include the influence of the external variables (Cordero et al., 2009).

In the third stage, DEA[1] will be conducted using the discretionary and non-discretionary input indicators. In most cases the indicators showing the external factors had a negative sign due to the negative influence which is why a translation was performed. The reason for performing the translation so as to achieve non-negative data is that the DEA software packages typically require this condition (Pastor & Ruiz, 2007). Moreover, in the empirical analysis in our study we were quite strongly limited by the low number of DMUs. In our case, the sum total of the inputs and outputs for 11 observation units would be less than 3.6 which is why in the first stage we only used one input and two outputs, whereas in the second phase the input was a measure of external influences so that there

[1] All of the empirical results in the empirical part of the paper will be related to DEA with an output orientation, allowing for constant returns to scale (CRS). An output orientation focuses on the amount by which output quantities can be proportionally increased without changing the input quantities used.

were two inputs and two outputs.[2] Other authors also propose that this number of included factors should be the highest possible.[3]

The observed substantive areas of the police work were defined according to the core police activities. The Slovenian Police performs the following core activities (Ministry of the Interior, 2011a):

- Crime prevention, detection and investigation
- Public order and overall safety of people and property
- Road safety
- State border surveillance and enforcement of regulations on foreigners
- Protection of certain persons and facilities

Table 1: Input/output indicators for three core police activities in Slovenia (in 2010) – descriptive statistics (Sources: Annual Report on the Work of the Police in 2010 (Ministry of Interior, 2011a); calculations by the authors)

Name of indicator	Indicator type	Mini-mum	Maxi-mum	Mean	Std. Deviation
Crime prevention, detection and investigation					
Criminal offences (number)	discretionary input	1,257	43,839	8,128.6	12,311.5
Population/sq km	non-discretionary input	35.9	159.7	91.8	38
Number of active population/1,000 inhabitants	non-discretionary input	158.8	305.4	202.3	43.3
Investigative and other measures taken while investigating criminal offences - Crime scene inspections (number)	output	322	9,503	1,794.4	2,689.9
Investigative and other measures taken while investigating criminal offences - House searches (number)	output	47	542	175.4	151.7
Public order and overall safety of people and property					
Violations of public order regulations (number)	discretionary input	1,553	16,737	4,916.7	4,508.4
Population size/settlement	non-discretionary input	141.4	505	335.5	124.5
Migration increment – total/1,000 inhabitants	non-discretionary input	-5.1	1.8	-0.5	2
Police measures against offenders - Number of persons held in custody	output	331	2,925	1049	826.8
Police measures against offenders - Number of ordered productions	output	52	1,752	492.3	541

[2] DEA itself does not provide guidance for the specification of the input and output variables; rather, this is left to the user's discretion, judgment and expertise. However, several issues may arise when selecting variables, e.g., the unavailability of data, high dimensional production processes, and the inclusion of irrelevant inputs or outputs (Nataraja & Johnson, 2011).

[3] For instance, Bowlin (1998) and Friedman and Sinuany-Stern (1998) mentioned the need to have three times the number of DMUs as there are input and output variables or that the total number of input and output variables should be less than one-third of the number of DMUs in the analysis: (number of inputs + number of outputs) < n/3.

Name of indicator	Indicator type	Minimum	Maximum	Mean	Std. Deviation
Road safety					
Violations detected during road traffic controls (number)	discretionary input	5,757	137,924	37,211.9	38,300.9
Number of motor vehicles/1,000 inhabitants	non-discretionary input	612.9	735.3	672.8	43
Length of public roads (2008)/sq km	non-discretionary input	0.9	3	1.9	0.7
Police measures applied during road traffic controls - Examination (alcohol) (number)	output	5654	106669	36807.8	30868.0
Police measures applied during road traffic controls - Temporary confiscation of driving licence (number)	output	278	3,821	1,316.2	1,075.8

Our study encompassed the first three areas representing the bulk of the police activity. The two areas State border surveillance and enforcement of regulations on foreigners and Protection of certain persons and facilities were left out because they involve specific activities. Namely, the state border activities of the police were not present in all police directorates. A similar situation occurred with the protection of certain persons and facilities where police activity is mainly limited to the location of such persons. The following indicators were selected for each of the three observed areas of police work (also see Table 1):[4]

- One (discretionary) input indicator which shows the incidence of the most important unlawful events in this area and consequently the burden of these events on individual police stations. For the three studied areas of police activity, indicators were selected that appropriately show the burden of criminal offences and violations on the police directorates.
- Two output indicators. The selection included those activities performed by individual police directorates as part of their (legally prescribed) responses to criminal events, which were presented as (discretionary) inputs. They indicate the quantitatively defined police activities. The higher the number of these activities, the more efficient an individual police directorate. First, 4–6 indicators were selected for each area based on their substantive adequacy. Then the "key indicator" was determined, i.e. the one showing the largest share of police activities in the relevant area. All those which had less than five events in individual units (e.g. criminal offences, violations) were also eliminated. Of the remaining indicators we selected the one which was the least correlated with the "key indicator" (however, Pearson's coefficient for all selected indicators was less than 0.95).

[4] A potential limitation of DEA is the sensitivity to proper variable selection. Improper variable selection or omitting relevant variables and/or including irrelevant variables will lead to a biased measurement. Moreover, it is also known that the sample size needs to be large relative to the number of inputs and outputs to prevent the classification of efficiency by default. Therefore, the careful selection of an appropriate set of variables is necessary for reliable efficiency measurement (Ruggiero, 2005).

A considerable problem in assessing efficiency is finding appropriate indicators (inputs and outputs) that would reveal only the efficiency of the police directorates. Most indicators also depend on other environmental factors (Drake et al., 2003). In our study, by introducing the non-discretionary input we attempted to neutralize the environmental/socio-economic influences. Therefore, in each studied area of activity we also included two external (non-discretionary) input indicators – one indicating the geographical background and the other the characteristics of the population. Also in the selection of non-discretionary input indicators the first criterion was substantive and the second statistical, although it should be emphasized that the selection of indicators was largely influenced by the data availability (see Tables 1 and 2).

Table 2: Correlations among the non-discretionary inputs (Source: Annual Report on the Work of the Police in 2010 (Ministry of Interior, 2011a); calculations by the authors)

	Size of population/sq km	Number of active population/1,000 inhabitants	Population size/settlement	Migration increment – total/1,000 inhabitants	Number of motor vehicles/1,000 inhabitants	Length of public roads/sq km
Population size/sq km	1.00					
Number of active population/1,000 inhabitants	-0.09	1.00				
Population size/ settlement	0.58	0.21	1.00			
Migration increment – total/1,000 inhabitants	0.12	-0.42	-0.47	1.00		
Number of motor vehicles/1,000 inhabitants	-0.59	-0.33	-0.72*	0.53	1.00	
Length of public roads (2008)/sq km	0.58	0.01	0.10	-0.03	-0.27	1.00

Note: * Correlation is significant at the 0.05 level (2-tailed)

4 EMPIRICAL RESULTS AND DISCUSSION

This subsection shows the empirical application of the three-stage Data Envelopment Analysis (DEA) to access the technical efficiency of police directorates in Slovenia.[5] Technical efficiency can be defined as the maximal activity of the police in response to unlawful events in their environment. The most efficient

[5] All of the calculated results are available from the authors upon request.

are those PDs which perform a higher number of measures or investigations per criminal event. Namely, we established to what extent the individual inefficient units (PD) would have to increase their activities (measures, investigations) to become just as efficient as the best performing units. With this goal in mind, we conducted the analysis in the first model with the basic data according to the three areas of core police activity. The key advantage of such analysis lies in the easier interpretation of the calculations and/or the possibility of defining for each inefficient unit how it could become efficient and by how much it must increase individual types of output. Moreover, the efficency results of the analysis can serve as a guide for the General Police Directorate in order to enhance the performance efficiency of its PDs.

Table 3: Correlations and rank correlations among first- and third-stage DEA efficiency scores in 2010 (Sources: Annual Report on the Work of the Police in 2010 (Ministry of Interior, 2011a); calculations by the authors)

	Third stage							
	Correlation				Rank correlation			
First stage	Crime prevention, detection and investigation	Public order and overall safety of people and property	Road safety	Geometric mean	Crime prevention, detection and investigation	Public order and overall safety of people and property	Road safety	Geometric mean
Crime prevention, detection and investigation	0.87*				0.75*			
Public order and overall safety of people and property		0.70*				0.62*		
Road safety			0.69*				0.57	
Geometric mean				0.70*				0.72*

Note: * Correlation is significant at the 0.05 level (2-tailed)

In the first DEA stage only discretionary inputs (i.e. controlled inputs) were used. The result of this first stage showed the aggregate relative efficiency of the police directorates. In the second stage, the effect of the non-discretionary (i.e. uncontrolled) inputs was separated from non-measurable management inefficiency using a Tobit regression. In the third stage, DEA was conducted using the discretionary and non-discretionary input indicators. The strongest correlation between the measure of efficiency of the first and third DEA stages was in the area of *crime prevention*, *detection* and *investigation* (0.87 or 0.75 in the range cor-

relation), whereas in the other two areas the correlation was medium-strong (see Table 3). The bulk of the aggregate relative efficiency is due to the efficiency of individual police directorates, although non-discretionary effects are also relatively strong. In the aggregate efficiency score of the third DEA stage the result of the PD with a higher density and concentration of population and more motor vehicles per person (e.g. the Ljubljana PD and the Koper PD) improved considerably compared to the results of the first DEA stage.

Table 4: Efficiency results by selected core police activities in 2010 (by police directorates) (Sources: Annual Report on the Work of the Police in 2010 (Ministry of Interior, 2011a); calculations by the authors)

	Values				Ranks			
Unit name	Crime prevention, detection and investigation	Public order and overall safety of people and property	Road safety	Geometric mean	Crime prevention, detection and investigation	Public order and overall safety of people and property	Road safety	Geometric mean
Celje PD	45.3	100.0	100.0	76.8	11	1	1	9
Koper PD	100.0	63.6	71.46	76.9	1	8	10	8
Kranj PD	54.2	72.0	96.07	72.1	10	6	7	10
Krško PD	88.4	56.6	100.0	79.4	6	10	1	5
Ljubljana PD	100.0	100.0	78.93	92.4	1	1	9	3
Maribor PD	100.0	100.0	100.0	100.0	1	1	1	1
Murska Sobota PD	100.0	73.2	64.75	78.0	1	5	11	7
Nova Gorica PD	82.3	58.5	98.93	78.1	8	9	6	6
Novo mesto PD	100.0	100.0	100.0	100.0	1	1	1	1
Postojna PD	80.4	41.9	83.56	65.5	9	11	8	11
Slovenj Gradec PD	85.5	70.5	98.97	84.2	7	7	5	4

The number of efficient units differs in three different areas of police operations (see Table 4). The analysis for 2010 shows that the highest number of efficient PDs was in activities belonging to the area of criminal offences. The order of precedence of PDs differs by area and shows that implemental practices differ considerably from one PD to another. For instance, the Celje PD has relatively highly efficient activities in the areas of *public order* and *road safety*, whereas it is the least efficient in the area of *crime prevention*, *detection* and *investigation*. By contrast, the Ljubljana PD is relatively inefficient in the area of road safety and efficient in the area of *crime prevention*, *detection* and *investigation*. The results of the analysis thus show that in several large police directorates (Ljubljana, Celje and Koper) the relative efficiency in a specific area came at the expense of the

lack of efficiency in another area of police activity. Similarly, those police directorates which were abolished in 2011 (the Postojna PD, the Slovenj Gradec PD and the Krško PD) are relatively inefficient in most of the discussed areas of activity.[6] Absolute relative efficiency was only achieved by two police directorates, namely the Maribor PD and the Novo mesto PD and, therefore, both can serve as a good benchmark for all remainaing PDs.

The analysis of individual areas of police activity reveals that, when it comes to road safety, the least efficient is the Murska Sobota PD. One of the major advantages of DEA is its ability to show the output improvement amounts needed to achieve efficiency. For police managers this is crucial as they obtain a comprehensive and precise picture of the situation of the inefficient police directorates. If the Murska Sobota PD wants to become efficient it should increase the number of alcohol examinations and the number of temporary confiscations of driving licences by 55 %. In the area of *public order*, the least efficient is the Postojna PD which should increase the number of persons held in custody and the number of ordered productions by 140 % and even 430 %, respectively, in order to become efficient. In the area of investigating criminal offences, the least efficient is the Celje PD which should increase the number of crime scene inspections by 120 % and the number of house searches by more than 190 %.

A more detailed analysis shows that the least efficient police directorate is the Postojna PD (the worst performer), although since this is no longer an independent unit as of mid-2011, further analysis included the second worst performer, i.e. the Kranj PD. The latter achieved the lowest relative efficiency scores (52.4) in the area of crime where to become efficient it should increase the number of crime scene inspections and the number of house searches by 85 % (peers are the Koper PD, Maribor PD and Novo mesto PD). Somehow less problematic is the area of public order where to achieve the efficiency frontier the number of persons held in custody should increase by 40 % whereas, on the other hand, the number of ordered productions should be increased by as much as 155 % (peers are the Maribor PD and the Celje PD). The most efficient area of activity of the Kranj PD in relative terms is road safety where the output only needs to increase by 4 % to make the unit efficient (peers are the Celje PD and the Novo mesto PD) (see Table 4). Obviously, this information, provided by the presented analysis, can be a valuable guideline for the police management to improve efficiency in inefficient areas of policy activities of the selected PDs.

[6] A new organizational structure of the police at the regional level took effect on 1 June 2011 as the result of the "Libra" restructuring project. Accordingly, the police force has begun to operate within a new organizational structure composed of eight regional police directorates: Celje, Koper, Kranj, Ljubljana, Maribor, Murska Sobota, Nova Gorica and Novo mesto. The purpose of the police restructuring at the regional level was to merge the least busy police directorates with larger ones (Ministry of Interior, 2011b).

5 CONCLUSION

This paper gave an account of the application of a non-parametric methodology to the assessment of police performance in Slovenia. We employed a three-stage DEA procedure to evaluate the efficiency of Slovenian police directorates in 2010. We found significant differences in the efficiency scores and that most police directorates in Slovenia are technically inefficient. Indeed, the empirical results show that between 6 to 7 police directorates (out of 11) (it depends on the core police activity) are inefficient relative to their peers. This suggests there are opportunities for an output increase by augmenting the observed police outputs. Two police directorates, i.e. the Maribor PD and the Novo mesto PD, are rated the most efficient in terms of technical efficiency for all three selected core police activities in 2010 using police statistical data and can therefore serve as a good benchmark.Moreover, our empirical analysis indicates that differences in operating environments and socio-economic factors do have a significant influence on the efficiency of police directorates in Slovenia.

Finally, we must point out a few notes of caution. Firstly, our empirical research mainly focuses on quantitative dimensions of outputs and inputs. However, there are additional important qualitative dimensions of outputs that were not taken into account; for example, the quality of police work and police officers. It would be desirable to treat these outputs explicitly in our models. Secondly, the three-stage DEA analysis does not enable a direct comparison of performances in the core police activities. However, the calculated average efficiency scores offer aggregate information on the average performance in all three areas. Further, application of the presented technique is hampered by a lack of suitable data and the precise definition of the inputs and outputs, which may influence the empirical results significantly. Last but not least, it is important to note that our findings are important indicators of relative efficiency (or inefficiency), which can serve as a guide for the General Police Directorate when further investigating how to enhance the performance efficiency of its units.

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RELATIONSHIP BETWEEN INTELLIGENCE-LED POLICING AND COMMUNITY POLICING: CONCEPTUAL AND FUNCTIONAL CONSIDERATIONS FOR NATIONAL CRIMINAL INTELLIGENCE MODEL IN SLOVENIA

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ABSTRACT
Purpose:
Prior to establishing a National Criminal Intelligence Model based on intelligence-led policing (ILP) concept, the new concept needs to be considered in the light of the existing strategy in the police organisation. In the Slovenian case, the ILP concept must be examined in relation to the concept of community policing, which has been defined as a framework for policing. The purpose of the paper is to discuss and examine the relationship between ILP and community policing in the framework of a future National Criminal Intelligence Model in Slovenia.

Design/Methods/Approach:
In drawing up the paper, the method of reviewing domestic and foreign literature was applied and reflection.

Findings:
This paper establishes that ILP is a collaborative enterprise based on improved intelligence operations and community policing. To implement the National Criminal Intelligence Model based on the concept of ILP, Slovenian police will need to re-evaluate current strategies and policies. The optimal approach in Slovenia would be to conceptualize the incorporation of Community policing and ILP in one strategy. This new strategy would then represent the basis for efficient implementation of a new police model which will require a country wide understanding of its implementation.

Originality/Value:
The paper helps us to understand the relation between ILP and community policing in the framework of future re-evaluation of current strategies and policies in the Slovenian police. The findings are useful for police management in the Slovenian police and other police agencies that are planning to establish a national criminal intelligence model.

Keywords: Intelligence-led policing, community policing, criminal intelligence, National Criminal Intelligence Model, Slovenian police

1 INTRODUCTION

The ineffectiveness of traditional policing results in new police approaches seeking to replace dominant reactive methods of policing. One of new police approaches is the intelligence-led policing (ILP) concept, which represents the main direction of policing development in the EU, USA and elsewhere in the world. Law enforcement authorities are increasingly identifying ILP as a model enabling the understanding of the complex and dynamic criminal environment, helping to define priorities in resource allocation and contributing to law enforcement efforts to predict criminal trends and manage future threats, which introduces a completely new approach compared to traditional reactive police models (Ratcliffe, 2008:4; Simonović, 2010:199; Den Hengst & Staffeleu, 2012:187-188).

The Hague Programme: Strengthening Freedom, Security, and Justice in the European Union introduced in 2004 ILP principles in European security architecture. In this context, establishing the European Criminal Intelligence Model (ECIM) in 2005 represented implementation of the ILP concept in the EU.

In order to ensure effective functioning of the ECIM, EU member states must create national criminal intelligence models that will ensure effective functioning of the ECIM as a system through effective collection, analysis, and exchange of information and criminal intelligence, and ultimately by using joint crime reduction methodology.

Adopting a decision to establish a national criminal intelligence model, which represents the foundation for the implementation of the ILP model, is just the beginning of a usually difficult and long process in which critical factors can hinder the development of a national criminal intelligence model.

In the development of criminal intelligence in Europe and the USA thus far, various critical factors have been identified that can stimulate or hinder the development of a criminal intelligence model based on ILP concept. In order to implement national criminal intelligence model, we have to deal with following the most important factors (Potparič & Dvoršek, 2011):

- Use of project-based approach when we start to establish national criminal intelligence model;
- Organisation structure adjustment;
- Set up of information management plan;
- Education, training and awareness-raising about criminal intelligence;
- Improving analytical capacities;
- A culture shift to embrace the ILP concept;
- Connecting ILP concept with existing policing practice in the police organisation.

In the paper we will analyse the last mentioned factor and that is the consideration of the new concept in the light of community policing, which has been defined as a framework for policing in Slovenia, in effort to move to an ILP organisational framework.

2 SETTING UP A NATIONAL CRIMINAL INTELLIGENCE MODEL IN SLOVENIA

In 2005, at the October Justice and Home Affairs Council meeting, Slovenia took part in adopting conclusions related to setting up the ILP concept in EU internal security architecture. One of the conclusions of this meeting addresses setting up and employing a joint ILP methodology to be sought by all EU bodies, agencies, and member states of the EU in a coordinated manner. This gives a clear indication that the member states adopted the ILP concept at the highest level, making a commitment to be involved in the activities to implement the new concept in the EU (Council of the European Union, 2005).

Unfortunately, the reality in Slovenia and most EU member states has failed to match the conclusion above concerning the ILP concept. The fact remains that ILP was embraced by only a few member states, and the majority did not express great enthusiasm for setting up the new concept, which also entails a cultural shift for most member states' law enforcement organisations (House of Lords, 2008:27). It is a question whether the member states' senior representatives even understood the meaning of the ILP concept or realised the changes that would have to be made in law enforcement organisations for the new law enforcement activity model to replace the traditional model.

It was not until the National Crime Prevention and Deterrence Program for 2007–2011 stated that identifying types of crime, predicting them, and taking proper action must not rely only on people's feelings, experience, and intuition but on a professional approach based on scientific findings. Through the program, objective criminal intelligence was set as the direction to take in developing policing in Slovenia. Criminal intelligence function was to be implemented through collecting, evaluating, analysing, and disseminating criminal intelligence, which would represent the basis for decision-making and planning police activities. This wording indicates that Slovenia made the decision to implement the ILP concept in crime prevention and reduction as a response to an increasing gap between the crime rate and available resources.

2010 saw a notable move forward in the Slovenian police with a major reorganisation, which also took into account the need to strengthen criminal intelligence, leading to the establishment of the Criminal Intelligence Centre within the Criminal police at the national level. The Criminal Intelligence Centre covers

the following areas: operational criminal intelligence, strategic criminal intelligence and CHIS. This centre is in charge of further developing criminal intelligence towards setting up a national criminal intelligence model based on the ILP concept. On the regional level, where in Slovenia exist 8 regional Police Directorates, there is the intention to establish 8 criminal intelligence divisions.

Recently adopted Resolution on the National Crime Prevention and Deterrence Program for 2012–2016 by National Assembly in the middle of 2012, set up clear requirements for the establishment of the National Criminal Intelligence Model in Slovenia until 2016.

A starting point for every agency to begin to address the steps concerning the organizational changes toward establishing an intelligence model should be to prepare a conceptual framework on which all changes will be based. The new police model must be adapted to the characteristics of each individual organisation and based on a good understanding of the new concept of policing. However, we should not forget the importance of management commitment and cooperation toward implementing and operating an intelligence model. It therefore follows that, in order for implementation of a National Intelligence Model to be successful, high-ranking police officials need to be educated about the key characteristics and challenges of the new concept so that they will be able to publicly support all necessary activities.

3 RELATION BETWEEN ILP AND COMMUNITY POLICING

3.1 ILP

ILP development arose from the realisation that quality criminal intelligence constitutes the lifeblood of a modern law enforcement organisation, making it possible to clearly understand criminal offences and crime, identify perpetrators of criminal offences, establish interconnected criminal offences, and predict problems (HMIC, 1997:1). ILP is based on criminal intelligence, which can be defined as police activity aimed at lawful collection of information from every available source and analysing it in order to provide tactical and strategic criminal intelligence.

There is no universally accepted definition of ILP. Ratcliffe and Guidetti (2008:112) define ILP as a policing philosophy with the following key features: it is managerially centred and top-down in decision-making format; it is proactive, it is informant and surveillance-focused and directed toward recidivist and serious crime offenders, and it provides a central crime intelligence mechanism to facilitate objective decision-making.

Carter (2009:80) proposes the next definition for the ILP strategy: " It is the collection and analysis of information related to crime and conditions that contribute to crime, resulting in an actionable intelligence product intended to aid law enforcement in developing tactical responses to threats and/or strategic planning related to emerging or changing threats.

Perhaps the easiest way of explaining ILP is to use Ratcliffe's 3i model (interpret, influence, impact). According to this model, a successful ILP system is one that is able to interpret the criminal environment, convey that intelligence to decision-makers and influence their thinking so that decision-makers in turn design creative crime reduction policies that have an impact on the criminal environment (Ratcliffe, 2004).

According to retired Deputy Chief of Topeka Police Department, Gary Herman (2012) ILP requires that analysts work closely with police chiefs and other executives who are able to control and direct resources. The aim of ILP is for police executives to have strategic overview of crime problems so they can better allocate resources to the most important crime problems.

However, it is necessary to point out that some authors see the community policing principles as a very important component of the ILP philosophy (Carter and Carter, 2009:319; Peterson, 2005).

3.2 Community policing

Community policing strategy like ILP represents reaction to the ineffectiveness of traditional policing. According to Friedmann (1996) "Community policing is a policy and a strategy aimed at achieving more effective and efficient crime control, reduced fear of crime, improved quality of life, improved police services and police legitimacy, through a proactive reliance on community resources that seeks to change crime causing conditions. This assumes a need for greater accountability of police, greater public share in decision making, and greater concern for civil rights and liberties"

Community policing has two core components: community partnerships and problem solving. Community partnerships are based on a mutual trustful relationship between police officers and community members. Problem solving is a method to uncover security problems and to develop and implement solutions to those problems (U.S. department of Justice, 2012).

Community policing is characterized by a decentralized organization whereby police officers obtain legitimacy for their work from the community they serve and consequently a down-top approach is used in decision-making format.

According to Meško et al. (2007:348) police activities in the framework of the community policing are mainly oriented toward improving quality of life in the community on the other side, the main goal of traditional policing is the fight against crime.

Due to the fact that the primary aim of community policing is identification and solving of problems in community, we can realize that community policing strategy is not always the optimal response to serious and organized crime. Serious and organized crime is usually invisible in the community, and members of community are often not aware of their presence.

The above statement is supported by the paradox of differentiated perceptions of crime by community members. Community members are usually convinced that the main responsibility of the police is to prevent and fight crime. However, when we ask the same community members to explain what they expect from the police in their own neighbourhood, usually crime fighting is not a main priority, and they expect the police to deal mostly with visible deviant activities (Van der Vijver in Meško et al., 2007: 344). Consequently we cannot expect that the planning of police activities in the framework of community policing would target serious and organized crime.

Probably this is the most important reason why many people do not think that community policing is an effective policing strategy. According to the landmark report to the United States Congress, community policing strategies, specifically Neighbourhood Watch, community meetings, door-to-door visits, police storefronts, and police newsletters have done little to reduce crime and are ineffective (Guideti, 2006:40). Moreover, the National Research Council Panel in a police effectiveness research carried out in 2003 established that community policing strategy demonstrates little or no evidence of effectiveness and weak to moderate evidence concerning community relationships (Baker, 2009:57).

We are noting that both community policing and ILP represent criticism of dominant reactive methods of policing, where police respond to issues on a case-by-case basis and after that wait for the next incident. Also, according to Tilley (2008:373-376), an important new feature that community policing brings to police work is a proactive approach, which is based on policing with and for community rather than policing of community.

3.3 Integration of ILP and Community policing

Some authors (Carter, 2009; Clarke, 2006) believe that ILP and community policing are compatible. According to them, the ILP concept is a logical improvement of proactive community policing. Community support is important for the ILP concept and its effective operation. Community policing has developed

some skills in many police officers that directly support performing police activities based on the ILP concept, that are: the scientific approach to problem solving, environment scanning, effective communications with the public, fear reduction, and community mobilization to deal with problems.

Studies conducted in the UK as part of the National Intelligence Model (Kleiven, 2007:270; John & Maguire, 2004:22–23) have demonstrated that a lack of community intelligence, which theoretically represents a key component of the National Intelligence Model, significantly impacts the identification of priorities in the local community that should be taken into consideration together with regional and national priorities. The paradoxical effect in practice has been that the priorities identified with the responsibilities of a police unit have not matched actual community concerns.

It is especially important (Carter, 2009: 87) to use the potential of the partnership between the police and the community built under the concept of community policing in the sense of analysing community intelligence for crime prevention and deterrence.

Slovenian police are aware of the potential of the partnership between police and community as a source for information. Internal police rules on performing community policing in Slovenia define among others the collection of information about criminals, crime and conditions that contribute to crime, as the most important activities of community police officers. Community police officers should be eyes and ears on the territory of their responsibility. However, the community police officers like all other police officers must be trained to regularly channel information to the intelligence unit for input into intelligence cycle for analysis (Žaberl, 2004:273-277).

Community policing is also recognized as important segment in the framework of Homeland Security. Community policing should perform the following activities in the intelligence process (Carter, 2009:87):

- Providing examples and materials that may aid in the recognition of terrorism to community policing officers to make members of the community aware of suspicious events and behaviors;
- Organizing community meetings to emphasize prevention strategies, caution, and public awareness;
- Ensuring that members of the community are aware of the means of, and processes for, relaying observed information to police;
- Encouraging prevention and close working relationships between the police and the community.

Easton et al. (2009:307-308) have argued that ILP can be defined as a working method for optimal utilizing information which can be implemented in every

police model or strategy. According to them, the implementation of ILP in the Community policing model results in increase level of democracy in the use of ILP strategy.

According to Tilley (2008:389), we have to be careful when we combine different strategies due to the fact that strategies have different aims, players, way of working and priorities. He has argued that when we combine different strategies in one police model, we have to define which strategy is prevalent and which are strategies that only supplement the prevalent strategy. On the other hand, Scheider et al. (2009) believe that the conceptual incorporation of all existing police strategies in one strategy, which allows a much more efficient implementation of a new strategy, represents the best approach to combining different strategies.

Baker (2009), on the basis of research on different police strategies resulting in the finding that single police strategies are not earning high grades of effectiveness, noted that the ILP strategy is the most effective when supplemented by various other strategies.

As regards crime prevention in local communities, Meško and Sotlar (2012) stress the importance of using a knowledge-based approach. Such an approach consists in the use of the best knowledge and information on causes of crime and strategies that have been proven effective, ideally compiled in a special base of knowledge. Such bases of knowledge can to a large extent contribute to the creation of more effective crime prevention approaches. According to our assessment, the use of the knowledge from such bases of knowledge should in any case be accompanied by a consideration of the context of a specific problem addressed, which means that we should use knowledge on both the crime problem addressed and the environment where the problem has occurred. Combining the concept of community policing and the ILP concept can thus substantially contribute to increasing the knowledge on a problem, enabling us to select the most suitable measures.

4 CONCLUSIONS

In the face of a situation where there is an increasing gap between the resources that are available for fighting crime on the one hand and crime that is becoming more and more international and organised on the other hand, criminal intelligence has seen strong development. The concept of criminal intelligence consists of a relatively new approach for many EU countries, which has been the basis for the creation of a model of criminal intelligence-led policing. The Member States of the EU have realised the importance of introducing intelligence-led policing, as it brings a proactive approach to activities undertaken by the police. The new

policing strategy is implemented in the European Criminal Intelligence Model, which can only be applied efficiently if the Member States support the principles it is based on. To begin with, the Member States must have a basic understanding of the new concept in order to enable its efficient functioning. The Member States that have not yet set up criminal intelligence will therefore have to deal with various critical factors that can stimulate or hinder the development of a criminal intelligence model based on ILP concept. One of those critical factors that Slovenian police has to deal with in effort to move to ILP organisational framework is the consideration of the new concept in the light of community policing which has been defined as a framework for policing in Slovenia.

This paper establishes that the ILP is a collaborative enterprise based on improved intelligence operations and community policing, which the field has considered beneficial for many years. To implement National Criminal Intelligence Model based on the concept of ILP, Slovenian police will need to re-evaluate current strategies and policies.

Community policing emphasizes the need and desires of the local community, on the other side ILP is a process whereby strategy and priorities are determined through a more objective analysis of the criminal environment. As such, it is possible that crime reduction priorities can differ from the needs of the community as perceived by its member. However, if we incorporate community policing into ILP we can guarantee that community problems and issues will be taken into consideration when our police organization identifies the priorities regarding the field of crime prevention and reduction measures.

In Slovenian police we have to harmonise ILP with the concept of community policing, which has been defined as a framework for policing. The establishment and implementation of the Slovenian criminal intelligence model must by all means involve the uniformed police who are responsible for community policing in Slovenia and for the investigation of minor criminal offences at the local level. This will ensure the involvement of the uniformed police together with criminal police in re-evaluation of Slovenian current strategy for preventing and fighting crime on the one hand and the involvement of uniformed officers in generating community intelligence, which represents an important segment of the National Criminal Intelligence Model, on the other hand.

When combining different strategies in one police model, we have to take into consideration that it is necessary to define which strategy is prevalent and which strategies only supplement the prevalent strategy.

The optimal approach in Slovenia would be to conceptualize the incorporation of community policing and ILP in one strategy. This new strategy would then represent the basis for efficient implementation of a new police model which will require country-wide understanding of its implementation.

In implementing the new concept, the Slovenian Police must however be careful not to repeat the mistake made in implementing the community policing concept, where great problems occurred as a result of excessive haste in implementing the community policing concept and a lack of understanding of the basic philosophy and the basic requirements (Jere, Sotlar, & Meško, 2012:4).

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INVESTIGATION OF CRIMINAL OFFENCES IN THE SLOVENIAN ARMED FORCES

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ABSTRACT
Purpose:
After the literature reviewed and our reported research we can conclude that the investigation, prevention and detection of criminal offenses, which occur in the Slovenian Armed Forces, certainly represent an area that presents an unavoidable challenge to the Ministry of Defence. We can say that we do not see any reasonable arguments to insist on the dualism of investigation of criminal offenses. Criminal offences that occur in the Slovenian Armed Forces and its missions abroad are, in accordance with regulations, investigated by two bodies: the Military Police and the Criminal Investigation Department of the Intelligence and Security Service. Those two services are differently, have different powers and different areas of jurisdiction. This raises a key question: "Does it make sense to insist on the dualism of Criminal Investigation in the Ministry of Defence/Slovenian Armed Forces?"

Design/Methods/Approach:
Based on theoretical considerations and empirical discoveries of the problem of Criminal Investigation in the Slovenian Armed Forces, our research was conducted using a focused structured interview. The research involved professionals from the State Prosecutor's Office, judiciary, court, police, military police, police, union, and the advocacies. The research method and target group of interviewees allowed us to test the thesis, while at the same time the study puts forward proposals to resolve the problem.

Findings:
It is a fact that the Military Police and the Criminal Investigation Department of Intelligence and Security Service require reorganization and changes to adapt to newly created social conditions, in order to increase efficiency, legal certainty, professionalism, economics and operational readiness.

Originality/Value:
The results clearly indicate unreasonable duplication of functions, ambiguity of powers and the complete absence of systemic thinking, a holistic approach, holistic decision-making, and holistic action. We perceived the problem, defined it and offered some solutions in the field of Criminal Investigation in the Slovenian Armed Forces.

Key words: criminal offense, investigation, systemic thinking, Slovenian Armed Forces

1 INTRODUCTION

The unit which represents the combat support force, with its peculiarity, is definitely the 17th Military Police Battalion (hereinafter referred to as Military Police). The Military Police is directly subordinate to the Slovenian Armed Forces Command and pursuant to its statutory mandate it conducts military and police tasks. The basic tasks are primarily to maintain military law and order, security of military transport, to protect military personnel and delegations, to prevent and detect criminal offences in the Slovenian Armed Forces and to guard the buildings and districts that are especially significant for defence.

In addition to participating in international military exercises, the Military Police was the first combat unit of the Slovenian Armed Forces engaged in NATO's stabilization operations Joint Forge (SFOR - MSU) in Bosnia and Herzegovina, and the Joint Guardian and Joint Enterprise (KFOR - MP) in Kosovo. The Military Police is still a trusted element in providing the forces to operate within the Alliance.

Since the object of our study is the investigation, detection and prevention of criminal offences in the Slovenian Armed Forces, besides the Military Police, the Intelligence and Security of the Ministry of Defence, which is an organizational unit of the Ministry and may have its own branches in the Slovenian Armed Forces, has also an important role in this process. Pursuant to the Defence Act, the officials of the Intelligence and Security Service conduct intelligence, counterintelligence and security tasks, which are determined by the internal organization within the operational, analytical, security and the criminal investigation sector. We have to emphasize that all the employees of the Intelligence and Security Service do not have the same tasks or authorizations: those who perform intelligence tasks do not have security powers; and those with security powers do not perform intelligence tasks. In the pre-trial criminal proceeding, the Criminal Investigation sector of the Intelligence and Security Service (Criminal Division of OVS) and the Military Police have therefore police powers to investigate, detect and prevent criminal offences, committed by a military person in the Slovenian Armed Forces or the Ministry of Defence, but not to the same extent.

Based on the researched literature and our own findings it can be concluded that the investigation and detection of criminal offences is most certainly an area that represents a challenge or problem, which the Ministry of Defence or his services cannot avoid. We can even suggest that there is no argument to insist on the double-track system of criminal offence investigation. The statutorily defined illogical dualism of criminal offence investigation in the Slovenian Armed Forces, which arouse during the formation of the Slovenian Armed Forces, is, to some extent, "justified" by the uncertainty of the time regarding the investigation jurisdictions of employees in the administrative sector of the Ministry

of Defence and military personnel in the Slovenian Armed Forces. We also see problems in training, equipment, organization, and mainly in the professionalism of the responsible services. We fear that we even reached the critical level, at which the services "virtually" compete with each other. Having said that two key questions arise:

- Do we need a dualism of criminal offence investigation in the Slovenian Armed Forces?
- Does the current organization provide impartial investigative activities?

The fact is that the investigative authorities - both the Military Police as well as the Criminal Division of OVS - need changes on the ground of adaptability to newly created social conditions with the aim of increasing efficiency, legal certainty, professionalism, cost efficiency and operational readiness. In the following paper, we present some solutions to overcome the problem of criminal offence investigation that with the right political attitude and consistent agreement between the responsible services, in our opinion, could be passed. Certain changes are also expected within the Public Prosecutor's Office and the Administration of Justice.

2 RESEARCH SUBJECT

The research subject in this paper is the investigation and detection of criminal offences in the Slovenian Armed Forces or the Ministry of Defence, committed by the military or civilian personnel, employed by Slovenian Armed Forces, or other workers in the defence field, or persons deployed on a mission abroad. The Military Police and Criminal Division of OVS have the authority to investigate such offences. The tasks, jurisdictions and authorities of both services are differently defined by the rules in force. The main platforms for changes to the legislation are:

- To give the Military Police the same broad powers as the police has in the pre-trial criminal proceedings, and to remove the restrictions of freedom that define the scope of the Military Police jurisdiction to investigate criminal offences punishable by a fine of imprisonment up to three years.
- To eliminate illogical dualism in criminal offences investigation. To determine a single body instead of the current two (Military Police or Criminal Division of OVS) or to establish a specialized service with all the statutory powers and jurisdiction for the investigation of criminal offences, regardless of the term of imprisonment prescribed.
- To achieve the desired efficiency in crime suppression and to ensure the independence of the investigation procedure and legal certainty.

- To improve cooperation with and guidance of the State Prosecutor's office, and when it comes to military matters, to obtain judicial practice and position statements for the successful conduct of the pre-trial criminal proceedings.
- To ensure the fundamental human rights in the investigative procedures by bearing in mind that the members of the Armed Forces are citizens of the Republic of Slovenia, and consequently have all the rights as other Slovenians and Europeans. Investigation of criminal offences in the missions abroad does not guarantee equality in criminal proceedings for members of the Slovenian Armed Forces.
- To overcome the inconsistency between international treaties and the national legislation.

The research subject also includes the activities of the investigating authorities in missions abroad that prevent effective pre-trial criminal proceedings due to inadequate regulations and ineffective use of resources. Geographical distance of areas and logistical problems in supplying material and technical resources further complicate the investigative activities. Based on our experience, we established that Slovenian contingents operating in the area of Afghanistan (ISAF - International Security Assistance Force), there are no authorized investigators who could investigate criminal offences, which are punishable by imprisonment higher than three years. Only the Military Police, which at the time of the mission is subordinated to the mission Commander, is present. The subject of the study is also the improvement of directing and managing pre-trial criminal proceeding and the ascertainment of relevance of determining the jurisdictions of the unified State Prosecutor and the Courts in dealing with military matters. A Professional Liaison Department would, in addition to the already-mentioned tasks, play an important role in the establishing of coordinated international obligations with national legislation.

3 INVESTIGATION OF CRIMINAL OFFENCES IN SLOVENIAN ARMED FORCES

The Criminal Procedure Act (2012) in the 158th Article states that when there are grounds for suspecting that a criminal offence in the Slovenian Armed Forces or Ministry of Defence was committed by a military or civilian employed in the defence field or a person deployed on a mission abroad, the statutory competent authority of the Ministry of Defence has police powers in the pre-trial criminal proceedings regulated by this Act. Therefore, for the investigation and detection of criminal offence are competent:

- The Military Police
- The Intelligence and Security Service (Criminal Division of OVS)

- The Department of Investigation and Prosecution of officials with special powers (Special Department)

The jurisdiction to investigate and detect criminal offences between the Military Police and the Criminal Division of OVS is regulated by the Defence Act (2004), which in the 32nd Article states that the Intelligence and Security Service performs tasks in intelligence, counter-intelligence and security fields. The latter also includes the investigation of criminal offences and direction of Military Police work in the performance of certain tasks. At this point, we establish that the terminology "directing" is not the right term, as the pre-trial criminal proceeding is only directed by the Public Prosecutor. The powers of the Intelligence and Security Service or Criminal Division of OVS are regulated by the 34th Article of the Defence Act (2004), which says that in preventing, detecting and investigating criminal offences in the ministry and the Slovenian Army is given to the Intelligence and Security Service officers performing security tasks set by the Minister of Defence the same powers as the law regulates for the police. The Intelligence and Security Service staff in performing the security tasks can use stipulated special measures following the procedure, under the conditions and to the extent as it is regulatory for the police. However, in the 65th Article of the Defence Act (2004), we comprehend that the Military Police may perform specific tasks relating to prevention, and the investigation and detection of criminal offences in the army. The legislature set a limit here, namely that the Military Police can only investigate criminal offences in the Slovenian Armed Forces, for which a fine or imprisonment up to three years is prescribed. The 66th Article of the Defence Act (2004) defines the rights and powers held by the Military Police. The mentioned Article exhaustively lists the rights and powers, which we judge to be a weakness. The area of responsibility is defined in the 66th Article of the Defence Act (2004), which states that the Military Police can use the rights and powers only:

- in buildings and districts that are significant for defence,
- in the camp area, if the unit or institution is outside the military barracks,
- against military personnel.

Since the Defence Act does not concretise precisely how the direction should proceed, the Ministry of Defence issued a Guideline on cooperation between the Intelligence and Security Service and the Military Police in investigating criminal offences[1] that regulates in detail the activities of cooperation between the Military Police and Criminal Division of OVS. The Guideline consists of some administrative and technical procedures of notification, filing and recording of criminal offences. It also determines a catalogue of criminal offences, which is not in accordance with the legal restriction imposed by the Military Police. Due

[1] Instructions on cooperation between Intelligence and Security Service of the Ministry of Defence and the Military Police in criminal investigations, no. 017-04-28/2004-4 of 21.6.2005

to the duplication of investigative authorities in the Slovenian Army, the Guideline is, to some extent, necessary, but it requires changes in individual elements. Let us mention a few areas: the investigation and detection of criminal offences in crisis response areas, the use of polygraph, protection of information sources, the definition of two-way communication regarding the criminal offences, the simplification of procedures of obtaining data from official records, and many other operational and investigative activities.

In the case that during the performance of duties the Intelligence and Security Service or Military Police perceives or detects a criminal offence committed outside the ministry or the Slovenian Armed Forces, it shall, without delay, notify the Police and refer the matter to it for further proceedings (the Defence Act, 2004, 33rd Article, paragraph 3). If the police or the Slovenian Intelligence and Security Agency in performing its duties finds out that there are reasonable grounds for suspecting that the military person has committed, is committing or will commit a criminal offence that is prosecuted ex officio, it shall without delay notify the Intelligence and Security Service. In the case that the police catches a military person in the criminal act, which in accordance to the law is investigated by the Intelligence and Security Service, or if it catches a military conscript serving military service in the criminal act, it should detain him or her until the arrival of the Military Police (Defence Act, 2004, 33rd Article, paragraph 4). Pursuant to the changes of the State Prosecutor Act[2] and the Criminal Procedure Act[3] the jurisdiction to investigate and prosecute criminal offences committed by authorized military personnel at home and abroad, who have the status of authorized officers with police powers in the pre-trial proceedings, is held by the Specialized Department established in the year 2007, which was organizationally placed in the Group of State Prosecutors for the prosecution of organized crime.

The Specialized Department gained exclusively the Territorial and Subject Matter Jurisdiction to prosecute all criminal offences committed by officials employed in the police or other officials employed in the field of internal affairs and defence, which have police powers in the pre-trial criminal proceeding, and officials deployed on a mission abroad, who have police powers in the pre-trial criminal proceeding. Until the above-described changes in the legislation, the criminal offences suspected to be committed by officials with police powers were investigated by the police in accordance with its powers and jurisdictions, while criminal offences suspected to be committed by authorized military personnel fell within the competence of the Criminal Division of OVS. It should be emphasised that the Specialized Department has exclusive jurisdiction over all criminal offences (also committed outside working hours), as in such cases as well, it is indispensable to ensure an independent, impartial and effective investigation (Pilko & Gorenak, 2011).

2 SPA-D in SPA-E, 2007
3 CPA–H, 2007

With the adoption of the new State Prosecutor Act (SPA-1, 2011), the Specialized Department was renamed in the Department of Investigation and Prosecution of officials with special powers (Special Department), which kept, despite the different basis of the legislator, exclusively the Territorial and Subject Matter Jurisdiction over the investigation of criminal offences committed by certain officials with police powers. Furthermore, the SPA-1(2011) extended the Personal Jurisdiction of the Special Division, as it gained exclusively the Territorial and Subject Matter Jurisdiction to consider criminal offences committed by Police officers, officials of internal affairs, who have police powers to execute control pursuant to the law governing the Police, Military Police officers, who have police powers in the pre-trial criminal proceeding, officials with police powers in the pre-trial criminal proceeding, who are deployed on a mission abroad, officials of the Intelligence and Security Service of the Ministry of Defence and officials of Slovenian Intelligence and Security Agency (Jakopič, 2011).

The purpose of the establishment of the now former Specialized Departments and present Special Department is to provide an independent, unbiased, timely, transparent, thorough and effective investigation of criminal offences committed by public officials, particularly in line with the positive duty of the state to systematically prevent, investigate and punish encroachment on the prohibition of torture, inhuman and degrading treatment or punishment under the 3rd Article of the European Convention on Human Rights and Fundamental Freedoms. Based on the researched literature, it can be concluded that the Military Police can investigate only criminal offences, which are punishable by a fine or imprisonment up to three years. For all the other criminal offences that are punishable by a higher penalty, the Criminal Division of OVS is competent. An important difference between the Military Police and the Intelligence and Security Service is also the fact that the Defence Act provides to the employees of the Criminal Division of OVS police powers in the pre-trial criminal proceeding and powers under the Police Act. We established that under certain conditions during an investigation or detection of criminal offences, in addition to traditional forms of evidence gathering, the officials of Criminal Division of OVS also use covert investigative measures. The Criminal Division of OVS has all the powers necessary to ensure an effective pre-trial criminal proceeding, considering that officials of the Intelligence and Security Service, who perform security tasks, should not apply powers of officials in the Intelligence and Security Service entrusted with the intelligence and counterintelligence tasks. In this matter, the Military Police is limited, because it has no possibility to implement particular powers. With such an arrangement, the Military Police can't provide equal opportunities for investigation to the parties involved in the proceeding (the wronged parties), as if the matter would be considered by the Criminal Division of OVS. The tasks, rights and responsibilities of the Military Police and the Criminal Division of OVS in the investigation of criminal offences in the Army are defined in various laws, which by our estimation is a weakness.

3.1 Restrictions that hinder the Military Police in the investigations of criminal offences in the Slovenian Armed Forces

The Military Police jurisdiction refers to the facilities and districts that are significant for defence, camp areas, if the unit or institution is outside the military barracks, as well as against military personnel. Under the conditions prescribed for the Police, the Military Police has the right and jurisdiction to issue warnings and orders, to establish identity of (a person, who is wearing a uniform or parts of the Slovenian Armed Forces' uniform, regardless of where such person is located) and to verify the authenticity of the identity of the driver and passengers, if the used vehicle has the Slovenian Armed Forces' marks, to invite, to march off, to detain (excluding the pre-trial criminal proceeding), to arrest, to seize items, to use coercive measures, to regulate and supervise military traffic, etc. Because the Defence Act lists the rights and jurisdictions of the Military Police, doubts about the possibility to use the powers or investigative measures, which are not explicitly listed by the law, arise.

The Defence Act should not exhaustively list the Military Police powers, because most of all, this brings uncertainty and unnecessary dilemmas to the legal order. When the Military Police considers a criminal offence within its jurisdiction, the 158th provision of the Criminal Procedure Act (2012) determines that in the pre-trial criminal proceeding, the competent authority of the Ministry of Defence has police powers, whereby ensuring that the Military Police has powers pursuant to the Criminal Procedure Act, and not merely powers exhaustively listed in the Defence Act. At this point, we would like to emphasize a home and personal search, interrogation of the suspect, inspections and other activities, which are not defined by the Defence Act, but are, nevertheless, regularly implemented by the Military Police in the investigation of criminal offences.

In the Republic of Slovenia, the Military Police operations are territorially limited to facilities and districts that are significant for defence, and camp areas, when the Slovenian Armed Forces units are located outside the military barracks. By reviewing legal provisions of the Defence Act, a deficiency, namely that the mission abroad does not fall under the area of jurisdiction of the Military Police, can be identified. The Service in the Slovenian Armed Forces Act (2007: 3rd Article, 1st paragraph) defines that a military person is any person, who as a soldier or non-commissioned officer, officer or military employee professionally performs military service, and soldier during military service or a member of the reserve army, when drafted into military service. A military person can also be a civilian, who professionally works in the army, or other person, who performs administrative and technical tasks within the ministry. Pursuant to the mandatory law, the above listed persons have only the "status" of military persons when performing military service. Such a definition of a military person in the practice of

investigation and detection of criminal offences often proves to be incorrect, as it prevents effective pre-trial proceeding. Military Police officers and employees of the Criminal Division of OVS may take action against military personnel only when they are performing military service. We propose the following interpretation: the status of a military person cannot be limited to a certain time period, i.e. the time when a member performs military service. The Defence Act (2004) in the 48th Article explicitly states that a person acquires the status of a military person on the day of the signature of the employment contract and keeps it up to the termination of employment. With such diction, a soldier in the Slovenian Armed Force is a military person 24 hours a day and not just when he or she performs a military service. Furthermore, we cannot forget the reserve army. The members of the reserve army are military persons only when they are called up for military service. The question of jurisdiction to consider the actions of a reserve army member is raised as well. The contract reservists have signed an act, by which they receive a payment, which refers to military service and preparedness at home. Therefore, it can be concluded that these contract reservists are also military personnel 24 hours a day. We established that with the proposed definition of a military person, the number of criminal offences covered by Military Police and the Criminal Division of OVS would grow. In fact, the Military Police, in so far as it would extend the sphere of jurisdiction, it could take action in matters, which are currently investigated by the Police.

3.2 The issue of investigating criminal offences in missions abroad

For members of national contingents that are present in the areas of crisis response, exclusive jurisdiction of the sending state is defined. Based on the Status of Forces Agreement[4], each member of the Slovenian Armed Forces, who has committed a criminal offence in crisis response operations abroad, is subject to the rule that the military authorities of the sending state have the right to enforce all criminal and disciplinary jurisdiction in the host country. However, prosecution comes up very rarely, mainly due to the unwillingness of sending countries to exert prosecution, and because of problems in the investigation that does not produce sufficient results according to criminal procedural law of the sending state. Ineffective investigation also reflects the geographical distance of the areas.

The Slovenian Armed Forces participates in NATO Response Force on the missions abroad KFOR and ISAF, but at the same time has no logistical capacity of own transport of contingents in areas where transport is possible only by

[4] SOFA (Status of Forces Agreement) is the model, on which the armed forces enter into mutual agreements. This agreement is necessary due to insufficient common law, balancing of interests between the host country and the entering country and the establishment of relations in the military and political spheres between countries (Maraš, Bosotina, Požek, & Lasič, 2007).

military plane. Based on an analysis of the events, we established that due to the remoteness and limited transportation options in Afghanistan, it is difficult to meet the requirements of an effective pre-trial proceeding. In these areas is almost impossible for the public prosecutor and the investigating judge to direct an investigation. Similar problems may occur in part when in criminal proceedings, the suspect investigated by the state authorities has the right to claim the constitutionally guaranteed rights. The right to a barrister is a fundamental right that a suspect of a criminal offence may claim (e.g., the right to a barrister at the interrogation and detention). Another reason that puts investigative authorities, in particular, in an unfavourable position is inconsistency of national legislation and adopted NATO standards (STANAG 2226, APP-12, NATO Military Police Doctrine and Procedures) and other international obligations adopted by the Republic of Slovenia within the Alliance (Flajnik, 2009). Among other things, the NATO standard APP-12 gives Military Police acting within the Alliance the jurisdiction over the investigation of serious criminal offences.

Due to national limitations that the Slovenian Military Police has, and given the fact that the investigators of the Criminal Division of OVS are not present at the location where the international operation ISAF is taking place, we established that legal pre-trial investigation is not guaranteed to the members of the Slovenian Army. When in crisis response areas, a criminal offence is committed by an authorized officer; it is investigated and subsequently prosecuted by the Department of Investigation and Prosecution of officials with special powers. Since in the composition of the Slovenian contingents operating in the international operation ISAF, there is no representative of the body, nor there are established concrete contacts with the investigators investigating authorized officials, it is hard to imagine an effective investigation and prosecution of those persons. At this point, we expect a concrete cooperation with the Special Department to ensure an effective, independent and impartial investigation, even if only for one case per annum. Experience shows that in remote geographical areas, such as Afghanistan, there are no employees of the Criminal Division of OVS, i.e. investigators who have police powers in the pre-trial proceeding and powers to investigate criminal offences, regardless of the term of imprisonment prescribed. Slovenian contingent in operation ISAF in addition to the members of the Slovenian Army organically includes also the Military Police, which, as we know, can investigate only criminal offences for which a fine or imprisonment up to three years is prescribed. An obvious solution as for the present situation is the 25th Article of the Service in the Slovenian Armed Forces Act (2007), where it is determined that the Government of the Republic of Slovenia can temporarily limit national restrictions in performing duties abroad. Another possibility is the reallocation of members of the Military Police in the Criminal Division of OVS, hereby gaining the same powers as staff members of the Criminal Division of OVS have during service abroad.

3.3 The issue of cooperation with the State Prosecutor

We soon established that geographical distance of areas, where the Slovenian contingents are located, prevents proper directing of investigators in the pre-trial criminal proceeding. The direction based on the 11th Article of the Decree on the cooperation of the state prosecutorial service, police and other competent state bodies and institutions in detection and prosecution of perpetrators of criminal offences and operation of specialised and joint investigation teams (2010) includes mandatory instructions and suggestions for the gathering of information and the implementation of other measures to obtain evidence, mandatory instructions about the measure of arrest, expert opinions, participation of the Public Prosecutor in procedural acts, decision of the Public Prosecutor on covert investigative measures, and insurance of the proceeds. Often the Public Prosecutor is informed about the case in question, which occurred in the domestic area within the Slovenian Armed Forces or on missions abroad, only after a criminal complaint is filed or after receiving the report of the investigating body, resulting in an inability to guide and direct the investigation phase.

The first serious problem already occurs in determining the Territorial Jurisdiction of the Public Prosecutor's office. The Criminal Procedure Act (2012) with the provision of the 29th Article provides that if the place of the criminal offence is unknown, or if it is a place outside the territory of the Republic of Slovenia, the responsible Prosecutor's office is the one in whose territory the suspect has permanent or temporary residence. Somewhat more complicated is the determination of the Territorial Jurisdiction in the case where a suspect is unknown. Namely, the Slovenian criminal-justice order allows for prosecution of a criminal offence against unknown perpetrator, which to some states represents a curiosity. The solution can be found in the provision of the 31st Article of the Criminal Procedure Act (2012), which states that in such cases, the Territorial Jurisdiction is determined by the Supreme Public Prosecutor's office, which defines one of the factual competent Prosecutor's offices to be seized of the matter.

From the examined literature, we established that the solution to the problem was already proposed by the higher Public Prosecutor Dragica Kotnik in a letter communicated to the Ministry of Defence, in which she stated that the procedures for establishing Territorial and Subject Matter Jurisdiction of the prosecutor's office would not be necessary, if the Republic of Slovenia would establish a single office of Public Prosecutor, which would lead and direct pre-trial and criminal proceedings in all matters that occur in international operations abroad (Kotnik, 2011). At this point, we add that this single office should be also competent for the prosecution of criminal offences, which occurred in the Slovenian Armed Forces in the territory of the Republic of Slovenia. Ms Kotnik (ibid.) also notes that this would certainly improve the directing and managing of the pre-trial proceeding, increase expert capacity of the prosecutors, especially in the

part of knowing military law and other specific military rules – thus the Public Prosecutor would better understand the warfare rules and other military regulations, which are valid in the armed forces, and would consequently, better represent the allegations made against the soldiers at the trial. In view of the concluded, we suggest the establishment of an agency of the Ministry of Defence, which would deal with criminal-justice legislation in relation to the gathering and interpretation of the military law. In the agency lawyers, military experts, representatives of the Slovenian Army headquarters, Commander of the Military Police and the Chief of J-2, the Director of Intelligence and Security Service and other experts would cooperate. As an advisory and unifying body between the Ministry of Defence and the State Prosecutor, such agency would play a key role in providing and interpreting military law. At the same time, a court would be determined that would have jurisdiction to deal with military matters, e.g. the District Court in Ljubljana, given the fact that the General headquarters of the Slovenian Armed Forces is located in Ljubljana. Thus, the court could deal with all the cases of conduct, which by penal code are classified as criminal offences committed by a military person or a civilian employed in the Slovenian Armed Forces or another employee in the defence field or a person deployed on a mission abroad. Trials in such cases would be centralized in one court; thereby judges as well would have a better insight into the field of military law and the creation of case law. We established that a coordinated interdepartmental cooperation is necessarily for such changes, and that is everything but an easy task. Precisely, the search for an interdepartmental consensus or the consensus of its services on the issue considered is an essential part of the performed research.

4 THE MILITARY POLICE CONTRIBUTION IN COMBATING CRIME

4.1 The community policing

By changing formations in the year 2007 along with some other changes, the Military Police introduced the Military Police offices. The last adopted directive on the operation of the Slovenian Army Military Police establishes that in major barracks in the territory of the Republic of Slovenia Military Police offices, whose work is based on the concept of community policing, operate. Community policing is based upon the notion that it is necessary to search for problems within the community, identify their causes, and take appropriate action in cooperation with the community (Meško, 2001: 273). The military community in the Slovenian Armed Forces is represented by the employees in the barracks. In this work concept virtually everybody, who is tied up with the army barracks, plays an important role. The purpose of the Military Police offices is to give all the em-

ployees in the barracks the opportunity to provide information about a criminal offence, accident, interesting phenomenon regarding security, and most importantly, to propose measures or actions to improve safety in the barracks. The Military Police took the model of community policing (with some modification) as implemented by the Police. The copying of the model with the organizational and technical changes, unfortunately, does not produce the expected effects. The organization must ensure that the military officers are trained, to a degree, so that they exceed the traditional responds in the Military Police, and they begin to believe in the effectiveness of the adopted concept. Here the Military Police has still a lot of potential capacities.

4.2 Criminal Intelligence as a working concept of the Slovenian Armed Forces

Henceforth, the Slovenian Armed Forces or its security authorities should aim at achieving acceptance of the concept of Criminal Intelligence. The Criminal Intelligence for the purposes of investigation, prevention and detection of criminal offences in the Slovenian Armed Forces is a particularly suitable concept, since the functioning of the army is based primarily on intelligence, which is the basis for an effective decision making within Criminal Intelligence. Certainly, the enforcement of such concepts is welcome for the rise in the performance, but of course, the specifics of the environment, in which the Military Police and the Intelligence and Security Service are working, have to be taken into consideration.

5 THE REORGANIZATION OF INVESTIGATIVE AUTHORITIES IN THE SLOVENIAN ARMED FORCES AND THE IMPLEMENTATION OF CRIMINAL INTELLIGENCE

Based on the examined problem, we concluded that it is reasonable to think about establishing a special military investigative body that in the area of jurisdiction will have the opportunity to investigate all crimes, regardless of the prescribed amount of imprisonment. In searching for the solution for the abolishment of the senseless dualism between the Military Police and Criminal Division of OVS, the establishment of the *Military Bureau of Investigation* in the Slovenian Armed Forces is certainly a solution that eliminates the underlying problem in the broadest sense.

Structurally it can be considered as an organizational unit of the Ministry of Defence, directly accountable to the Minister of Defence or the General headquarters of the Slovenian Armed Forces. The newly established authority must be com-

pletely autonomous, independent and professional when investigating and detecting criminal offences, tied only to the Public Prosecutor's Office. It is chaired by a Director, and a staff merger of investigators and officers of the Criminal Division of OVS would be reasonable. Authorized officers performing functions in the Bureau must have a contract of indefinite duration[5]. The Military Bureau of Investigation must continue to work closely with the Intelligence and Security Service and the Military Police. Such reorganization would allow a separate intelligence and security activity – this kind of an arrangement is typical for most modern countries. Other essential tasks of the Bureau of Investigation would be: proactive activity, efficient analytics, improvement of collaboration and exchange of information with foreign military investigation services, establishment of a compatible information system and gathering of information for the criminal and intelligence products, which would be the main guidance for decision making on the field. The operation of the Bureau of Investigation must be based on the principles of the intelligence led policing and principles of criminal intelligence, where the exchange of information, which should not be based on the "need to know" principle, but on the "need to share" one, is crucial. Furthermore, we propose the establishment of an online information system between security and intelligence agencies at the national level, designed for the exchange of data and information arranged by investigation field. Criminal Intelligence is one of the essential prerequisites for successful proactive activity of all investigative authorities, not only from the perspective of preventing consequences, but also in terms of creating databases of individual security events, as well as planning and directing of own activities.

6 RESEARCH

We posed the research questions in accordance with the objectives and theoretical starting points. The findings of the theoretical work have been applied to the experience of individuals, experts in such issues. Eight structured interviews were conducted with experts in the field of internal affairs, criminal police, prosecution, judiciary, military and law, who have years of experience and know well enough the researched problem. We asked the interviewees questions, which can be divided into three sections:

- questions related to the legislation and the effectiveness of criminal investigations,
- questions to determine the reasonableness of the reorganization of the competent services in the Slovenian Armed Forces (Military Police and the Criminal Division of OVS),

[5] According to valid regulation, the Military Police investigators have fixed-term employment contracts (10 years). The fact is that the investigators in the Intelligence and Security Service, and the inspectors in the defence field have contracts of indefinite duration, which is the only real form of employment in this field.

- questions related to the improvement of the Public Prosecutor's work, when it is directing and guiding a criminal investigation in the Slovenian Armed Forces.

At this point, we summarize some of the key responses and proposals of interviewees that relate to changes in the investigation, detection and prevention of criminal offences in the Slovenian Armed Forces:

- Current regulatory arrangements are not good and do not allow an efficient use of resources that are available for the investigation of criminal offences in the Slovenian Armed Forces,
- (dis)respect for human rights is present in the pre-trial and criminal proceedings, for legality and limited legal certainty, especially for members of the Slovenian Armed Forces, who are present in international operations,
- unification of powers in the relationship between Military Police and Criminal Division of OVS is proposed,
- elimination of the punishment consisting of deprivation of liberty that constitutes a limitation for the Military Police in investigating criminal offences in the Slovenian Armed Forces is proposed,
- elimination of the senseless dualism in the investigation of criminal offences in the Slovenian Armed Forces is necessary,
- the merger of the investigative part of the Military Police and the Criminal Division of OVS into an independent Military Bureau of Investigation within the jurisdiction of Military Police is proposed (variant 1)
- establishment of an independent Special Military Department outside the Ministry of Defence within the framework of the existing services is proposed (variant 2)
- it is necessary to provide independent investigative procedures and to ensure equality in criminal and pre-trial proceedings,
- a more active cooperation with the Public Prosecutor's office and enhancement of knowledge and qualification of prosecutors specialized in military affairs are needed,
- it is important to determine the Subject Matter and Territorial jurisdiction of the Public Prosecutor's office for military affairs and to determine an exclusive jurisdiction of the court for court proceeding related to military affairs,
- the reorganization of services would contribute to a more efficient directing and managing of the pre-trial proceeding.

7 DISCUSSION AND CONCLUSION

We established that the investigation, detection and prevention of criminal offences in the Slovenian Armed Forces and missions abroad represent challenging tasks for the Ministry of Defence or the Slovenian Armed Forces. Experts, who were included in the study, agree that the dualism in criminal investigation is in-

adequate and ineffective. Furthermore, we established that various laws define competent authorities for the direction of the pre-trial proceedings and investigations. It would be correct that the criminal proceeding, in respect of all the modalities and the jurisdiction of the investigative authorities, is regulated only by the Criminal Procedure Act. Legal restrictions and on the other hand, Military Police powers should, by their nature, be adequate to the police powers in the civil sphere, instead it can only investigate criminal offences punishable by fine or imprisonment up to three years.

We established that the restriction is illogical, particularly because we know that in crisis response areas (ISAF, Afghanistan) officers of the Criminal Division of OVS are not present, but only members of the Military Police. The reorganization of existing services and the establishment of a unified independent and impartial service are necessary.

The proposed model requires organizational and personnel changes with the aim to establish a *Military Bureau of Investigation*, an independent investigating body composed of the Military Police that would have all the rights and powers in areas within its jurisdictions as the Police has in the pre-trial proceeding, the possibility of criminal investigation, regardless of the prescribed prison sentence, and it would be directed by the Public Prosecutor. The most important measure in the proposed model is the placement of the Military Police at the highest level of the chain of command and control. According to the valid formation, the Military Police Commander is accountable to the Commander of the Slovenian Armed Forces for his work and the work of the Military Police. The Republic of Slovenia is obliged to comply with national legislation and protect fundamental human rights and freedoms of all citizens to the same extent and under equal conditions, and even more so of the Slovenian Armed Forces members, which daily expose their lives in international operations. At the same time, legislation must be in compliance with the general principles of international law and international agreements binding on Slovenia. The doubt on legal jurisdiction of Military Police can be easily removed by amending the 65th article of the Defence Act (2004) to make Military Police accountable for all criminal offences in the Slovenian Armed Forces, regardless of the prescribed prison sentence. Since in the Republic of Slovenia the legislation in force provides the investigation of criminal offences to be within the jurisdiction of existing services in the Ministry of Defence, the doubt about the impartiality of the investigative process, unless reorganized, cannot be overcome. In order to promote effective management and direction of the pre-trial proceeding, changes in the Public Prosecutor's office are expected as well. Due to the relatively small number of criminal offences that occur in the Slovenian Armed Forces, the Public Prosecutors are unfamiliar with military law and specific military rules. The presence of Public Prosecutors and familiarization with the real conditions, which apply in the crisis response areas, would practically contribute to a more effective pre-trial proceeding. We

emphasize the need to encourage an active cooperation with the Public Prosecutors as well.

A more appropriate solution to the problem is indicated in the establishment of the *Special Military Department* (outside the Ministry of Defence) in the framework of the already active Specialized Department, which is directly placed under the Supreme Public Prosecutor's office. The Special Military Department would be directed by the Public Prosecutor's office and his team of investigators, who must have military skills (they must undergo a basic military training, be trained to fight on the battlefield, understanding the defence system) and professional criminalist skills that are important for the investigation and detection of criminal offences. Further training of the prosecutors in the field of military law and other specific military rules (conventions, protocols, combat rules) is necessary. The Special Military Department under the direction of the Prosecutor should have in areas within its jurisdictions all the powers as the Police have in the pre-trial proceeding and the possibility to investigate and prosecute all the criminal offence regardless of the prescribed amount of imprisonment. The operational unit in the Special Military Department would be the Military Police carrying out specific tasks related to the investigation and detection of criminal offences, as it would be territorially organized throughout the area of the entire country, and it would also be present in peacekeeping operations. It is reasonable to determine the Subject Matter and Territorial jurisdiction of the Public Prosecutor's office that would represent the indictment acts against military personnel, who have committed criminal offences in the Slovenian Armed Forces and missions abroad. As an upgrade to this model, the establishment of an agency under the Ministry of Defence that is expertly tied to the Public Prosecutor's office is indicated. It is a modest form of the American JAG (The Judge Advocate General's Corps), where investigators, with the powers of the Prosecutor and the Advocate-General, operate. The agency within the ministry would conduct investigations, provide legal assistance, provide defence counsels, decide on disciplinary proceedings and represent in indemnity suits. The Military Police with investigators, who would have powers as the Police in the pre-trial proceeding, would be subordinated to it as an operational unit. As a novelty, we propose to consider the jurisdiction of the Special Military Department for the investigation of military personnel regardless of where they are located. According to the valid regulation, the Military Police or the Criminal Division of OVS investigates a military person only in cases when the criminal offence is committed within the framework of the Slovenian Armed Forces by a member performing military service. With the interpretation that a civil becomes a military person when he or she signs the employment contract and loses the status of a military person with the termination of the employment, we cannot ignore the logical fact that Special Military Department has the jurisdiction to investigate military personnel also when they commit a criminal offence outside working

hours, and the Slovenian Armed Forces. In case that proposed changes would occur, the establishment of a single court that would be competent for trial in military matters would be reasonable. The conclusion is simple. If we want to participate and be active on the international scene, it is necessary to adopt appropriate regulations, standards, enabling a unified, comparable functioning of subjects within a single organization. Such measures are necessary to determine the accountability and responsibility, by virtue of the reasons to avoid a collision of legal acts. The reorganization of the Intelligence and Security Services and the Military Police in the segment, which is engaged in the investigation of criminal offences, should be based on political and professional consensus. With this research of the problem, the latter is already provided.

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CRIMINAL INVESTIGATIVE TECHNIQUES IN ADVERSARIAL INTERVIEWING

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ABSTRACT

Purpose:
The purpose of this article is to study the similarities and differences between investigative interviews done by police detectives and those done by investigative reporters.

Design/methodology/approach:
The study used descriptive methods pursuant to the expert literature supported by the case study of the interviews done by investigative reporters.

Findings:
In the professional literature there is a strong belief that the most important factor in a criminal case is the interview. Something similar applies to journalism. Interviewing is the central activity in modern journalism and the interview is the main mean by which reporters gather information. Investigative reporters can and do use methods and techniques similar to those used in formal crime investigations, particularly in the field of the interviews.

Research limitations/implications:
To confirm conjectures about police and investigative reporting interviews a survey among investigative reporters and police detectives was done.

Practical implications:
The paper and its findings are a useful source of information for investigative reporters and police detectives on how to conduct investigative interviews.

Originality/value:
This article extends our understanding about how investigative interviewing operates in journalism.

Keywords: investigative interviewing, interview, adversarial interview, forensic, investigative reporting, journalism, ethics.

1 INTRODUCTION

Experience shows that the ordinary law enforcement agencies are ineffective in deterring complex forms of crime such as corruption. The precise level of corruption in the Republic of Slovenia is not known. According to the police statistic the level of corruption is increasing. For example: in 2011 the police filed 21.1 % more criminal charges for typical corruption crimes as compared to the year before (2011: 86, 2010: 71); the number of suspects thus charged increased from 91 in 2010 to 112 in 2011 (Police, 2011). The Slovenian Commission for the Prevention of Corruption[1] notices that the prevalence of corruption in Slovenia is much bigger from what the official institutions are able to detect. There is a huge gap between the level of corruption detected by the official institutes, and the perception of citizens regarding the prevalence of corruption. A whopping 95 % of Slovenes believe that the corruption is the major problem in the country[2] (CPC, 2013a).

Commission for the Prevention of Corruption takes note of a lot of factors that allow for the development of the administrative corruption[3], and in particular of the systemic corruption[4]. These factors include: 1. Public procurement practices are too complicated and over-regulated. 2. Management of the country's capital investments (government capital investments in represent a disproportionately large share of the entrepreneurial capital) is under a lot of political influence. The managers involved often lack integrity and corporate management know-how. 3. The functioning of the banking system is under the dominant influence of the state. 4. The system of control over the financing of the political parties and electoral campaigns is inefficient. (ibid.)

We conclude that most of the corruptive acts are not even detected by the police. Hence the number of corruptive acts investigated by the police is not very relevant in the discussion about the level of corruption.

Investigative reporters are probably among those best placed to deal with corruption, but the pilot study conducted by Dobovšek and Mastnak in 2010 suggests that in Slovenia they are insufficiently qualified and skilled (Dobovšek & Mastnak, 2012). Most concerning is their lack of expertise in the field of investigative interview.

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1 The Commission for the Prevention of Corruption of the Republic of Slovenia is an independent state body, like the human rights Ombudsman, Information Commissioner or the Court of Audit, with a mandate to investigate and prevent corruption and breaches in ethics and integrity of public officials.

2 Such are the findings of the Eurobarometer survey, which was carried out by the European Commission in June, 2011.

3 This form of corruption involves residents and junior civil servants or officers of the administrative units or members of various supervisory bodies at the lower-levels (CPC, 2013a).

4 When we are dealing with the systemic corruption we have in mind the emergence of the state capture. The systemic corruption is characterized by the penetration of corruption and corrupt practices into the political elites who then work either in symbiosis with or around the economic elites to establish the conditions under which the entry of new participants into the political and into the economic arena is restricted and controlled. (ibid.)

2 INVESTIGATIVE INTERVIEW

In the professional literature there is a strong belief that the most important factor in a criminal case is the interview (Schollum, 2005). Many authors emphasise the importance of information gained from a witness, victim, or a suspect. (Gudjonsson, 2007; Milne & Bull, 1999; Pakes & Pakes, 2009; Hoffman 2005) Something similar applies to journalism[5]. Interviewing is the core activity in modern journalism, and the interview is the main mean by which reporters gather information (Hicks, 2005). This hold to an even larger degree for investigative reporters.

An investigative reporter is a person whose job it is to discover the truth and to identify lapses from the truth. Work done by investigative reporters is distinct from apparently similar work done by police, lawyers, and other regulatory bodies in that it is not limited in scope, nor legally restricted or bound by public transparency (De Burgh, 2000). On the other hand, investigative reporters can and do use methods and techniques similar to those used in formal crime investigations. Even more similarities between investigative reporting and police work occur in the way investigations are planned (Dobovšek & Mastnak, 2009).

We can find similar methods in books on criminalistics[6], particularly on the field of interviews (Maver, 2004). One should note the similarity between the advice given to investigative reporters stating that different sources are best approached in different ways (different methods and techniques are used in interviewing friendly and unfriendly sources) (Benjaminson & Anderson, 1990), and findings from the Slovenian practice of criminal investigation suggest that informal investigative interviews are often conducted like interrogations in which the police officers and detectives approach the interview with the authority of power (Maver, 2004).

As journalists are usually more adept and used to having interviews with friendly sources, or victimized persons, the detectives are surely more used to interrogation (criminal investigation), or, put in other way, to having interviews with targets of investigation (journalism investigation)[7]. A strategy of entanglement (suspects becomes entangled with their own lies) (Malinovksi & Brusten, in Maver, 2004) is an approach that is quite common in investigative reporting as well. It is easiest to have an interview with someone who is obviously lying. It is bet-

[5] This statement is also supported by a pilot study conducted by Dobovšek and Mastnak in 2010, that includes 10 in-depth interviews with investigative reporters and police detectives. Both group of respondents confirmed that interview is one of the most useful tools in an investigation (Dobovšek & Mastnak, 2012).

[6] We should keep in mind that Criminalistics as a science does not exist in Anglo-Saxon states. Criminalistics, or rather we should say criminal investigation science in this states is approached from a practical point of view.

[7] However, the purpose of "interrogation" is completely different for investigative journalists than it is for police detectives. Investigative reporters also do not have any legal authority to interrogate, except the principle of the public right to information. But, the techniques of interrogation are probably very similar.

ter to just let the "target" tell their side of the story and become entangled with their own lies (Obad, 2004). It is interesting, that the following technique, which is the first step in the interrogation, is rarely used in investigative reporting: to confront the suspect directly with a statement that he or she has committed the crime and then wait for a reaction (Brandl, 2004). This step is part of surprise strategies, in which the investigators either accuse the suspect at once, or leave them unaware for a while, and then confront them with all of the evidentiary material (Geerds and Maver, 2004). The question is whether it is inappropriate for investigative reporters to use such a method, or is it merely that the method is not known primarily to investigative reporters (Dobovšek & Mastnak, 2009).

3 INVESTIGATIVE INTERVIEW TECHNIQUES IN JOURNALISM

How to get prepared and how to conduct an interview is described in detail in the professional literature for journalists where there are even tips on what to wear (Adams, 2005; Frost, 2001; Boyd, Stewart, & Alexander, 2008). Reducing these tips to their essentials interviewing could not be simpler. Three golden principles of interviewing are: ask clear questions, listen to the answers, encourage the interviewee to keep talking (Adams, 2005).

Interviewing activities can be divided into preparation for the interview and into conducting an interview. Before the interview gets started it is essential for the reporter to have a plan (it is necessarily to know what we want to know, that is easier to prepare topic and questions), and to make a research about the issue and the interviewee. During the interview it is essential that the reporter knows how to listen and to be able to empathise (this does not mean that the reporter has to like his or her interviewee, but rather that the reporter should be able to put himself/herself into the interviewee's shoes) (ibid.)

Basic principles of planning, preparation and conducting the interview are applicable to all forms of interviews. But when dealing with investigative reporting projects, different skills and a different emphasis in approach is required. Timing is essential. It is necessary to not think only about whom to interview, but also about at what stage of the investigation it would be best to interview the person under investigation. If the investigative reporter does it too soon, there is a risk that that person will conceal their traces (warnings others, destroy the evidence...). If it is done too late there is a risk that that person will prepare answers to unpleasant questions in advance (in that case the opportunity to surprise the person is missed), or simply the person will no longer be available (will flee abroad, or come up with the excuse citing their health and so on). Such a person can respond in any way possible, so it is crucial to be prepared. Denial

is the easiest thing is to deal with. In this case it is best to keep on digging. It is much harder to deal with threats, which can be either direct physical or legal threats, or can be indirect threats (through third parties, for example through an editor) (Investigative Journalism Manual, 2010). Therefore it is best, if possible, to conduct interviews from the outside-in, starting with sources that are more general and peripheral and working closer and closer toward the final interview, which should be the reporter's main target. This is the easiest way to avoid the „circling the wagon" routine, with high-level subjects consulting each other to get their stories „straight" (PBS, 2007).

The context in investigative reporting is different than in some other forms of journalism. Investigative reporting is the reporting of concealed information. (Benjaminson and Anderson, 1990) Therefore, the first task of investigative reporters is to uncover concealed information (Dobovšek & Mastnak, 2009). It is therefore much more likely to encounter hostility, defensiveness, reticence, or evasion from the interviewee, since the interview topics tend to be bigger or more sensitive. Thus it is necessary to use a different strategy and different questioning techniques in order to achieve different goals (Investigative Journalism Manual, 2010).

There are three different strategies for an interview. In the case of an informal interview or a research interview (just search for or verify the facts), the intensity of questions all the time remains the same. In interviews for profile, however, questions begin with a narrow focus on the individual (for example: which school you attended?), but as it progress questions are becoming more wider[8] (for example: when did new buildings materials appears on the market?, What is your opinion about that?, Do state enterprises use appropriate materials?) An investigative interview often follows also the opposite strategy. It starts with the bigger, more general issues, and as the questions progress, they become narrower and more precisely focused[9] (an example of such sequence of questions: which general conditions are required to obtain a contract for the procurement of medical equipment?, How exact are this conditions specified?, How often does the government monitor it?, and at the end, Did you break the law when you selected the XY company?) It is best to ask such questions last as that is the point at which the journalist may be thrown out of the office (ibid.).

Questioning techniques of investigative interviewing are often described with terms of "forensic" and "adversarial". These terms are borrowed from police and justice terminology. The term "forensic" means relating to, or like the law courts. The term "adversarial" means that journalists are in the contest of uncovering guilt (ibid.).

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8 Such a sequence of questions can be marked as „trumpet", because this type of interview questioning starts narrow and becomes wider, with more open questions (Investigative Journalism Manual, 2010).

9 Such a sequence of questions can be marked as „funnel": it starts broad and ends narrow (ibid.).

Just as the police detective when conducting an investigation is facing with victims, witnesses or suspect, so the investigative reporter when conducting an investigation is faced with the people who could be characterized in similar terms. Common sense tells us that the adversarial interview is inappropriate for interviewing victims or witnesses. It is reserved only for those who did something wrong. It is not appropriate that the journalist would intimidate a victim or a "whistleblower"[10] with some kind of interrogation technique to force them to tell what they do not want to tell.

The interviewing techniques used by investigative reporters, leaving aside an "interrogation", are similar to those used by police detectives. An interview by Zulawski and Wicklander (2002) is a fact-gathering process that attempts to answer six questions: who, what, where, when, how and why. This definition is fully consistent with the definition of the investigative reporters' interview. Journalistic investigation is concluded when the reporter has collected enough facts to answer seven basic questions, which are the same as the golden questions in criminalistics (criminal investigation) (Šuen, 1994; Žerjav, 1994).

For both the investigative reporter and the police detective it is important to gain the interviewee's trust (Adams, 2005; Zulawski & Wicklander 2002), especially when dealing with vulnerable[11] people, or children (Adams, 2005; Milne & Bull, 1999). For this group a special treatment is required (with a lot of consideration and carefulness). If the criminal investigator or the investigative reporters wants to have a successful interview, they need to be familiar with basic psychology.

4 INTERROGATION VERSUS ADVERSARIAL INTERVIEW

The use of the term "interrogation" has recently fallen out of use due to its negative connotation. The departure from that term is primarily a response to the negative images arising from the use of the word, especially the image of people being submitted to uncaring, unpleasant or unjust tactics by those in authority over them (police officers, criminal detectives, persons employed in intelligence services and so on) (Schollum, 2005). In Britain in the early 1990s the term "investigative interviewing" was introduced to represent a shift of focus in police interviewing philosophy from confession to general evidence gathering (Williamson, 1993). Some interrogation tactics could often lead to false confessions (Gudjonson, 2007).

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[10] *„A whistleblower is a person who tells the public or someone in authority about alleged dishonest or illegal activities occurring in a government department, a public or private organization, or a company"* (Wikipedia).

[11] This group includes: older people, persons with some kind of traumatic experience (such as the relatives of a murderer victim) and so on.

On the other hand some warn that it gives rise to an unnecessary confusion. Therefore they suggest the term accusatory interviewing (Hoffman, 2005). In general the interview is the first phase of the investigative interviewing process, that sometime leads to the process of interrogation. The term interrogation is relating with suspects (Mire & Hanser, 2012). The interview is often less formal than an interrogation. The interview becomes much more formal when an investigator decides to confront a suspect with the evidencel. Then the process we can call interrogation beginst (Zulawski & Wicklander, 2002).

Reporters of course do not have statutory powers to interrogate a suspect. However, camera interviews with politicians sometimes resemble an interrogation (Dobovšek & Mastnak, 2012). It is a fact that a reporter has no formal powers to force someone to participate in an interview. However, especially when a reporter investigates misconduct of politicians, whose positions depend on re-election, the reporter has a lot of informal power for convincing them to participate in an interview. An adversarial interview can be compared with the prosecutor's questions in a court room, to secure evidence of wrong-doing from an accused person. It is a contest between a reporter and the interviewee. Against thoroughly prepared reporters who possess key evidence and have a thorough knowledge of a subject, most interviewees will find the going tough (Investigative Journalism Manual, 2010).

Each interview takes place within certain time limits. It is wrong to believe that a police detective has indefinite time to interrogate, even though there is no absolute time limit to an interrogation specified by law. Unless the crime is particularly heinous, most police detectives conclude interrogations in a maximum of two hours without gaining a first admission[12] (Zulawski & Wicklander, 2002). Investigative reporters usually have even less time, especially in the case of broadcast interviewing, when reporters sometimes have only a few minutes to conduct an interview.

The interrogation is much more formal then the adversarial interview. Law is very specific on how an interrogation must be conducted by police detectives. In the 227th Article of the Slovenian Code of Criminal Procedure what to ask in the first hearing and how to warn the accused person.is precisely specified A suspect also has to be warned that they have the right to remain silent and they do not have to defend themselves (Maver, 2004). Even more, after the warnings, the police detective before proceeding must determine whether suspects have understood what they have been told (Zulawski & Wicklander, 2002). Investigative reporters have much more freedom. How a reporter should conduct an interview is not specified by the law. A reporter is limited only by the Ethical Code and thier own integrity. However, similarto how the police detective

[12] This admission is merely the admission that confirms the interrogator's assertion that a suspect was involved in the act under investigation (it is not a confession) (Zulawski & Wicklander, 2002).

warns a suspect of his rights, a reporter must draw a clear line when a statement is given on the record,and when it is given off the record[13] (Investigative Journalism Manual, 2010). Due to informal nature of the adversarial interview, an investigative reporter has another advantage. By the 5th Article of the Slovenian Code of Criminal Procedure it is determined that the questioner must tell the accused what he is accused, and what is the basis for the accusation. Therefore the police detective cannot hold the accused in doubt (Maver, 2004). A reporter on the other hand can surprise an interviewee with some unexpected question. Nevertheless, some authors (Adams, 2005) point out that it is unethical if the reporter asks the interviewee about different subject than as specified in the interview request.

Sometimes when a reporter is interviewing an experienced politician who wants to deflect the questions a soft indirect approach is not appropriate. The reporter just has to come straight out and ask it (Investigative Journalism Manual, 2010). But the reporter must thread a fine line between directness and the danger that the interview may degenerate into a personal argument between the interviewer and the interviewee. This danger is more apparent for broadcast interviewing as compared to press interviewing. Intimidating questioning may provoke the audience to feel that the interviewee is being unfairly treated, regardless of the fact that issues being raised are justified and in the public interest. In the adversarial interview it is particularly important for the reporter to appear objective and impartial (Adams, 2001). Therefore a reporter should never become emotional during an interview (Investigative Journalism Manual, 2010).

The adversarial interview is in many ways similar to the interrogation conducting by police detectives, but the main purpose is entirely different. The goal of the interrogation process is the confession and ensuring that a suspect confession will be admitted in a trial (Mire & Hanser, 2012). The main goal of the adversarial interview is not (or at least should not be) the confession, but provide one of the basic principles of objective journalism. Each person under "journalistic investigation" should be given an opportunity to defend himself or to present his perspective on the story. The 3rd Article of the Code of Ethics of Slovene Journalists for example states that a journalist publishing information containing serious accusations must get feedback from those concerned and this feedback must be generally published in the same piece but otherwise as soon as possible. Each journalist should also be aware that he/she is not a judge. Therefore, the final judgement journalists often like to give are inappropriate. The final judgement should be left to the public.

[13] Often even though it is agreed that interview is on the record the interviewee asks to go off the record. The reporter should respect the request.

Therefore a journalist should not be afraid of silence. He/she should use it to his/her advantage. Instead of following each subject's response with a question, it is better often better to wait. Most people feel uncomfortable with silence and will avoid it by continuing to talk, and there will have better chance of "hanging themselves" (PBS, 2007).

5 CASE STUDY

1ST CASE

BACKGROUND

In the 1990s (immediately after the independence of Slovenia) Slovene companies were faced with the loss of the common Yugoslavian market. At that time the factory TAM was in big trouble although it was once the biggest company in Maribor (the second biggest town in Slovenia). The factory TAM where buses were manufactured had an outdated manufacturing process. Despite the huge debts of company the then government decided to recapitalise TAM with government money. The law which enabled state aid for TAM was adopted in 1995 and soon after rumours circulated that the state aid was not intended for recovering manufacturing but was used only for repayment of banks and for the commissions of different agents.

PREPARATION ON INTERVIEW

The journalist of the national television Lidija Hren, who reported from the Parliament at that time, decided to verify those rumours. She was working at the story for three months and during that time she carried out informal interviews with 32 individuals (criminal investigators, politicians, people employed in TAM, and bankers). One of the criminal investigators told her some criminal complaints were lodged against some people related to TAM. But they were withdrawn because of the pressure »from above«. Mrs Hren finally drew up a list of four people who in her opinion could be the most responsible for non-transparent spending of government money. "The ones who are the leaders in the certain political system always stand behind the corruption in this system." These people were: 1. the chairman of the board in TAM, 2. the chairman of the supervisory board in TAM, 3. the chairman of the board in the lending bank and 4. the Minister of the Economy.

Mrs Hren first held some informal interviews with all of them just to get to know them. »One needs to get to know each target in details. Before you attack the particular target, you must find out how this person reacts to a certain question. You need to get to know his/her character. Every detail might help you. It

is necessary to find out who this person is in an intimate relationship, in friendship or in a business relationship. It must be found out which person could be the weakest link.

Lidija Hren did not reveal what she had decided as to who was the weakest link. As she remembered the interview with that person was similar to this: *"Warmly welcome, I have got an interesting story, which is completely different from the one you have represented to me. –Really, what is this story like? –Interesting, interesting. And you will be the chief culprit. –Oh, that's not true. I'm not the one who made decisions on this. –My data and documents indicate to it. –That's impossible. –Can you prove that I'm wrong."* With this interview the journalist made that person give her a document which compromised the then Minister of the Economy. *"I was bluffing during the interview. I took a risk and I was lucky."*

INTERVIEW

An interview with the then Minister of the Economy lasted for a long time. A copy of interview starts when the journalist led the Minister up to »the edge of the precipice«. As Lidija Hren says, a journalist should never face the interviewee with an incriminating document at the beginning of the interview. He/she must get him/her to deny the fact which refers directly to the incriminating document. He/she must be caught lying.

REPORTER: "If I remember correctly it was on administrative board to decide about following a proposal of the management of TAM and you are not familiar with the details. I've got a contract with Cyprus company Tameks here and it is understood that they transferred 7 million dollars of prepayment which leads to the repayment to Mr Zarič. Is this your signature?"

MINISTER: "Yes, this is my signature."

R: "Can you tell me more about the repayment to Mr Zarič now?"

M: "It is in accordance with what I said earlier that it was in the context of the politics that we defended at that time."

R.: "How did Mr Zarič achieve that, did he hang around your neck?"

M.: "I think that the last few words are the right ones, he did hang around our necks in certain deals and he still does that in some way in these deals and one of the characteristics of these deals is that we have many intermediaries. They are not only in TAM but also in other places and we depend on them."

R: "Do you agree that it is about a huge amount of budget funds?"

M: "No, it is not about the budget funds and this is one of the serious misunderstandings."

R: "In case that the guarantees will be called on, it will certainly be about the budget funds."

M: "Only if the guarantees are called on."

R.: "Criminal investigators told us in front of the camera that they will act in the same way if they come across the contracts or repayments of the debts. So, is it possible that there will be a criminal complaint lodged against the minister?"

M: "Criminal investigators will have to decide about this."

AFTERMATH

The Minister of the Economy resigned few months after the interview because of the public pressure. Soon after that the then government collapsed. Minister Tajnikar was a member of the third biggest governing party. After the Minister's resignation his party also left the coalition parties therefore the coalition parties did not have the majority in the parliament anymore.

2ND CASE

BACKGROUND

Before the Parliamentary Elections in 2004 there were public opinion polls which indicated very low support for three parliamentary parties. Among these parties there was also the SMS party (The Youth Party of Slovenia).

INTERVIEW

A TV presenter on national television Marcel Štefančič, jr. invited to his show *Studio City* all three presidents of the previously mentioned parties. The then President of The Youth Party of Slovenia was Dominik Černjak.

His answer to the question if in his party they are afraid of early elections started like this:

POLITICIAN: "Maybe at this moment we are somewhat weak because of the certain internal stories which are common to all of us."

TV PRESENTER: "Will you split or not?"

P.: "Well, in our country it is common that every political party in fact has some internal frictions..."

TV P.: "Will you split or not?"

P.: "Just before the elections..."

TV P: "Will you split or not?"

P.: "It is true that we've got some individuals..."

TV P.: "Will you split or not?"

P.: "who can..."

TV P.: "Can I ask you five more times and it will be ten times?"

P: "There will be an answer. Can I conclude that those who do it, do it very clumsily via

media and in our party we have a clear vision: centre and green politics and those who do not find themselves in this story, I believe, will find their own way and I wish them luck and they should let us work as our party is ready and we will do a lot and we actually do not care whether the elections are on 13th July or on 3rd October."

A Tv presenter gives up and starts interviewing another guest.

Marcel Štefančič's answer to the question why he asked the guest the same question for five times in less than 30 seconds was: *"I decided for it because he wanted to get rid of me with the cheapest political trick, namely, a politician is saying everything else but what he was asked. I didn't prepare that question in advance, I decided for it completely spontaneously."*

AFTERMATH

The party split into two parts soon after the interview. None of these parts succeeded in entering the parliament.

3RD CASE

BACKGROUND

The President of the Republic of Slovenia Danilo Türk was impeached by the then biggest opposition party SDS (The Slovenia Democratic Party) in 2010. The cause for charges was the decoration of the former state secretary for interior administration (from the socialism period) by President Türk. The former state secretary was decorated for actions in 1989, when the Slovene Secretariat for Interior Administration prevented the meeting by Serbian radicals in Ljubljana. The President of the Slovenian Democratic Party Janez Janša made the statement then that the President of the Republic of Slovenia »*violated the constitution and seriously violated the laws when he decorated the former chief of the secret political police Udba Tomaž Ertl.*« Among other statements Janša said that Ertl was also responsible for terrorist actions, which were carried out abroad by secret police.

The process for initiation of impeachment in the Parliament was not passed. At the beginning of 2011 there was a document published on the website of the Slovenian Democratic Party. This document was supposed to prove that Türk was informed about the assassination which was supposed to be carried out by Yogoslavian police in the Austrian town Velikovec in 1979. The Yugoslavian Embassy in Vienna was supposed to inform Türk about it. Before that the members of the Parliament discussed the Türk's impeachment and he said that he knew about the assassination as much as it was published by media. Some of the political officials such as the President of the Commission for Minority received similar dispatches. The current President Türk became the President of this Commission only three months after the assassination.

Soon after the document was published on the website of the Slovenian Democratic Party it turned out that the document was composed of three different documents.

INTERVIEW

On 22nd Feb 2011 Slavko Bobovnik in the evening daily-news show *Odmevi* hosted the President of the Slovenian Democratic Party Janez Janša.

SB: "Most of those who today visited the Archives of the Republic of Slovenia say that what you have published on your website has been constructed, and that President Türk did not receive all the documents, when he was a President of the Commission for Minority at the Socialist Association. A part of the documents was received by his predecessor. Have you constructed?"

JJ: "Even if that was true, which is not and I will later explain why not, Mr Türk received the documents from his predecessor. The documents are still in the archives today, which means they were on his desk or in the chests, when he became president of the commission. He was, during the time of the Velikovec assassination, a secretary of Mr Hartman, who was supposed to receive these documents. However, the document which has been shown today, was not found by our expert assistants after the last year impeachment. These documents we published; I have here all of them; were found by our co-workers after reviewing twenty boxes of documents about the Commission for Minority. Each document is dated respectively and it is known exactly when it was made, and in this cover letter...«

SB: »We have already shown this a couple of times."

JJ: "Yes, this cover letter describes in detail what is the case. The case is the information about the Vidmar Bleiweis legal process, and we received this information from the Yugoslav Embassy in Vienna."

SB: "Look, Mr Janša, I have printed what was published on your website. Mr Türk has undoubtedly received the document you showed, and undoubtedly he received four pages which follow this document from 1980."

JJ: "Yes, and they are not newspaper articles."

SB: "Well, let others be the judges of that. This was made in 1979 - and this was also made in 1979 - and this is the component part of the documents, which, according to you, were received by the President of the Republic."

JJ: "Yes. This is written on each of these documents."

SB: "They arrived on the address of the President of the Commission for Minority, when Mr Türk was not the president of this commission."

JJ: »At least nobody claims he was.«

SB: "Your document, which was published on the website, is therefore composed of three documents.2

JJ: "No, our document is from the scanned documents which we found in the Archives of

the Republic of Slovenia about one year ago."

SB: "And then you composed them into one document."

JJ: "No, they have been presented in the same way as we found them. We did not claim anywhere that all the document which are enclosed to the primary letter relate to the embassy report, because it can be seen from the documents themselves that this is not the case, and each document contains date, not one of them is falsified."

SB: "We did not claim that, Mr Janša. I believe we would be underestimating our viewers if we said that you did not want to communicate the fact that these documents are directly related to the period, when President Türk was the president of the minority commission."

JJ: "Of course, they are related to that period too. We never claimed that when the assassination took place president Türk was in the position to be informed about it. That surfaced in the media afterwards. This would also be illogical according to his function at that period. As soon as he became the president of this commission, he was informed about it. President Türk claimed last year that apart from what he learned from the media, he knows nothing about it. This simply is not true. In 1980 he received document from which he learned about things that were not in the media."

SB: "In 1980 he received four pages of documents."

JJ: "No, he received more, only we published just four. Even we found at least ten of such documents."

SB: "Good. These are then the documents, received by his predecessor."

JJ: "Well, he received a number of others as well, and when Mr Türk became president of the commission, he inherited all the document from his predecessor."

SB: "Mr Janša, we are not talking about the contents now, but let us repeat for the audience; that which you have in the file is composed from a number of boxes. Is this true?"

JJ: 2The contents is what the president knew then and what he knew last year." ...

SB: "Only this afternoon you were saying that there is a chance that from the time you saw the documents until today something in the archives might have been lost, metaphorically speaking. Do you really assume that?"

JJ: "No, I am absolutely sure the Archives management has been manipulating you today, because they showed you only two of thousands of documents of this commission, from which a couple of hundred relate to the time of the assassination in Velikovec."

SB: 2But they also showed us all that you have in your file. How can they have been manipulating us? The contents of our documents is the same.2

JJ: "No, it is not. Some things are the same and some are not, and some of these enclosures were enclosures of different letters."

SB: "Good, the minority..."

JJ: "And this can be determined by checking the complete archives."

SB: "No, I believe we checked well today and we did not arrive to such conclusion."

JJ: "Look, our expert assistants spent some days in the archives and reviewed approx. 20 percent of all the documents."...
The anchor gives up and asks a question on a different topic.

AFTERMATH

Janez Janša, although his party did not achieve the highest election result (it came as second), became Prime Minister in 2012.

6 CONCLUSION

The latest example that demonstrates the Slovenian journalists' lack of knowledge in all areas of investigation is the press coverage following the public announcement of the final report of the Commission for the Prevention of Corruption on the asset declaration and financial disclosure of the leaders of all seven parliamentary parties published on January 8, 2013. The report revealed that the Slovene Prime Minister Janez Janša (also the leader of the SDS) and the Mayor of Ljubljana (the capital city of Slovenia) Zoran Janković (the leader of PS), systematically and repeatedly violated the law by failing to properly report their assets to the Commission[14] (CPC, 2013b) Media was either unable or unwilling to pursue the story further. It only reported and broadcasted was the content of the report of the commission. Journalists and TV presenters have to this date not asked Janša or Janković any questions that might go beyond the scope of what is explicitly mentioned in the report.

The Interview is one of the most important tools as is the case in criminal investigations and journalistic investigation. While the police are strictly a formal mechanism of control, journalism is an extraordinary mechanism of control. Therefore, a police interview is more formal than a journalist interview and it is also more determined by the law.

Reporters in comparison with police detectives do not have statutory powers to interrogate a suspect. A reporter after the interrogation does not charge a person with a crime. Therefore, the basic purpose of adversarial interview is not a confession, but to ensure objectivity. Anyone who is under investigation has a right to defend himself. If you look for examples in the Reid *Technique of Iinterrogation*, which was developed in the 1960s and it is still widely used in North America, you do not find a lot of similarities with journalism interview techniques. This

[14] Neither the Prime Minister (Janez Janša) nor the Mayor of Ljublana (Zoran Janković) have resigned from their posts because of this report (current as of March 3, 2013). However, the smaller parties left the government coalition shorty after this damaging report was published and on February 27, 2013, the Slovenian Parliament held a sucessful constructive vote of no confidence in favor of Alenka Bratušek (the new leader of PS). Mr. Janković resigned from his post of the leader of PS as part of a deal with other parties in exchange for their support in the vote.

nine-step method of interrogation (that has a goal to get a confession) calls for a specific preparation. To set up the interrogation process, interrogators are advised to isolate the suspect in a small, barely furnished, soundproof room housed within the police station (Mire & Hanser, 2012). If a journalist is well adept and used to having adversarial interviews most of the interviewees will find the going tough. Some approaches used by police detectives within an interrogation process may also be useful for journalists. For example the Columbo tactic of playing naive (named after the TV series, where the detective is pretending to be stupid, and therefore he fools the suspect), or to show a hopeless resistance (when the absurdity of denial is reasonably presented to the suspect) (Roso in Maver, 2004), are tactics that are also often used by reporters.

Much more similar are other interviewing techniques. It is most important, for the police detective as well as for the reporter, to gain the interviewee's trust.

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EVALUATION OF THE SLOVENIAN POLICE USE OF FORCE: TRAINING FOR DAILY POLICING PURPOSES

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ABSTRACT
Purpose:
The research evaluates police officers' perceptions on theoretical and practical explanations/demonstrations of the use of force, taught in the Practical Procedure Training (PPT). The paper also considers how this training affects daily policing.

Design/Methodology/Approach:
A quantitative method was employed using two structured questionnaires with 180 police officers, who have participated in the PPT. Officers were are asked to evaluate the theoretical and the practical components of the PPT.

Findings:
It is argued that the training environment, training topics and leadership styles influence police officer daily use of force and that these issues are not completely considered in the PPT process. The PPT program does not enable officers to gain greater understanding on how the chosen method of applying force results in subsequent behaviour.

Research limitations/implications:
The research is focused and limited to the comparison between theoretical and practical interpretations in the PPT. It would be beneficial in the future if correlations between force training and force used were considered in all eight police regions to enable bigger samples and more plausible conclusions.

Practical implications:
Officers cannot gain use of force skills through the repetitive approach used in the PPT and in the field solely but rather learning must occur under field-compatible conditions. It would be much more plausible if the PPT would be scientifically evaluated instead of using subjective evaluations based on experiences of officers.

Originality/Value:

The paper presents the first use of force training and officers' daily use of force correlations study in Europe.

Keywords: Police, use of force, training

1 INTRUDUCTION

In last four decades police training has increasingly evolved. The frequency and complexity of police – civilian encounters, from daily policing practice, necessitates appropriate police responses. This is particularly critical when the use of force is employed. Police officers use their powers on a daily basis. However, the use of force is more infrequent and inconsistent. The consequences of the use of force by improperly and inadequately trained officers can be fatal for both officers and civilians alike.

In the Slovenian police service the first systematic and continually organised in-service training in the use of force started in 1996, when the first instructors were appointed in regional police directorates. The aim of the training, known as Practical Procedure Training (PPT), (originally Practical Procedures with the Self-defence), is to enable the strengthening of theoretical and practical knowledge and skills for the lawful, professional, safe and harmonized execution of police powers, as well as practical procedures and self-defence techniques. Furthermore, the aim of the PPT is to enable homogeneous performing of police powers and tasks to gain and maintain adequate psychological and physical capabilities required for successful policing performance. The training programme is run by the Sector for Police Powers and Prevention, directly responsible to the Slovenian Police Director. The training approach is based on theoretical and practical explanations and demonstrations of proceedings in the use and means of restraint and police powers. The instructors and police officers are in charge for the practical component, meanwhile the theoretical component of the PPT should be, according to the annual program, conducted by commanders and deputy commanders of police stations and instructors and inspectors from regional police directorates (MNZ Policija, 2010).

The PPT domain has received little research attention in the Slovenian police service. There is only one piece of research which evaluates officers' satisfaction with the training methods used in the PPT. It suggested that instructors should be ranked at a higher salary grade because they perform not only practical but also the theoretical component of the PPT (Naraglav et al., 2006). This conclusion cast some doubts about commanders' actual involvement in the PPT. It is for this reason that this research analyses the gap between theoretical and practical interpretations and how this affects officers' use of means of restraint in dynamic policing encounters. Accordingly, this research evaluates if the PPT program reflects constantly changing use of force situations holistically and contributes to the necessary and proportional use of means of restraint. The research looks at training from a co-relational perspective rather than simply measuring if a set of training goals are achieved. In most cases evaluations represent measurement of whether training has achieved its set aims and objectives, with no link to improved performance (Gibson, 2009). Police trainers and administrators should consider line-officers' feedback in respect of their experiences employing the

tactics learned (Kaminski and Martin, 2000). A central component when developing a training curriculum for adults are the needs, desires and interests of the participants (Birzer, 2003). Furthermore, training topics should be presented so that officers can use them in problematic situations. Alpert and Fridell (1992) argued that the use of force can be considered as a high risk, low-frequency activity and according to Alpert & Smith (1991) the use of force requires the most extensive policies, guidance and training (Alpert & Smith, 1994a).

2 QUESTIONS AND THEORIES CORRLEATION

Officers open discussions about restraint problems with instructors and commanders in the PPT depends on how officers perceive a commander's experience and law enforcement/police background (McKean, 2005). If training environments incorporate stress and threats this can, according to Torrence (1993), inhibit officers' openness, positive feelings and participation (Birzer, 2003). It is considered if officers are encouraged to talk openly about use of force cases and problematic encountered and how leadership styles (Engel, 2002; Alpert & Smith, 1994a) and martial arts philosophy influence open discussions within the PPT (McKean, 2005). It is argued that internal self-regulation in the Slovenian police service guides these discussions where officers and administrators cooperation is considered (Phillips, 2010).

Commanders' evaluations of the use of restraint reports and the advice of instructors about the proportional use of force and analysis of use of force cases and demonstrations of the proportional use of force in the PPT are linked to applied levels of force (Terrill, 2005), as well as consideration of the distinction between well and occasionally trained officers (Alpert & Smith, 1994b). Commanders' facilitation and elucidation about active officers' discussions in the PPT is assessed considering causal-consequence relations and advice on adequate documentation in the means of restraint reports (Krebl & Klarič, 2003). Fyfe's (1989) conclusion that officers failed to take charge, when it is clearly appropriate to do so, is considered (Terrill, 2005). Worden's (1995) conclusion about officers' creation of use of force situations (Terrill, 2003) is examined and Dror's cognitive causes are considered in the PPT (Dror, 2007).

Regular participation of commanders in the practical component of the PPT is correlated to Druckman and Bjork's (1991) skills and knowledge maintenance, which is seen as essential for objective evaluation of the use of means of restraint reports (Bennell and Jones, 2005). Regular commanders participation in the PPT is also related to Alpert's et al. (2006) and Morrison's (2006) timing gap, between the last training season in a police academy and the actual use of force in practice, which helps to ensure that knowledge and skills are constantly

refreshed and adapted to the changing rules, tactics and procedures (Lee et al., 2010). It is explored how regulation of the annual PPT program influences commanders' participation in the PPT (MNZ Policija, 2010) and how commanders implement training - resulting behaviour, where Alpert and Smith's (1994) leadership styles are considered (Aplert & Smith, 1999). Finally, it is examined if the Slovenian police administrators and commanders are aware about the added value of the practical component of the PPT.

Commanders' evaluations of the use of restraint reports and advices on necessary use of force as well as instructors' analysis of use of force cases and demonstration of necessary use of force in the PPT are linked to learning approaches. It is argued that rather behaviourist training strategies than Codish's (1996) andragogical methods are considered within the PPT (Birzer, 2003). It is concluded that not all sequences from the police – civilian encounters are evaluated by commanders and instructors (Alpert and Smith, 1994b) considering alternatives to negotiate a peaceful outcome (Rojek et al., 2010). It is evaluated how commanders advice officers, according to Krebl's (2002) methodology, paying particular attention to causal – consequence relations (Krebl & Klarič, 2003). Conducive learning environment (Birzer, 2003), provided by instructors is examined and whether or not officers are properly trained on when and how use of force reports should be completed (Terrill et al., 2003), paying regard to Hunt and Manning's (1991) conclusions that any action that results in bodily injures is justified in the means of restraint reports, produced by officers (Alpert & Smith, 1999). Finally, officers' understanding about force magnitude in relation to necessity is scrutinised (Alpert & Smith, 1994b).

Commanders and instructors ability to distinguish between passive resistance, active resistance and attacks is compared and examined against types of resistance. Officers' wrongful as well as well-meaning engagements are considered in respect of whether these issues are incorporated in commanders' evaluations of means of restraint reports and instructors' demonstration (Griffin & Bernard, 2003). An analysis is made as to whether commanders consider O'Linn's (1992) burden principle (Bennell & Jones, 2005) and how they have determined practices and trends (Alpert & Smith, 1999) and contributed to abolishing of controversial regulation (GPU, 2001).

The flow of information from practical to theoretical and from theoretical to practical components in the PPT is examined. The lack of objective information is indicated and officers are not being taught the most efficient techniques for safe mastering of resistive and combating suspects (Kaminski and Martin, 2000). It is evaluated that physical division of the theoretical and practical components of the PPT influences commanders' insight in practical training (MNZ Policija, 2010). Finally, officers' solidarity and isolation in protecting wrongdoing is discussed (Newburn & Reiner, 2007).

Commanders' and instructors' corresponding interpretation of necessity and proportionality is assessed and linked with available information, alternatives and training before employing force (Alpert & Smith, 1994b). Perception of regular training participators (officers) is compared with irregular participators, where situational factors leading up to a use of force judgement is considered (Bennell and Jones, 2005).

3 METHOD

The research is based on the systematic approach. The aim of the research is to evaluate how police officers perceived theoretical and practical explanation/ demonstration of the use of force in the PPT. Commanders and instructors' role in the PPT is evaluated by police officers and how they contribute to the necessary and proportional use of force. The annual elaboration of the PPT program by the police administrators is considered. The research seeks to ascertain how the training environment, training topics and leadership styles influence use of force and how they are implemented in the PPT. Correlation between the prevailing training approach and officers understanding of applying force are subsequently analysed, as well as if alternatives, before employing force, are trained for sufficiently. Finally, it is evaluated whether the PPT takes into account the complex nature of encounters, considers cognitive causes, and if the risk of unnecessary injures is reduced, in a constantly changing and demanding policing environment.

On the basis of the Slovenian police service official annual published report, the most frequently used means of restraint are in the three police directorates – regions; Ljubljana, Maribor and Celje (MNZ GPU, 2011).

3.1 Questionnaires and data collection

Accordingly, 60 police officers from each police directorate have been requested to fill in questionnaires. The researcher visited each of the above three police regions and before obtaining official approval number 092-2/2011/82 (205-09) on 05.04.2011, from the Head of the General Police Director Office of the Slovenian Police. The regional police directorates were informed by The General Police Director Office about the research. This enabled the process to be carried out with the minimum of delay and without resistance. Furthermore, the researcher's Security Clearance (SC), issued by the Slovenian Ministry of the Internal Affairs, enabled access at the required levels. The police officers were visited during the PPT by the researcher and selected randomly on the basis of the training participation. Before filling in the questionnaires the officers were requested to read and sign consent forms. All 180 officers signed the consent forms and filled in the anonymous questionnaires which were saved by the researcher.

A quantitative method with structured questionnaires (assertions) was used for police officers, who have participated in the PPT in 2010. They were asked to evaluate the theoretical and the practical components of the PPT and to respectively to evaluate commanders and instructors contribution in the PPT. Accordingly, two questionnaires were elaborated upon, one in relation to commanders (Q1) and one in relation to instructors (Q2). The structure of the six assertions was the same in Q1 and Q2 and enabled theoretical/practical comparisons, except two assertions from Q1 which were evaluated individually. The structure of the assertions was formulated by the researcher and supervisor's comments were considered in order to ensure that the questions were as comprehensive as possible, with a view to making ensuring plausibility as well as utility. The officers have evaluated the assertions using the five points Lickert's scaling system. Besides the above assertions, the officers have answered four socio-demographic questions; years in service, gender, working positions and training participation, which were considered in the each assertion and elucidated theoretical/practical distinctions.

3.2 Tests used

All data was transferred and analyzed in the SPSS computer programme. Each assertion was individually tested using the Paired Samples Test, which indicates significant differences between commanders and instructors interpretations. The mean (*M*) and probability (p) by both commanders and instructors elucidated the distinctions.

Afterwards, for plausible statistical conclusions each of the socio-demographic variables (years in service, gender, working positions and training participation) were analyzed with the Tests of Within-Subjects Contrast. The test considered probability (p) and indicated significant differences between commanders and instructors interpretation and officers' years in service, gender, working positions and training participations and how these variables effects the interactions.

The exceptions are two assertions from Q1, which were not represented in Q2 and are individually tested with the analysis of the variances between groups (ANOVA). The ANOVA test enabled identification of significant differences between particular variable groups (years in service, gender, working positions and training participation) and how these variables influences the assertions.

RESULTS

The officers' evaluations highlight differences between commanders and instructors interpretation/demonstration of principles of necessity (*M* -1.77) and proportionality (*M* -1.70) when analyzing force used. Furthermore, officers in-

dicate pretty high distinction (*M* -1.27) between commanders and instructors differentiation of passive resistance, active resistance and attacks. The distinction (*M* -1.14) between commanders and instructors views on the usefulness of the PPT for necessary and proportional use of force in daily policing is significant. Finally, officers perceived open discussions about the use of force problems between commanders and instructors (*M* -.57) and the flow of theoretical/practical (*M* -.49) training information as less problematic.

Table 1: Paired Samples Test

No	ASSERTIONS	Most often answers for Commander	Most often answers for Instructor	Comm. M_1	Instr. M_2	Diff. Mean	*P*
1	I can openly discuss with the commander/instructor about problems related to the use of means of restraint in daily police practice	Agree 60/180 = 33.33 %	Strongly Agree 89/180 = 49.44 %	3.76	4.33	57	**.00**
2	Commander /Instructor evaluates our reports about the use of means of restraint, during theoretical part of the PPT, together with us and advices how to improve proportional use of means of restraint in daily practice	Neither Agree nor Disagree 50/180 = 27.77 %	Strongly Agree 80/180 = 44.44 %	2.59	4.30	**1.70**	**.00**
3	Commander/Instructor evaluates our reports about the use of means of restraint, during theoretical part of the PPT, together with us and advices how to improve argumentation in reports – why the use of means of restraint was necessary	Neither Agree nor Disagree 58/180 = 32.22%	Agree 79/180 = 43.88 %	2.49	4.27	**1.77**	**.00**
4	Commander/Instructor explanation about the use of means of restraint distinguishes between passive resistance, active resistance and attacks	Agree 56/180 = 31.11 %	Strongly Agree 93/180 = 51.66 %	3.14	4.27	**1.27**	**.00**
5	Commander /Instructor is informed about the actual techniques and the ways of use of means of restraint trained at the PPT	Neither Agree nor Disagree 49/180 = 27.22 %	Agree 57/180 = 31.66 %	3.15	3.64	49	**.00**
6	Commander/Instructor interpretation and advice are useful for necessary and proportional use of means of restraint in daily policing practice	Neither Agree nor Disagree 58/180 = 32.22 %	Strongly Agree 69/180 = 38.33 %	2.92	4.06	**1.14**	**.00**

Nevertheless, the above results do not consider social-demographic variables (years in service, gender, working positions, participation in the PPT) essential for plausible evaluation conclusions. They are considered in the next table and enable more credible and explicit proposals for improvement in PPT process in respect of training – use of force correlation.

Table 2: Tests of Within-Subject Contrasts (WSC) and ANOVA

No					
1	I can openly discuss with the commander/instructor about problems related to the use of means of restraint in daily police practice - WSC	p =.53	p =.10	p =.78	**p= .00**
2	Commander /Instructor evaluates our reports about the use of means of restraint, during theoretical part of the PPT, together with us and advices how to improve proportional use of means of restraint in daily practice - WSC	p =.18	p =.56	**p=.01**	**p=.01**
3	Commander is regular participator in the practical part of the PPT – ANOVA	**p = .03**	**p = .00**	**p = .00**	p =.11
4	Commander/Instructor evaluates our reports about the use of means of restraint, during theoretical part of the PPT, together with us and advices how to improve argumentation in reports – why the use of means of restraint was necessary – WSC	p =.25	p =.69	**p = .00**	p =.20
5	Commander/Instructor explanation about the use of means of restraint distinguishes between passive resistance, active resistance and attacks – WSC	p =.47	p =.71	**p=.05**	p =.14
6	Commander /Instructor is informed about the actual techniques and the ways of use of means of restraint trained at the PPT – WSC	p =.48	p =.09	p =.74	**p=.06**
7	Commander interpretation of principles of necessity and proportionality, about use of the means of restraint, corresponds with instructor - ANOVA	p =.80	**p = .03**	p =.36	**p= .04**
8	Commander/Instructor interpretation and advice are useful for necessary and proportional use of means of restraint in daily policing practice – WSC	p =.29	p =.10	p =.12	p =.24

4.1 Data Interpretation

There is a highly significant interaction between officers' open discussion with commanders and instructors, during the PPT, on one hand and participation in the training, on the other hand, as it is F=3.636; df = 5; p<.01. Participation in the PPT does influence this interaction. There is a highly significant interaction between commanders' evaluation of the use of means of restraint reports and advice on how to improve proportional use of means of restraint and instructors' analyses/demonstration of the proportional use of force, during the PPT, on one hand and officers' working positions on the other hand, as it is F=3.419; df = 4; p=.01. Working position does influence this interaction. The results from the analysis of variances ANOVA indicates significant statistical differences between years of service groups (F=2.916; df=3; p<.05) in relation to the commanders' regular participation in the practical component of the PPT. Accordingly, years in service do influence commanders' regular participation in the practical component of the PPT. The results from the analysis of variances ANOVA indicates

a highly significant statistical differences between officers' gender (F=12.763; df=1; p<.01) in relation to the commanders' regular participation in the practical component of the PPT. Gender does influence commanders' regular participation in the practical component of the PPT. The results from the analysis of variances ANOVA indicates a highly significant statistical differences between officers' working positions (F=3.627; df=4; p<.01) in relation to the commanders' regular participation in the practical component of the PPT. Working positions do influence commanders' regular participation in the practical component of the PPT. There is a highly significant interaction between commanders' evaluations of the use of means of restraint reports and advice on how to improve argumentation in the reports – why use of means of restraint was necessary and instructors' analyses/demonstration of necessary use of force, during the PPT, on one hand and officers' working positions on the other hand, as it is F=5.452; df = 4; p<.01. Working positions do influence this interaction. Commanders' and instructors' differentiation between passive resistance, active resistance and attacks, during the PPT, on one hand and officers' working positions on the other hand is statistical significant, as it is F= 2.406; df = 4; p=.05. Working positions do influence this interaction. There is an interaction between commanders' and instructors' mutual flow of theoretical/practical training information, during the PPT, on one hand and officers' participation in the training on the other hand, as it is p=.06, on the bound of the statistical significance. It can be concluded that training participation do influence this interaction. The results from the analysis of variances ANOVA indicates a significant statistical differences between officers' gender (F=4.702; df=1; p<.05) in relation to the commanders' and instructors' corresponding interpretation of principles of necessity and proportionality about the use of means of restraint. Gender does influence commanders' and instructors' corresponding interpretation of principles of necessity and proportionality about the use of means of restraint. The results from the analysis of variances ANOVA indicates a significant statistical differences between officers' training participations (F=2.285; df=5; p<.05) in relation to the commanders and instructors corresponding interpretation of principles of necessity and proportionality about the use of means of restraint. Officers' participations in the PPT do influence commanders' and instructors' corresponding interpretation of principles of necessity and proportionality about the use of means of restraint.

5 DISCUSION

It is argued that the participation of the officers in the PPT has a highly significant role and affects officer communication with instructors and commanders. However, commanders are perceived with some mistrust by the officers, unlike instructors who are perceived by the officers as one of them. It may be that commanders are perceived by the officers as supervisors with insufficient use of force

experience and are consequently less accepted by the officers (McKean, 2005). The officers are less willing to talk openly to commanders than with instructors, about use of force cases and problematic. Torrence's (1993) conclusions may play a role, where the PPT environment inhibits rather than encourages officers' openness, positive feelings and participation (Birzer, 2003). The officers' creativity is, because of the presumably prevailing traditional authoritarian approach (Engel, 2002), not fully expressed (Alpert and Smith, 1994a) and an inclination to the martial arts philosophy likely prevents more active involvement in the use of force analyses by officers (McKean 2005). It seems that the Slovenian administrators' capacity is not fully exploited and that room to encourage communication between officers and commanders exist (Phillips, 2010).

The lack of commanders' evaluation of the use of force reports and advice for improving proportional use of means of restraint in policing practice, in the PPT, is indicated by officers. It is significantly expressed by the patrol officers, who are likely more exposed to the use of force situations as well as being regular training participators. In the PPT regular patrol officers participation has a role, where they concluded differently as to what is reasonable (proportional) to resolve an encounter to other poorly trained officers (Alpert and Smith, 1994b). It seems that the regularly trained patrol officers lack commanders' advice on how far increments should go whilst the use force is still proportional (Terrill, 2005) and that commanders very rarely facilitated and elucidated officers use of force analysis in the PPT, in terms of causal-consequence relations. Consideration of adequate evidence documentation in the means of restraint reports is likely an exception rather than the rule (Krebl and Klarič, 2003). It is possible that Fyfe's (1989) conclusion that the patrol officers failed to take charge when it is clearly appropriate to do so may play a role (Terrill, 2005). On the other hand, the patrol officers are pretty satisfied with the instructors' analyses of means of restraint cases and the demonstrations of techniques enabling proportional use of force during the PPT. However, instructors' demonstration of techniques is too often perceived by police officers as self-evident, instead of being casually oriented. A constant repetition of self-defence techniques solely is no guarantee for proportional use of force. It is possible that very little room for evaluations and elucidations of Worden's (1995) officers' creation of use of force situations (Terrill, 2003) and Dror's cognitive causes exists in the PPT (Dror, 2007).

Significant dissatisfaction with commanders' regular participation in the practical component of the PPT by the patrol officers, female and male officers and different officers' years in service groups, send a clear message to the police administrators and should be seriously considered. As one of the patrol officers stated: *"Commanders should also participate in the practical component of the PPT because they do not really understand the use of force problems"*. It seems that the Slovenian police administrators and commanders are not aware and do not consider fully Druckman and Bjork's (1991) skills and knowledge maintenance (Bennell and Jones,

2005) and Alpert's *et al* (2006) and Morrison's (2006) timing gap, which can help facilitate constant refreshing and adapting to the changing rules, tactics and procedures, not only for officers but also for commanders (Lee *et al*, 2010). Furthermore, blurred rather than clear regulation in the annual PPT program, about commanders' participation/role in the practical component of the PPT, can represent an additional hindrance. Commanders instead of participating in the PPT mainly just enable and order officers to participate in the training (MNZ Policija, 2010). It is likely that in the Slovenian police service Alpert and Smith's (1994) conservative leadership style prevails over more progressive approaches and inhibits rather than encourages commanders to gain more information required for objective use of force reports evaluations (Aplert and Smith, 1999). Finally, it seem that the Slovenian police administrators and commanders are not fully aware about the added value of the practical component of the PPT, or the benefits for commanders authorized to use force and above all to command their subordinates to use force in circumstances when public peace and order is violated.

According to the patrol officers it is the principle of necessity, which is insufficiently considered in the PPT by the commanders. On the other hand, patrol officers perceived instructors' analyses of the use of force cases and techniques demonstration as adequate so as to enable them to respond with the necessary use of force. However, this does not mean that adequate learning strategies are implemented in the PPT. It seems that the accent is on Birzer's (2003) behaviourist approach, which is useful in situations where police officers need to learn new mechanistic skills e.g. defensive techniques. It is likely that in the PPT are officers too often mechanically trained by instructors based on the presumptions that use of means of restraint is allowed, instead of the more andragogicaly oriented implementation of Codish's (1996) interactive, experiential and participatory simulation exercises, and problem-solving activities (Birzer, 2003). It seems that mainly behavioural oriented PPT inhibits rather than enables the evolution and development of communication skills, important for all police – citizen interactions, where other (communication) alternatives to negotiate a peaceful outcome are not completely implemented (Rojek et al., 2010). It may be that Slovenian police administrators and instructors do not fully considered all critical frames in the PPT (Alpert & Smith, 1994b) and do not learn from the trainees' experience and provide an environment, which is more conducive to learning (Birzer, 2003). On the other hand, commanders' criteria for evaluation of means of restraint reports are likely subjective and vague, suffering from different interpretations (Terrill et al., 2003). It seems that Krebl's use of force methodology, incorporating causal – consequence relations, is not completely implemented in the PPT process (Krebl & Klarič, 2003) and that Hunt and Manning's (1991) conclusions, concerning officers' biased reporting are not fully considered by the Slovenian commanders (Alpert & Smith, 1999). As a result, use of force causes are not sufficiently elucidated and evaluated by the Slovenian commanders and

this may influences officers understanding of whether or not the magnitude of force used are in relation to its necessity (Alpert & Smith, 1994b).

The patrol police officers estimated that commanders' ability to distinguish between passive resistance, active resistance and attacks is insufficient compared with instructors. This may be particularly problematic when commanders evaluate officers' means of restraint reports, in terms of necessity and proportionality. It is likely that commanders do not indicate and implement a distinction between wrongfully and well-meaning in their very rare evaluations of the PPT course or adequately consider types of resistance (Griffin & Bernard, 2003). It seems that O'Linn's (1992) conclusion that the burden of the force decision made by police officers rests not only with them but with those who administrate, train and supervise (Bennell and Jones, 2005) is not fully considered by the Slovenian police service and room for improving the awareness of administrators and commanders exists. Accordingly, commanders training participation and evaluation of the use of force reports, in order to determine practices and trends, are less evident than they could be and likely do not contribute enough to the abolition of controversial regulations (GPU, 2001).

It seems that actual topics and conclusions from the theoretical component of the PPT are discussed in the practical component of the PPT with instructors, menwhile an opposite flow of information from practical to theoretical training is less evident. It is likely that in the Slovenian police service a lack of objective information exists as to whether police officers are being taught the most efficient techniques for safely mastering resistive and combating suspects (Kaminski & Martin, 2000) and that physical division on theoretical and practical training prevents rather than enable commanders' insight into the practical component of the PPT (MNZ Policija, 2010). This may be a precondition for Skolnick's internal solidarity and social isolation where frank information sharing from daily policing encounters between officers and supervisors is likely prevented in the Slovenian police service (Newburn & Reiner, 2007).

The officers who irregularly participated in the PPT perceived corresponding commanders' and instructors' interpretation of necessity and proportionality more problematic than officers who regularly participated in the training. Regular participation in the PPT, by the officers and commanders, can decrease the interpretation gap as well-trained police officers will understand situational factors leading up to a use of force judgement and act differently to untrained officers (Bennell and Jones, 2005). Nevertheless, it seems that commanders' exclusion from the PPT inhibits rather than enables the co-existence of theoretical and practical interpretations, which may confuse already complex encounter interactions and prevent officers from making necessary use of force decisions. Hence, the PPT likely does not offer enough information, and above all alternatives, to the officers before employing force, notably dangerous to the people (Alpert & Smith, 1994b).

6 CONCLUSION

It seems that Wasserman's (1982) structured policy to remove the need to make split-second decisions to use force is only partially implemented (Alpert & Smith, 1994a) and that the complex nature of police – civilian encounters is not fully considered in the PPT (McKean, 2005). Hence, the risk of unnecessary injuries is likely not sufficiently considered in the PPT course (Kaminski & Martin, 2000) where regulation rather than officers' perceptions of use of force situations has a strong role (Dror, 2007). Alternatives, before employing force, are likely trained for insufficiently. Thompson and Jenkins's (1993) verbal judo as a consistent set of interpersonal communication techniques which incorporated predetermined steps, responses that deflect insults, scripted phrases and gaining compliance through personal appeals could be promising if implemented in the PPT course (Johnson, 2004). However, more active involvement of commanders in the PPT process would be beneficial and can help in changing officers' perceptions about supervisors (McKean, 2005) and contribute to an adequate training environment, pinpointed by Torrence (1993), encouraging officers' openness, positive feelings and more active training participation (Birzer, 2003). It would be beneficial if the traditional authoritarian style could be changed in the facilitation, mentoring and coaching approaches (Engel, 2002) and increased officers' creativity fostered (Alpert & Smith, 1994a). It seems that the PPT program do not enable officers to gain greater understanding on how the chosen method of applying force results in subsequent behaviour (Terrill, 2003) and that room for more instruction as to when officers can and should use force exist (Klahm IV & Tillyer, 2010). As a result, the officers likely gain these skills in the field, rather than learning the appropriate applications of these skills under field-compatible conditions (Bennell & Jones, 2005).

If the Slovenian police organization really want to improve quality of the PPT and use force according to the principles of necessity and proportionality, then the influence of training on policing performance must be evaluated holistically, including police officers' and citizens' views, otherwise policing dynamics cannot be fully considered. Annual evaluation of the PPT program should not represent purely a measurement of whether training has achieved its set aims and objectives, with no link to improved performance (Gibson, 2009). It would be much more plausible if the PPT could be scientifically evaluated on the basis on the methodological quality standards, incorporating statistical conclusion validity, internal and external validity, construct and descriptive validity, instead of subjective evaluation based on experiences (Farrington, 2003).

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2.

CRIMINAL JUSTICE AND CRIMINOLOGY

COMPLIANCE WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS BY LAW AND JURISPRUDENCE IN ROMANIA

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ABSTRACT
Purpose:
The paper highlights the status of compliance of the Romanian legislation and jurisprudence with the European Convention on Human Rights in situations related to criminal charges.

Design/Methodology/Approach:
Considering the decisions of the European Court of Human Rights against Romania, the paper identifies situations where such decisions led to a change of relevant legislation or jurisprudence.

Findings:
In numerous situations legislation improved as a consequence of decisions of the European Court of Human Rights. Total duration of preventive arrest and short terms for revising the necessity of the measure, the possibility to complain in front of a court of law against the acts of the prosecutor, equality of parties in the criminal procedure, the right to representation or legal aid of the defendant, the necessity of giving reason to court decisions were some of the issues where cases like *Maszini vs. Romania (2000), Vasilescu vs. Romania (1998)* brought a change in the Romanian law or jurisprudence. New jurisprudence was created after the cause *Anghel vs. Romania (2007)* concerning the autonomous notion of "criminal charge". Other situations connected with criminal charges, where the protection of rights was improved referred to art. 8, art. 10 and art. 2 of ECHR.

Originality/Value:
Although studies have been made on particular decisions of the European Court of Human Rights, no general evaluation of the influence of the decisions of the European Court for Human Rights upon the evolution and the current status of Romanian legislation and jurisprudence, in the field of criminal law, was made.

Keywords: Romanian legislation, Romanian jurisprudence, criminal charge, protection of rights.

1 INTRODUCTION

Romania has ratified the European Convention on Human Rights (ECHR) by Law No. 30/1994. The law expresses a reservation regarding article no. 5 of ECHR, stating that this article will not prevent Romania of enforcing the dispositions of article no. 1 from the Decree no. 976 from October 23rd 1968 regulating the military disciplinary system, with the condition that the duration of the imprisonment will not exceed the period stipulated by legislative acts in force. The first article of the mentioned Decree stated that for breaching military discipline, provided by military regulations, military commanders or leaders can apply disciplinary sanctions with imprisonment up to 15 days. The reservation was consistent with article no. 23 paragraph 9 of the Constitution stating that "Penalties can be established or applied only in accordance with and on the grounds of the law" and the belief that military discipline imposes the need of sharp punishment, such as imprisonment.

Since adhering to ECHR, Romania has worked constantly to align its legislation and jurisprudence. The dispositions of article no. 20 of the Constitution adopted in 1991 show that constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.

The process included the withdrawal of the reservation. In 2003 the Constitution was revised and article 23, paragraph 13, regarding individual freedom, stated that "The freedom deprivation sanction can only be based on criminal grounds". This text made the disciplinary sanction of imprisonment unconstitutional and thus, by Law no. 345/2004 the reservation made to article no. 5 of ECHR was withdrawn. The change is consistent with the jurisprudence of the European Court of Human Rights (referred to as The Court) in the case *Engel vs. Netherlands (1976)*[1], stating that a disciplinary penalty or measure which on analysis would unquestionably be deemed a deprivation of liberty were it to be applied to a civilian may not possess this characteristic when imposed upon a serviceman, but, nevertheless, such penalty or measure does not escape the terms of article 5 when it takes the form of restrictions that clearly deviate from the normal conditions of life within the armed forces of the Contracting States. As, according to Decree no. 976/1968, the sanction of imprisonment was established by a superior and not a court, as article no. 5 paragraph 1 letter a) of ECHR requires, it was obvious that the regulation was not consistent with ECHR.

[1] All the decisions of the European Court of Human rights were retrieved from the site of the court http://www.echr.coe.int/ECHR/fr/Header/Case-Law/Decisions+and+judgments/HUDOC+database/

The dispositions of article no. 20 of the Constitution permit the national courts to set aside legal norms that are contrary to ECHR. But, if legislation is not modified in accordance to ECHR, there will be a state of uncertainty that could easily breach the protected rights with serious consequences in the field of criminal law. This is why the legislation in this field was constantly modified in order to comply with ECHR, while fewer changes were observed in the field of civil law where the dispositions of ECHR remained to be enforced by the courts.

Withdrawing the reservation shows the will of compliance with the Convention at the highest level. The article presents the evolution in Romanian jurisprudence and legislation in relation with the most important principles from the Convention and ECHR decisions.

2 PRINCIPLE OF LEGALITY

The principle of legality, comprising the legality of incrimination (*nullum crimen sine lege*) and the legality of the punishment (*nulla poena sine lege*) is well recognised in our days at a global level, valid not only in national law but in international law also (Van Schaack, 2010). In ECHR, the principle of the legality of incrimination (*nullum crimen sine lege*) is to be derived from article no. 7 regarding the more favourable law principle as stated by the jurisprudence of The Court (case *Achour vs. France, 2006).* In the Romanian legislation, the principle of the legality of incrimination was first mentioned explicitly in the Criminal Code adopted by Law no. 15/1968, in force today with multiple alterations. Article no. 2 from this code states that the law specifies what actions constitute crimes. In the previous Criminal Codes, adopted in 1864 and 1936, the principle of the legality of incrimination was deduced from the dispositions regarding the more favourable law principle, except for the period 1948-1956 when the principle of analogy in detriment of the defendant was permitted. After 1956 the Romanian doctrine was constant underlining the inadmissibility of such an analogy (Streteanu, 2008: 48-50). Nevertheless, after adhering to ECHR, a decision of the Romanian Supreme Court of Justice was given in breach of these principles. In 1996 two defendants were condemned by the Tribunal of Timiș County for taking bribe, the offences being committed in 1991. The defendants argued that, according to the legislation of the year 1991 only public servants, or persons employed by a state company, could commit the offence, but they were employed by a private bank. The legislation was only modified by Law no. 65/1992 that extended the offences committed by public servants according to the Criminal Code to persons employed in private companies, by modifying article no. 258 of the Criminal Code accordingly. The Court of Appeal Timișoara

upheld the sentence of the Tribunal, with express reference to the possibility of analogy. It mentioned that in the course of the transition period some gaps may occur in the legislation, leading to non-equitable solutions, so that the difficulties may be solved either by analogy or rational interpretation. As the purpose of the law is to punish the person that has professional obligations towards a legal person and breaks them, it may be considered that in the interval between 1989 and 1992 the offence of taking bribe is referring to the persons employed by private companies too. The Supreme Court of Justice upheld the decision of the Court of Appeal, making an analogy no upon the statute of the defendants but on the statute of the institution, considering that, as the bank where the defendants were employed was a company established with public capital, the conditions of the Criminal Code in force at the date the offences were committed were applicable to them. The defendants registered a complaint to The Court and a breach of article 7 of ECHR was found. The Court underlined that as The Romanian Supreme Court of Justice mentioned that it applied the law in force at the date the offences were committed, there was not a case of retroactivity of the law. The only analysis made was to see if the interpretation given to the law is an analogy. The Court concluded that no jurisprudence or doctrine, previous to the conviction of the defendants, assimilated the employees of a bank to a public servant, so the defendants could not foresee that their actions constitute an offense and that was a breach of the principle of legality. Also, as the Criminal Code was drawn in 1968, when there were only state enterprises, it could not refer, until the alterations made by Law no. 65/1992, to employees of a private company (case of *Dragotoniu and Militaru-Pidhorni vs. Romania, 2007*). We find the first statement of The Court surprising. If previous Romanian court decisions or doctrine would have stated the same conclusions as the sentence of the Tribunal or the decisions of the Court of Appeal and the Supreme Court of Justice (which in itself may constitute a precedent), it would still be an analogy forbidden by the jurisprudence of The Court, so a breach of the principle of legality protected by ECHR, as stated by The Court in the second statement of its decision in this case.

In order to strengthen the principle of legality, Law no. 177/2010 introduced a new reason for revising a court decision, namely if a decision of the Constitutional Court admitted an exception and the decision in case was founded on the disposition found in contradiction with the Constitution, or on other dispositions from the contested legal act that obviously cannot be dissociated from the ones that were the object of the Constitutional Court's decision (Micu, 2012: 167-168). Although it is generally recognised that a decision of the Constitutional Court may only produce effects for the future (*ex nunc*), in criminal law, maintaining a conviction founded on a legal text that is later on proved to be against the Constitution was considered to be against the principle of legality of the incrimination (*nullum crimen sine lege*).

Although the principle of legality was recognised in the Romanian criminal legislation since the first Criminal Code adopted in 1864, beginning with the decision in the case of *Dragotoniu and Militaru-Pidhorni* both the legislator and the courts paid a closer attention towards it.

3 RIGHT TO INDIVIDUAL FREEDOM

In order to comply with the dispositions of article no. 5 of ECHR, the provisions of the Romanian Criminal Procedure Code, enforced by Law no. 29/1968, regarding the preventive arrest were constantly modified. First, Law no. 281/2003 modified the dispositions of article no. 146, that stated that the preventive arrest is ordered by the public prosecutor by an ordinance, limiting the duration of the measure taken by the public prosecutor to 3 days and obliging him to submit the case to the competent court, within a period of 24 hours from the moment of issuing the preventive arrest warrant, giving reasoned proposal for preventive arrest. The court may decide the prevention arrest for a longer period of time, according to the law. This alteration of the law was consistent with the decision of The Court in the case *Pantea vs. Romania (2003).* The Court found that the authority ordering the arrest ("the magistrate") should fulfill certain conditions that would guarantee the defendant against arbitrary and unjustified deprivation of liberty. Previously, in the case *Vasilescu vs. Romania, 1998,* The Court has already found that in Romania public prosecutors are not independent authorities, as they are members of the Procurator-General's department, subordinated firstly to the Procurator-General and then to the Minister of Justice. Article 146 was modified again by Law no. 356/2006, when the power of taking the prevention measure of arrest was given strictly in the competence of the court. The Law no. 429/2003 for revising the Constitution, modified article no. 23 introducing dispositions for limiting the duration of the preventive arrest: "During the criminal proceedings, the preventive custody may only be ordered for 30 days at the most and extended for 30 days at the most each, without the overall length exceeding a reasonable term, and no longer than 180 days." The provision was also included in the Criminal Procedure Law (article 149 modified by the Government Emergency Ordinance no. 109/2003). Jurisprudence also contributed to the protection of the right to individual freedom. The Constitutional Court of Romania decided on the 1st of July 1997[2] that the text of article 149 paragraph 3 of the Criminal Procedure Code, stating that the preventive arrest ordered by the court during trial lasts until a definitive decision is pronounced, unless the court is revoking it, is not constitutional. Article 23, paragraph 4 of the Consti-

[2] Decision no. 279/1997 of the Romanian Constitutional Court, in the Official Journal, Part I, no. 50 from February 4th 1998.

tution stated at the time that arrest shall be made for a maximum period of thirty days and the period of arrest may be extended only by a decision of the court. As there may be no difference between the arrest ordered during criminal procedure or during trial, article 149 paragraph 3 was unconstitutional. Unfortunately, the Romanian Supreme Court of Justice, in a decision pronounced on 7th of May 1999, considered that the decisions of the Constitutional Court are not mandatory for courts but for the Parliament who has the responsibility of changing the law. Until the changing is made, the courts should apply the law as it is in force. This jurisprudence brought Romania a conviction from The Court (case of *Varga vs. Romania*, *2008*). Through Decision no. VII/2006 pronounced in an appeal on points of law by the Romanian High Court of Cassation and Justice[3] was stated that failure of the court to verify the legality of the preventive arrest measure, before the legal period of the detention was over, has to result in lawful termination of the detention and immediate release. The reasoning of the decision referred to article 5 paragraph 3 of ECHR, regarding the right of an arrested person to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to be entitled to trial within a reasonable time. The High Court of Cassation and Justices underlined that these dispositions of ECHR resulted in the obligation of the courts, introduced in the Criminal Procedure Code in articles 160^{b} and 160^{h} by the Government Emergency Ordinance no. 109/2003, to periodically verify whether the preventive arrest measure of the defendant is still holding grounds. Neglecting to perform this obligation is breaching the rights of the defendant and may only result in the termination of the detention and immediate release. Later on, Law no. 356/2006 completed article 140 of the Criminal Procedure Code in the same way, taking on the idea of the highest court.

The current legal dispositions predict short durations for re-evaluation of the preventive arrest measure taken by the court in different stages of the criminal procedure, between 10 and 30 days and in exceptional situations 60 days during trial (Udroiu, 2011: 166). The appeal against the court order has to be lodged in 24 hours from the time the court order was pronounced or from the time the person receives it. According to article 140^{3} paragraph (5) of the Criminal procedure code the file has to be sent to the appeal court within 24 hours and the appeal has to be judged within 48 hours in the case the accused and within 3 days in the case of the defendant. Also, The High Court of Cassation and Justice decided in an appeal on points of law that the appeal lodged against the court order that admitted or rejected the proposal for taking or extending the preventive arrest should be always judged before the duration of the discussed measure ends[4]. Both the current form of the article 140^{3} of the Criminal Code,

[3] The Supreme Court of Romania has changed its name into the High Court of Cassation and Justice in 2003 according to the law revising the Constitution.

[4] Decision no. 25/2008 of the United Sections of the High Court of Cassation and Justice.

introduced by Law no. 281/2003 and modified by Law no. 356/2006, and the decision of the High Court of Cassation and Justice considered a complaint introduced against Romania at The Court in 2001. Romania was condemned as a consequence of this complaint in the case *R□ducu vs. Romania (2009)*, The Court finding that although the right to obtain in a short term a court judgement on the legality of detention has to be appreciated in each case according to the individual circumstances, and a term of 30 days is not in itself excessive, the legal terms also have to be taken into account. A period of 10 days passed before the appeal lodged by the defendant reached the tribunal competent to judge it, although according to the legal dispositions in force at the time (article 140[1] paragraph 2 from the Criminal procedure code) the file should have been sent within a period of 24 hours. The Court decided that the excuse of the authorities regarding no activity of the postal service cannot cover the passivity of the prosecutors[5] for 10 days and thus the procedure was not completed speedily, as article 5 paragraph (4) of ECHR demands.

It is considered that the court order that rejects the request for revocation, replacement or termination of the preventive arrest cannot be appealed (Siserman, 2007: 307). Decision XII/2005 of the High Court of Cassation and Justice given on an appeal on the point of law, shows that in agreement with the jurisprudence of the European Court of Human Rights, article 5 paragraph (4) of ECHR does not guarantee a review of the court orders deciding preventive arrest, but guarantees a degree of jurisdiction, represented by an independent court, for taking, extending or maintaining the measure of preventive arrest.

Accommodating to the dispositions of the Convention regarding individual freedom was a bit difficult, as the vision of the communist regime did not give much consideration to this right. Nevertheless, a continuous change following the ECHR jurisprudence is to be noticed.

4 RIGHT TO A FAIR TRIAL

Article 6 of ECHR is regarded as a sum of procedural rights as well as a substantial multi-component right with a specific sanction: the international liability of member state (Bârsan, 2005: 394).

The right to an independent and impartial tribunal was discussed in relation with military courts. In the case *Maszini vs. Romania (2006),* The Court found a violation of article 6 paragraph (1) of ECHR, because the objectivity and impartiality of the military magistrates are questionable due to subordination and

[5] According to the legal dispositions of the time, the preventive arrest was ordered by a prosecutor's ordinance. The appeal against it was judged by the competent court.

dependence to the Ministry of Defense regarding military career, wages and integration within the military hierarchy. Thus, judging a civilian by a military court, only because the offence was committed together with military personnel, violates his right to be judged by an impartial and independent court, the right to a fair trial.

Already in 2004, by Law no. 304/2004 regarding the organisation of magistracy, the military judges were given the same status and subordination in judicial aspects as civil judges. Both categories were subordinated to the Superior Council of Magistracy. By Law no. 356/2006, article 35 of the Criminal procedure law was modified, giving into the competence of the civil courts the cases where there was a situation of connection or indivisibility and, considering the quality of the defendants, the competence would belong to different courts. But, the same law had transitory dispositions stating that in cases where criminal procedures or trials have begun before it entered into force, where civilians were investigated or judged before military courts along with army personnel, these courts will remain competent. Although the military courts were now to be considered independent and impartial courts, the Constitutional Court[6] found the transitory disposition as being in contradiction with the constitutional right of equality before law and appreciated that beginning with the enforcement of Law no. 356/2006 the competence to judge cases where prosecution or trial of civilians has begun in front of military courts, these courts should immediately decline their competence in favor of civil courts.

Also, Law 356/2006 introduced a new reason for incompatibility of the judge (article 48 paragraph (1) letter a), namely the situation where he has judged upon ordering or extending the preventive arrest during prosecution. Starting from this legal text, The High Court of Cassation and Justice has decided, in appeals on a point of law, upon two problems that received opposite solutions in jurisprudence. In Decision no. VII/2007 it was decided that a judge who has solved the appeal against a court order ordering prevention arrest or extension of the prevention arrest is not incompatible to judge another appeal against another court order of the same nature in the same cause. That is because in the appeal the court only states upon the quashing reasons presented, and not upon the proposal for preventive arrest. In our opinion the solution of the High Court of Cassation and Justice tried to cover a situation where, if more orders of extension of the preventive arrest are taken and contested, some courts will run out of judges to solve the appeals. In reality, the court solving the appeal may be in the position to judge if there is enough reason for taking or extending the measure, just like the first instance court, and so, a second time will be tempted to cover its first judgment. Decision no. 22/2008 of the High Court of Cassation and Justice stated upon the compatibility of the judge who ordered the preventive

[6] Decision no. 610/2007 of the Romanian Constitutional Court, in the Official Journal, Part I, no. 474 from July 16th 2007.

arrest during prosecution to decide upon the extension of the measure. Based on the fact that the judge is deciding within the same stage of the procedure (the prosecution), it was decided that there is no incompatibility.

The right of defense is protected in the Romanian legislation by several dispositions. Article 6 of the Criminal procedure code guarantees the right to defense of the defendant and other participants in the criminal procedure. The same article, in paragraph (3) mentions the duty of the judiciary authorities to inform the accused or the defendant, immediately and before being questioned, about the offence he is being investigated and its legal classification and to enable him to prepare and exercise his defense. The right of defense is also guaranteed by article 24 of the Romanian Constitution. Romanian courts were preoccupied about the quality of the defense in the criminal trial. After Law no. 51/1995 regarding the statute of lawyers came into force, several organisations were founded as parallel structures of the legal bars. Unfortunately, due to the confusion produced by court decisions authorising legal activities to be performed by commercial companies or foundations, many persons avoided the scrutiny of an examination necessary in order to enter a legally organised bar. Those persons presented themselves as lawyers in a "legally constituted bar". Although exercising a profession without a legal right was considered a crime, none of these persons was condemned, as they exercised an activity authorised by a court. Another reason given by prosecutors was the uncertainty of the law, although in 2004 the Law 51/1995 was modified and explicitly stated that any person who did not enter a bar from the National Union of Bars constituted according to this law, and exercises the profession of lawyer, is committing a crime. The criminal courts were the first to begin rejecting the right of such "unlawful" lawyers to assist defendants, but it was only in 2007, by Decision no. XXVII/2007, when an appeal on the point of law was solved by the High Court of Cassation and Justice with the conclusion that the defense of an accused or defendant by a person who has not achieved the status of lawyer according to Law no. 51/1995 equals with the absence of defense.

Jurisprudence decided that if legal dispositions are changed during trial and legal aid becomes mandatory, the court has to implement immediately the new dispositions. Thus, the decision of the first instance court was found to be null if, before pronouncing the sentence, the law changed demanding that in the case of the crime committed legal aid should be provided for the defendant and the court failed to obey this new rule (Siserman, 2007: 156-157).

According to article 294, paragraph (3) of the Criminal procedure code, when the defendant is detained, the judge has to ensure the right to defense *ex officio* and the possibility of the defendant to meet his defender. In the same case of the defendant being detained, according to article 314 of the Criminal procedure code, the trial may proceed only in the presence of the defendant, his presence

in court being mandatory. Such provisions are consistent with the jurisprudence of The Court, as in the case *Stanford vs. United Kingdom (1994)*, was found that ECHR guarantees an effective participation of the defendant to the trial, not only to be present, but to be able to follow the whole procedure.

The High Court of Cassation and Justice decided that the defendant's right of defense was breached if he could not, or did not want to sign his statement and this was not mentioned by the court, the consequence being the nullity of the court's decision. The solution was criticised on the grounds that absolute nullities are explicitly mentioned by law and article 197 paragraph (2) only sanctions the violation of dispositions regarding the right of the accused or of the defendant to be assisted by a lawyer, when such is the case; on the other hand, transforming a case of relative nullity (that has to be invoked inside a prescription period together with the proof of the injury produced by the violation) into a case of absolute nullity, that would automatically lead to the nullity of the court decision, is giving way to an excessive formalism with the result of sanctioning the courts and the injured parties and giving unnecessary satisfaction to the defendant (Siserman, 2007: 254-255).

Among the grounds for appeal is the situation when prosecution or trial took place without legal defense. Although the presence of the detained defendant is also mandatory when the appeal is judged, Decision no. X/2009 of the High Court of Cassation and Justice stated that the examination in principle of the admissibility of an extraordinary appeal, without summoning the parties, does not breach the right to a fair trial protected by article 6 of ECHR. Article 174 paragraph (1) from the Criminal procedure code, as it was modified by Law 281/2003, states that, during trial, all parties may be represented, except for the situations when the presence of the accused or the defendant is mandatory. Regarding this article, the jurisprudence of the Constitutional Court of Romania was changed by Decision no. 145/2000[7] saying that dispositions denying the right of representation to the defendant during the first instance court are not a guarantee, but on the contrary, an unduly restriction of his right to defense. The presence of the defendant may be necessary both in the general interest of justice and of the defendant who can directly exercise his right of defense, but, if the defendant is not able to be present in court, denying him the right to legal representation is a breach of the right of defense (Micu, 2012: 105).

An extraordinary appeal (appeal for annulment) may be lodged not only by the defendant, but by any of the parties, if they were unable to be present in court and notify the court about this circumstance. Jurisprudence also found that, in case the party managed to notify the court about the impossibility of being present, and the court judged the appeal without giving regard to the notification,

[7] Decision no. 145/2000 of the Constitutional Court of Romania, published in the Official Journal, Part I, no. 665 from December 16th 2000.

the appeal for annulment was admissible, under the condition the notification is proved (Micu, 2012: 160).

Several changes were made during the years in the Criminal procedure code concerning the rights of the lawyers of different parties. The focus only upon the defendant's right to defense, article 172 paragraph (1) stating the lawyer of the defendant may attend any prosecution act, file applications and complaints, while the lawyer of the injured party could only attend certain acts specified by law, brought Romania a conviction in The Court. In the case *Forum Maritime S.A. vs. Romania (2007)* The Court showed that the restrictions suffered by the plaintiff, injured party in a criminal trial – nor the plaintiff nor his lawyer having access to the evidences given by the defendant and the prosecutor's office, such as documents and affidavits of the witnesses and of the defendants - show the unfairness of the procedure of the complaint accompanied by the formation of a civil party, the dispositions of article 6 paragraph (1) being breached. The complaint of Forum Maritime S.A. was lodged in 2000. Before it was solved, the text of paragraph (1) of article 173 was modified by Law no. 281/2003, stating that the lawyer of the injured party and of the civil responsible party has the right to observe any prosecution act, file applications and complaints. So, the rights of the lawyers of all parties were equal in respect wit observing the prosecution acts, filing applications and complaints. Afterwards, Law no. 356/2006 modified again the text of paragraph (1) of article 173: the lawyers of the injured party and of the civil responsible party had the right to observe any prosecution act implying hearing or the presence of the party they were representing. The right to file applications and complains was maintained. On the other hand, paragraph (3) of the same article extended the right of the same parties to legal aid, appointed by the competent authority, in case it was considered necessary, throughout the whole criminal procedure, not only in court. Confronted with the constitutionality of the new form of paragraph (1) of article 173, the Constitutional Court of Romania admitted that the expression "implying hearing or the presence of the party he is representing" are contrary to article 24 of the Romanian Constitution protecting the right of defense[8]. As a consequence the text of paragraph (1) of article 173 remained the one established by Law 281/2003.

In the same area, of creating equilibrium between the rights of different parties, was a decision of the Constitutional Court regarding the reasons for the second appeal. Article 385^9 of the Criminal procedure code, regarding the reasons for a second appeal was completed by law no. 141/1996 with point 17^1: "when the decision is contrary to the law or when in the decision the law has been wrongly applied". This point was abrogated by Law no. 356/2006. The Constitutional Court found that abrogating point 17^1 of article 385^9 was unconstitutional, because all other points of the same article refer to different breaches of the

[8] Decision of the Romanian Constitutional Court no. 1086/2007, in the Official Journal, Part I, no. 866 from December 18th 2007.

criminal law (points 12-17, 19 and 20) and there is no legal text referring to a breach of civil law, thus depriving the injured party of the possibility of lodging a second appeal if the law has been violated when determining his civil rights.

The right to a tribunal, equal for all parties of the prosecution procedure, also led to changes in the Criminal procedure code. Initially, the Criminal procedure code provided the right of the accused, or of the defendant, to contest the prosecutor's acts, but the competent authority to solve the complaint was a superior prosecutor, according to article 278. Many of the accused or defendants contested the prosecutor's acts to the court based on the 21st article from the Romanian Constitution (entered into force in 2001) that consecrated free access to justice. Court decisions were contradictory, some of the courts considered themselves to be competent, on grounds of the constitutional text, other rejected the complaints as not being admissible. In 1996 the Supreme Court of Justice decided that a court that has considered itself competent has exceeded its judicial powers and thus, that particular decisions are null (Sima, 2002). One year later, the Constitutional Court admitted an exception of non–constitutionality and in Decision no. 486/1997[9] stated that article 278 is non-constitutional only if it forbids the person who is unhappy with the prosecutor's act to apply to the court; the grounds to apply to court was the 21st article of the Constitution with direct effect. No reference was made in the decision of the Constitutional Court to ECHR. Again, the Supreme Court of Justice stated in its decisions that free access to justice does not mean necessarily access to courts, because only the law decides upon competence and remedies, as well as exceptional situations. This conclusion was based on the Decision no. 486/1997 of the Constitutional Court of Romania that also stated that the legislator has exclusive competence to establish the rules of the trial and the court may decide only in the conditions of the law. A period of totally different solutions in court followed, not only regarding the admissibility of the complaints against prosecutor's acts, but also regarding competence and the possible solution (Sima, 2002).

The fact that in the case *Vasilescu vs. Romania (1998)* the Court found that a prosecutor lacks independence and impartiality due to the hierarchic subordination, lead finally to the dispositions of article 278[1] introduced in the Criminal procedure code by dispositions of Law no. 281/2003 that entered into force in January 1st 2004, allowing all parties to complain to court against the acts of the prosecutor.

The Court found in several decisions that among the guarantees of a fair trial, was the obligation of courts to motivate their decisions, detailing some ideas about the extent of motivation (Bârsan, 2005)[10]. Following the decision in the

[9] Decision of the Romanian Constitutional Court no. 486/1997, in the Official Journal, Part I, no. 105 from March 6th 1998.

[10] Cases *Ruiz Torija vs. Spain (1994)*, *Hiro Balani vs. Spain (1994)*, *Helle vs. Finland (1997)* referred to by the author.

case *Albina vs. Romania (2000)* that condemned Romania for breaching the right to a fair trial by failure to state reason in a court decision, jurisprudence constantly adopted the solution of quashing the decision with referring the file to the court that failed to state reason. In the Civil procedure code, although failure to give reason to a court decision is a motive for appeal, the dispositions of article 312 paragraph (3) remained unchanged in the sense that failure to give reason in a court decision will be a motive for the court of appeal to quash the decision and judge the cause itself. But jurisprudence is now constant, courts set aside the dispositions of the Civil procedure code on the grounds of ECHR and unreasoned decisions are quashed and the file is referred to the court that failed to state reason, making sure the number of jurisdictions provided by law is ensured. In the Criminal procedure code dispositions were modified. Law 356/2005 modified article 385^{15} paragraph (1) point 2, letter c) so that if the court decision is quashed for absence of reason, the file has to be referred to the court that issued it.

The autonomous concept of „criminal charge" set by the Court in cases like *Özturk vs. Turkey (1999)* and *Engel vs. Netherlans (1976)* begun to be absorbed by Romanian jurisprudence after the case *Anghel vs. Romania (2007)*, where The Court found that a contraventional (administrative) sanction applied to the plaintiff met the criteria of a criminal charge and so the burden of proof should have been consistent with the presumption of innocence. Complaints against contraventional sanctions are judged in the Romanian legal system in front of civil courts and in accordance with civil procedure, obliging the plaintiff to prove all allegations. Also, the contraventional procedure does not provide guarantees similar to the ones for criminal procedure. But, after the case of *Anghel vs. Romania*, national courts considered that contravention reports have to be annulled, for example, if the offence is not described by law (*nullum crimen sine lege*), if the fine was less than the minimum stated by law (*nulla poena sine lege*), if for the same offence an administrative sanction based on the disposition of the Criminal code and a contraventional fine were applied (*non bis in idem*), if the offender - a foreigner in Romania - was given to sign the contraventional report although he did not understand the language (Cristuș, 2010). All decisions considered that principles of criminal law, protected by ECHR, are to be applied, according to The Court's concept of criminal charge. As to the presumption of innocence, the courts admit sometimes that the situation of the plaintiff is one of a criminal charge, but frequently consider that the social value protected by the contraventional law is more important and article 6 of ECHR is not breached if the plaintiff is given the opportunity to prove the contraventional report wrong in front of a court of law. At the same time, some courts found that the criminal law principle of *in dubio pro reo* applies in some situations. Romanian doctrine, on the other hand, considers that most of the times contraventional sanctions meet the criteria of a criminal charge (one of the reasons being the origin of contravention in the Criminal code,

the punitive character of the sanction and the severity of most sanctions) and that Government Ordinance no. 2/2001, regulating the legal regime of the contravention, leads to violations of the rights protected by ECHR (Popescu, 2002).

According to article 189 from the Civil procedure code, witnesses related to the plaintiff, up to the 3rd degree, are not admissible, unlike the criminal procedure where they are. This limitation makes even more difficult for the plaintiff the bear burden of proof, sometimes even impossible, violating his right to defence, but in these situations, no court has set aside the Civil procedure code dispositions on account of ECHR.

The right to a fair trial is a very complex one, but it can be noticed that both the legislator and the courts are making continuous efforts to respond to its requirements.

5 OTHER RIGHTS PROTECTED BY ECHR

The case *Sabou & Pârcălab vs. Romania (2004)* brought a conviction against Romania for violating article 8 of ECHR, because article 65 of the Criminal code imposed termination of parental rights as an additional punishment for all punishments with imprisonment and life imprisonment. The Court stated that ECHR does not allow the termination *ab initio* of all rights mentioned in article 64 of the Criminal code, as an additional punishment, but only of the ones necessary in relation with the nature, category and seriousness of the criminal offence. The automatic termination of parental rights in case of a criminal offence that was not in any way directed against the defendant's children, and represents no danger for them, is a violation of the right to private life protected by article 8 of ECHR. Article 65 of the Criminal code was modified by Law no. 278/2006, paragraph (3) mentioning the situations where the offence may be considered to endanger the defendant's children, when termination of parental rights may be an additional punishment.

Recently, in the case *Crăiniceanu & Frumuşanu vs. Romania (2012),* The Court found a violation of article 2 of ECHR, regarding the right to life. The Court noted that, in 1991, shortly after the riots in Bucharest that led to the death of the relatives of the plaintiffs, an investigation had been opened as a matter of course. However, 20 years later, and despite the public's interest in knowing who had been responsible for the deaths of Aurica Crăiniceanu and Andrei Frumuşanu during the quelling of the riots of 25 September 1991, the investigation had still not been completed and the criminal proceedings were still pending. Being a complex situation, with political implications, several different offences committed by different factors may have resulted in the death of the two persons. The excessive duration of the investigation led to the prescription of some. This is

why, in order to ensure a better protection of the right to life, after this decision the dispositions of article 121 of the Criminal Code were modified, the offence of murder being now indefeasible.

Regarding freedom of expression, protected by article 10 of ECHR, an interesting dispute aroused around the offences of insult and defamation. In the conception of the criminal code, dignity is associated with honour and reputation, as the criminal offences described in the chapter "Crimes against dignity" are insult and defamation (articles 205-207). Law No. 278/2006 abrogated both articles 205, incriminating the insult, and 206, incriminating defamation. The abrogating dispositions of Law no. 278/2006 were the object of constitutional control when an exception was raised in 2007. The Constitutional Court of Romania considered that the acts incriminated as insult and defamation, by articles 205 and 206 of the criminal code, bring serious harm to human personality, to the dignity, honour and reputation of the victims. If such conduct would not be discouraged by the means of criminal law, there would be a *de facto* reaction of the victims and endless conflicts, resulting in the impossibility of normal social cohabitation, assuming respect for every member of the society and just appreciation of everyone's reputation. The above mentioned values (honour and reputation) were considered by the Constitutional Court as constitutional rights of high value, according to the 1st article, paragraph (3) of the Romanian Constitution: "Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed." In accordance with the opinion of various authors concerning the relation between social values and legal sanctions (Fodor, 2003 and Buzdugan, 2011), the Constitutional Court appreciated that abrogating the articles from the criminal code that protected those values, created a legal vacuum, as no other legal protection is offered to the same values. Following to Decision no. 62/2007[11] of the Constitutional Court, articles 205 and 206 were reinstated into force. Mentioning honour and reputation as protected values by the new civil code was considered sufficient protection of those values by the Romanian legislator and as a result, insult and defamation are no longer incriminated by the new criminal code (Law No. 286/2009, that has not yet entered into force).

In our opinion, the situation created by the new civil and criminal codes is not different by the situation existing when articles 205 and 206 of the criminal code now into force were abrogated. If a value is mentioned in the Constitution, any threat against such a value may be stopped and any damage may be repaired by means specific to civil law. So, by abrogation of articles 205 and 206 from the criminal code there was no void in the legislation, as long as the value was

[11] Decision No. 62/2007 of the Constitutional Court of Romania, published in the Official Journal of Romania No. 104 from February 12th 2007.

protected by Constitution. At the time articles 205 and 206 from the criminal code were abrogated, Decree No. 31/1954 regarding the natural and legal persons was in force, article 54 stating that any person who's right to honour or reputation was injured was entitled to ask the court to order the termination of the damaging actions, the publication of the court order or other facts that would rehabilitate the injury. The same dispositions are now to be found in the new civil code (Law. No. 287/2009), Chapter II of Book one. The truth is, in the absence of a press law, journalists easily faced prison in violation of article 10 of ECHR, as The Court found in the case of *Dalban vs. Romania (1999)*, so the solution was disincrimination of insult and defamation as criminal offences.

Applying criminal law may result in connections with different rights protected by the Convention and Romania aims to respect those rights and modify its legislation in accordance with ECHR jurisprudence.

6 CONCLUSION

Not long before adhering to the European Convention on Human Rights Romania was a state with a communist regime for about half a century. Even during the communist regime criminal legislation recognised some of the main principles established in democratic societies, such as the principle of legality. Other rights, such as the right to a fair trial or the right to individual freedom were less protected by law and often breached in practice. After adhering to the Convention, Romania proved constant desire to align to its requirements, especially in the field of criminal law, recognising the importance of the rights protected. It was not an easy task, as the content of the principles were not always correctly understood. But the legislator watched closely the complaints registered against Romania to ECHR in the field of criminal law and most of the times changed the legal norms even before the Court passed a judgement, and other times in accordance to the judgements passed against Romania. The national courts followed the principles of ECHR decisions, and even if for a brief period of time the national jurisprudence was not uniform concerning certain issues, in the end the right solutions prevailed either by the way of an appeal on a point of law, or through the intervention of Parliament that changed the law.

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CORPORATE CRIME IN ROMANIA: THEORETICAL AND PRACTICAL ISSUES

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ABSTRACT
Purpose:
The purpose of the paper is to present the main regulations governing the criminal liability of corporations, as existing in the Romanian Criminal Code since 2006, as well as they are provided in the new Criminal Code which should enter into force in 2013.

Design/Methods/Approach:
The study focuses on the presentation of the legal provisions regulating the criminal liability of corporations in Romania, as well as on the case law in this field.

Findings:
The criminal liability of corporations is now consecrated in Romanian for more than five years. However, there is some reticence in engaging the liability of such persons who are not "in the flesh". Police officers, prosecutors, lawyers, judges and other practitioners deal with several problems regarding the application of the legal provisions regulating this field. Nevertheless, in the past two years, it can be noticed an emergence of the files where the problem of the criminal liability of corporations is raised. Therefore, it is important to analyze both the documents drawn up during criminal investigations against corporations and the court decisions where criminal charges against such entities were carried out and to see how the relevant legal provisions were applied in these cases. For instance, it can be noticed that the most common crimes perpetrated by corporations are related to employment issues, copyright, corruption, illegal drug trafficking, tax avoidance etc.

Originality/Value:
As, until recently, the criminal liability of corporations was not consecrated in Romania, there is no much legal literature in this area. There is also no inventory of the decisions given against such entities by the Romanian criminal courts.

Keywords: criminal liability, corporations, sanctions, Romania, precautionary measures, interim measures

1 INTRODUCTION

Together with other relevant topics, the criminal liability of corporations has become one of the most debated issues of the 20th and 21st centuries. The debate became especially significant following the 1990s, when all countries have faced an alarming number of environmental, antitrust, fraud, food and drug, false statements, worker death, bribery, obstruction of justice, and financial crimes involving corporations (Pop, 2006).

In Romania, the criminal liability of corporations (re)gained its place n in 2006, when Law no. 278/2006 for the modification of the Criminal Code and of other laws[1] was adopted. The criminal liability of corporations lives its first years of life in the Romanian legislation. It is thus understandable that this topic raises numerous problems. The first court decisions against corporations were given in 2009 and the practitioners do not seem totally convinced by the utility of this institution, continuously named "recent". Subsequently, the few cases where the criminal liability of corporation was raised ended with questionable solutions. The new Criminal Code adopted in 2009 brings however some changes in this field. This is why a detailed presentation of the legal provisions related to this issue is particularly important.

When speaking about the criminal liability of corporations, it must be analyzed, in a first phase, the conditions required by the law in order to engage such liability, also taking into account the foreign regulations which inspired them, if case. Of course, the beginning of a criminal trial against a corporation creates both criminal and criminal procedural consequences, which shall be studied in the second part of the paper.

2 THE CONDITIONS REQUIRED BY THE LAW FOR THE CRIMINAL LIABILITY OF CORPORATIONS

The criminal liability of corporations is regulated in art. 19[1] of the Romanian Criminal Code, named „*The Conditions of the Criminal Liability of Corporations*", being found in Chapter I („*General Provisions*") of Title II (*"Crime"*) of the General Part of the Code, immediately after the provisions related to the general characteristics of the crime. According to this article, the corporations[2], excepting the State, the public authorities and the public institutions which develop activities which cannot form the object of the private field are criminally liable for the

[1] Published in the Official Journal no. 601 of July 2006. The provisions regarding the criminal liability of corporations entered into force 90 days after this date.

[2] For the purpose of this paper, we used the term "corporation" in order to define the collective entities which are liable under the Romanian Criminal Code. As explained below, only the legal persons (which acquired legal personality) can be held responsible, with the exceptions provided by the law.

crimes committed when performing the object of activity, to their benefit or on their behalf. The Code also states that the criminal liability of corporations does not exclude the criminal liability of the natural person who contributed, in any manner, to the perpetration of the same offence.

Other provisions related to the criminal liability of corporations are contained in the articles related to the attempt [art. 21 par. (2) of the Criminal Code], the concurrence of crimes (art. 40^1 of the Criminal Code), the recurrence (art. 40^2 of the Criminal Code), the intermediate plurality (art. 40 of the Criminal Code), in Title III of the General Part regarding the sanctions, as well as in the provisions related to the status of limitation of the criminal liability (art. 122 last par. of the Criminal Code) and of the execution of the sanction [art. 126 par. (2), (3) of the Criminal Code], rehabilitation [art. 123 par. (2) of the Criminal Code]. Some relevant provisions are also contained in the Special Part of the Criminal Code [art. 271 par. (5) regarding the non-observance of court decisions and art. 285^1 regarding the sanctioning of the corporations for forgery crimes]. Last, as it is normal, the procedural provisions regarding the criminal liability of corporations can be found in the Criminal Procedure Code (Chapter I^1 of Title IV – *„Special Procedures"*- of the Special Part).

All these provisions create the legal framework of the criminal liability of corporations. In order to determine the conditions of the criminal liability of such persons, there are three questions which need to be answered: (1) Who (which corporation) can be criminally liable? (2) For what crimes? and (3) How can we relate those two – the corporation potentially liable and the crimes which can be perpetrated by such entities?

In order to answer these questions, we need to analyze the aspects related to the application field of the criminal liability of corporations, from both material and personal perspective (subchapter 2.1), as well as the ones related to the lien between the crime committed and the corporation (subchapter 2.2).

2.1 The domain of the criminal liability of corporations

One of the most important issues raised by the criminal liability of corporations is related to its domain. The doctrine, either Romanian or foreign (from the states which inspired the Romanian legislator) affirms that the criminal liability of such entities is general (Le Gunehec & Desportes, 2006). This means that it is applicable to all legal persons and to all crimes, provided by the Criminal Code or by special laws. Some explanations must however be made in both cases. Therefore, the domain of the criminal liability of corporations include its analysis from both personal perspective, through the examination of the legal persons which can be subjects of the criminal liability, and material one, through the delimitation of the crimes which can be perpetrated by a legal person.

Regarding the legal persons subject to criminal liability, art. 19[1] of the Romanian Criminal Code clearly states that the legal persons, except from the State, the public authorities and the public institutions which develop activities which cannot form the object of the private field are criminally liable. This rule requires however various discussions regarding, on one side, the private legal persons and, on the other side, the public legal persons.

With respect to the private legal persons, as a principle, all such entities can be liable under the Romanian Criminal Code, including the commercial companies[3]. This category of legal persons is mainly concerned by art. 19[1] of the Romanian Criminal Code, taking into account that they are frequently met in the economic landscape and the most capable of perpetrating crimes through their activities. The text also concerns syndicates, economic interests groups, European economic interest groups, owners associations, political parties, associations, foundations etc. The Criminal Code concerns the lucrative legal persons, as well as the ones without lucrative purpose. Of course, the logical interpretation of the provisions regarding the criminal liability of corporations leads to the conclusion that this institution was mainly created for the lucrative legal persons (Le Gunehec & Desportes, 2006)[4]. It is beyond doubt, taking into account their scope (to obtain turnover), those kinds of persons are the most exposed to criminal liability. From the analysis of the first three decisions against legal persons, it can be noticed that only limited liability companies were sentenced.

Some other issues are raised with respect to the determination of the exact concept of "legal persons". The chronological limits of the criminal liability of corporations are thus to be analyzed (Urbain-Parleani, 1993), meaning the determination of the criminal liability of the entities lacking legal personality, the entities which are being created, transformed or dissolved.

Regarding the first issue, it must be noticed that, according to the Romanian Criminal Code into force, only the legal persons are liable. *Per a contrario,* the entities which lack legal personality do not fall under the provisions of the criminal law. This solution is grounded on the idea that a person who does not have identity or legal existence cannot be sentenced and that, anyway, such sentencing would not have any interest, because the said entity does not have rights or a patrimony (Le Gunehec & Desportes, 2006). Moreover, the doctrine showed that the limitation of the criminal liability of corporations to the entities having legal personality represents a source of legal security, which would be damaged if such entities would be criminally liable (Desportes, 2001). Thus, it would be difficult to establish who could represent such entities in a criminal trial and the

[3] For instance, in France, in the projects of the Criminal Code of 1978 and 1983, only private legal persons were concerned by the provisions which regulated the criminal liability of corporations.

[4] In France, out of 97 decisions against corporations, given in the first four years after the consecration of their criminal liability, 60 were given against commercial companies - limited liability companies or stock companies (Ducouloux-Favard, 1998).

enforcement of sanctions would be hard to conceive with respect to the principle of the personal character of the criminal liability (Streteanu & Chiriță, 2007).

In accordance with this principle, no prosecutions were carried out against person which lack legal personality, as it would be difficult to establish who could represent such entities in a criminal trial and the enforcement of sanctions would be hard to conceive with respect to the principle of the personal character of the criminal liability (Streteanu & Chiriță, 2007).

A second problem which was raised regarding the criminal liability of private corporations is related to the moment when such liability can be held against them, knowing that there is always an amount of time between the moment when the by-laws of the company are signed and until the date when the person is registered according to the law. In the absence of any case law in this field, the doctrine stated that no criminal liability of such entities could be admitted. Such idea would raise various problems, especially regarding the sanctions applicable to these entities. Moreover, it must not be forgotten that the principle of legality must always be observed: as long as the Criminal Code clearly states that only the legal persons are liable, no collective entity could be responsible before that moment.

What is the solution with respect to the criminal liability of a corporation when such person is being transformed, taking into account the fact that, in such situation, the loss of legal personality normally becomes an obstacle to the liability? (Segonds, 2009).

According to the Romania law, the transformation of corporations can be made through merger or demerger. The merger is made through the acquisition of a legal person from another legal person or through the consolidation of more legal persons in order to create a new legal person, while the demerger is made by the split of the entire patrimony of a legal person between other existent legal persons or who are thus being created.

The Romanian Criminal Code does not state on this issue, but the doctrine generally accepts the possibility of engaging the criminal liability of corporations for offences perpetrated before the transformation, based on the continuity of the legal person (Streteanu & Chiriță, 2007). This solution is expressly provided by the new Criminal Code adopted through Law no. 286/2009[5]. Thus, according to art. 151 par. (1) of the new Code, named "*The effects of the merger and the demerger of the legal person*", in case of the loss of the legal personality through consolidation, acquisition or demerger, after the perpetration of the crime, the criminal liability and its consequences shall be suffered by the legal person created through consolidation, the person which acquired the initial one or the persons created through demerging.

[5] Published in the Official Journal no. 510 of July 24, 2009. The date of the entering into force shall be provided through the Law for the application of the Code.

The foundation of this solution is related to the effects of the transformation of the legal persons, which suppose the transmission of the patrimony. This idea allows the practical enforcement of the sanctions against the entity which acquired the patrimony of the person which committed the crime. Of course, one could state on the breach of the personal character of the criminal liability. Also, some problems related to equity or opportunity can be raised: it is justifiable to dissolve a newly created person for crimes committed before this moment? The case law shall respond to these problems.

There is still no case law against corporations which perpetrated offences before the finalization of their registration procedure or during the transformation phase. There is however a criminal trial where a corporation is being judged through its liquidator, as it deals the insolvency procedure. It is therefore confirmed, although the Criminal Code is silent in this matter, that the corporation is criminally liable during the insolvency procedure, taking into account the fact that it does not lack legal personality.

The "death" of a corporation raises as much problems as its birth and life. It is known that the disappearance of a legal person determines a liquidation period, when the legal person keeps its civil capacity, meaning also its legal personality. Although the Criminal Code is silent in this matter, it is generally accepted that the corporation is criminally liable during this time, taking into account the fact that it does not lack legal personality.

While it can be observed that there is no exception to the criminal liability of private legal persons, the situation is different with respect to public legal persons. The Romanian Code provides for two absolute exceptions, concerning the State and the public authorities, and an exception which requires various discussions, regarding the public institutions which develop activities which cannot form the object of the private field.

The criminal liability of the State is expressly excluded by art. 19^1 par. (1) of the Criminal Code. The same exception exists in all the laws or projects of criminal codes which accepted the criminal liability of corporations. The reasons of this exception are related to the principle of sovereignty and of the separation of powers (Picard, 1997). Another argument links the State to its role regarding the criminal sanctions: the State has the monopoly of the right to punish; as a consequence, the State cannot punish itself (Balaban, 2002; Mitrache, Filipas & Bulai, 2009). The same arguments are used in order to justify the exclusion of the public authorities from the criminal liability.

With respect to the public institutions, their criminal liability is excluded only if they develop an activity which cannot form the object of the private field. Such solution is yet a subject of criticism. Normally, in the legislations of the States which provide the same exception, only the legal persons which committed the

crime while performing an activity which cannot form the object of the public domain are excluded. The contrary solution, existing in the Romanian Criminal Code, allows the immunity of a public institution whenever it performs at least one prerogative which cannot form the object of the private field. Or, the majority of public institutions are in this situation. This conclusion leads to problems with respect to the constitutional principle of equality. Hence, the Romanian National Bank cannot be held liable for a criminal offence, but any other commercial bank shall see its criminal liability engaged for the same crime. The new Criminal Code correctly settles this matter, excepting from criminal liability only the legal persons which committed the crime while performing an activity which cannot form the object of the public domain.

Until now, there is only one public institution subject to criminal prosecutions, i.e. a public hospital which is being prosecuted for manslaughter of six babies following a fire caused by a short circuit. The file is currently being judged by Bucuresti District 6 Court.

The domain of the criminal liability of corporations also includes the determination of the crimes which can be committed by moral persons. The Criminal Code into force, unlike Law no. 301/2004[6], provides for a general liability, meaning that corporations can be held liable for all crimes provided by the Criminal Code or by special laws.

The justification of the special liability, provided by Law no. 301/2004 and other foreign laws is related on the crimes which could be attributed to corporations. It was mentioned that such entity cannot commit crimes such as rape, incest, bigamy, desertion etc. However, it must be noticed that all these crime can be perpetrated by corporations, as instigator or accomplice. It is therefore almost impossible to identify a crime which can totally exclude the implication of a legal person from its perpetration (Ilie, 2009). A corporation can be thus sentenced for being accomplice to rape when it allows natural persons to enter its headquarters on this purpose or for helping natural persons committing bigamy, by furnishing forged papers (Streteanu & Chiriță, 2007).

The criminal decisions against corporations given so far engaged their liability for crimes related to copyright[7], accidental injuries and breaches of the labor

[6] Law no. 278/2006 is not the first law on the criminal liability of the legal person. Some precationnary measures against corporations were provided by the Criminal Code in 1937. Also, Law no. 299/2004 on criminal liability of legal persons for crimes of forgery of currency or other values (published in the Official Journal no. 593 of July 1, 2004) came into force in 2004, but could not be applied in the absence of appropriate procedural provisions. Also Law no. 301/2004 on the Criminal Code (published in the Official Journal no.575/2004) provided for the criminal liability of corporations, but it never came into force and was repealed by Law no. 286/2009.

[7] See Sibiu Tribunal, criminal decision no. 105/2009 (Jurma, 2010); Sibiu Tribunal, criminal decision no. 126/2009, unpublished.

law[8], fraud, tax dodging[9]. Also, there are currently criminal prosecutions against corporations for illicit drug trafficking, tax dodging, money laundering, manslaughter, bribery, forgery, using or presenting forged documents which have as a result obtaining European funds and other crimes provided by special laws. Such conclusion confirms the idea that the criminal liability of corporation was recognized especially for those type of crimes, as they are most likely to be perpetrated by such entities.

2.2 The lien between the corporation and the crime committed

The answer of the third question requires the research of the lien between the corporations criminally liable and the crime committed. In order to answer this question, we must first determine which are the natural persons who can engage the criminal liability of corporation, as it is widely accepted that the criminal liability of corporations cannot be conceived in the absence of the intervention of a natural person. Second, the constitutive content of the crime committed by a legal person must be analyzed, through the examination of the material element and of the subjective element.

Law no. 301/2004 which was meant to introduce for the first time the criminal liability of corporations in the Romanian law provided that corporations are liable for crimes committed by their organs or representatives. We can found here the indirect model of criminal liability of corporations. The model of this provision was art. 121-2 of the French Criminal Code. The notion of "representative" was wider than that of "organ," and includes other persons such as the temporary administrators, liquidators, and special agents. Therefore, the acts of other members or subordinate employees cannot engage the criminal liability of corporations even when the acts are committed in the benefit of the corporations.

Law no. 278/2006 did not keep this rule, providing for a direct criminal liability of corporation. This means that the liability can be engaged by any natural person who is sufficiently related to the legal person (administrator, executive director, accountant, employee, representative etc.).

The criminal liability of corporations cannot be however engaged by any person related to these entities, as the law requires for other conditions. Thus, there are three criteria pursuant to which a legal person may be charged with an offence, namely the perpetration of the offence when performing the object of activity, the perpetration of the offence to the benefit of the legal person or the perpetration of the offence on behalf of the legal person.

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8 See Iasi District court, criminal decision of March 31st, 2010 (Ilie, 2010).

9 See Ploiesti Court of Appeals, criminal decision of February 2011, unpublished (Ilie, 2011)

The perpetration of the offence when performing the object of activity means that the offence must closely connected to the performance of the object of activity of the legal person. Such offences are related to the general policy of the company or to the activities it performs (offences related to the work safety, competition, environment protection).

The perpetration of the offence to the benefit of the legal person refers to those offences that fall outside the activities related to the performance o the object of activity, but considered to result in a benefit for the legal person. The benefit may take the form of a profit or of the avoidance of a loss.

The perpetration of the offence on behalf of the legal person refers to those crimes perpetrated within the process of organizing the activity and operation of the legal person without directly connected to its object of activity (Streteanu & Chiriță, 2007) .

It must also be stated that, according to the Criminal Code, the criminal liability of the legal person does not exonerate the criminal liability of the natural person who contributed, in any manner, to the perpetration of the same offence.

One of the arguments which discouraged the criminal liability of corporations was related to their deed, their specific *mens rea*; it was shown that the corporations do not have their own will. However, it must be admitted that, although we cannot find the psychical processes specific to natural persons, the legal persons have their own will, expressed through their capacity to assume contractual obligations or through their tort or contraventional liability.

In the Romanian law, the criminal liability of a legal person represents a direct liability; which means that the infringement must be researched from the part of the company. In this respect, the Romanian Criminal Code expressly provides that a legal person may be held liable under the criminal law where the deed has been perpetrated by means of the infringement provided by the criminal law". Therefore, the offence may be the consequence of either a decision made deliberately by the legal person or of the negligence from its part, negligence which may consist of a faulty organization, insufficient safety measures of unreasonable budgetary restrictions that provided the circumstances for the perpetration of the offence. In respect of the offences perpetrated by an agent or by an attorney in fact, it is required that the company had been aware of his/her intention to perpetrate such offences or had encouraged such actions (Lex Mundi, 2011).

3 THE CONSEQUENCES OF A CRIMINAL TRIAL AGAINST CORPORATIONS

Whenever a criminal trial begins against a corporation, there are two sorts of consequences, which could be triggered. The first category refers to the criminal consequences and determines the analysis of the criminal sanctions applicable to corporations. The Romanian Criminal Code provides three types of sanctions that may be inflicted on a corporation: a main penalty, some complementary penalties and safety measures (subchaper 3.1). The second category of consequences, which a criminal trial determines, relates to the provisions of the Criminal Procedure Code. When the criminal liability of corporations was set forth in the Romanian Criminal Code, the legislator also modified the Criminal Procedure Code, by introducing a special chapter in this respect (subchapter 3.2).

3.1 The criminal sanctions applicable to corporations

As a preliminary statement, it must be mentioned that the term "sanction" includes both penalties (criminal sanctions pronounced as a consequence of the sentencing of the corporation) and safety measures (such measures can be inflicted against any person which committed illicit acts provided by the criminal law, and not crimes, in order to avoid an emergency condition and to prevent other illicit acts).

With respect to the penalties, which can be applied to corporations, it must be mentioned that there are only two categories of such sanctions: a main penalty and complementary penalties.

The single main sentence, which may be inflicted on the commercial companies, is the fine. The criminal fine, which may be inflicted on the commercial companies, is between the common limits RON 2,500 and RON 2,000,000 (approximately euros 545 – euros 435.000). The fine is calculated taking into account the penalty provided by the law for the natural person. Thus, in the cases in which, for an offence perpetrated by a natural person, the law provides a maximum penalty of 10 years' imprisonment or a fine, the special minimum of the fine inflicted on a legal person is of RON 5,000 and the special maximum of the fine is of RON 600,000. In the cases in which, for an offence perpetrated by a natural person, the law provides the life imprisonment or the penalty of more than 10 years' imprisonment, the special minimum of the fine for a legal person is of RON 10,000 and the special maximum of the fine is of RON 900,000.

It can be noticed that those limits are lower than the common ones (RON 2,500 – RON 2,000,000). Those common limits can be touched however by means of the mitigating or aggravating circumstances (such as concurrence of crimes or recurrence).

Up to now, the fines applied to corporations were of RON 20,000 (for crimes regarding copyright), RON 12,000 (for accidental injuries), RON 10.000 (for breaches of the labor law), RON 15,000 (for fraud) and RON 6,000 (for tax dodging). It can be therefore noticed that the judges tend to apply the fines towards the minimum provided by the law. This could represent a solid argument in favor of the idea that the criminal liability of corporation is not meant to be a reason for ruining the activity of corporations, but mostly a way to prevent serious breaches of the law taking into account the preventive role of punishments.

The complementary penalties can be applied together with the fine, whenever the judge consider necessary. They are however mandatory whenever the law provides as such (for example, in case of forgery). The service of the complementary penalties shall commence to run from the date on which the conviction sentence remains final. The complementary penalties are as follows: the legal person's winding-up; the suspension of the legal person's activity for a period of 3 months to one year or the suspension of one of the activities performed by the legal person, in respect of which the offence was perpetrated, for a period of 3 months to 3 years; the closing down of certain working points of the legal person for a period of 3 months to 3 years; the prohibition to take part in any tender procedure for a period of 1 to 3 years; the posting or dissemination of the conviction decision (Ilie, 2008; Lascu, 2007).

The initial decisions given by the Romanian courts against corporations did not provide for any complementary sanction. The further decisions however provided for the posting or dissemination of the conviction decision as well as for the winding-up of a corporation (for fraud and tax dodging)[10]. It is interesting to notice that, when the decision was given (by the first court, by the Court of Appeals and by the High Court), the insolvency procedure was already opened against the corporation and, until the cause was re-judged by the Court of Appeals and the decision remained definitive, the corporation had been already radiated following a civil decision.

In this context, it must be mentioned that the new Criminal Code adopted by Law no. 286/2009 introduces a new complementary penalty which can be imposed on a legal person: the placement under judicial surveillance. This penalty determines the appointment of an administrator or a representative who shall supervise, for a period of 1 to 3 years, the performance of the activity that triggered the perpetration of the crime (Jurma, 2010).

The Criminal Code provides for various safety measures, which can be taken whenever an illicit act has been perpetrated. However, there is only one safety measure, which can be applied to corporations: the seizure of the assets.

[10] See Ploiesti Court of Appeals, criminal decision of February 2011, unpublished.

In order to apply this measure, the seized goods shall meet one of the following conditions: (a) such goods are obtained by means of the perpetration of a deed provided by the criminal law; (b) such goods have been used, in any manner, for the perpetration of an offence, in case they belong to the perpetrator, or, in case they belong to another person, such person was aware of the purpose for which they have been used. This measure may not be ordered in respect of the offences perpetrated by means of the press; (c) such goods have been produced and adjusted with a view to perpetrating an offence, if they have been used for the said perpetration and if they belong to the perpetrator. In case such goods belong to another person, the seizure is ordered provided that their production and adjustment has been performed by the owner himself/herself or by the perpetrator and with the full awareness of the owner; (d) such goods have been offered with a view to cause the perpetration of an offence or to reward the perpetrator; (e) such goods have been acquired by perpetrating a deed provided by the criminal law, if they are not returned to the aggrieved person and if they do not serve as a remedy for such person; (f) it is prohibited by the law to own such goods.

3.2 The procedural provisions relevant to criminal trials against corporations

The Criminal Procedure Code, in art. 479, states that its provisions are also applicable to offences perpetrated by legal persons, being amended by the special provisions contained in the Chapter referred to the enforcement of the criminal liability of corporations.

A first problem related to a criminal trial against a corporation is related to the person who can represent the legal person, especially that mostly the representative of the corporation is also the person who perpetrated the offence. The Criminal Procedure Code distinguishes between two situations. First, if solely the legal person is held liable, it shall be represented for the fulfillment of the procedural steps by its legal representatives. Second, if for the same deed or related deeds, the criminal proceedings have been initiated against the legal representative of the legal person as well, the latter shall appoint an attorney-in-fact to represent it. In the event that the legal person fails to appoint an attorney-in-fact, such appointment shall be made by the body conducting the criminal proceedings or by the court, from among the legal practitioners in the field of insolvency procedures.

In the file where a Romanian corporation was sentenced to the winding-up, the administrator of the said corporation was also prosecuted for the same facts. For this reason, the corporation was represented in the criminal trial by the sister of the administrator, which is at least questionable from the point of view of the observation of the principles which govern the representation of corporations during the criminal trial.

Another important mention concerns the interim measures, which can be applied to corporations. In this respect, the Criminal Procedure Code provides that during the criminal trial, either the judge or the court may order, for grounded reasons in order to ensure the good and proper development of the criminal trial, one or more of the following measures: the suspension of the legal person's winding-up or liquidation procedure; the suspension of the legal person's merger, division or reduction of the share capital; the prohibition of any specific patrimonial operations that may entail the significant reduction of the patrimonial assets or the legal person's insolvency; the prohibition to execute certain legal instruments, established by the legal body; the prohibition to perform activities of the same nature as those underway or as those that occurred when the offence was perpetrated (Costin, 2010).

The Criminal Procedure Code also provides for the possibility to take precautionary measures against a corporation (the distraint and the garnishment). These precautionary measures may be undertaken with a view to ensuring the special seizure, the remedy of the damage caused by the offence, as well for securing the service of the sentence represented by a fine.

There is not much case law on the criminal procedural provisions regarding corporations. It is however important to mention that, in one court decision given in 2010, it was established that, based on art. 200 and 202 par. (1) of the Criminal Procedure Code, whenever the prosecutor is informed through a criminal complaint on the perpetration of offences by a natural person who is also a representative of a legal person, the prosecutor must decide with respect to both persons. On the contrary, the prosecutor's decision is subject to suppression, the prosecutor being compelled to also perform investigations on the corporation[11].

4 CONCLUSIONS

All the aspects presented herein are meant to underline the main issues regarding the criminal liability of corporations in Romania. Thus, the Criminal Code provides for the criminal liability of all corporations, either public or private, excepting the State, the public authorities and the public institutions, which develop activities which cannot form the object of the private field. Such corporations are liable for any type of crime provided by the Criminal Code or by special laws, as authors, instigators or accomplices. In order to engage the criminal liability of a corporation, the offence must have been committed when performing the object of activity, to their benefit or on their behalf. The Code also states that the criminal liability of corporations does not exclude the criminal liability of the natural person who contributed, in any manner, to the perpetration of the same

[11] See Iasi Court of Appeal, criminal decision no. 69 of January 2010 (Ilie, 2010).

offence. Following a criminal trial, a corporation can be sentenced to a main penalty (the fine), together with complementary penalties. There is also a safety measure (the seizure of the corporation's assets), which can be taken against a corporation, as well as interim measures and precautionary measures.

The implications of these outcomes can be already seen in the few court decisions which raised the problem of the criminal liability of corporations. Thus, the criminal decisions against corporations given so far concerned only limited liability companies and engaged their liability for crimes related to copyright, accidental injuries and breaches of the labor law. The companies were convicted together with their administrator and the only penalty inflicted was the fine.

All these aspects show that there is still a long way until this institution shall be fully understood and applied. Other than the issues raised by this study, there are many other topics for discussion, such as the consideration of the turnover as a criterion for the individualization of the sanctions applicable to corporations (Jurma, 2010), the criminal liability of foreign corporations or the introduction of new criminal penalties.

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CRIMINAL PROCEEDINGS OF JUVENILES IN SELECTED EUROPEAN UNION COUNTRIES

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ABSTRACT

Purpose:
This paper examines the criminal proceedings of juveniles in selected countries of EU (central and eastern Europe) to point out the differences and similarities which can be useful in criminal cooperation between states. The purpose of the paper will be to find out whether these legal orders comply with the EU law in particular in the field of harmonization and reciprocal recognition and whether they include a specialized regulation of juveniles.

Design/methodology/approach:
critical analysis of theoretical grounds of legal regulations and partial comparison with selected foreign legal regulations.

Findings:
Explaining of the diversity of legal regulations of juveniles in selected countries of EU, their strengths and weaknesses. Thanks to such finding, it will be possible to propose de lege ferenda suggestions of possible harmonization of criminal law of juveniles.

Research limitations/implications:
Given that the data were not drawn from a study specifically focused on the perceived benefits of education or experience, the dependent measures could be improved.

Originality/value:
There are not many researches about juveniles towards the cooperation in criminal matters; usually the research focus just on adult's offenders. In this aspect is the paper original.

Keywords: criminal procedure, juveniles, the limits of criminal liability, the right of defense, Lisbon treaty

1 INTRODUCTION

This paper is a part of the project research which began last year and next year it should finish. So these results are just the partly results from this project concerning the answers about limits of criminal liability, suitability of special procedure for juveniles and the possibilities of having a defence lawyer from the beginning of operations in criminal proceedings. These issues should lead to the other questions concerning the problematic of juvenile justice procedure which will be solved next year and it is connected with the possibilities of harmonisation of criminal law in Europe not only for adults, but as well for juveniles and in some aspects for children who are not criminal liable.

The questions which have arisen now are these. Is it possible to have a special legal regulation for juveniles? Why is it good for them? Do we need special acts concerning the area of youth? Is it possible to harmonize the minimum age of criminal liability in European countries? Do juveniles need a defence lawyer from the beginning of the procedure or just for the court hearing?

This paper tries to answer these questions in connection with possible cooperation in criminal matters in cases of juveniles and give some suggestions.

2 THE SPECIAL LEGAL REGULATION FOR CHILDREN IN THE INTERNATIONAL DOCUMENTS

Firstly I would like to mention the international documents dealing with children. An important standard for the protection of children is the Geneva Declaration of Rights of the Child, adopted in 1924, which firstly defined the basic rights of the child. Then the Declaration of the Rights of the Child from 1959 (under whose influence was in the Czech Republic adopted the Law on the Family in 1963). In 1989, it was the UN General Assembly which adopted the Convention on the Rights of the Child, one of the most important rules governing the status of children bound not only for the Czech Republic. Significant position in terms of child protection in the context of the juvenile justice have also Standard Minimum Rules for Administration of Juvenile Justice (the Beijing Rules, the UN resolution 40/33 of 29 11th 1985) of the UN further in preventing youth crime (the Riyadh rules, the UN resolution 45/112 of 14 December 1990) and the United Nations Rules for the protection of Juveniles Deprived of their Liberty (UN VIII. Congress, Havana, UN Resolution 45/113 of 14 December 1990). These international documents were adopted by the European states as a framework of the overall concept of criminal policy of juvenile and from them should depend on a solution when the child not criminal liable commits a criminal act. International Convention lay down many elements to protect minors from the

protection of their personal data, through a special treatment restriction of personal freedom to the basic principles of preservation of human honor, dignity and the prohibition of torture.

After these treaties and documents many states have created a special system for juveniles. Among the first progressive states which separately codified criminal juvenile justice were the Netherlands (1921), Denmark (1922), Germany (1923), Sweden (1924), Spain (1925), Italy (1926), France (1927), Austria (1928) and Czechoslovakia (1930).

3 SPECIAL LEGAL SYSTEMS FOR JUVENILES

The beginnings of a separate youth justice system not only in the Czech Republic, but in the world, can be dated back to the turn of the nineteenth and twentieth centuries. In the First Republic of Czechoslovakia youth issues was dealt by the Law Act No. 48/1931 Coll., called "Youth Justice Act". The criminal juvenile justice in Czechoslovakia these days was very progressive and modern standard, which corresponded to the trends in developed European countries. This law was unfortunately abolished in the fifties without any replacement by the Act no. 86/1950 Coll. This situation in the Czech Republic remained until 2004, when Act no. 218/2003 Coll. called "Juvenile Justice Act", came into effect on 1 January 2004. Then we can say that Czech Republic again reached the level of the developed countries with a separate system of juvenile justice.

There are two basic models approaches at the youth criminality. The first is the judicial model based on the idea that the offender has freely decided to commit a crime, and is therefore in place for him to bear responsibility. At the same time, there is an emphasis on proper discussion of crime in criminal proceedings. Second is the socio-guardianship model, which is primarily aimed at the welfare of the child. It assumes that youth crime is influenced by social, economic and psychological factors, the penalty solves nothing and issues of youth, which may threaten their successful development is the need to analyze and "treat" regardless of whether the individual was convicted of crime or not (Kuchta et al., 2005: 266)

The aim of the special juvenile act is the appropriate action to deter the juvenile from committing repeated crimes, to ensure its inclusion in society and restore disturbed social relations (compare § 3 of Juvenile Justice Act). In terms of criminal policy as expressed in the Juvenile Justice Act the concept of restorative justice, which corresponds to the current international trends in the approach to juvenile delinquency.

Also the aims of the special laws for young people are that the methods of positive action to achieve a better correction of the offender from the youth,

its inclusion in everyday life and reducing juvenile delinquency, by dealing with them differently than normal (adult) offenders and suitable and adequate storage measures, which included the impact on the offender to self-correct harmful effect which caused his unlawful behavior.

Tackling youth crime resources of criminal justice and the treatment of juvenile offenders is certainly not a new phenomenon. Already in the mid-nineteenth century the experts of advanced countries began to deal with these problems. Until then, however, the children and youth who have committed an offense tends to be equated as adult offenders, and were treated with them as well, such as in the America, the children were equated in terms of adult sentences for crimes they committed when they were for each offense very severely punished, even by death penalty. Now it is possible in the cases of really serious crimes.

The basis of a specific approach to delinquent youth activities is the recognition that the immature children cannot be treated the same as adults. They should be seen as yet irresponsible, developing juveniles. It is necessary to take into account the stage of development in which they are located. Special treatment permits to use this flexibly, in contrast to the general rules.

Treating juveniles who have committed a criminal offense (or misdemeanor) it is necessary in order to act upon them preemptively, and so, to refrain them from committing criminal activities, receive adequate social background and could also be applied socially. At the same time, there should be other activities that lead young people to their reintegration into society and correct the conflicting condition associated with the offense. However, it is necessary to motivate the behavior of the offender and give him an opportunity to influence change of his attitude and avoid him committing further crimes. What is needed above all professional is help and guidance. Addressing the current situation of young and professional guidance to life without conflict should be the core function of staff who works in the criminal proceedings for the juvenile. Most experts agree that the development of young people is not yet completed and that it is possible to influence other alternatives that will lead to correct them more than by repressive means. Furthermore, it is clear that the classical methods of criminal procedure do not lead properly to the objectives to be achieved in proceedings against juveniles. It is therefore necessary to have a different system of criminal proceedings in matters committed by a juvenile.

Within the EU, we can see three approaches:

- States which have specific legislation and the special juvenile law, which is different from the general law for adults.
- States which address the issue of young people in the general laws, but with a special type of control, which provides for exceptions in proceedings relating to juveniles and deviations from punishment.

- The approach where there would be no special treatment in matters of delinquency of juveniles, does not perhaps even longer exists because the commission provides the minimum standards for children, and thus juveniles.

In general, it seems to me that the existence of specific legislation is appropriate, as a special law allows fully reflection of the peculiarities of youth and exceptions to the general rules. On the other hand, if the state has the at least the derogations in juvenile cases and the different approaches for juveniles, this solution is better than none.

The other thing I think is useful for special regulation of juveniles is the interest in creating conditions for healthy social and psychological development of juveniles. Among states there are preferred strategies and programmes that focus on the fact that the perpetrator himself realized what he had done, and took upon himself the responsibility for the consequences of his act, for example, trying to compensate for his atonement and injury victims. These strategies include the concept of restorative justice. The restorative justice focuses on the harm done rather than the broken rules. Show equal concern and commitment to those harmed and to those responsible for the harm, involving both in the process of justice. Restorative justice works toward the restoration of those harmed, empowering them and responding to their needs as they see them and support those responsible for causing harm, encouraging them to understand, accept and carry out their obligation to repair the harm and make amends. For offenders is this approach which takes responsibility for his action and it is much appreciated. It works more educative than mere formal impersonal sentencing to penal sanction (compare http://www.restorativejusticescotland.org.uk/html/restorative_justice.html cited 10.10.2012).

If I have to conclude with the first answer, I will state, that special legal regulation for juveniles is needed, because it is necessary to focus on the child or adolescent as a person in need of assistance, not on the act that brought him or her before the court. The proceedings should be informal, with much discretion left to the juvenile court judge. The judge has to act in the best interests of the child. Juvenile court proceedings should be closed to the public and juvenile records should remain confidential so as not to interfere with the child's or adolescent's ability to be rehabilitated and reintegrated into society (http://www.nap.edu/openbook.php?record _id=9747&page=154).

The most countries were inspired by the Canadian Juvenile Delinquents Act (The *Juvenile Delinquents Act*, Statutes of Canada, 1908, chapter 40) from 1908, *the spirit of which was to make the treatment of accused delinquents more of a social welfare exercise than a judicial process. The Juvenile Delinquents Act was philosophically grounded in the doctrine of parens patriae, which held that the state could intervene*

as a "kindly parent" in situations where a family could not provide for the needs of its children. The juvenile justice system was now governed by the overarching principle of the best interests of the child; consequently, due process rights were minimized in the interests of an informal process and the promotion of the welfare of children. The Juvenile Delinquents Act stated that "every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child" (see http://www.justice.gc.ca/eng/pi/icg-gci/jj2-jm2/sec02.html).

4 AGE LIMITS OF CRIMINAL LIABILITY IN THE EUROPE

Most international standards, however, are addressed only to the criminal proceedings against juvenile, so usually cases, where the child without criminal liability commit the offense, are not covered by these standards. Convention on the Rights of the Child in Article 1 states that child is every human being below the age of 18 years, if not take the age of majority under applicable law before the state. In Article 40, paragraph 3, point a) requires states to establish minimum age below which children shall be ineligible to infringe the penal law and in point b) if necessary, to take measures for dealing with such children without resorting to judicial proceedings, providing that full respect for human rights and legal safeguards. But this leads us to the next question: Is it necessary for all states to have the same minimum age for the criminal liability? Or is it possible to have just certain age in each state? As we can see from the list of the age of criminal liability in the EU, we can find different limits. These limits are moreover connected with other conditions, as is the seriousness of the crime, limits for the sanctions etc.

Table 1: Country Minimum Age of Criminal Responsibility (Source: Janes, 2008)

Austria	14
Belgium	18 (16 for serious offences)
Bulgaria	14
Czech Republic	15
Denmark	15
England and Wales	10
Estonia	14
Finland	15
France	13 (educational measures can be imposed from the age of 10)
Germany	14
Greece	13 (educational measures can be imposed from the age of 8)

Hungary	14
Iceland	15
Italy	14
Latvia	14
Lithuania	14
Luxemburg	18
Netherlands	12
Northern Ireland	12
Norway	15
Poland	13
Portugal	16
Romania	14
Russian Federation	14
Scotland	8
Slovakia	14/15
Spain	16 (14 in Catalonia)
Sweden	15
Turkey	12

Conclusion of the second answer is not still clear, because it is complicated a lot. I think that it is impossible to unify the limits of criminal liability in the Member States of the European Union because of the traditions, suverenity of the states etc. The European Union is composed of states with their own long traditions, unique systems of criminal courts and their own laws. The elements of individual criminal offences are defined in criminal codes, as are the procedural rules. Even the European Parliament agreed on the European Parliament resolution of 16 January 2008: Towards an EU strategy on the rights of the child 2007/2093(INI)) (2009/C 41 E/04). There stated few really important things which are related to this issue.

In the article 68 of this resolution it points out that there has been an alarming increase in all Member States in the phenomenon of juvenile delinquency involving juvenile perpetrators and victims, a situation which calls for an integrated policy, not only at national, but also at Community level; recommends therefore, as a necessary measure, that an authoritative survey of the problem be compiled without delay and that a framework programme integrated at Community level then be drawn up, grouping together measures around three guidelines: preventive measures, social integration measures for juvenile perpetrators and judicial and extrajudicial intervention measures.

The most important thing is that European Parliament notes that the age of criminal responsibility is not currently the same in all the Member States and requests that the Commission undertakes a study concerning the differing views

among Member States of the age of criminal responsibility, their treatment of young offenders and their effective strategies concerning the prevention of juvenile delinquency (article 86) and in article 87 stresses the need to provide legal practitioners in the youth justice sector (judges, lawyers, social workers and police officers) with specific rating.

This resolution is cruical to the issue I have been discussed in this article and which is connected with the research, because it is related to the trend of unifying the age of criminal responsibility and to have a special regulation for juveniles, especially the specialisation of judges, state procesutrs and other people who work with juvenile offenders. This is really very useful for criminal cooperation.

In matters involving an underage person, it not only the issue of what procedural rights such a person has but also whether the juvenile has criminal liability and whether he or she may be handed over for criminal procedure into another country. What is meant here are cases when a juvenile commits a criminal offence (a violation of law) during his or her stay abroad and then returns to his or her home country – for instance, while on a holiday, when accompanying the juvenile's parents on their business trip abroad, or in the course of the juvenile's study stay. With respect to the juvenile's age, background, etc., it needs to be asked whether it is suitable that such a person should be handed over for criminal proceedings or whether such a person should be handed over also for the purpose of serving a sentence.

5 SELECTED ASPECTS OF JUVENILE PROCEDURE IN SELECTED STATES OF EUROPE

5.1 Slovak Republic

Slovak Republic does not have any special regulation concerning juveniles even there was a recodification of criminal law in 2005. They still incorporated juvenile rules in the general criminal codes (Act number 300/2005 Col., Criminal Code, further only Slovak Crimnal Code, and Act number 301/2005 Col., Criminal Procedure Act, further Slovak Criminal Procedure Act). However, both aforementioned Slovac Codes take a due account of particularities of proceedings involving juvenile offenders. Relevant substantive provisions can be found in Chapter IV of the General Part of the Slovak Criminal Code under the heading "Specific Procedures for Dealing with Juvenile Offenders", and particularities of procedures involving juvenile offenders are governed in Section Three of Chapter VII, Subsection II of the Slovak Criminal Procedure Code under the heading "Prosecution of Juvenile Offenders".

Slovak regulation divides juvenile offenders into three categories based on their age:

- Children, who are not criminal liable because of their age (at the time of the commission of the offence have not attained the age of 14, and in cases of sexual abuse under Sec. 201 of the Slovak Criminal Code the age of 15.) These children are not liable to criminal prosecution and if they act in a way otherwise classified as a criminal offence, punitive-educational protective orders may be imposed on them (under court ruling [Sec. 37(2) and (3) of Act No. 36/2005 (Family Act) as amended] or under a ruling made by the child-welfare agency and social agency [Sec. 12(1) of Act No. 305/2005 on the Child Welfare and Social Agencies as amended]). These measures can be imposed by the state prosecutor to promote the child´s legitimate interests; the need for taking these measures must be duly considered and a due account must be taken of the child´s personality, external environment, his family background, as well as of the nature of the child´s actions which are otherwise classified as a criminal offence. Subject to stringent requirements prescribed by law the child may be imposed a mandatory educational or medical treatment order by the civil court; these orders are enforced in specialised educational centres, in professional foster families or in in-patient health care centres. The proposal to impose a mandatory educational or medical treatment order is usually put forward by the prosecutor.
- Juvenile offenders who are criminal liable and are between 14–18 years. There is just one difference, if they commit a sexual abuse offence. The criminal liability is called relative, there is need to have an individual level of moral and mental maturity. And there has to be considerable gravity. This, of course, does not apply to more serious offences and felonies. There is wider range of non-sentencing options, more alternative and non-repressive sentencing options, but also a narrower range of sentencing options. Custodial sentences imposed on juvenile offenders below the age of 18 are served in juvenile correctional facilities.
- Offenders between the age 18 to 21 are called young offenders. This circumstance can be concerned as mitigating circumstances under Sec. 36 item d) of the Slovak Criminal Code.

Criminal proceedings in Slovakia are covered in sec. 336-347 of the Slovak Criminal Procedure Act and I can state these differences in cases of juveniles:

- Juvenile offender must be represented by a defence counsel from the moment of formal accusation being brought against him until the final and conclusive disposition of the case or matter at issue
- Involvement of the state youth welfare agency in criminal proceedings
- Defence counsels may bring appeals against court orders or resolutions to the benefit of juvenile offenders on their behalf; the state youth wel-

fare agency may bring appeals even without the juvenile offender´s consent, or even against his will
- It is necessary to ascertain and assess the level of the juvenile´s mental and moral maturity and his family or social background
- Juveniles below the age of 15 must undergo a mental health assessment
- Juvenile offenders may be taken into pre-trial custody (detention) as a last resort only on condition that the purpose of the pre-trial custody cannot be achieved in any other way and if there are no other less-restrictive alternatives
- Possibility to refer and forward the case to be tried in a court other than a local court within the jurisdiction of which the juvenile offender resides, if such referral is in the best interest of juvenile offender
- Main hearing and public plea-bargaining is not allowed in the absence of the juvenile offender
- Prosecutor must always be present also at public hearings
- Joint prosecution of the juvenile offender and the adult offender above the age of 18 is admissible only in exceptional cases
- If it is to the benefit of the juvenile offender, the hearing may be held without the presence of the public.

In the Slovak Republic there are not specialised judges for cases, where an offence was committed by juvenile. The cases are held before classical adult´s courts. Custodial sentences imposed on juvenile offenders below the age of 18 are served in juvenile correctional facilities. There are differences in the length of custody etc.

5.2 Slovenia

Slovenia does not have special laws on juveniles like the Slovak republic. The age of criminal liability is 14 years, but we can divide juveniles into two categories.

- Juveniles aged 14-16 years where use of measure is limited. For example prison can be imposed on them.
- Juveniles between 16-18 years where is possibility to impose imprisonment in cases, where criminal code stated the sanction of imprisonment more than 5 years.

Juveniles in Slovenia have different rules for criminal procedure. There is principle of priority for the state prosecutors. The character of the proceedings is again prevention not repression. There is necessary to find the circumstances, why the offence was committed, establish personal and living conditions of juvenile offender. The there is necessary to impose the correct sanction. (Compare to the national report find on http://ec.europa.eu/youth/policy/national_ reports_2012.htm)

5.3 Croatia

I have involved as well Croatia even it is not in the European Union, but it is a central east country. In Croatia there is the age of criminal liability 14 years. They do not have any special regulation for juveniles, so they provide general law (pursuant to the Article 4 of the Law on Juvenile Courts (NN no. 12/2002), general law, that is provisions of the Criminal Code, Criminal Procedure Act, Law on Courts, and Law on the protection of persons with mental disorders.) But there is a special Act on Juvenile Courts which is special to the general rules, so if there is stated something else, the judges have to use it. I mean sanctions like educational measures, juvenile imprisonment and security measures.

We can divede juveniles in Croatia into two groups:

- Juveniles between years 14-16, who may receive only educational and security measures. Educational measures can be imposed till 23rd birthday. In cases of younger juveniles the court is not bound, with restrictions of mitigation of punishment listed in the Criminal Code, to pronounce the lowest measure of the prescribed sentence for the criminal offence. Court cannot pronounce a prison sentence to a younger adult for more than twelve (12) years, unless he/she committed criminal offence for which long-term imprisonment is prescribed or for committing concurrently adjudicated criminal offences (at least two) for which prison sentence longer than 10 years is prescribed.
- Juveniles between years 16-18 called "older juveniles", who may receive educational measures under conditions prescribed by the Law on Juvenile Courts and Juvenile Imprisonment. But the criminal measures can be imposed on them, but the maximum length of imprisonment is 10 years. There is possible to impose security measures too.

The purpose of juvenile sanctions is to influence the upbringing, development of character and strengthening of personal responsibility in juveniles by providing protection, care, assistance and supervision and securing general and professional education of juvenile perpetrator of a criminal offence.

In case of imposing imprisonment there are differences from adults in regard to conditions of pronouncement, duration, purpose and content of the sanction. It may be pronounced to older juvenile for committing a criminal offence for which imprisonment of five (5) years or more is prescribed, if, taking into consideration nature and severity of criminal offence and high degree of guilt it is necessary to pronounce a sentence (Compare http://ec.europa.eu/youth/policy/national_reports_2012.htm)

5.4 The Czech Republic

In the Czech Republic juvenile justice criminal procedure is involved into the law on responsibility of juveniles for illegal acts number 218/2003 Coll. (further only „Juvenile Justice Act"), which came into effect on January 1st, 2004 (Compare Fenyk, J., 2007, p. 54). This law extended the application of the new principle of restorative justice into Czech criminal law. This Juvenile Justice Act is special to the criminal code and criminal procedure act. This act covers treatment of the youth. There are two categories of the youth:

- juveniles - persons between 15 to 18
- children under 15 (minors).

The minimum age of criminal liability is 15 years of age. Juveniles do not commit a crime, but this illegal act is called transgression. There are conditions which have to be fulfilled to define an illegal act as transgression:

- Age - the minimum age for criminal liability is 15 years,
- Sanity - the offender does not have to be insane (the offender has to be mentally healthy), and
- Moral and mental maturity - the offender has to know what he/she commits (it is necessary to have individual level of moral and mental maturity (see § 5 Juvenile Justice Act). This conception of criminal liability is called relative liability.

The system of sanctions for juveniles is based on the united system of measures, which are separated into educational, protective and criminal measures. The purpose of these measures is to create conditions for sociable and personal development of the juvenile with respect of his/her mental and moral level, personal character, family background and protection from the negative effects and prevention from committing other transgressions.

The system of measures creates unified, internally linked system, which can flexibly react to different aspects of juveniles and their background. The main features of measures are addressed to the future, to prevent recidivism.

In the criminal procedure there are differences from adults. The fisrt is that there is requirement defence from the beginning. Hearing in cases of juveniles is not public (this can be public just with the consent of juvenile. The state prosecutor can use educational measures in pretrial proceedings but with the consent of juvenile. Imprisonment of juvenile is possible up to 5 or in serious cases for 10 years, but it can be impose just as the last measure. We have specialised judges and state prosecutors and police officers and the alternative ways are more used then classical ways (diversions).

There are few important competences of the state prosecutor and the youth court in the Czech.

One of the great advantages of the Juvenile Justice Act is that, following the defendant's approval, educational measures can be imposed by state prosecutor already in pre-trial proceedings or can be applied as complementary to specific types of proceedings (particularly diversions such as conditional discontinuance of criminal prosecution, conditional discharge of the imposition of criminal measures or abandonment of the criminal prosecution; another applicable diversion is the approval of victim-offender settlement permanently discontinuing proceedings – these diversions can be applied for less serious offences with the maximum sentence of five-year custody).

Apart from educational measures and diversions, the youth court can also declare the defendant guilty and impose protective or criminal measures, even if the defendant denies his guilt or refuses to give testimony. Exceptionally, the court can also remand the juvenile defendant into a pre-trial custody, which can last two months at most and may be replaced by the probation supervision and other educational measures.

6 POSSIBILITIES OF CRIMINAL COOPERATION IN JUVENILE CASES

Above mentioned central and eastern states of Europe can illustrate the differences in juvenile proceedings. The age of criminal responsibility varies, but mostly it is 14 years (with differencies for juveniles younger than 16). The imposing of imprisonment for juveniles is limited; mostly there are used educational measures and alternatives. The criminal procedure for juveniles is covered by the special act (Czech Republic and Croatia) or in the general criminal code and code of criminal procedure with differences for juveniles (Slovak republic and Slovenia). Juveniles need defence lawyer during the procedure. But specialisation among the state prosecutors and judges are not in all states.

If we are talking about criminal cooperation in cases of juveniles, we find out that there are lot of things which should be changed.

The issue of international cooperation is closely related to the principle of mutual recognition of decisions and harmonization of criminal law. The principle of mutual recognition has been the fundamental basis for international cooperation ever since the adoption of the Maastricht Treaty in 1992. Gradually, a uniform area of freedom, safety and justice was formed in 1997 on the basis of the Amsterdam Treaty. And, to simplify somewhat, that was how the area of European criminal law came into existence. Subsequently, many modifications were introduced by the Lisbon Treaty – also in the area of criminal law.

As regards harmonization of law and mutual recognition of decisions, these concern very important legal matters of the European Union, though each of them has a different substance. The difference between harmonization and the principle of mutual recognition is that harmonization – or the approximation of law – concerns the unification of legal orders of the member states. By contrast, the principle of mutual recognition allows for the enforcement of criminal decisions of other states within the territory of another member state, even if their legal systems remain different - that is the consequence of the current situation when member states retain their own legal systems but – thanks to a degree of unification – are able to trust each other to allow the enforcement of decisions in criminal matters. (For more details, cf. Joutsen, M., 2006).

Owing to the constant extension of the European Union, which had started with "only" six countries and has grown to 27 member states (several other candidate countries seek entry into the EU, which means that the number of member states could soon stand at thirty), it is evident that the attempts at unifying law in all member states will not be easy, particularly with view to their diverse traditions, specific historical developments, etc. While the principle of mutual recognition of decisions requires the existence of trust between states, the different procedural standards currently valid in various countries mean that this principle may not be fully accepted. I suppose that it is this difference in procedural standards that hampers the attempts at securing the rights of injured parties and guaranteeing justice and security for EU citizens. Nevertheless, since the formation of the European Union, the EU has been increasingly interested in procedural rights of accused persons, which is attested by the proposals submitted by the Commission, both in the content of the "Green papers" and other proposals made by the Commission in 2004 and 2007, that express the aim to unify the procedural rules of criminal procedure (Green Paper - COM (2003) 75 final; Green Paper COM (2004) 0328 final; Proposal of 5th June 2007 10287/07).

The Lisbon Treaty, adopted on 1 December 2009, has changed the previously existing procedures in a fundamental way. It not only abolished the three-pillar structure but also transferred the issues relating to the safety of the judiciary into the first pillar. Issues of international judicial cooperation will be adopted – instead of the unanimous vote of all member states – through decisions of the European Parliament and the Council adopted by a qualified majority (Compare IVOR, J. et al. 2010). That decision can only be viewed with approval since it is increasingly difficult to achieve a unanimous vote with the growing number of member states. Frequently, important decisions could not be adopted just because of the negative attitude of a single country. This change could thus ultimately lead to the adoption of some proposals that had previously been blocked because they well lacking the prior unanimous approval.

In the area of criminal law, the principle of mutual recognition of decisions tends to be emphasised, allowing the court of one state to enforce and execute the decision of some other state. However, adequate cooperation of police forces and other judicial bodies is undoubtedly needed. Such cooperation must also include the preservation, processing, analysis and exchange of relevant information, which will affect the conditions under which such cooperation can be possible. For that reason, the Lisbon Treaty also provides for the establishment of the institution of the European Public Prosecutor (Article 86 TFEU - Treaty on the Functioning of the European Union).

7 CONCLUSION

The cooperation between EU countries in the area of criminal law has developed and spread very fast. It is obvious that it is very difficult to assess objectively what has happened, what is happening at present and what is about to happen. Nevertheless, it is clear that the European Union keeps developing, which holds for criminal courts as well.

Moreover, this issue is usually dealt with in areas of law that concern adult offenders rather than juveniles. Of course, considering the overall crime rate, the issue of juveniles is relatively marginal (Cf. annual statistics available at http://portal.justice.cz/Justice2/MS/ ms.aspx?j=33&o=23&k=3397&d=47145), but because of the possibilities of education and movement of persons, i.e. areas supported by the EU as well, (compare Green paper COM (2008) 423 Final, COM (2009) 329 Final), this field has been certainly growing and should come to the foreground of attention of legal experts and professions. So the partial results about the age of criminal lability and differences in the procedure will be continued to the solutions for further criminal cooperation in juveniles´ matters. The approximation of criminal liability limits is for cooperation essential and it is clear that juveniles need special protection. So we can sum that special regulation for juveniles is really necessary.

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TOWARDS A WELL-ORDERED SOCIETY: EXITING THE VICIOUS CIRCLE OF CRIME

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ABSTRACT
Purpose:
The paper examines the levels on which various forms of deviance appear and get to be tolerated from the point of view of social actors. The failure to sanction crime leads to the spread of the belief that crime pays off, creating the vicious circle of crime. The purpose is to suggest potential ways of exiting it and creating preconditions for a well-ordered society, and to broaden the research perspective from crime to deviant social structures and cultural patterns.

Design/methodology/approach:
The concepts of vicious circle and well-ordered society are used to analyse whether life experience, especially the lack of crime sanctioning in post socialist countries, promotes deviance and the lack of trust in the rule of law. Vicious circle is created because the fight against crime is governed by the same rationale that led to it in the first place, which includes a cost-benefit analysis based on partial and individual versus common and general interests, as well as employing political power in determining socially (un)acceptable actions. The appearance and development of crime can be viewed on four levels: excess level, organized crime level (*a state with its mafia*), the level with no rule of law (*a mafia with its state*), and the level on which deviant norms and values govern social relations. Methodology includes the examination of the most frequent forms of criminal activities and deviant social processes (e.g. putting the political before the professional), that maintain distrust towards the rule of law. Contextual factors, primarily cultural, which make people inclined to choose deviant methods in realizing social and individual goals are also studied. Finally, the potential to exit the vicious circle regarding social actors is examined.

Findings:
The potential to break the "vicious circle" and move towards a well-ordered society can be realized by raising general critical awareness as a prerequisite for harmonising economic and cultural capital with human potential in order to create a stimulating social climate. The power that should be directed towards realizing this potential resides with both nongovernmental social actors and political elites. Also, the responsibility that has to be taken for deviant actions in a well-ordered society is not only political, but also criminal and material. The authors have found that it is necessary to analyse deviance via its harmful social consequences, which are often left unquestioned and unpunished, resulting in what can no longer be studied as criminal behaviour but a deviant social structure and deviant cultural patterns.

Originality/value:
The paper moves from the content of deviant actions, individual criminal activities or structural factors leading to them, to social actors. In addition to this, deviance is not understood through causes, but harmful consequences arising from social relations, patterns in social structures, or decisions of political elites. Also, the notion of crime is broadened to the notion of deviant social structure and deviant cultural norms.

Keywords*:* deviance, crime, vicious circle, well-ordered society

1 INTRODUCTION[1]

This paper tends to arrive at a multidimensional understanding of crime. The traditional research perspective focused on the content of deviant actions, individual criminal activities or structural factors leading to them when studying the levels of appearance or tolerance of crime. However, it is also necessary to take the perspective of criminal actors, where the focus is on the factors leading to the ubiquitous status of crime as an acceptable and simple path that people can choose quite safely to realize their goals, in a relatively harmless way, without bearing much or even any responsibility/consequences (on collective responsibility see e.g. Sadler, 2007). The concept of the *vicious circle* from sociological theories on poverty (see e.g. Mosley & Verschoor, 2005) is applied here. It denotes the situation in which the fight against crime is governed by the same rationale that led to it in the first place, which includes a cost-benefit analysis based on partial and individual versus common and general interests (on the issue of general and individual in this discourse see Lott, 2006; Martinson, 2006; Kleingeld, 2006; St John, 2007; Richardson, 2006; Gentry, 2007). The logic of crime perpetuation also includes the use of political power to determine socially (un)acceptable, legal or criminal, actions. The appearance and development of crime can be viewed on four levels: "excess level", organized crime level, "the state that has its mafia", and "the mafia that has its state" (Matić & Groznica, 2009). The final, fourth, level does not necessarily supersede the third regarding the number of brutal criminal acts, and can contrarily even seem ordered and neat, but in fact deviant norms and values create social relations on a long-term basis, and non-deviant model is present only ceremonially, with no precedent or model upon which one might base the assumption that knowledge, professionalism, justice, and solidarity pay off. Descriptive term for such social reality might be: *society with deviant social structure and deviant cultural forms* (*outlaw society* in Rawls, 1973).

A well-ordered society is an ideal type of a stable homogenous society in which the concept of justice as fairness (Rawls, 1973; Ron, 2006) and utilitarianism are accepted by citizens as a comprehensive moral doctrine (Rawls, 1993). Although

[1] The theoretical framework used here was developed in our paper on Croatian society and the vicious circle of crime (Matić & Groznica, 2009); the focus here is on the potential to exit the vicious circle.

homogenous, this society is pluralistic and its members belong to different religious, ethnic, and cultural groups, but all have agreed upon the scheme of principles they want to underlie their most important institutions, which is to say that there is a general consensus on that group of principles to which citizens are committed – this is a well-ordered society in Rawls's definition (1993). Without having achieved social harmony (if it is desirable at all), a well-ordered society has a sufficiently just system to create civil trust among members of the society, so that the people living in it do believe that association is possible (Rawls, 1993:12-13). In a social reality that would justify the title of a well-ordered society, a criminal act in most cases triggers the mechanism of social reply and repression of the perpetrator (see Khatchadourian, 2006, on the problem of initiating the repression mechanism when the perpetrator is the state itself), which creates the image of crime as not paying off. The issues dealt with in this paper are whether life experience (examples taken from the Croatian context) encourages or discourages crime and what crime tolerance levels can thereby be differentiated, and whether a society gives additional motivation to those wishing to realize their goals by employing dishonest and criminal activities or to the ones trying to live by the principles of humaneness, honesty, and hard work. We will be interested in detecting the levels of crime appearance and tolerance in the Croatian context to see whether functional or dysfunctional social goals pervade from the point of view of justice (fairness), solidarity, and appreciation/respect for others i.e. whether social relation discourage or promote lawlessness.

The first chapter analyses the current state of affairs in order to reveal the most widely spread forms of criminal activities and consequential forms of deviance in a social reality. This primarily refers to corruption and unresolved misdeeds of political and economic war profiteering, which are discussed in the second chapter. Other forms of deviant "innovation" (Merton, 1938) then lean against these phenomena and develop out of them, which continues the distrust towards the institutions of the legal system, their norms and standards, which in turn continues the renewal of distrust towards the rule of law in general. The tolerance of deviance and the distrust of institutions can thus be said to be systemically attachable (for different notions of attachability see Durkheim, 1982; Luhmann, 1981, and 2001; and Foucault, 1989, and 2002). Besides, the presence of distrust of political actors towards the values of professional knowledge and expertise, as well as towards their agents (professionals), is significant. After the attempt to detect social processes favourable for continued reintegration of deviance and crime into Croatian society, the paper moves towards contextual forms, primarily from the field of culture, which create the environment for the propensity towards deviant and criminal methods in order to realize individual goals, with a special emphasis on the ever more spread inclination to armour, which maybe most clearly testifies the lack of trust into institutional and legal methods of realizing social goals. The final chapter considers the potentials to exit the vicious circle of deviance.

2 WHEN THE PUNISHMENT DOES NOT FIT THE CRIME

In stable social conditions sanctions not only discourage from crime, but also help realize multiple preventive effects. Thus, a criminal offense sets off the mechanism of legal actions, and a public condemnation as a moral reply of the public. The synergy of the two makes it clear that crime does not pay off. On the contrary, a social reality in which the mechanisms of formal social control leave individual deviance unpunished, or the criminal prosecution is deliberately avoided in order to justify a criminal act by war circumstances or 'higher causes' such as the creation of a state, open up a wide space of possibility to make an individual excess a regular phenomenon. Undesirable and shameful examples with time become desirable role models, war profiteers turn into successful entrepreneurs, whose 'competence' leaves the members of the society who were for decades creating social goods without their share (or jobs) overnight, all 'in the name of development'. At the same time other, especially younger, members of the society, observe the situation and make conclusions: if the wealth gained by fraud and violence remains in the hands of perpetrators, if such misdeeds cannot or refuse to be sanctioned, then the values of hard work, honesty, and fairness are no good choice for success. On the contrary, they mean uncertain future in which all key decisions are made by the very social actors whose criminal activities and ruthlessness caused permanent structural disorders in the first place (Matić, 2003).

On the other hand, persons who agree upon social liabilities and respect the laws experience frustration on many levels.[2] As the law cannot touch upon big offenders and obligors, stolen social wealth or our "common debt" has to be repaid by other citizens, whose standard has already been shattered by lawlessness. A society like that cannot guarantee its members that honesty and hard work will be rewarded, but contrarily that living in accordance with the law often means becoming a victim of a faceless and dysfunctional bureaucratic procedure. In the end, instead of seeing crime as a risky and unprofitable activity, lawlessness becomes a widely accepted and recognized means towards wealth and success. On the contrary, it is dangerous and precarious to deal with crime in a well-ordered society. Crime suspects do not take most media space and do not demand, at least not publicly, from the president of the state the explanation and apology for being brought in, nor do they exchange political appraisals and threats with government officials. Not because they as citizens would not have the right to the freedom of speech (however nonsensical it might be) or

[2] Many criticised the focus on institutions and laws i.e. legal guarantees of the formal respect for rights and freedoms; it does not touch upon the key issue of self-interest and economic inequalities resulting from it. See Baynes (2006) and Lægaard (2006). It would be worth a while to compare the ideas Rawls considers compatible with classical republicanism (and thus capable of answering to the famous Marx's critique of liberalism) with the critique of this position in De Francisco (2006).

because personal acquaintanceship between a politician and a person associated with criminal underground would not be possible, but because the very thought that a crime suspect and a senior official in the judicial, executive or legislative authority can promise or owe something to each other based on their social positions is scandalous and dangerous for the legal stability of society.

Such examples point to social disorganization, permanent consequences of which can be far more dramatic than forecasts on depopulation processes. Among the socially dysfunctional phenomena that are conducive to this form of social disorganization a prominent place belongs to corruption and the inability to overcome totalitarian heritage, manifested in the incompetence to formulate strategic social goals along the clear criteria that guarantee their realization (on systemic complexity of the goal realization problem and the legitimacy gained through procedure see Luhmann, 1992).

Corruption is among other things bribery, usually of public servants and other persons on influential positions, it implies using one's own social position (function) to seize unlawful privileges and/or material gain or enable someone else to seize them, and is associated with material and moral depravity (Hrvatski enciklopedijski rječnik, 2003), whereby the latter meaning well illustrates the final influence of corruption on society. The focus here is by no means on the personality or defects of actual persons receiving and offering bribe, but on the disappointment of the citizens who suffer injustice, on their lack of trust in the state, which is personified in political elites and public servants, and on social relations that create fertile ground for corruption, as well as on the consequences suffered in corrupted societies.

The level of corruption can be described as an indicator of state efficiency on the one hand and trust in state and other social institutions on the other.

In functionalist terms, the state emerges and exists only if it permanently fulfils the purpose of its existence: to meet the needs of the members of a society. Systemic aspect regarding the problem of purpose however stresses the fact that once created, the system maintains itself by internal differentiation, and is capable of creating its own purposes directed at its own survival and self-preservation. Although the prosperity of citizens is in focus here, in the sense of trying to deter from crime, it should be born in mind that various purposes and causes can be represented with a mask. The example from liberalism is the alleged effort to achieve a more even economic distribution by the trickle-down effect, which actually only makes citizens endure current unjust position in the name of a future greater good. The needs of citizens can thus be simultaneously proclaimed to be the most important cause, and actually supressed in favour of social interests. The rules of institutional activity are however not agreed from case to case or all over again whenever necessary (or according to the informally

communicated citizens' needs), nor are they based on the current mood of public servants or citizens (Weber, 1976). The rules are founded upon relatively stable norms and their implementation guarantees the realization of the final goal, in the formal sense of the word.[3] By obeying these formalised norms, a public servant plays his/her role of a highly professional provider of service to each citizen – client, because it is to this very citizen as the only true employer (pays through taxes) that he/she owes loyalty. The trust in state and its institutions actually boils down to a relatively stable degree of certainty that every citizen will for every legally foreseen step he/she takes regarding any social institution enjoy the right granted to him by law.

The lack of trust in this mechanism is the result of insecure and non-transparent relations that do not offer any certainty regarding outcomes, but on the contrary demand of citizens to think of an alternative path for every service they need, because the legal way brings no expected results. This alternative mostly comes down to informal incentives and an extra-institutional activity now and then (recommendation, threat, blackmail, counter service, 'reward') demanded of citizens in order to provide them with a service.

The next aspect of the approach to corruption as an immoral and illegal phenomenon concerns the consequences that corruption has on society. To demand, receive, and give bribe for a service someone is by definition paid and obliged to provide is possible only in the societies already going through the 'moral erosion' (Županov, 1995), whereby the reason for the existence of formal and informal norms, as well as common values all norms are derived from, is blurred or lost.

The first effect of corruption on a society is the permanent intensification of moral erosion on the institutional level i.e. progressive introduction of disorder and uncertainty into the expectations that the members of society have of the institutions. What follows is the legitimation of lawlessness, at first as an alternative, and soon as a desirable way to realizing social goals.

The final expected consequence is social disorganization or the loss of integrative factors in a social community (without the underlying assumption that stability and integration are positive; for alternative approaches see Wilson, 2007, and Francesco, 2005). In simple words: corruption leads to losing economic, cultural, and political sovereignty, to the abolishment of a society as a national community. A paradox of a kind can be recognized here: the strengthening of corruption regularly appears in societies after they become independent and gain sovereignty. Regardless of the fact that in such a context apocalyptic discourse

[3] It is important to point out that only formal sense is meant hereby, because such perspective itself does not for instance consider social injustice and its abolishment, but worries about the existence of a legal mechanism that citizens can use in case of injustice. That mechanism has the power to judge on (in)justice. Compare this with Rawls's rejection of normative political realism (1999) and Santurri's (2005) criticism thereof by claiming that this rejection is in conflict with Rawls's acceptance of normative political reality.

on threats to national interests is emphasized, political elites appear in practice to be incompetent to guard national sovereignty, because they do not recognize the true danger arising from corruption and crime.

There is a series of examples of how contemporary societies fight crime and corruption with the common denominator: critical mass of political will and the decision to redirect concentrated power from the realization of particular and individual goals towards a joint strategy functional for the society as a whole.[4] A desirable and realistically expected result in this case is the development of an efficient ad stimulating normative structure, and the exclusion of the politicized influence from the institutions whose activity is necessarily based on professionalism. The inability to decisively step out from the totalitarian tradition and establish social relations structured by democratic procedure inhibit the exit from the vicious circle of crime, which in turn continually perpetuates the distrust of society members that legal goals might be realized by legal and morally acceptable means. What prevents us from establishing the rule of law in Croatia and bringing corruption to its end? The answer is: political influence in professional structures.

3 THE CONSEQUENCES OF POLITICAL INFLUENCE IN PROFESSIONAL STRUCTURES

Although Croatian society is not completely transformed from totalitarian to democratic, the illusion of true democracy is relatively successfully maintained by keeping regular democratic elections, respecting the freedom of speech (unthinkable in the past few decades), and having the possibility to publicly criticize each public actor. In spite of all this, democracy is still a hard-to-realize ideal in the sense of the possibility to guarantee the rule of law and corruption-free society. It is as hard to get as it is unimaginable to political actors in Croatia to give up the influencing of professional and specialist services, primarily within the scope of public service.

A common practice after each parliamentary elections is to lay off or promote staff, which, unlike the situation in well-ordered democracies, does not stop at previously agreed quotas of officials, but is performed according to the political needs of the new government, and it can touch upon every, even the lowest-ranking, executive position. The criterion of ‚political needs' includes relatives,

[4] It is necessary to be cautious when it comes to functional wholeness. It resembles a type of a precondition that gives rise to general claims that are formal in character. Liberalist justice demands procedure and legitimation through procedure. Still, this does not mean that other less visible forms of oppression cannot exist, with the procedure suitable to a particular purpose. Besides, poststructuralist ideas of Derrida and Foucault warn against the oppressive nature of great unifying conceptions. Rawls in his later work (2000) expands on his early ideas on justice onto the political sphere, focusing thereby on the issue of justice in pluralist societies.

friends, and political party colleagues, who are, regardless of their education and previous experience, assigned to the existing jobs or new positions are created for them, with perks such as a vehicle, cellular phone, credit card etc. The excuse and justification are that former elites did the same thing, but now unlike then professional staff are employed. The attention of the media and general public is relatively short-term, and only certain ‚special' cases are foregrounded, but the very political appointments and assignments as the principle of employment are never brought into question.

The consequences of this problem, which are rarely spoken about – partly due to not being acquainted with models of professional staffing and the habit that things 'have to be this way', and partly due to the fear for jobs and insufficient self-esteem of employees, can be observed on several levels. In such unstable circumstances where no criteria of successfulness exist, employees in various ministries suffer psychological pressure defined as *mobbing* i.e. power abuse, harassment, and maltreatment at work, especially prior to parliamentary elections. As the prevailing criterion of political need and aptness does not allow the criterion of expertise and professionalism to develop, it is impossible to tell what is a well done and what a poorly done work, because that estimate mainly depends on the mood and unclear professional competence of politically appointed executives. The total result of continued politically directed staffing is the systematic deprofessionalization that pushes Croatian society ever further away from democratic models it strives to come close to, much more than can be shown by statistics or assessment of even the most competent international institutions. A good example is the institution of the police (see more in Vaughan, 2007), professionalism of which directly influences the safety of citizens. There has so far been no clearly established advancement criterion that would guarantee each employee an equal opportunity to manage one's own qualification and career. Successful performance of police duties, lifelong education, and professional development are no warrant of vertical mobility in the service, and these criteria are often completely disregarded. Posterior to parliamentary elections, there are confusing things going on, speaking from the point of view of professionalism, such as horizontal and vertical movements from/to positions, retirements, and then appointments to executive positions of persons with no proper education or professional working experience, but with connections (party or family affiliations) to the persons holding executive or legislative power. This has a destructive influence on the working motivation of police employees, and thus also directly on the safety of citizens and society as a whole. Such a pessimistic reality is blurred by figures on solved criminal offenses, which mostly do not differ from the ones in European democracies, which is sufficient for political actors to give civil safety a high mark. Contrary to that, police experts warn that professional structure will break if political influence and internal staffing fail to be organized according to the model set by well-organized European police systems.

The following example (the consequence of permanent and systematic deprofessionalization) is the already legendary slowness and inefficiency of Croatian administration, frequently pointed to by the guests from abroad: not only tourists, but also potential partners, investors, analysts, and experts in local situation. The lack of transparent motivation and clear models of managing one's own professional career, not only in case of public service but also in all other legal business environments, leads to the loss of trust in professionalism and education as the basic warrants of the attainment of professional goals. To consciously give up one's expertise and professionalism might produce a series of socially dysfunctional possibilities, such as relatively permanent deprivation of work-active population, which on the one hand leads to the attempt of adjustment i.e. to the acceptance of deviant criteria of political and other aptness, or there is another alternative to fair and professional success within state administration structures: a wide range of criminal activities recognized under the shared name of corruption.

Having identified focal points of self-regeneration of deviance and crime in Croatian society, we need to analyse some of the contextual patterns, primarily the ones from the cultural sphere as they ensure the continuity of trust in deviant and criminal methods. The special emphasis needs to be put on the increasing inclination to arms, which clearly indicates the rise in the risk of involving into various forms of crime and deviance, in the trust in non-institutional and lawless methods of attaining social goals, and in the lack of trust in social institutions.

3.1 Unsubstantiated rule of law and the possession of arms

A society in the vicious circle of crime can for descriptive purposes be defined as characterized by deep pervasiveness and promotion of criminal values and norms due to the lack of adequate social control i.e. recognizable and regular appearance of the punishment for the offence, and mostly insufficient and experientially unsubstantiated socialization in the atmosphere of socially manifested desirable norms and values.

It is possible to consider the phenomenon of lawlessness and deviance from the perspective of the example of *the love of* arms, in the sense of use and legal and illegal possession of arms. A series of approaches can be applied in attempting to understand and explain that phenomenon, but two cultural aspects - normative and value - arise as the most adequate ones for the global national level (the level of culturally, politically, and economically unified space).

The normative aspect sees social control as one of the most important factors. In this context, the question of the level of social control in pre-war and post-war era is valid, in the sense of the war being the only culprit leading the society to allow the creation of the potential for the development of the culture of

deviance and violence. Or, should we rather reach for the conflict perspective that warns about the character of capitalism, which needs a wide and free underground and black market to prosper and develop, because the logic of the market is such that everything, including a whole range of criminal activities and accompanying equipment utilized to increase gain, primarily weapons, can be bought and sold. Besides, the normative aspect in a wider sense includes passing and implementing laws, and refers to the development of consistent and stimulating normative structure in accordance to which the choice of violence or arms by any actor (from illegal possession to threats and murders) will be experienced as dangerous and unprofitable, contrary to continued positive sanctioning and experience-witnessed profitability of opting for peaceful non-violent problem-solving methods and creative pro-social goal realization. Like in case of most forms of crime and deviance, the highest level of responsibility for the existence of normative deviance in social relations at this level lies with social positions holding the power to create normatively stimulating social environment, the positions primarily held by political elites.

The value aspect of trust in arms, crime, and violence focuses on the process of socialization, including individual, group, national, and societal level of opting for crime, violence, and arms. On the individual level there is a personal choice of a social actor who highly values the possession of arms. Such value orientation can be based on neutral and relatively harmless collector's wish to possess arms, but it can also be based on criminal and violent motives. Furthermore, it can be motivated by the fear for one's own safety in relation with the lack of trust in social institutions in charge of the promotion and protection of civil safety. The mentioned protection is particularly important if there are among *the lovers of arms* the citizens who participated in the defence of the country with the primary manifest goal to create a state as an independent sovereign entity that is efficient and guarantees among other things all necessary levels of safety.

Group level of value-based opting for crime and violence can be explained by various criteria. The professional criterion refers to social groups and categories that possess and use arms as a part of their legally performed profession. The traditional criterion refers to social groups/ categories who were forced to get accustomed to arms or who were in close geographical touch with the cultures in which arms and its social function are symbolically positively seen. We can also take the criterion of *negative experience* of certain minority groups who, regardless of the real discrimination, live with the constant lack of trust in institutions and thus keep arms *just in case*.

The values of crime and violence on the national level can be interpreted in the sense of inclusion of the society into the wider value context of the societal community that may have preference or socialize for the values of arms and warfare. Classical sociological literature calls such societies *militaristic* (Spencer, 1897; op-

posed to industrial societies) as in them arms and violence are socially desirable values that have to be proven in the process of initiation, after which they present the basis on which social success and prestigious position are achieved. Also, a society can on this level be included into or under the influence of a wider societal frame or a cultural background in which the values of peacekeeping and hard work are desirable, which makes a degree or certificate of expertise witnessing one's knowledge more important for the 'initiation' process, with creativity and the trust in social norms presenting the basis for social success.

Finally, we need to discuss the possibility of destroying social relations that stimulate deviance, crime, and violence; social relations that structured in the experience of social actors the conviction that deviant means are an easier and relatively harmless way to realize desirable goals.

4 THE POTENTIAL FOR A BREAKTHROUGH

Is there a way out and how to get there? The first step towards the exit from the *vicious circle* of crime is to reveal and understand the weaknesses of the present fight against crime. The weakest point so far is the relying on the same logic that led to the development of deviant structures in the first place and that continually promoted, independently of the awareness of the involved actors, crime as an alternative, acceptable, desirable, and sometimes even the only efficient means for achieving goals. This logic can also be recognized in the domination of politics over social institutions that should develop autonomous, independent, and politics-freed action strategies, as well as make business decisions based on scientific and professional criteria.

The basic drawback of politically-dependent decisions is manifested in the lack of jointly defined goals and mutual responsibility. Namely, strategic decisions are in principle socially supported because the members of the society choose the decision makers i.e. political elites in democratic elections. The decisions once made are thus obliging also for the members of the society who did not directly participate in the decision making process, although they paid for the final costs and bore the consequences of the decisions. A series of one-way decisions directed at different, often even mutually excluding goals, which are not corrected based on empirical test i.e. their real consequences, but are persisted upon based on the principle of the decision makers' unquestionability, can cause the disorganization of a society, a perfect example of which was the relationship between Croatian society and crime.

Besides the need to exclude the influence of political criteria on strategic decisions, it is once again necessary to point out the presence of political criteria and actors in institutions that should by definition act professionally and indepen-

dently, which primarily refers to the police. The creation of political strategies regarding anti-criminal activities that does not take the scientific and professional rationale into consideration and affirms the criterion of political appraisals and interests, so it would afterwards have an obliging effect on the police, is from its beginning founded upon unstable grounds. Independent and professionally consequential police activity directed at preventing and sanctioning crime can be successfully implemented only based on independent expertise and empirical testing. In case a series of assessments and decisions crucially depends on the perception and interests of various political groups that have exchanged chairs on top political positions in the last years, a discontinuity of mutually conflicting strategies and a permanent dependence of a profession upon politics are the result. In such circumstances it is not only impossible to ensure the development of adequate social control at least by arithmetic progression (step by step), but there is a threat of deprofessionalization and disorganization of the institution primarily in charge of the fight against crime, which continues to develop completely freely, with no regard for the rules, regulations, compromises, or political interests, which is why its spread over the social space can be said to be on the level of geometric progression.

The paradox is intensified when we take into consideration that the emancipation of state and public institutions (which is currently of crucial political significance in Croatian social reality) is possible only by consensus of the political elites i.e. their giving up of the power share in favour of the institutions and groups without whose independent professional activity it would be impossible to adequately respond to the challenge of alternative criminal socialization,criminal goals, and criminal rules that all members of society are exposed to.

5 CONCLUSION

The paper looks into the problem of crime in Croatian society from the perspective of social actors. The main starting point is that the failure to sanction crime leads to the spread of the belief that crime pays off, creating the vicious circle of crime. The research perspective is broadened from crime to deviant social structures and cultural patterns. Deviance is not understood through causes, but harmful consequences arising from social relations, patterns in social structures, or decisions of political elites.

The first chapter analyses the current state of affairs in order to enable the recognition of the most spread forms of criminal activities and consequential forms of deviance in a social reality. This primarily refers to corruption and unresolved misdeeds of political and economic war profiteering, which are discussed in the second chapter. Other forms of deviant activities *attachable* to this situation and

easily springing from it continue the distrust towards the institutions of the legal system, which in turn continues the renewal of distrust towards the rule of law in general. This primarily refers to the influence of political agents/factors on professional structures, which is dealt with in the third chapter. Special emphasis is put on the *culture of arms* as the symptom and symbol of perpetuating deviant normative and value patterns, making the rule of law unsubstantiated in the experience of social actors, because it creates the environment for the propensity towards deviant and criminal methods. The final chapter considers the potential to exit the vicious circle of deviance and move towards a well-ordered society, which can be realized by raising general critical awareness as a prerequisite for harmonising economic and cultural capital with human potential in order to create a stimulating social climate. The power that should be directed towards realizing this potential resides with both nongovernmental social actors and political elites. Also, the responsibility that has to be taken for deviant actions in a well-ordered society is not only political, but also criminal and material.

Based on the analysis of crime and deviant processes in Croatian society, the authors have found that 1) organized crime has so far been a legal and legitimate social activity; 2) executive power has been in charge of determining what crime is (not); 3) legislative and judicial power are in service of executive power; and 4) such society truly lacks a permanent and clear basic value consensus on what is socially acceptable and constructive and what unacceptable and destructive. The authors have found that it is necessary to analyse deviance via its harmful social consequences, which are often left unquestioned and unpunished, resulting in what can no longer be studied as criminal behaviour but a deviant social structure and deviant cultural patterns.

Croatian society is not an environment prepared to overcome social relations based on traditional premodern (Inglehart, 1997) patterns, characterized by goods exchange economy, and social relations/positions based on affiliations, instead of on inalienable human and achieved civil rights, and the respect for diversity. The authors thus conclude that the final result of the analysed social processes is the negative effect on the processes of modernization and democratization. The decisive step towards development is the eradication of the political influence from professional structures and putting common good and citizens' welfare above all, and particularly above all individual and political interests. This step is not yet taken, which prevents Croatian society from finally abandoning corruption, establishing a well-ordered rule of law, and dismissing of totalitarian ballast that makes a desirable ideal of democracy remain only an unreachable illusion. However, this step is a precondition for exiting the *vicious* circle and for successful crime neutralization.

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THE VICTIM – A PASSIVE OBSERVER OR AN ACTIVE PARTICIPANT IN CRIMINAL PROCEEDINGS - GENERAL OBSERVATIONS FOLLOWING FROM THE ASSESSMENT OF LATVIA'S EXPERIENCE

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ABSTRACT
Purpose:
The article aims to examine the role of the victim in criminal proceedings. Special focus is placed upon the proportionality of the personal and public interests in situations of criminal procedure, when the solution depends upon the victim's opinion. The objective is set to examine the impact of the victim's opinion on the existence or absence of criminal proceedings, choice of the form of proceedings, and evolution of the proceedings and results. Likewise, the victim's role in proving the case is examined – considering this party to the proceedings both as a source of evidence and subject of proving.

Design, Methods, Approach:
The article analyses the provisions of Latvian criminal procedure law, examining their development from the so–called Soviet times to the present. Relevant legal acts, as well as the research literature, examining issues linked with the status of the victim in criminal proceedings, were analysed.

Findings:
The article, analysing the development of the criminal procedure law in Latvia over the last 50 years, concludes that this period has witnessed significant changes in the understanding of the victim as a party to criminal proceedings, the scope of victim's rights and obligations, victim's impact upon criminal proceedings and the application of its separate institutions. Significant changes have affected the victim's impact upon the existence of criminal proceedings. It allows proposing the question – if the situation under consideration is such that can be decisively regulated by the victim and the perpetrator, then, perhaps, the public interest is not so great as to recognise the violation as criminal at all?
Analysis of the victim's procedural safeguards allows concluding that in comparable situations the scope of victim's rights and obligations differs from the suspect's or the accused person's scope of rights and obligations.

Keywords: Victim, criminal proceedings, public interest, procedural safeguards

1 INTRODUCTION

A criminal offence has been committed. This fact, even if widespread, even if an everyday occurrence, always causes anxiety, dislike, incomprehension and many other emotions, the wish to punish being one of the most vivid among them. The people, upon whom the perpetrator has inflicted damage, are especially affected by these emotions. The more personal and severe the offence the deeper and more negative the emotions. From this emotionally saturated moment to the legal solution of the case time passes, that often mutes emotions, and which is filled with legal procedures during which a proper legal solution must be found. These are criminal proceedings – legal produce, which aim to arrive at a fair solution of criminal law relations, abiding by the interests and needs of the victim, the perpetrator, and society. Undeniably, the victim is one of the parties in this procedure. The article aims to examine the questions – who exactly the victim has been and is in the criminal proceedings, what are the victim's role and functions? How has the perception of the victim changed in the modern criminal proceedings over 50 years? The issues are examined on the basis of Latvia's experience taking up those aspects in the victims' criminal procedural status that the authors deem to be the most topical.

2 SHORT OVERVIEW ON THE DEVELOPMENT OF LATVIAN CRIMINAL PROCEDURE LAW, 1960–2012

For the clarity of the following overview, a short insight into the development of Latvian criminal procedural law over the last 50 years seems to be useful This stage covers comparatively recent "history". At the same time 50 years for the development of a branch of law or its sub–branch a sufficiently long period to give its general overview, make conclusions about trends, developments and future forecasts. Development of criminal procedure law, as well as development of other sub–branches of law in Latvia during the last decades are interesting also for the reason that this period has been extremely rich in historical, political and legal changes, that among other things was marked by Latvia's incorporation into the USSR, regaining its' independence and accession to the European Union. The 50–year period of the development of criminal procedure law in Latvia has been chosen since during this time span the major legal documents of criminal procedure law came into force or were later replaced by others.

In 1961 the Criminal Procedure Code of Latvia SSR was adopted and came into force, which in 1991 was renamed into the Criminal Procedure Code of Latvia. But in 2005 the Criminal Procedure Law (CPL) was adopted and came into effect, which is in force today. The development of criminal procedure law in the period 1960–2012 can be dividend in three periods – 1961–1990, 1990–2005 and 2005–2012. The following findings characterise the first period:

- On January 6, 1961 The Supreme Soviet of Latvia SSR approved a Criminal Procedure Code of Latvia SSR (henceforward – LSSR CPC), ruling that it came into force in April of the same year.
- Until May 4, 1990 when the declaration "On Restoring Independence of Latvia" was adopted, the decrees of the Presidium of the Supreme Soviet of Latvia SSR amendments and addenda were adopted 18 times. Thus on the average the text of the code was edited slightly more often than once in two years over 30 years.
- The common trend of the amendments in the LSSR CPC made during this period was expansion of rights of the suspected and accused persons, strengthening of prosecutor's supervision and simplification of proceedings. The amendments made during the given period both by their number and substance are to be recognized as significant. At the same time, despite the multitude and significance of the amendments, at the end of the given period i.e., at the beginning of 1990s the LSSR CPC can be still be perceived as systematically unified, still comparatively lucid and clear for application.

To characterise the second period, i.e., 1990–2005, the following can be mentioned:

- At the very beginning of the period it was decided that a new Criminal Procedure Code should be drafted. However, time passes and the changes that were happening around could not but leave an impact upon the criminal procedure provisions that were in force. Thus, two directions characterise the development of the criminal procedure: 1) elaboration of a new code, 2) elaboration of amendments and addenda in the code that was in force.
- As for the first direction of work, one can note, that the first edition of CPC RL was submitted to the Ministry of Justice in March 1994. The draft was widely discussed both on local and international level. The second edition of the draft was submitted in the summer of 1995. But the third edition was ready on October 31, 1996. After collecting and evaluating the submitted proposals and after their integration into the draft the Ministry of Justice the fourth edition was submitted. The fifth edition of the draft was prepared and submitted to the government in December of 1998. (Meikališa, 2000, P.116–133)
- In 2000 the administration of the Ministry of Justice after discussions with law–enforcement agencies concluded that the draft did not meet the requirements of the time and it was necessary to work out a new draft. On February 26, 2001 a new working group was established to work out the draft of CPL. On June 12, 2001 the Cabinet of Ministers approved the draft concept of the new CPL. The CPL draft was submitted to Saeima (Parliament) on 29.05.03, at Saeima plenary session of 29.05.2003 it was sent to the Saeima committees and on 19.06.2003 it was approved in its first reading. After its third reading the Criminal Procedure Law (henceforward CPL) was announced on May 11, 2005 and it came into force on October 1, 2005.

- The entire period is characterized not only by working out a new legal document but also by very intensive work on introducing changes in the existing code. One could conclude that the provisions of LSSR CPC were amended speedily, extensively and essentially. At the beginning of the period the title of the legal document was still Criminal Procedure Code of Latvia SSR. That was changed only with the law of August 21, 1991, which prescribed that untill the adoption of the Criminal Procedure Code of the Republic of Latvia, the Criminal Procedure Code of Latvia SSR was to be considered as Criminal Procedure Code of Latvia (henceforward CPC).
- Since May 4, 1990 until it became invalid on October 1, 2005, approximately 15 years, this legal document was changed 39 times, in other words – 2.5 times per year. Not all the years are characterized by the same intensity of amendments. Most of all CPCL was changed in 1991 when five laws on amendments and addenda were adopted and in 1993 this legal document was changed 9 times.
- As the most significant areas of amendments are: 1) changes in terminology; 2) changes that are associated with the harmonization of CPC provisions with the provisions of other laws, mainly with provisions of the Criminal Code and Criminal Law; 3) introduction of several essential basic principles (such a fundamental criminal proceedings principle as presumption of innocence was introduced in the CPC in 1993); 4) revision of compulsory measures and creation of additional guarantees to the persons against whom such measures are applied; 5) changes of competences of different law–enforcement agencies involved in criminal proceedings. In this sense the reform of 1994 – 1995 was of particular importance having to do with transformation of the system involving the Prosecutor's Office and investigating (inquiry) institutions; 6) revision of the scope of compulsory measures and the creation of additional guarantees to persons against whom they are applied; 7) introduction of other procedural guarantees; 8) changes in types of proceedings; 9) inclusion of international cooperation into the CPC devoting to it a separate chapter which was accomplished with the law of June 20, 2002. (see more in Meikališa (2000), P.116–133, Strada–Rozenberga K. (2012),P.411–422)
- As a result of the multiple and extensive amendments one can identify both positive and negative features. Undeniably it afforded to the modernization of criminal proceedings, introduced provisions compliant to international standards, and provided grounds for transition to new legal regulation of criminal proceedings. Yet at the same time the negative feature was that at the end of the given period, the CPC could not be considered a systemic unified, lucid, and understandable, hence it was not a legal document suitable for application.

Regretfully, the third period, which started when the CPL was adopted and came into force, can be characterised as the time of stability.

- CPL has been amended and supplemented very often and essentially. Since the moment of its adoption untill now changes have been made 14 times, i.e., on the average twice a year.
- It has been changed so far that in Part A and B that regulate the so–called local criminal proceedings less than 57% of provisions remained unchanged, while Part C which is devoted to international cooperation, has been both amended and significantly supplemented.
- Characterizing amendments in the CPL can be classified into several groups: 1) editorial amendments, including elimination of insufficiencies and imprecision's that had been created as a result of carelessness introducing the previous amendments. Such amendments actually mean elimination of mistakes, elimination of the previous, insufficiently considered consequences; 2) amendments of separate Sections of the CPL, adding, specifying – by finding a better, more precise wording for the edition of the section at the same time harmonizing regulation of identical issues in different provisions; 3) amendments that change the essence of criminal procedure institutions or create entirely new criminal procedure institutions.
- As the most significant amendments that essentially influenced the whole system of criminal proceedings and the provisions regulating it one could indicate abolishing of the institute of lay judges from July 1, 2009 and abolishment of private prosecution proceedings from January 1, 2011.

3 THE CONCEPT OF THE VICTIM IN THE CRIMINAL PROCEDURE

The use of the concept "victim" is neither uniform in theory, nor in practice, and is understood in two different ways:

1. the actual person, who has suffered from the criminal offence, upon whom damage has been inflicted by the criminal offence;
2. the victim in the procedural meaning – the party to the criminal proceedings, whose status is regulated by the criminal procedure.

   Not all the actual victims of the criminal offence or the persons, who have suffered damage caused by the criminal offence, are also victims in the meaning of criminal procedure. For a person to obtain the status of a victim in criminal procedure, they must be recognised as a victim by a special decision. A person may be recognised as a victim, if the following pre-conditions are present:

1. the person has been inflicted moral injury, physical sufferings or material loss;
2. the moral injury has not been inflicted as to a representative of a certain societal group;

3. the person has expressed a wish or a consent to be the victim in the criminal proceedings;
4. the person has been recognised to be a victim by a special decision taken by the body in charge of the proceedings.

Thus, any person, who has suffered from criminal offence, may decide – to become or not to become a victim in the meaning of the criminal proceedings. In this respect the position of the CPL provisions essentially differs from the one that was in force while the CPC was valid. According to the CPC the wish or consent of the person to be recognised as a victim was not necessary. Thus, in all criminal cases, in which the objective signs allowed establishing that a person had suffered because of a criminal offence, this person was recognised as the victim. This decision was adopted, irrespectively of the fact, whether the person consented or did not consent, possibly, even against his or her will. Presently all persons, who actually have suffered because of the criminal offence, may decide to become or not become a victim as a party to the criminal proceedings (see more: Meikališa & Strada–Rozenberga, 2010: 353–356). The finding that a person acquires the status of a victim in the criminal proceedings only if he wishes to do so, leads to the following two questions: 1) what does the person gain/ lose, by consenting to take the status of a victim in the criminal proceedings; and 2) what are consequences for the course of the criminal proceedings, if the person is unwilling to assume the status of the victim in the criminal proceedings.

The answer to the first question is simple – at the moment, when the person decides, whether to become the victim or not in the meaning of the criminal proceedings, he or she must be aware of his or her wishes and directly – whether he wishes/ does not wish to participate actively in the proceedings and influence its course. This is the essence of the decision. The possibility to become actively involved in the proceedings and to influence it, i.e., to receive information on the course of proceedings, to receive copies of the case materials, to submit challenges, to submit complaints, to participate in the court proceedings, to speak at the court hearings, etc. is granted only to those persons, who have actually suffered from the criminal offence, who have expressed the wish or consent to be a victim in the meaning of the criminal procedure and have been recognised as such by the decision adopted by the body in charge of the proceedings. If the person does not want to participate in the proceedings with an active status, he or she is not involved in the proceedings, unless that is not necessary due to the need to obtain from him information relevant for the criminal proceedings.

The answer to the second question is more complex. In defining it such principles of the criminal procedure as the mandatory nature of criminal proceedings and the public accusation must be kept in mind. It allows recognising that the fact, that the person, who actually suffered from the criminal offence, does not want to be the victim in the meaning of the criminal proceedings, does not in

any way influence the existence of public criminal proceedings; as this is done in the interests of the public (see more in: Meikališa & Strada-Rozenberga, 2010: 100–103). Exceptions to this principle will be examined in the following section.

Even though formally only the victim in the meaning of the criminal proceedings is recognised as the party to the proceedings, it cannot be denied that also a person, who has actually suffered from the criminal offence, however, had not wished to be recognised as the victim also in the legal understanding of it, has a specific and independent role in the criminal proceedings. This allows proposing that a special status should be established for such persons (Meikališa & Strada–Rozenberga, 2010: 353–356).

Continuing the examination of the concept of the victim, two more aspects must be discussed: 1) whether the status of a victim should be granted not only to natural, but also legal persons and 2) the actions to be taken in the case of the victim's death. As regards the first one, it must be pointed out that in Latvia at the beginning of the 1960s, only a natural person could be a victim, but starting with the mid-1990s this status can be granted also to a legal person. As regards the second one, it must be noted that the initial wording of the CPL envisaged that if the person, who actually suffered as the result of the criminal offence, dies, one of the relatives or the spouse should be recognised as the victim. The amendments introduced in the recent years apply this possibility not only to the situation, when the victim has died because of the criminal offence, but to all cases, when the actual victim has died before the proceedings have been initiated or during it.

We believe that the "replacement" of the victim should not be supported. In this case due to the death of the actual victim some of the relatives can be recognised to be a victim and, which is important, not because he or she has directly suffered because of the criminal offence (if it is established that a person has directly suffered because of a criminal offence, he himself is entitled to be recognised as a victim, irrespectively of the fact that another person has died), but because he "replaces" the person, who actually suffered from the criminal offence. In the aforementioned context it must be recognised that legally it is of special significance to differentiate between situations, when a person himself personally suffers from the criminal offence and when the damage inflicted to him is linked with the perpetration of a criminal offence. This borderline is very fine and reveals that the phrase "suffered from criminal offence" in the framework of the criminal proceedings is used in a very narrow understanding compared to everyday life understanding of "suffering".

The majority of readers, having read the aforementioned, initially, perhaps, will disagree. Hasn't the child, whose father has perished because of a criminal offence, or a mother, who has lost her child, suffered? Undoubtedly, actually they have. And the state should take measures to support these people in various

ways, both psychologically and financially. However, in the criminal proceedings a borderline has to be drawn. Otherwise the relatives of other victims of crime, who have survived, should also be recognised as victims. Aren't they suffering too? Are emotions, pain and material loss caused only by death? Doesn't severe disfigurement, mental traumas, particularly cruel crimes with permanent consequences create damage to the relatives? Clearly, they do, but in accordance with the CPL provisions that are in force they are not recognised as victims. Following from this discussion we believe that the CPL does not aim to broaden the circle of persons, who could potentially be victims, but to ensure the protection of the deceased victim's rights. Thus, in fact, here we see the protection of the interests of the actual victim (which is slightly similar to representation, however, making the disclaimer that according to the general rule representation expires with the death of a person) and of a person, who becomes involved in the proceedings to ensure the interests of the deceased. Perhaps, to avoid ambiguity in the text of the law and in practice, a special procedural institution for the protection of the rights of a person who has died because of criminal offence, thus, the actual victim (for example, a special status – a person, who advocates the protection of the deceased victim's rights) instead of the current "replacement" of the victim (Meikališa & Strada–Rozenberga, 2010: 353–356).

These considerations are made even more relevant by the fact that the concept of "the victim" is losing its national content. It is documented, for example, by the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JH and other EU documents, which deal with the relevant concepts and influence or might significantly influence the national criminal procedure law and its application.

4 GENERAL CHARACTERISTICS OF THE STATUS OF "THE VICTIM"

In the current Latvian criminal procedure law the victim may be characterised as an active party to the proceedings, to whom possibilities of active participation, within a limited framework, are ensured. It must be emphasized that the victim is not a body in charge of the proceedings and, with a number of exceptions that will be mentioned in the following section, has no significant influence upon the proceedings. He/she has all the rights that ensure unbiased proceedings and his participation within the limits of his competence, i.e., the right to use a language that he/she understands, to participate in the court hearings, to get acquainted with case materials, to submit requests, challenges, complaints, to receive legal aid, etc. However, in view of the fact the prosecutor's office has exclusive juris-

diction over criminal prosecution, the victim is unable to assure that the offence is investigated and the perpetrator is made criminally liable, if the prosecutor does not deem it possible or necessary. Likewise, the victim has almost no possibility to influence the type of procedure selected. In some cases, though, the victim has the chance to exert decisive influence upon the absence or termination of proceedings. This issue is examined in the following section.

We would like to point out as an aspect of special significance that currently Latvia no longer knows the procedure of private charges. In this type of proceedings, which existed in Latvia prior to 1 January 2011, the charges were brought by the victim or his representative, it did not have the pre–trial procedure and the involvement of a prosecutor (Meikališa & Strada–Rozenberga, 2010: 674–793). On 1 January 2011 amendments to the CPL came into force, fully renouncing this type of procedure. Thus, currently in all cases the procedure of public indictment is realised, in which the victim may participate within the limits of his/her competence.

The victim's involvement in the criminal proceedings is characterised by the voluntary exercising of rights and free choice in defining the scope, i.e., the person himself may choose whether to exercise his rights or not, and if yes, then – the scope of them (this is one of the general principles of the victim's rights referred to in the CPL). No procedural coercive means can be applied to the victim with the aim of realising these rights. However, the meeting of obligations is mandatory to the victim, and the victim may not refuse to fulfil the obligations.

The involvement of the victim in proving a case deserves special mentioning. The victim may be the subject of proving in this procedure, since the CPL grants him the right to submit evidence, to participate in the verification at the court, etc. Likewise, the victim may the source of evidence. Here it must be noted that the victim has the obligation to testify (he/she may refuse to testify against himself/herself or against relatives), and to hand over evidence. Criminal liability to the victim for ungrounded refusal to testify or to hand over evidence is envisaged. Likewise, the victim is obliged to give true testimony. Criminal liability is envisaged for deliberately false testimony. For a comparison it must be noted that the rights of the suspect or the accused as regards testifying differ – suspects may totally refuse to testify (not only against themselves or their relatives), and no criminal liability is envisaged for deliberately giving a false testimony.

5 THE VICTIM'S IMPACT UPON TH EXISTENCE OF CRIMINAL PROCEEDINGS

Section 6 of the CPL enshrines the mandatory nature of the criminal proceedings as one of its principles. It envisages that "the official who is authorised to perform criminal proceedings has a duty within his or her competence to initi-

ate criminal proceedings and to lead such proceedings to the fair regulation of criminal legal relations provided for in the Criminal Law in each case where the reason and grounds for initiating criminal proceedings have become known." It follows from this provision that the so-called legality principle is recognized in Latvian criminal procedure, as opposed to the efficiency principle. The efficiency principle to a certain extent relates to the proportionality principle, sometimes they are not sufficiently differentiated. However, even though both efficiency and proportionality are value concepts and in some cases overlap, there are situations, when these should be differentiated between, since not always that, which is efficient, at the same time will be proportional, and vice versa. One can also note that abiding by the proportionality principle, when deciding upon the existence or absence of criminal proceedings, is more applicable to the provisions of substantial law, but the efficiency principle in the context of the issue, whether the criminal proceedings should be present or not, is linked with procedural norms. Within the space of recent legal discussions about criminal procedure, the acceleration of the criminal proceedings has been one of the most popular and leading topics, including increasing the manifestations of the efficiency and proportionality principle, the victim's decisive impact upon the existence or the absence of criminal proceedings (Strada–Rozenberga, 2012: 2–29).

The issue of the victim's role and influence in the criminal proceedings deserves extensive discussion. In reviewing this issue the so-called traditional theories of criminal justice must be referred to – punitive legal proceedings and utilitarism in criminal proceedings. The so-called punitive theory (on other sources called also "retributivism"– name with Latin origin, "retribution") views the punishment as a deserved retribution for the violation of norms and oriented towards the past. The person should be punished, because he has violated provisions, it is a retribution for the offence. The supporters of this theory see also the course of the criminal proceedings as important, however, the victim is not allocated a significant role in the processes of the criminal proceedings. The supporters of the utilitarism theory are, in their turn, are future oriented and believe that the person should be punished for an offence with the aim to prevent reoccurrence of such offences in the future. The supporters of this theory are the ones, who emphasize the so-called general and special deterrence as the objective of punishment. According to this theory the regulation of the proceedings is not significant, likewise, the victim is not granted an important role. In the recent years also the ideas of the so-called restorative proceedings have become topical, according to these the main aim of the criminal justice system should be restoration of harmony, reconciliation of the involved persons and that the involved state institutions should become similar to agencies for service provision, predominantly taking care of this "restoration" process. According to this approach the victim has a significant role in the criminal proceedings (McGonigle Leyh, 2011: 36–41; 51–57).

Returning to Latvian CPL, it must be pointed out, that the manifestations of the aforementioned principle of the mandatory nature of the criminal proceedings are restricted by the provisions included in the CPL, which in a number of cases envisage initiation of criminal proceedings only if the victim wishes so. In the so-called Soviet years and the period from 1990 to 2005 there were only a few offences, with regard to which initiation of proceedings depended upon the victim (intentional mild bodily harm, libel and defamation, with regard to which the so-called private accusation process was conducted, and also rape without qualifying circumstances, for which public charges were brought, but only if the victim wished so). Since 1 October 2005, with the coming into force of the CPL, the number of those criminal offences, the criminal investigation, prosecution and punishment of which decisively depend upon the person, who has suffered damage because of the criminal offence, has significantly increased. Currently this number has reached 15; among them, theft, fraud, small-scale misappropriation, some violations in the field of road traffic, several types of bodily harm, hindering the realisation of voting rights, rape, etc. It must be noted that with regard to all these offences the victim's will is decisive not only as regards initiating the proceedings, but all these procedures must be terminated, if a settlement is reached during the proceedings.

The trend of granting more opportunities to the victim to influence whether the proceedings will take place at all and the person will be punished – cannot be assessed unequivocally as being positive or negative. The following positive aspects can be mentioned:

It complies with the trends for simplifying the criminal proceedings (see, for example, the Council of Europe, Committee of Ministers Recommendation No. R (87) 18 to Member States Concerning the Simplification of Criminal Justice. This Recommendation to the Member States advices giving *up the principle of proceedings*, using the following measures with regard to insignificant and common offences: summary procedure, *out–of–court settlement*, simplified procedure, simplifying the ordinary procedure; the EU Council Framework Decision of 15 March 2010 on the standing of victims in criminal proceedings, which, *inter alia*, states that each Member State shall seek to promote mediation in criminal cases for offences, which it considers appropriate for this sort of measure, and that each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account;

- Allows abiding by the efficiency considerations in the proceedings;
- Allows the person, who has suffered from the criminal offence, to become aware that he/she has a decisive role in the criminal proceedings, etc.

The negative ones – issues of public importance (and the CL contains such offences, which should be considered as the most severe, thus harmful not only to one person, but society in general) are left at the discretion of one person,

criminal liability becomes dependent not upon the substance of the offences (who has perpetrated what, is liable for that), but the willingness/ unwillingness and ability/ disability of the involved subjects to reach an agreement, etc. Thus, being well-aware that return to the mandatory nature of criminal proceedings and unlimited manifestations of its public nature probably will not have happen, special consideration should be given to what kind of offences may be attributed to which type or sub-type of proceedings (Meikališa & Strada–Rozenberga, 2010: 637–648)

We still consider that criminal law should be retained as a mechanism for protecting public interests, not as a means for settling personal disputes. We are not proposing in any way that the victim should not be protected and supported. On the contrary – these persons deserve much larger state support (some trends and proposals see, for example, in Doak, 2008). Likewise, we do not consider at all that the only solution with regard to the offender would be harsher punishment. Alternative models for solving criminal law relationships can be sufficiently effective (see, for example, The Role of National Criminal Law in the European Union Area and the Alternative Resolutions of Criminal Procedure, 2011). We also support the promotion of settlement and solving conflict situations within the framework of the criminal proceedings (see, for example, Judins & Pelikana, 2011) However, we believe that the victim's will should not be the only consideration in deciding, whether the criminal proceedings will or will not take place, whether the person will or will not be punished. If the public sees the offence as so insignificant that the questions, whether to recognise or not that a person has committed a criminal offence, is left for the victim to decide, then perhaps there are grounds to discuss the possible need to decriminalise the offence. This proposal might seem inappropriate and unfashionable in the context of contemporary development trends in criminal justice (predominantly under the influence of the so-called restorative proceedings). However, we hope that we shall not be misunderstood. We are not against the idea of reconciliation between the victim and the offender – reconciliation should be facilitated and an outcome of a settlement is a factor to be taken into consideration when deciding the offender's future fate. However, it cannot be the only one, from which the solution of the problem depends, with long-term consequences for the offender and also for the victim himself.

It seems that the initiation of criminal proceedings should be left at the discretion of the victim only in such situations, when because of the personal nature of the offence only the victim is able to determine whether infringement has taken place and whether it reaches the degree of criminally punishable infringement. This aspect should be examined separately from the consequences of reconciliation in criminal proceedings. At the same time the possible consequences that the achieved settlement might leave upon the course of criminal proceedings must be carefully considered. Already several years ago we proposed that settlement should be more precisely regulated in Latvia (see, for example, Strada-Ro-

zenberga K. (2008) Cietušais un tā tiesības kriminālprocesā [The Victim and his Rights in Criminal Procedure]), recommending, for instance, envisaging cases, when settlement would be inadmissible as grounds for terminating criminal proceedings. It was proposed to include among these cases, for example, those situations, when the criminal offence is a threat not only to the interests of a concrete person, but also affects the public interests, when the offence has caused grave consequences, etc. These proposals were supported by other Latvian scholars of criminal procedure (see, for example, V. Liholaja (2009) Izlīgums un krimināltiesisko attiecību taisnīgs noregulējums [Settlement and Fair Regulation of Criminal Law Relations]), and accepted in court practice. This was stated in a collection of case-law of the Supreme Court of Latvia "Case-law concerning terminating criminal proceedings and releasing a person from criminal liability, on the basis of settlement reached between the victim and the accused" (2008): "Termination of criminal proceedings, releasing a person from criminal liability due to a settlement is admissible, if the object of the criminal offence is the victim's interest of personal nature, the provisions of Section 97 (8) of the Criminal Law also indicate that the victim may reach a settlement with the person who has inflicted harm to him or her. If the criminal offence has affected also the interests of another person, society, the state, then the termination of criminal proceedings on the basis of a settlement, concluded between the accused and the victim, should not be admissible." We believe that the following, exceptionally effective solution might be advanced as one of the proposals – with regard to some offences (the direct object of which has been the victim's personal interests, which have not been committed in a generally dangerous way or have not caused severe consequences, etc.) to envisage the possibility to terminate the criminal proceedings on the basis of a settlement, however, applying the so–called conditional termination of the criminal proceedings, i.e., a procedural situation when after termination of proceedings until the decision's final coming into force the so-called probation period is set for the person, similarly, additional obligations may be imposed upon the person.

In conclusion it must be mentioned that the recognition of an offence as being criminal, depending upon the victim's opinion, as well as the legal consequences of a settlement, first of all should be envisaged by the substantial criminal law provisions. The inclusion of this regulation only in the criminal procedural provisions can be regarded neither as sufficient, nor methodologically accurate.

6 CONCLUSIONS

The victim of a criminal offence is a person, who has / might have private interest to participate in the criminal proceedings and who should be ensured the possibility to participate within the limits of his competence.

The issue of "replacing" the deceased victim with his relatives is worth consideration. It seems that the introduction of an institution for representing the victim's interests would be more appropriate in such cases.

The victim should be ensured the possibility to exercise his procedural rights voluntarily and within the scope set by himself.

The issue of the victim's decisive role in the existence of criminal proceedings should be carefully considered. It seems that there are no grounds to define the victim's opinion as the decisive criteria for initiating criminal proceedings in the case of offences particularly harmful to society, and criminal offences are to be recognised as such. The victim's opinion regarding initiation of the criminal proceedings should be decisive in those situations, when because of the personal nature of the offence only the victim himself is able to determine, whether infringement has taken place and whether it reaches the degree of criminally punishable infringement.

Reconciliation should be facilitated in the criminal proceedings, carefully assessing its possible legal consequences, *inter alia*, the possibility to terminate the criminal proceedings on the basis of a settlement. One of the possible solutions – for some offences the possibility to terminate the criminal proceedings on the basis of reconciliation should be envisaged, however, applying the so-called conditional termination of the criminal proceedings.

The decisive role of the victim's opinion in initiating the criminal proceedings and the legal consequences of settlement should be regulated in the substantial law provisions.

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INTER-PRISONER SEXUAL HARM: REPRESENTATION VS. REALITY

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ABSTRACT
Purpose:
Sexual harms between inmates are widely used within popular cultural representations of imprisonment. This paper argues that popular depictions of prison life are inaccurate relative to the reality of prison rape, often showing a positive transformation resulting from sexual violence directed towards key characters.

Design/Methodology/Approach:
A grounded analysis of representations of prison rape in a number of different films and television episodes.

Findings:
The main contention is that the prison film genre gives an overly stereotypical and clumsy portrayal of sexual harms within the prison setting, with problematic and negative implications for both audiences and incarcerated men. It argues that such depictions result in the misrepresentation, normalisation, and the comic establishment of incarcerated sexual harms which can have serious implications in terms of how prisons and sexual violence within them are perceived. Such messages can imply that prison rapes can have positive and character improving implications, and create masculine hero characters, as opposed to highlighting the serious potential harms that can actually result.

Value:
The article shows that representations of inter-prisoner sexual harms fail to portray an accurate picture of men in prison to a society reliant upon such depictions for information, with potentially serious implications for public perceptions and policy application.

Keywords: Prison rape, representation, identity transition, masculinity, sexual harm

1 INTRODUCTION

This paper seeks to address the lack of coherence in the prison film genre's interpretation and depiction of inter-prisoner sexual harms, and the reality of the issue as recognised through academic research. The importance of the prison film genre as a source of information about imprisonment, the spectacle of which has been removed from the public eye, turning it into a 'strange secret between the law and those it condemns' (Foucault, 1975: 15) is huge, in particular with

reference to the dearth of 'real' knowledge available about prison life (Bennett, 2006). In particular, there is a distinct gap between the represented effects of sexual harms in prison fiction (which are and generally shown to be a positive event for the victimised character's narrative, transforming him into a 'better' person for a particular situation), and the reality of sexual harms in the real-world prison context which, despite a general lack of research, are shown to have negative effects upon prisoners' identities. This article is based upon the emergent themes of a grounded analysis of various 'prison films' in the broad sense. Nellis defines the 'prison movie' as 'a feature film (rather than a documentary, although the area of overlap can be considerable in this field) which is set wholly or mainly in a penal institution ... or - more loosely – which takes imprisonment *and its consequences* as a primary theme' (1988: 2 – emphasis in original). In this case, seventeen films and TV programme episodes with reference to prison rape (both serious and for 'comic' effect) were watched and analysed in terms of their approach to representing incidences of prison rape and the resultant plot lines. The films were observed in order to gain an initial understanding of where common assumptions surrounding prison and prisoners come from, other than direct experience. Particular note was taken of the manner in which sexual harm is depicted, how it impacts upon the victimised character, and whether it is shown in a positive or negative light. Although there were a number of representations of women, the majority of depictions of prisons focus upon men – to a degree representing the dominance of men in the adult prison estate populations worldwide. The overriding theme that emerged was the use of prison rape and sexual harm as a measure through which demonised film characters can be transformed into socially acceptable individuals – their victimisation enabling them to move into a different category of 'other' prisoner, not fully part of the 'normal' (and thus 'bad') prison population (see also Mason, 2006).

2 REPRESENTATION VS. REALITY

As Schauer notes, 'representations of prison life tend to be structured fairly intensely around avoiding rape and punking' (2004: 35). Although much has been written about the qualities of prison films and their definition (Nellis, 1988; Mason, 1995; Rafter, 2000; Schauer, 2004; Wilson & O'Sullivan, 2004, 2005), little direct consideration has been given to the issue of how the realities of prison sexual harms sit in relation to representations. Crewe notes how 'little of the prison literature that I had consumed had primed me' for the reality of his prison research (2009: 465), and Saum *et al.* describe the fact that inmates themselves perceive a 'myth of pervasive sex in prison, contradicting their own realities' (1995: 427), with the media, prison narratives and institutional research playing a part, yet they too give little attention to the importance of representations in shaping concepts and judgments. Roberts and Hough make the observation in

their consideration of public knowledge of imprisonment as a whole that '[d]espite – or perhaps because of – frequent media representations of prison life, the public probably know less about imprisonment than any other stage of the justice system' (2005: 91). There are numerous problems that result from this lack of accurate knowledge about prison life, and sexual harms in prison in particular – little, if any, evidence examines the knowledge in existence about prison sexual abuse and its subsequent potential implications, yet the public health (and wider negative social) implications of prison rape are extensive (McGuire, 2005; Just Detention International, 2009).

Much research has been done into sexual harms within the prison setting (particularly within the United States): the 2003 Prison Rape Elimination Act and its 2009 report instigated numerous studies into this aspect of sexual violence. The reality is that sexual harms do occur within the prison setting. Work from the USA found that 20 % of a sample of 516 respondents had been forced or pressured into sexual contact whilst incarcerated, giving an incident rate of 22 % for men and 7 % for women (Struckman-Johnson et al., 1996: 67). There have been a wide variety of studies undertaken to find the rate of incidents within prisons in the USA, and another study has pointed out that the suggested rate of prison rape varies from 1-14 % in different pieces of research (Struckman-Johnson & Struckman-Johnson, 2000: 380). As such, the statistics are somewhat inconclusive in pinning down the actual rate of assaults, yet they do determine the fact that such incidents occur on a fairly regular basis (backed up by ex-prisoner testimonies). In the UK context, Banbury (2004) has determined that 1 % of a sample of 208 inmates had been sexually coerced involving sexual intimacy during their incarceration; a study of young offenders by McGurk et al. (2000: v) discovered that 0.3 % of 15-17 year olds in a young offender institution had experienced unwelcome involvement in sexual activity during their detention, and another study of five English prisons found that, of 1,160 prisoners, 6.8 % reported being sexual attack victims in their current prison (King & McDermott, 1995: 120). In a broader study on prison conflicts, it was found that, of a cohort of 481 prisoners who responded to questions about sexual assault, 'Eight (less than 2 per cent) said they had been sexually assaulted while in custody; 14 (3 per cent) said they had been threatened with a sexual assault; and a further 9 (2 per cent) said they had witnessed one – one inmate said she was a perpetrator and two said they had intervened to stop a sexual assault' (Edgar et al., 2003: 48). Although these studies tend to give much smaller rates of incidence than those from the USA (the aforementioned 0.3 % actually corresponds to only 3 individuals), they still show a problem to exist.

This area of prison research in particular is subject to serious limitations: geographically research projects tend to have variable foci depending upon the policy objectives of the location at the time – research on sex in prisons in the USA tends to focus upon harms, relationships, and gangs, whereas in South Africa,

the focus tends to be on the gangs and HIV/STDs (see Gear, 2001; 2005; 2007; Goyer & Gow, 2002; Singh, 2007). In the UK, prisoner research tends to focus more on youth, identity, bullying, violence, suicide and self-harm, these being the more high profile and 'worrying' aspects of the prison system at the time. This limits (if not totally prevents) cross-cultural (or cross-prison) comparisons. More research is emerging, however - in the USA in the wake of the Prison Rape Elimination Act 2003 the US Department of Justice issued standards to address sexual abuse in correctional facilities in 2012 (Just Detention International, 2012), and in 2012 in the United Kingdom the Howard League for Penal Reform announced the creation of a Commission on sex in prison, to include a review of coercive sex (Howard League for Penal Reform, 2012). Without facts that reflect current notions of sex, sexuality, gender, and other social issues, such research can be limited by the values of the past that are often out of date – studies from the early 1900s up to the 1970s discuss homosexual activity as 'a perversion' (Otis, 1913) or 'deviant' (Ibrahim, 1974): such accounts would now be seen as homophobic and unacceptable. In addition to the location of research in space and time, such research is, in itself, difficult to do. Obtaining access and ethical clearance is a major hurdle, and encouraging men to discuss matters that can have serious emotional, physical and demasculinising implications can be almost impossible. Struckman-Johnson et al. (1996) showed that only 29 % of targeted inmates had informed prison officials about a sexual assault, due to a combination of factors including fear of harm and poor treatment, in addition to feelings of shame and embarrassment. Entering prison reality to investigate the accuracy of film representations is thus difficult and rare.

Eigenberg and Baro (2003) compare the depiction of and reference to male sexual assault in fifteen different portrayals, considering issues such as frequency and centrality to the plot. The analysis is somewhat descriptive of the events represented, but they make a highly perceptive statement in their conclusion '... even though victims are portrayed somewhat sympathetically, there is no general outrage that men are imprisoned in institutions where they are not safe from either the threat or the reality of sexual assault...' (2003: 87). Despite this, less consideration is given to what these films are trying to say compared to how they actually depict rape and sexual assault, and, although it is mentioned in concluding statements, little reference is given to the reality and how reality and representation interact. This article intends to address these concepts. Mason also gives some consideration to the use of different forms of violence, including sexual variants, in prison films, stating that such depictions 'serve to limit the meaning of imprisonment to such brutality' (2006: 621) and actually are used 'purely for the pleasure of the spectator' (Mason, 2006: 607). Although prison films are arguably primarily for entertainment – after all 'Violence sells; stories exploring the socio-economic factors that underpin the inherent justice in the penal industrial complex do not' (Mason, 2006: 622) - they may have

more subtle uses regarding the role of sexual violence in cinematic and television depictions (although Mason has found them more likely to situate prisons within discourses of violence and the dehumanised prisoner 'other', 2006). Indeed, it has been argued more broadly that 'Acts of sexual violence can be seen to function as an attempt to restore and reinforce a patriarchal gender order...' (Boman, 2003: 127).

3 REPRESENTATIONS OF RAPES

A number of films and TV episodes depict or refer to rape and sexual assault in prisons, such as *'Animal Factory'*, *'American History X'*, *'Sleepers'*, '*The Shawshank Redemption'*, *'Brubaker'*, *'American Me'*, and *'Oz'*. Other 'humorous' depictions of the prison setting refer to sexual assault in a more indirect manner, using it as a comedic device, such as the 2006 film *'Let's Go To Prison'*, (which used images such as soap and rubber ducks in its advertising in order to bring the audience imagination to the shower setting and its associated sexual dangers); the classic comedy *'Stir Crazy'*; or the 1970s British sitcom *'Porridge'*. In addition, sexual innuendo referring to the prison setting is found in a variety of non-prison films – one example of this is the joke made in the high-brow US sitcom 'Frasier', with the comment 'who's wearing shorts in the shower now??!!' (Episode 4.10: 'Liar Liar'). Although more concerned with the serious depictions of sexual harms in the context of this piece, it is important to recognise that jokes regarding such violations play a part in influencing public perceptions and knowledge, and thus 'reality'. They have a normalising effect, detract from the seriousness of the crime, and encourage the public to see such violence as acceptable and expectable - this is recognised in the work of Sigler, who describes an occasion where a past Californian Attorney General joked about prison rape in a press conference (2006: 563). Every depiction arguably plays a part in the meanings and interpretations of prisons available to audiences.

The majority of prison films showing rapes and sexual assault are set in male prisons. The most likely reason for this is the sheer volume of films showing men in prison relative to women, but this may also reflect the general gendered myth that women do not commit sexual crimes. In addition, the majority of depictions represent prison staff (see also Schauer, 2004) as playing a part in the sexual harms, be that through omission (as in *'American History X'*), or commission (as in *'Sleepers'*). Again, the majority of staff members involved in the depicted incidents are men, which may again be the result of gendered stereotypes regarding sexual crimes, or the gendered nature of the representations – male inmates are generally shown to be governed by male staff. There is rarely a female presence situated within the prison, thus limiting how masculine identities can be framed and interpreted without women for gender identity juxtapositioning (see Con-

nell, 2005). Although it is clear that gender plays a highly influential role in the depictions of sexual harms within the prison setting (see also Schauer, 2004), the impact of another key variable in general discussions surrounding prisons – namely 'race' – is less than clear or accurate. In the majority of representations, race and sexual harm tend to be kept separate (contrary to the reality, as discussed in the following section). Specifically, black inmates are depicted victimising other black inmates (as in *'Animal Factory'*), and white inmates victimising white other white inmates (as in *'The Shawshank Redemption'*). Rarely do we see any cross-racial sexual victimisation occurring. Although race can play a part in the films themselves (for example, *'American History X'*) – rarely are sexual harms shown to be crimes of racial division/hatred. The reason for this is unclear, (particularly considering the research evidence), although it does seem politically safe for film makers to avoid the issue of inter-racial sexual violence in such an already contentious subject setting.

Prison films also have a tendency to depict the 'fairytale element' of the harms experienced within the institution: 'good' victims triumph over 'evil' perpetrators and corrupt staff, leading to the creation of 'heroic masculinities' (see also Schauer, 2004). Jarvis noted (in discussions of the prison series '*Oz*' that 'marks of battle do not signify weakness but, rather, inscribe the prisoner's body with signs of masculine agency and resistance to the will of others' (2006: 160) and Mason found similar cases of protagonists' redemption in death penalty films (2006: 619). Schauer notes that such victimised characters survive and retain heterosexual identities 'through some combination of masculine strength, entrepreneurial spirit, resourcefulness, independence, resilience and rebelliousness' (2004: 35) and Eigenberg and Baro recognise the use of such character constructions in prison films which convey that such men 'can withstand any circumstances and demonstrate great bravery in the face of great adversity' (2003: 63), thereby reinforcing social constructs of manhood and hegemonic masculinity (Connell, 2005; Connell & Messerschmidt, 2005). Eigenberg and Baro note this theme throughout their analysis with particular regard given to the context of the film *'Escape from Alcatraz'*, where they acknowledge the message that 'a "real man" cannot be raped or would fight to the death before he was raped' (2003: 65). Sparks (1996) suggests fictional heroic masculinity to be a reaction against unstable current notions of real masculinity; an interesting suggestion when applied to the prison setting where increasing numbers of young men are being incarcerated. These men are often those who have relatively few opportunities in terms of education, employment and socio-economic status, leaving very few legitimate expressions of today's hegemonically masculine values available; rather, they must find other avenues of masculine expression, often in the zone of criminality (Messerschmidt, 1993). If the incarcerated male can be depicted as having the potential for heroism, hope can be given to the truly imprisoned man. Brown's analysis of Mel Gibson movies (2002) considers the importance

of the role of sadomasochism in the construction of a superior masculinity in film – we can clearly see this in action in the prison film genre where the violent sufferings of leading characters are necessary in order to signify their eventual triumph over the adversity of the prison, and their superiority as men. Their ability to succeed where most others would fail, and thus retain their individuality and masculine ideals (as Eigenberg & Baro (2003) and Schauer (2004) discuss), places them at the top of the character hierarchy and gives them the ultimate hero status.

It is arguable that the majority of portrayals of prison rape and sexual harm are specifically used for the cinematic purpose of character development and transition. Through the comparison of the journeys of victimised characters, a pattern of transition emerges. Rape and sexual assault tend to be used in order to instigate a period of development, in combination with (a) the destruction of harmful or, more appropriately, 'irregular' masculinities – those deviating either from the society of the free population, or the society of the prison, depending on the representation in hand; and (b) an altered state of self-identity, which, after a period, is renegotiated in order to become a 'socially' acceptable and constructive state of self. There is also the final stage of release from the prison society and prison space, which tends to feature in the majority of films (be this in the form of literal release from the prison, escape, or even death). This transition has been recognised to occur in reality in prison populations - Jewkes argues that '[i]n addressing the tensions between structural demands and the need of the self, ... in public at least, prisoners must suspend their pre-prison identities and construct social identities that will conform to the expectations and demands of the performative and excessively masculine prison culture' (2002: xiii). Such suspended identity is seen by Schmid and Jones (1991) to be achieved in reality through the evolution of various strategies of adaptation throughout the inmate's prison career, including anticipatory strategies based upon pre-prison images of violence (which are likely to be informed to some degree by popular culture), and the concept of the 'bifurcation of [the inmate's] self' (1991: 419), whereby a prison identity is created to mask the potentially vulnerable pre-prison identity. The difference with this concept of suspended identity and the transformation shown in prison films is that real identity transformation is suggested to be for self-preservation in anticipation of, rather than as a response to, some chaotic event such as rape.

'American History X' is a good example of this transitional phase instigated through rape – in this film, the main character, Derek Vinyard (Edward Norton) is raped in the showers by his former neo-Nazi gang members. Following the rape, the character is seen to repent of his racist ways both in and outside the prison, where he attempts to make up for the harm that he created in his pre-prison life and removes himself from the racist sect of which he was a highly respected member. In this way, Vinyard's character is seen to wish to improve with the

help and advice of his former headmaster Dr. Bob Sweeny (Avery Brooks) who puts the offence into perspective with the line 'Has anything you've done made your life better?'. Such a line almost suggests that there is some sort of 'Karma' effect in life and he is being punished for his past wrongs through rape – note not simply by undergoing incarceration. The film implies that a horrific, violent rape is what is needed for this character to turn his life around, in part due to his being overly masculine and requiring a degree of feminisation (a feature of interpretations of the effects of male rape which has even been assimilated into prison jargon in terms of the use of the feminine identity signifier of subservience, 'prison bitch') in order to reduce future offending.

A similar transition effect can be seen in *'American Me'*. In this representation, the "formation of a socially constructive identity" is only applicable in the prison context. Montoya Santana (Edward James Olmos) is raped in a juvenile detention facility, murders his aggressor, and continues to be a violent offender both in the juvenile facility and in the penitentiary to which he is transferred. In this way, the rape seems to instigate a change in his life to a hard-core con, describing the gang's role in illegal activities in terms of being *'the choices we made to survive'*, and later, as central to gaining power and respect within the prison. In this way, the masculine success and new identity formed as a result of the rape becomes constructive inside the prison walls, where he is responsible for service provision, and conforms to the prison culture's ideology of hegemonic masculinity – strength, power, dominance – although, as we are to discover, on the outside, where the society has different values, he finds adaptation difficult in terms of his relationships with others. When he is eventually returned to the institution, his decision not to conform to his previous prison identity due to his attempted conformity with free social values whilst outside results in people starting to see him as weak (thus potentially feminine, in opposition to the masculine hierarchy), and ending in his eventual violent murder.

'The Shawshank Redemption' depicts a series of gang rapes against the character of Andy Dufresne (Tim Robbins). Over a period we can view Dufresne going through a period of transition as a victim, culminating in his being beaten sufficiently that the prison guards take action (in the form of disabling physical violence). The identity transition in this depiction is somewhat less obvious, but we can see that, at the same time as the rapes, Dufresne becomes more adept at using his intelligence from the outside. When the guards beat his attacker, there is a transition of exploitation against Dufresne: as opposed to sexual extortion by other prisoners, Dufresne is used for his socially acceptable skills. By embracing his socially acceptable former identity, he sheds the socially unacceptable identity of being a rape victim. Albeit indirectly, we can contend that, had he not undergone such rapes and suffered such beatings, he would not have taken on this intelligent masculine identity and thus been granted such staff protection and freedom that, in time, enabled him to escape.

These films all contain some form of sexual exploitation, assault or rape, that are used as devices that show the victimised prisoner's character changing their identity to something that is constructive in one society or another, rarely both. Where this does occur, as in *The Shawshank Redemption*, it is more a case of a constructive identity being imported, (as Irwin & Cressey (1962) discuss in reality) into the prison in a somewhat alien state, rather than the identity fitting into the prison society. It is interesting to note that the power and respect that are recognised as values for the masculine criminal are actually values of mainstream masculinity: the 'bad man' is interchangeable with the 'good man'. The difference in the male binary seems to be that the means by which criminal men achieve these values are defined as illegitimate by non-criminal men who dominate, which lies in accordance with the proposition made by Messerschmidt that 'for many men, crime may serve as a suitable resource for "doing gender" – for separating them from all that is feminine' (1993: 84). As Connell notes, '[i]t is the successful claim to authority, more than direct violence, that is the mark of hegemony...' (2005: 77). Arguably sexual violence is an easier mechanism through which to demonstrate the power and dominance imbalances that occur within the prisons setting (see also Jarvis, 2006), and provide a dramatic representative tool through which to give audiences 'access to models of, or metaphors for, other people's experiences which they don't experience themselves directly' (Wilson and O'Sullivan, 2004: 15). Yet perhaps the manner in which these incidents are used in prison films, when juxtaposed with the fact that many audiences know so little about the reality of these forms of violence, dominance and harmful behaviour can have serious implications for the ways in which they are viewed, understood, and transferred to real-life understandings of prison rape.

4 THE REALITY GAP: SO WHAT?

Surette argues that 'the continued exposure to the content of popular culture influences our view of reality' (1998: xv). Sexual assaults and references to them are pervasive in popular cultural depictions of, and references to, incarceration (Schauer, 2004). In reality, such matters are characteristically ignored or sidelined in public debates of prison, being an issue that raises feelings of discomfort with regard to male sexual assault and the security of prisoners. In films, the concept of good versus evil pervades storylines with the fairytale notion that the aggressor will always be punished in some way, be that through personal harm or through their lack of progression from the status quo relative to the victim who progresses through or outside the prison in a positive manner. In reality prison rapists are rarely officially punished (and so remain hidden from public scrutiny and debate), and generally the only punishment available to incarcerated perpetrators is yet more time in prison (either in the general population or in solitary confinement) – for offenders doing 'serious time' such as life sen-

tences with limited parole potential, this will have little impact, and for the film industry, the portrayal of such a time extension is nether interesting nor easy to depict (Jarvis, 2006: 156).

In addition, the power struggle within the prison in the context of the sexual violence is a key variance between representations and reality – in prison films, there is generally a fight for dominance on a non-racial footing, whereas in reality, such power struggles are often racially motivated and race does play a key role in the prison experience. A 1980 US study by Lockwood found that, despite only 50% of the population under study being black, 78 % of aggressors in sexual attacks were black, with the racial element to target/perpetrator profiling in sexual coercion confirmed in more recent research (Struckman-Johnson & Struckman-Johnson (2000)). This is rarely reflected in fictional accounts of incarceration, as has been noted already, where the majority of depicted characters are shown to be white, and any sexual aggression is strictly inter-racial; not the case according to statistical reports. Finally, the roles of staff in film and life are substantially different – in the prison film genre, the role of staff in sexual harms, be it through commission or omission and ignoring the situation is emphasised (see also Schauer, 2004). Struckman-Johnson et al. (1996) found that 18 % of experiences of male targets identified in their study were of staff perpetrators, but there is little evidence of the degree of omission-based activity that exists in reality. The manner in which staff definitions of prison rape and sexual assault as harms vary considerably according to the circumstances, making the issue of omission substantially more complex: staff 'cannot react appropriately if they fail to define coercive sexuality as rape in the first place' (Eigenberg, 2000: 446), and it has been found that perceptions of staff vary considerably to those of female and male inmates regarding risk factors for sexual violence (Gonsalves et al., 2012).

There are numerous potential implications that arise as a result of such representation/reality divides. A key problem is the matter of repercussions for the victim of a sexual assault. In film, the victimised character is depicted as experiencing positive repercussions following a sexual assault and the transition in identity which is shown to follow – the identity structure of the victim is shown to be improved in terms of reputation and respect from others. In reality, there is a distinct lack of positive repercussions for the victimised individual; instead, as Coolman (2003) argues, he is at serious risk of STDs, post-traumatic stress disorder, and potentially a personal transition to violence in response to a perceived threat of future victimisation, in addition to the potential for damage to masculine identity and sexuality. McGuire also highlights the potential for the encouragement and proliferation of racist attitudes as a result of the pervasive racial component of such assaults (2005: 76). If positive repercussions for individuals' identities did exist in reality, it is likely that these would have emerged in research, as one of the key reasons behind such a lack of full knowledge on the

areas is due to the negative light in which sexual assaults experienced by men are seen with regard to the maintenance of their masculine identity. Although arguments have been made on just-deserts, utilitarian or retributive bases, the success of such approaches is negligible. Sigler (2006) considers and deconstructs these arguments, (particularly in light of a 1994 poll by the Boston Globe which found that half of respondents saw prison rape as being a part of the punishment for crime). She considers potential utilitarian or retributivist uses of sanctioned rape as punishment to be 'so anathema that we would almost certainly reject it as unacceptably barbaric' (2006: 584).

There is also the issue of potential normalisation (see also Mason, 2006) – by portraying sexual assaults in the prison setting on such a wide and pervasive scale, not only is the issue shown to be a 'normal' aspect of the prison experience (regardless of category or type) and thus an extension of criminal justice punishment, but it also encourages this pessimism to continue. It is important to recognise that a lack of accurate and informed debate around such matters will have potential implications for how the problem is seen at a front-line level: Liebling (2004: xix) argues that staff treatment of prisoners is 'shaped by the messages they receive from those around them (governors, senior management, Ministers, Home Secretaries, the media and their "lay" friends and families) about what kinds of prisons are desirable, and achievable'. Coolman (2003) notes that such normalisation and expectations can undermine the legitimacy of the criminal justice system through the anticipation of uncontrolled, emasculating vengeance in a private setting. Expanding from this, where sexual assaults and rapes are shown to have positive repercussions, any suffering experienced by the individual is rarely shown to be attributable to the sexual harm he has experienced; instead, the assault is shown to make the victim stronger, more cunning, and more likely to change and become a social success. Rewards and rehabilitation are, therefore, inherently connected to represented sexual victimisation and, as such, the wider societal, health, and emotional consequences of such abuses are not seen to the extent that they are experienced by victims in reality.

The state of represented sexual assaults in the prison setting follows this pattern of misinformation throughout the prison film genre in practically every sense, which can have the effect of hiding or limiting the view of reality from the general public (see Jarvis, 2006: 156; Mason, 2006: 609), thus inhibiting preventative action. This could, however, be changing, particularly in the United States as a result of the 2003 Prison Rape Elimination Act, which aimed to investigate the incidence and effects of prison rape, and provided information, resources, recommendations, and funding to protect prisoners from such harms. The resultant report came up with nine key findings, made various recommendations, and developed standards regarding the prevention, detection and punishment of such abuse that it states should be mandatory (National Prison Rape Elimination Commission, 2009: 2), and such intentions and outcomes have the effect of rais-

ing awareness and working towards addressing the problem within US prisons and jails. Although this is a positive step for the USA, no such parallel legislation has been created in England and Wales (where the Sexual Offences Act 2003 tends to be used as a 'catch-all' piece of legislation, rather than having distinct Acts to address particular sexual situations), although the Howard League for Penal Reform's Commission is a welcome increase in attention to the issue, and globally the creation of such legislative and constitutional provisions is inconsistent. This may be indicative of a number of factors corresponding to prison rape.

The lack of political and legislative attention given to such offences could refer to there being (or there being perceived to be) little or no problem to address, although this seems unlikely given the recorded existence of prison rape in a wide range of countries of varying political, socio-economic and penal climates – for example, Just Detention International has programmes operating in prisons in the USA, South Africa, Mexico and the Philippines (Just Detention International, 2012b). The shame and embarrassment of such victimisation will certainly inhibit reporting and the reflection of such matters in official statistics, but it unlikely to hide it altogether, particularly from those working in such environments. Indeed, even though a study on prison violence revealed that 'sexual assault in prisons in England was rare' (Edgar, et al., 2003: 49), it did not find it to be non-existent. It is questionable as to how often a violent act must occur in order to be considered important to the political agenda which has its own issues concerning prisons. As such, a lack of attention could point towards a much more subtle political state of penal populism (see Pratt, 2007), whereby the public believe in punitive policies to deter and punish criminals, following the 'don't do the crime if you can't do the time' rhetoric, and the political agendas respond to such feelings through giving less attention so such 'unworthy' policies and official research funding opportunities. Whatever the reasoning behind it, the outcomes are still the same.

There is also a distinct lack of research looking into the fiction/reality divide of the prison film, in which audiences' knowledge regarding prison is understood better. Although commentators like Bennett (2008) do note the difference between reality and representation in related areas (in Bennett's case, release from prison), the actual implications for public perceptions are still not well understood. In addition, this reality gap could be seen to play a part in what Young terms '*Late Modern Bulimia*' (1999: 8), whereby the social order 'consumes and culturally assimilates masses of people through education, the media and participation in the market place' (1999: 8). The portrayal of sexual harms being used as a transformative method for the conversion of offender identity could be said to be an attempt to 'educate' audiences about the harms of imprisonment and thus impose cultural norms of behaviour and sexuality (prison rapes in films imply incarcerated homosexual activity to be inherently abusive, and advocate male sexual assertiveness and predation as a way of maintaining a dominant masculine identity).

The films certainly send a message regarding expectations of hegemonic and heterosexual masculinity (see also Schauer, 2004), whereby expressions of violence (both physical and symbolic) are seen to be an essential component of masculine authority, with those characters represented as lacking the ability or potential to use violence being de-masculinised. As Jefferson notes, '"hardness" connotes mental as well as physical toughness' (1998: 78). Non-sexual violence receives a much greater degree of academic attention (see Edgar et al., 2003) and is much more visible in public discussions surrounding the prison experience, although its high visibility in prison film rarely shares the 'rehabilitative and reforming' elements of those incidences of sexual harm described, rather being seen as a reflection of the brutality of the prison setting (Mason, 2006), or as a justified form of punishment or defence. Both victim and perpetrator in non-sexual violence are often framed in a 'boys will be boys' setting, whereas in cases of represented sexual violence, the victim is often not seen as a legitimate 'boy' figure (see Gear & Ngubeni, 2002), thereby negating the application of such a normalising frame of reference regarding masculine behaviour/experience norms, and homosexuality in general tends to be problematised in prison films (Schauer, 2004). As such, expectations of gender roles and specifically strong masculinity, in addition to the role of the prison to deter and 'reform', the idea that rape victims are 'asking for it' (not unlike perceptions expressed in the Sexual Assault Research Summary Report (Amnesty International, 2005), where certain female behaviours were seen to attribute some responsibility for victimisation), and the reinforcement of heterosexual norms and the worst forms of masculinity, are communicated to audiences through prison films.

5 CONCLUDING REMARKS

This article has argued that films and TV tend to depict prison rape as a transitional event, used for cinematic character development and the conversion of irregular masculinities to socially acceptable identities (albeit contextually dependent societies). Although representations of inter-prisoner sexual harms pervade popular cultural depictions and discussions of prisons, there is a huge gap between these scenes and the available reality behind them, particularly relative to reports of other forms of violence. This can be particularly problematic when one considers that the prison film genre is one of the most accessible form of information about prisons (Martin, 2000; Rafter, 2000; Roberts & Hough, 2005; Mason, 2006; Fiddler, 2007), and when one considers the narrow reading that many academics take of that genre's constitution; it is possible that one reason behind such a lack of academic discourse in the area is due to the self-imposed limitations applied to the prison-film field. Regardless of how these films are academically pigeon-holed, society is unable to rely on such films for accuracy and 'truth', yet there are few other easily accessible sources of information avail-

able to replace such inconsistent facts (even within academic works there are restrictions and hurdles). This has distinct consequences for the way that prisons (as 'legitimate' housers of violent transitional revenge on behalf of the state) and prisoners (as 'deserving' of such transitional and devastating events) are presented to the public, indeed, it has been noted that the media in general often construe prison as 'a solution to crime, echoing the 'what works' mantra of New Labour' (Mason, 2006b: 251). It is questionable as to whether it is really helpful (particularly when combined with the increasing force of penal populism (Pratt, 2007) within political agenda) that there is such a lack of accurate knowledge, and that the representations we do have suggest that the prison experience is useful, character building and heroic, even (and sometimes even particularly) when it includes sexual violence.

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CONSEQUENCES OF EXPLOSIVE DEVICES' ACTIVATION ON VICTIMS AND THEIR CRIMINAL JUSTICE IMPORTANCE

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ABSTRACT
Summary:
This paper contains analyses of intentional and unintentional activation of explosive devices with consequences on victims in the period of seven years (from 2000 through 2006). The charts in this paper show the statistic trend of increase/decrease of explosions' number i.e. consequences of explosions on victims. This paper also points out the possibilities of various legal qualifications from the standpoint of perpetrator's culpability (mens rea), and also the importance this element has to determine the type and to estimate the mass of the used explosive.

Purpose:
The objective of this paper is to demonstrate the importance of knowing the type and mass of used explosive within the activated explosive device in order to correctly determine the form of culpability of a perpetrator and to impose an adequate criminal penalty.

Design/methodology/approach:
Theoretical and statistical approach; analysis of police practice in the Republic of Serbia.

Findings:
The decreasing trend of activated explosive devices numbers in the period 2000 – 2004 was noticed, but also the increasing trend in 2005 and 2006. Such trends are followed by explosion consequences. Also, it is stressed out that there is a possibility to determine the type and mass of the explosive based on the traces on explosion victims, and after that on the importance of an accurate and timely estimation of explosive's mass for the determination of criminal legal issues (material) in criminal proceedings.

Research limitations/implications:
Disability of experimental explosions.

Practical implications:
Assistance to the court in legal qualification of a criminal offence, determination of guilt and sanctioning of a criminal offence by an explosive expert who shall de-

termine the type and mass of used explosive based on the explosion effects on the victims. Understanding the type and mass of used explosive is also important for having a legal and fair trial (a trial within the reasonable time) and the efficiency of criminal proceedings. The judge who has the knowledge of the importance of determination of type and mass of used explosive for informing numerous criminal legal matters, producing timely investigations. Such information an reduce unnecessary additional or repeated expertise.

Originality/value:
Separation of the importance of selected topic relevant for the correct sentencing in criminal case regarding the noticed deficiency in the treatment of this topic by the expert (legal) community.

Keywords: explosive device, explosion, explosion effects, fatalities, severe bodily injuries, slight bodily injuries, legal qualification, culpability (mens rea)

1 INTRODUCTION

In accordance with their distribution, diversity and tragic consequences, formational and improvised explosive devices can appear as devices, items or as ways of performance (*modus operandi*) in various criminal offences in our country and in the modern world. Explosive devices can be used in cases of the most serious criminal offences such as terrorism, murders, attempted murders, causing of serious bodily injuries, and causing of public danger. Many perpetrators are using explosions and fires to cover up the traces of their offence with the hope that the traces, which could reveal them, will be destroyed by the pressure and heat. "There were cases in forensic practice where the perpetrator, with the intention to destroy the traces of his criminal offence (for example murder), has timed an explosive device to explode in the exact determined time when he has already inured an alibi for himself" (Evans, 1996). Perpetrators of some criminal offences are sometimes using explosion effects for the achievement of their goals. In similar ways with strong explosion effects terrorists spread fear and panic among the population, they cause huge material damages and human casualties in order to achieve their political, religious or some other goals. Some perpetrators of a criminal offence of murder use the explosive as means of execution in order to kill a certain person (for example by placing an explosive device under a parked motor vehicle, under a window, in a yard, etc.), while perpetrators of a criminal offence of aggravated theft use the explosive to overcome an obstacle in order to get the money or some other valuable items. In recent years explosive devices have become the weapon selections in numerous terrorists' attacks. (Remennikov, 2003; Luccioni & Ambrosini, 2005; Luccioni & Ambrosini, 2012). Information availability in the production of an explosive ordnance, especially on the Internet, makes production relatively easy, mobility in the transport of

explosive devices a greater possibility by producing ordnance with smaller dimensions, the illegal availability of explosive materials more possible, with the capability to create fatalities and injuries to people, as well as damages on the objects. Tighter these accesses are responsible for the increasing the number of the so called bomb attacks around the world.

The increased use of explosive ordnance in the execution of certain criminal offences as well as the increasing progress of science and technology used in the production of these devices requires the involvement of more subjects into the identification of perpetrators and proving a criminal offence. This requires cooperation between all the subjects who are involved in the determination of an explosions` cause and explosion responsibility. This includes: courts, prosecution offices, police, criminalistics experts, forensic engineering, and physical chemistry.

Explosion investigation starts with the processing of the explosion site involving the gathering of evidence. Explosion site processing is made within the crime scene investigation. Crime scene investigation includes a complex of activities that cover the direct examination of material objects and their connections with the objective to discover the traces of a criminal offence and clarification of other circumstances that are important for that criminal offence. The crime scene investigation after an explosion involves the gathering and processing of traces that are sent to the appropriate expertise/forensic analysis give information about the cause of an explosion, which is then used as a foundation for the writing of criminal charges against the persons responsible for an explosion (unknown or known person). The person responsible for the performance of a crime scene investigation is the investigative judge who can, in accordance with the applicable Code on Criminal Procedure, request assistance from an expert crime or forensic officer. When an explosion occurs experts go to the explosion site (employees in crime scene investigation and anti diversion technique, as well as the experts – forensic engineers) and perform an investigation in accordance with the court order.

In the first moment upon arrival to an explosion site, one cannot claim with certainty what sort of explosion has occurred (whether that was a chemical explosion or not). The answer to that all other related questions is given by a professional – registered court expert, who with the authority of knowledge, skills and experience gives findings and opinions in relation with the facts which are determined in the procedure. This person is actually an expert witness (Žarković, Kesić, & Bjelovuk, 2011). Forensic investigation and analysis of an explosion site can involve the engagement of experts from many areas due to the multidisciplinary nature of these events and therefore to the different approaches to the problem. In such ways experts from different professions can work on examination of an explosion causes: physical-chemists (based on the samples gathered

from an explosion site and with the use of appropriate methods they can provide information on what sort of explosive was used), forensic engineers (provide information about the mass of the used explosive, which is based on examination of damages caused by an explosion, types of explosive device used, and ways in which the explosive was initiated and material damaged), forensic pathologists (provide information on explosion victims and possible causes of death), forensic biologists (provide information on possible DNA profile), dactiloscopy experts i.e. biometry experts (provide information on traces of papillary lines i.e. fingerprints of perpetrators), and other experts (Bjelovuk, 2005; Mašković, 2010.)

If necessary additional expertise / forensic analyses can be requested during the procedure that can sometimes request an additional inspection of the explosion site and require additional investigation. During the procedure the need can emerge, based on gathered evidence material – investigation documents, to request the opinion from some other expert so the court can request an additional expertise / forensic analysis from other experts within the area.

In this way the gathered material evidence, among other evidence (different witness and defendants statements, etc.) are considered by the court and give foundation for the final judgement. A flowchart of determination of an explosion causes is shown as the algorithm in Figure 1.

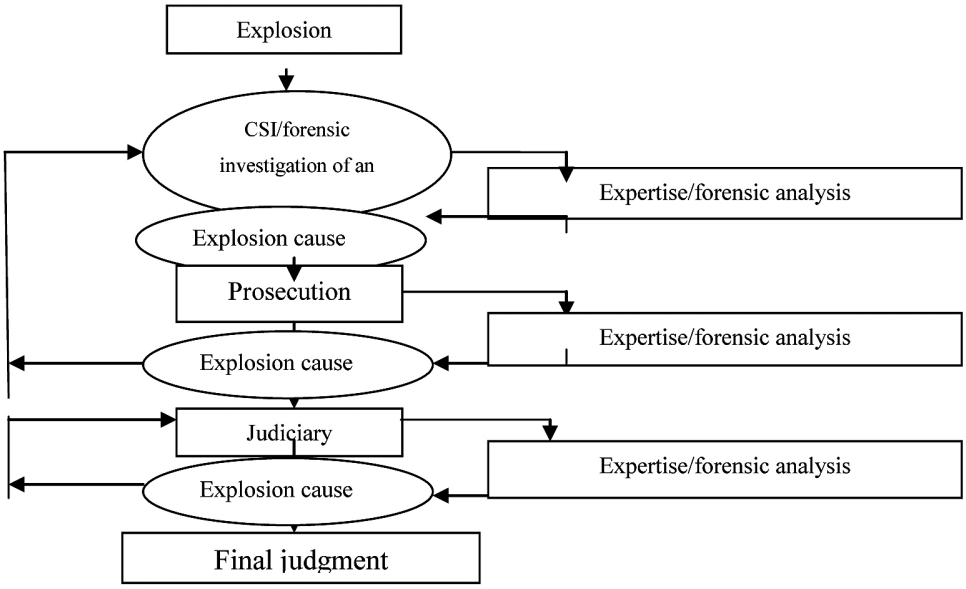

Figure 1: Flowchart of determination of an explosion causes

Through the forensic investigation of an explosion site information that can be provided from the analysis of an explosion`s effects are of significant impor-

tance. This information can be about the explosion centre, the ways of initiation of the used explosive device, the explosive mass (from the forensic engineering point of view), the sorts of explosive (from the forensic chemistry point of view) or information about the perpetrator of a criminal offence (from the forensic – criminalistics point of view). These data can be received through the examination of the location, shapes and dimensions of the crater that emerged as a consequence of a brisant explosion effects, traces of shock wave effects, thermal but also the seismic effect when the ground shakes during the strong explosions causing an effect that can be similar to an earthquake, and also through the forensic investigation and analysis.

Data about the used explosive mass is useful for the court because it enables the precise determination of a form of perpetrators' culpability, which can have the influence to the legal qualification of a criminal offence, and also the determination of the type and severity of criminal sanctions. A larger mass of the explosive shows the intention of causing bigger material damage, serious bodily injuries or deaths, higher number of victims, and the like.

There are several definition of the term "explosion", but most authors agree that the "*Explosion is a fast chemical reaction of disintegration of explosive's substances, followed by sudden rise of pressure, abrupt release of large quantity of energy in a short time interval and a shock wave as the consequence that occurs in the surrounding area*" (Žarković, Bajagić, & Bjelovuk, 2010). Since the term explosion can mean the explosion of vessels under pressure, explosions of steams from flammable liquids and gases, chemical explosions and nuclear explosions, there is a need to emphasize that this paper is related only to the explosion of brisant explosives. Otherwise the intensity of each explosion can be expressed through the TNT equivalent. *Explosives are substances able to disintegrate in accordance with the regime of stable detonation (chain reaction), releasing a large quantity of energy in a very short time interval* (Radić, 2011).

The basic purpose of explosion research, i.e. investigation and analysis of an explosion, is the determination of an explosion cause and responsibility for an explosion. The cause of an explosion is the circumstance or the activity that led to an explosion. The basic reason for which the explosion cause is investigated is in determination of the responsibility for an explosion, material damage and injuries and number of victims.

Responsibility for an explosion lies in circumstances, activities, mistakes, purpose, all connected to human factors (Kennedy & Kennedy, 1990). In consideration of the facts determined with the forensic investigation and analysis of an explosion site, the court makes decisions about the legal qualification of a criminal offence and adequate sanction to be given to the perpetrator in the criminal offence.

1.1 Effects of an explosion to the environment

Forensic analysis has the potential to determine the cause of an explosion from the effects manifested by the event (Bjelovuk, Jaramaz, & Micković, 2012). *Damages emerged as the consequence of the shock wave effect are situated on the direction of the shock wave movement – expending of detonation products into the environment* (Bjelovuk, 2005).

If persons were present on the crime scene in the moment of an explosion i.e. if on the crime scene there are dead or injured persons, mass of the used explosive could be calculated based on the damages on their bodies (that are measured during an autopsy or forensic medicine examination) and distances on which that happened.

Concentric zones are spreading around the centre of an explosion in which, in depending on the explosion force, there can be injuries of different severity caused by the released mechanical energy of the shock wave. Immediately around the centre of an explosion there is a so called lethal zone in which all persons present are instantly killed. The narrow band around that zone is a lethal limit in which half the number of present persons end up dead. Outside of that zone is a critical zone in which there are lots of blast injuries with different severity (Savić, Černak, Ignjatović, & Tatić, 1999). Traces generated on the bodies of persons and animals include injuries made by the explosive devices and its parts – particles (fragments, pellets, cubes, sticks, etc.) released by the explosion of an ordnance (bomb, mine, grenade, improvised explosive device, etc.) that can penetrate through the skin into a human body and cause different damage. As a rule traces of fragmentation effects of an explosion to a human body are mechanical injuries in the form of lacerations or small perforation defects. Traces of an explosion can also penetrate victims' clothes. That is the reason for which all the clothes from each injured or deceased person in the explosion is taken for examination and possible analysis. Burns of various degree, burnt hair and bodily hair can occur due to the thermal effect of an explosion to the human body.

Taking into consideration the effect of the shock wave of the overpressure of gases detonation products different types and degrees of injuries can occur in humans depending on the place in which that person was situated in the moment of an explosion. Thus, at the lowest levels of overpressure a person can sustain partial loss of hearing for high frequencies without the damage of the eardrum and in such cases the hearing loss is just temporary unlike the higher values of the overpressure that cause partial or complete loss of hearing as a result of damaged eardrum. Lungs damages occur when the shock wave hits the person's chest which leads to the rupture of tissue (the air goes into the bloodstream and damages vital organs) or the tissue is just pushed inward so the bodily fluids are released into the lungs. Individual tolerance capability for the shock

wave effect depends of the pressure, duration of the pressure, position of the person in regards to the direction of spreading of the shock wave and the body constitution of that person. Table 1 shows approximate values of overpressure and the effect that is caused by that overpressure.

Table 1: Values of the overpressure of the explosive wave (blast wave) and the effect caused on persons.

Overpressure (kN/m²)	***Effect***
30	Small possibility of eardrum damage
100	50% damage of the eardrum
200-300	Small possibility of lungs damage
500	High possibility of lungs damage
700-800	Small possibility of lethal injuries
900-1200	50% possibility of dying
1400-1700	Certain death

1.2 Estimation of the mass of used explosive based on explosion traces on victims

As forensics includes the use of science and technology for judicial purposes, traces of explosions are very important for the possibility of estimating the mass of the explosive used in any particular event. Within the professional literature one can find empiric equations for the calculation of overpressure Δp that is created with the air explosion of a certain explosive mass m_e on the distances R from the explosion centre, some of those equations are the following:

$$\Delta p = \frac{0.84}{\overline{R}} + \frac{2.7}{\overline{R}^2} + \frac{7}{\overline{R}^3}, \text{ where } \overline{R} = \frac{R}{m_e^{1/3}}, \text{ Sadowsky equation} \qquad (1)$$

$$\Delta p = \frac{114.87}{Z} - \frac{188.32}{Z^2} - \frac{1945.97}{Z^3}, \text{ where } Z = \frac{R}{m_e^{1/3}}, \text{ Cook equation} \qquad (2)$$

These equations can be used for the calculation of the mass of used explosive when on the scene of crime there are damages and when their distance from the explosion's centre is calculated, with the use of data about the influence of overpressure of an explosion to the degree of injuries on persons at the explosion site.

Overpressure in the shock wave in the case of detonation on the ground surface Δp_{tlo} can be calculated with the formulas given by Sadowsky (Stamatović, 1996):

$$\Delta p_{tlo} = 14\frac{Q}{Q_T}\frac{m_e}{R^3} + 4{,}3\left(\frac{Q}{Q_T}\right)^{2/3}\left(\frac{m_e^{2/3}}{R^2}\right) + 1{,}1\left(\frac{Q}{Q_T}\right)^{1/3}\frac{m_e^{1/3}}{R}; \qquad (3)$$

$$\Delta p = 1.1/R + 4.3/R^2 + 14/R^3 \qquad (4)$$

Where Q – is the explosion heat of the used explosive, Q_T – heat from the TNT explosion, m_e – explosive mass, R – distance from the explosion's centre, ;

$$\overline{R} = R/m_e^{1/3};$$

or

$$\Delta p = 114.87/Z - 188.32/Z^2 - 1945.97/Z^3 \text{ - in accordance to Cook,} \qquad (5)$$

where $Z = R/(2m_e)^{1/3}$.

These equations must constantly be adjusted with an appropriate TNT equivalent depending on the type of used explosive. Based on the known sorts of damages the value of overpressure is determined and its appropriate value $\overline{R}$. Since $\overline{R}$ is a function of R and m_e, is the minimum value of the explosive mass that caused certain damages on the crime scene and it is calculated with the following equation:

$$m_e = (R/\overline{R})^3$$

It is of a great interest for an investigation to have data on the type and mass of the used explosive, in order to, among other, point out the intentions of a perpetrator. Namely, if the mass of the used explosive is larger that means that the intention was to have more victims and larger material damage (for example when it is about the criminal offences of terrorism, sabotages, causing of public danger, murders, serious bodily injuries, thefts, robberies, etc.). The method for the estimation of the mass based on the effects on the explosion victim can also be used to test other methods for the estimation of an explosive mass.

1.3 Criminal justice significance of the determination of an explosive mass

Determination of mass of the used explosive does not represent only a forensic challenge, but it is also of a significant importance in the procedure of determination of answers to strictly legal i.e. criminal justice questions. This is because the explosive mass can be one of the most important parameters in the procedure of determination of the forms of culpability of some perpetrator, and consequently for the legal qualification of a criminal offence, and also an important

parameter in the procedure of selection and weighing of criminal sanctions. It is clear that police officers, and even more the judiciary i.e. prosecutors and judges, have to be aware of this fact and have to have knowledge that are important for understanding the opinion of an explosive expert whose involvement in the criminal proceedings, in the cases where explosive devices were used. With knowledge from these investigations and the recognition of the right to a fair and speedy trial criminal proceedings can proceed without unnecessary delay and with rationalization of expenses.

Adequate legal qualification means compete and truthful determination of facts under the proper criminal offence. Bearing in mind that the criminal laws recognize a large number of criminal offences in which the act, means, i.e. item of the execution of a criminal offence is connected / could be connected to explosive devices, it is clear that this aspect of the analysis of the activation of explosive devices must not be neglected.

By reviewing criminal legislation in the Republic of Serbia it can be seen that there are several groups of criminal offences in which, when defining the core of the offence, explosions or explosive devices are strictly mentioned, and there are numerous criminal offences in which their possession/usage could be considered as some of the elements of a criminal offence. There is a similar situation in comparative legislation. In the Serbian Criminal Code (Official Gazette RS, no. 85/05, 88/05 – correction, 107/05 – correction, 72/09 and 111/09) there are different groups of criminal offences where explosions and explosive devices are considered or could be considered as important elements. Special significance is in the criminal offences against the life and body where with the use of explosives life and health of persons could be jeopardized (for example murder, aggravated murder, unintentional murder, serious and light bodily injuries), as well as certain criminal offences against assets, which can be, among other, executed with the use of explosives (for example aggravated theft, destruction and damaging of possessions, extortion). It is also worthy to mention the criminal offences against living environment (for example illegal fishing) and criminal offences against general safety of persons and property (for example causing of public danger, illegal dealing with explosives and flammable material). With the use of explosives one can execute a criminal offence of endangering the safety of airlines with the use of violence, and that criminal offence is a part of the group of criminal offences against safety of public traffic.

A special group of criminal offences is those where dangerous activities are undertaken, among which is the execution of an explosion with the intention to fulfil certain political goals with the use of violence, or intimidation. Here we refer to criminal offences against constitutional order and the security of Serbia, such as: terrorism, diversion, preparation of acts against constitutional order and the security of Serbia, and aggravated offences against constitutional order and the security of Serbia. Another group of criminal offences is related to the offences

against the public peace and order including the criminal offence of the production and procurement of weapons and means that will be used for the execution of a criminal offence, and illegal possession of weapons and explosive substances. It is important to mention the criminal offence of international terrorism, which is a part of acts against humanity and other assets protected by the international law. Within the criminal offences against the Army of Serbia a certain number of criminal offences is related to the inappropriate managing of weapons, ammunition or explosive, unlawful usage of weapons, ammunition and explosive, and theft of weapons and some parts of ordnances, including the explosives. Certain international legislations added selling and using of fireworks to this type of criminal offences (The "Explosives Acts", The Crown Prosecution Service).

Determination of the mass of explosives has special significance in the determination of the subjective characteristics for some criminal offence, i.e. culpability (premeditated or from negligence). Premeditation or negligence as a subjective characteristic of a criminal offence significantly influenced the lawful determination of the terms of some criminal acts and the existence of a criminal offence (Stojanović, 2006). If we perceive premeditation and negligence as the forms of culpability then we are referring to their association within a certain perpetrator, and the existence of his guilt for a certain case depends on them. Intention and motivation are also parts of subjective characteristics of a criminal offence, so for the existence of certain criminal offences an intention is searched for (for example if there is a large number of criminal offences against the assets, the law is searching for the existence of the intention to gain illegal economic benefit for oneself or for somebody else). In such cases the intention is determined as a significant element of the criminal offence but in the same time it gives a clear answer to the question concerning guilt, considering that the existence of a certain intention is not possible without premeditation. Criminal offences of negligence (unintentional criminal offences) cannot contain an intention or a motive as their element, and the responsibility for what was done is specially stipulated by the law.

Such stipulation of culpability clearly indicates the importance of the precise determination of consciousness and before all the willingness of a perpetrator during the use of explosive devices. Within the use of explosives the perpetrator's consciousness and willingness can be directed towards the provocation of danger over a certain person or object, death of a certain person, causing injuries, i.e. destruction or damaging of items or intimidation of persons. That is why it is important, when determining the precise culpability, among other things, to determine the mass of the used explosive, bearing in mind that this fact is one of the most important in the legal qualification of an executed criminal offence and determination of criminal sanctions. But, it cannot be treated in isolation from all other circumstances of some criminal offence, because often a will can be directed towards the creation of small consequences (for example intimidation), but because of the existence of other subjective and objective circumstances in a realistic environment

that can lead to completely different interpretation of perpetrator's will (intention), (for example not having a knowledge about the type and effects of explosive devices, synergy with surface on which is places, victim's movements, etc.).

Determination of the explosive's mass can be observed as a key issue for criminal justice questions, but not as exclusive and isolated fact from all other circumstances of each and every individual case. Possession of awareness in all actors in criminal proceedings, especially the judges, about the need of an accurate and timely determination of facts related to mass of the used explosive we could achieve the request for fair and efficient criminal proceedings. In this paper, with the aim to confirm the mentioned stand, we will present and analyse certain representative examples from the police practice in the Regional Police Directorate for the city of Belgrade.

Explosion experts are providing the assistance to the court for legal qualification of a criminal offences, culpability and sanctions for the perpetrator, through the determination of the mass of used explosive based on the explosion effects on victims and the determination of responsibility and intention for an explosion.

Data about the used explosive mass is useful for the court since it enables precise determination of a certain form of perpetrator's culpability, which can influence the legal qualification of a criminal offence and with that also the determination of the types and severity of criminal sanction, commitment of the perpetrator to execute some criminal offence with a certain "weight" i.e. with smaller or larger consequences, and with that the appropriate sanctions.

Data about the type and mass of the used explosive is of a great importance for an investigation, since it shows the intention of a perpetrator. Namely, if the larger mass of explosive was used that implies that the intention was to cause larger number of victims and more material damage (for example criminal offences of terrorism, sabotages, causing of public danger, murders, serious bodily injuries, thefts, etc.). Also, the estimation method that is based on the effects on explosion victims can serve for the testing of other methods used for the estimation of the explosive mass.

2 MATERIAL AND RESEARCH METHOD

A method of observing and describing was used in this paper. Namely, the number of activation of explosive devices was observed within the period of seven years (2001-2006) with the consequences caused by the explosions` effects in the cases of intentionally and unintentionally activated explosive devices. The analysis of submitted criminal charges by the Regional Police Directorate for the City of Belgrade was made as well.

2.1 Number of activated explosive devices on the territory of the Republic of Serbia

For the needs of this research an overview of the number of activated explosive devices is given for the territory of the Republic of Serbia that have cause an explosion, improvised explosive devices with brisant explosive charge, hand bombs and other explosive devices in accordance with time interval (years). From Figure 2 one can see the movement trend of that number with the time flow.

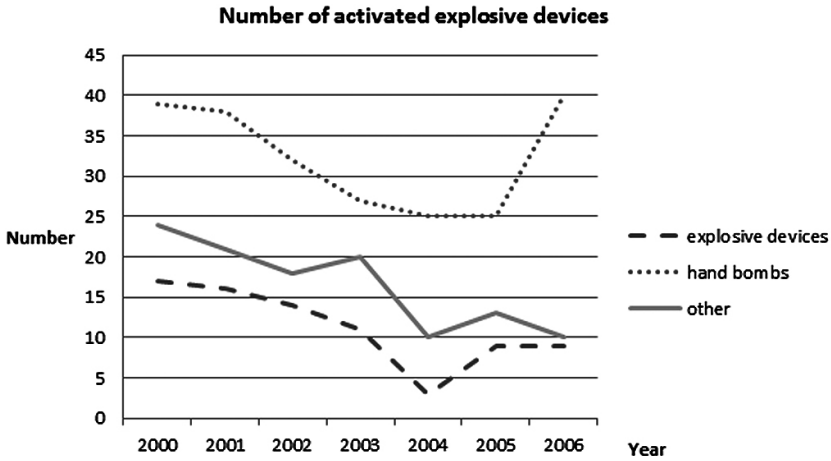

Figure 2: Number of activated devices (explosions) in Serbia from 2000–2006

Also the number of unintentionally activated explosive devices and trend of increasing/decreasing during the years is given at Figure 3.

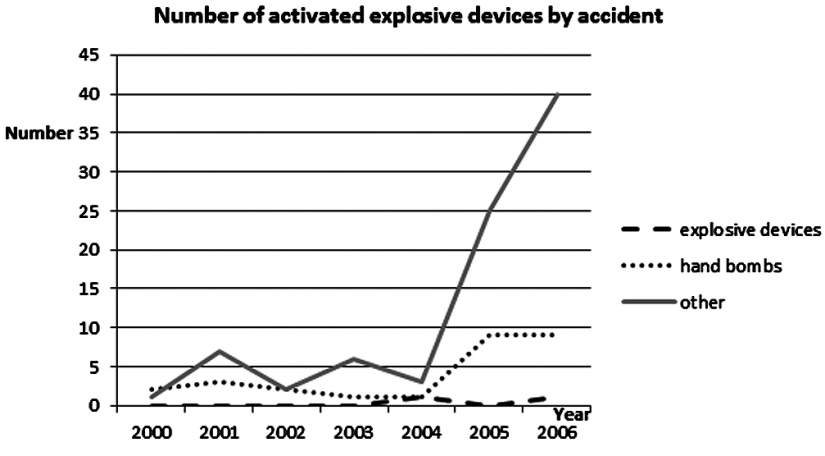

Figure 3: Number of accidentally activated explosive devices in Serbia from 2000 to 2006

2.2 Consequences of activation on the territory of the Republic of Serbia in the period from 2000 till 2006

Figure 4 shows the chart with the consequences of foisted and activated explosive devices through seven years (from 2000 until to 2006).

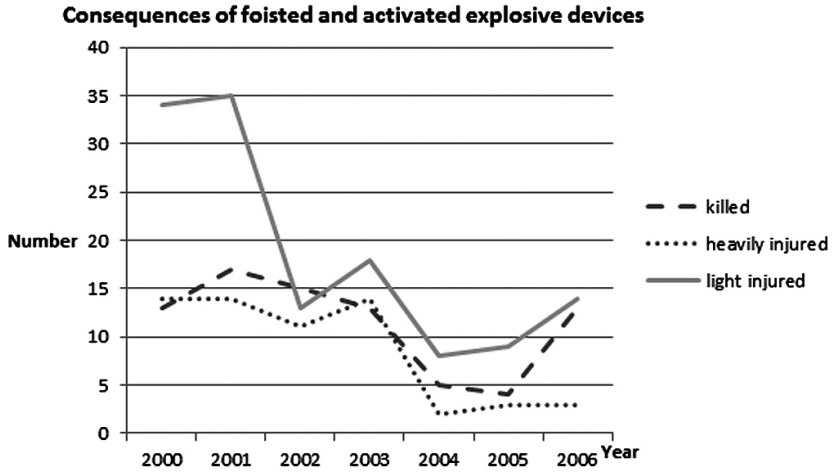

Figure 4: Number of consequences of foisted and activated explosive devices in Serbia from 2000 to 2006

Figure 5 shows the chart with the consequences of an unintentionally activated explosive device with the number of killed persons, persons with heavy and light bodily injuries. One can see the movement trend of number of fatalities from the explosion consequence with the time intervals (time flow).

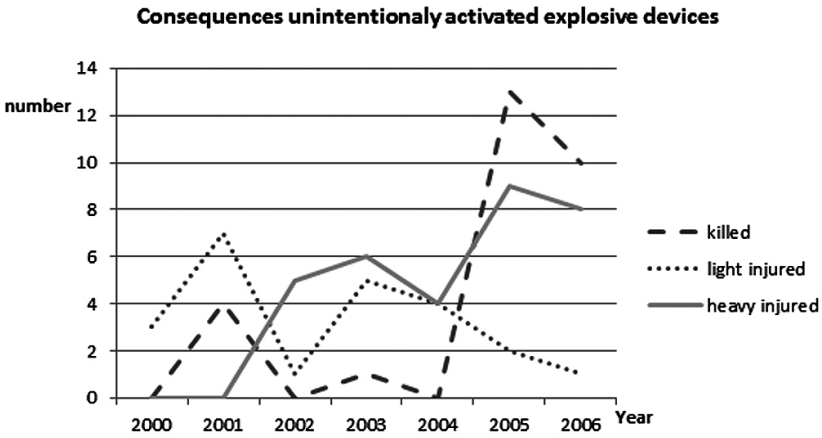

Figure 5: Number of consequences of accidentally activated explosive devices in Serbia from 2000 to 2006

3 DISCUSSION

From the figures presented it can be concluded that in the observed period of seven years explosions in Serbia are not rare and that they are not a phenomena that does not deserve the attention. It was also noticed that the number of planted devices decreased right after the bombing, but from 2004 that number started to increase again. It can be concluded that on the territory of the Republic of Serbia the explosive device that was used the most was the hand bomb M75. The highest number of planted and activated hand grenades was in 2006. Since the hand bomb has very characteristic particles that scatter after an explosion (bucket, safety pin, pellets and other parts of the casing) they can be easily recognized as traces of an explosion during the crime scene investigation and the cause of an explosion is not hard to determine based on those traces at the explosion site. The situation is similar with other formational ordnances. The problem occurs when an explosive device was some non-formational ordnance so in that case the determination of the cause of an explosion is more difficult but not impossible.

The Regional Police Directorate for the City of Belgrade was taken as a representative sample in accordance with the criteria "the most populated city in Serbia" and 2006 as the last year in the observed period in which there were seventeen incidents with explosive devices. In fourteen cases hand bombs were activated and in three cases other explosive devices were used and in one of those the device was activated with the bomb detonation. Ten cases were characterised as events that suggest the existence of criminal offence but there were not enough elements for such qualification, so in such regime they were registered in the book as events. In one case registered event was, after an overview of consequences and determined facts, qualified as a criminal offence of an attempted murder (Article 113 Criminal Code of Serbia). Within the research period the applicable law was the Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 85/2005, 88/2005 (correction) and 107/2005 (correction). In six cases police officers submitted the criminal charges for the criminal offences of causing public danger (Article 278 Criminal Code of Serbia) while one case was qualified as causing of public danger with the elements of illegal possession of weapons and explosive devices (Article 348 Criminal Code of Serbia).

During the performance of crime scene investigations that were made for incidents connected with the explosions different damages on the surface and on the surrounding objects were found as the consequences of these explosions and in one case the existence of serious bodily injuries on three persons. Reports on crime scene investigations contain data on damages caused by the explosion, and special attention was paid to the description and photographing of emerged craters. In order to determine a cause of an explosion and identification of a perpetrator in thirteen cases requests for expertise were sent (traces of papillary

lines – ten requests, DNA analysis from the pieces of devices – three requests, samples from crater for the determination of the explosive's type – two requests, burnt plastic mass for the determination of the explosive's type – one request).

4 CONCLUSION

Looking at the theoretical perspectives and the results from the undertaken empirical research it can be concluded that the estimation of an explosive mass is one of the most important facts in the clarification of every criminal offence. In certain cases, or to be more specific in the cases where the formational explosive devices were used the estimation of the used explosive mass may not be made since that mass is determined by standards, but in the cases of improvised explosive devices this type of expertise is obligatory.

Analysis of 17 incidents during the period of one year in which the explosive devices were used shows that only in one case police has qualified certain behaviour as the attempted murder since 3 persons sustained serious bodily injuries after the activation of one bomb. Other cases in which the bomb was used as the execution method were mostly legally qualified as the criminal offence of causing of public danger.

Having in mind the presented research we can conclude that the numbers of elements are not enough to confirm the assumption on causal relation between the mass of used explosive and appropriate legal qualification of a criminal offence. This is particular for the use of formational explosive devices, and even for the use of different sorts of bombs M75 type (offensive/defensive) that are the most present on the territory of the Republic of Serbia in cases of activation of explosive devices.

Undertaken research shows the relevance of this, but also other circumstances, and before all the place, time, and ways of placement and activation of explosives. In the analyzed cases the most frequent case was the throwing of hand bombs by perpetrators who decided to activate/throw the bomb in such way to avoid hurting people i.e. on the place and in the time when persons are not present (except in one case). It is the same for all the cases where explosive devices were planted and activated. Operational data on life circumstances and activities of persons whose objects were attacked show the possibility that, before all, the attacks were made in order to send a warning for disrespect of the request for certain ways of behaviour i.e. extortions or it was all about intimidation of competitors in criminal activities. In recent history on the territory of the Republic of Serbia cases were registered where the bomb M75 were planted in such a manner that the victim is activating it by pulling out a safety pin. In these cases the result of the attack was lethal for the victims, and the premeditation of per-

petrator was pointed in that direction (in March 2008 the president of the Municipality Court in Knjaževac was killed – the victim activated M75 bomb when opening his yard gate, and one year later in the same town the wife of the judge of offences was killed – the victim activated the bomb by opening the front door of their accommodation).

In other words, analyzed examples from the practice show that the same types and masses of the used explosive can be covered with different legal qualifications by police officers, and can also have different qualification in criminal legislation. In clarification of a concrete criminal event/offence besides these evidence police officers and other actors in pre-trial proceedings have to take into consideration the other evidence such as different material evidence, witnesses' statements, perpetrators' statements, in order to precisely determine perpetrators motive and to make appropriate legal qualification of a criminal offence. In accordance with all that was said conclusion on correlation between the types and masses of the used explosive it is possible only in the context of respecting other circumstances from which many can be determined only with an insight into the judicial practice. Namely, only lawfully terminated judicial cases represent an adequate foundation for the estimation of question of how the explosive mass influences the legal qualification, for a concrete case, considering that the police and public prosecution do not consider the legal qualification as obligatory and it is the subject of change within the criminal proceedings.

Bearing in mind that the results of this paper are just the first step in the research of given problems we are convinced that the extension of the scope of observed cases and their overview from the judicial perspective shall contribute to the answers on questions that were raised in this paper.

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LEGISLATION, GOVERNANCE, CORRUPTION, AND PREVENTION: AN INTEGRITY FOUR-LEAVED CLOVER LEAF

Authors:
Boštjan Slak, Branko Ažman and Bojan Dobovšek

ABSTRACT
Purpose:
This paper discusses the common features between organised crime, business and governance, suggesting that some delinquent acts done by people employed in the business or public sectors show organised crime characteristics, entailing state capture as one of the possible avenues of development. The key element to prevent such acts, at least to a certain degree, is integrity, discussed here with regard to further development and implementation of prevention, elaborating, in particular, the idea of *integrity profiling* and *integrity testing*.

Design/methodology/approach:
The paper is based on a literature review.

Findings:
Due to many common features of governance, business, and organised crime, thereto related acts are easily intertwined, for due to the core nature of how human society works their protagonists are obliged to interact with each other. Indeed, the acts done in business and public sectors resemble organised crime, some of them showing white-collar crime traits. This is something that Sutherland has pointed out several times, but it often seems to be thoughtlessly dismissed. These similarities can also contribute to the fact that preventive measures from one sphere can be redeveloped and redeployed in another (e.g., preventive and integrity measures applied in the companies may be used in the public sector).

Originality/value:
Though several authors have pointed out the similarities and common features between organised and white-collar crimes, their observations have not received due attention. Therefore, this paper tries to remedy that fact and shed more light on such views so that they could be of more value to those seeking new alternative views on the topics of organised crime.

Keywords: integrity, prevention, organised crime, white-collar crimes, public sector, business sphere

1 INTRODUCTION

Today's political talk frequently declares war on corruption, organised crime, state capture, and delinquency. We are daily exposed to speeches focusing on the fight against organised crime, poverty, inequality, and the like, seemingly living in an era when, finally, all the bad things in society are actually getting tackled. On the other hand, we are also daily made aware of new political scandals and corruption cases. Though one might attribute this increase in the volume of bad news to the efforts following up on above mentioned political declarations aimed at combating these social anomalies, the reality as such and the scepticism stemming from it provide sufficient grounds for us not to fall prey to such claims.

This paper discusses the common features between organised crime, business and governance, suggesting that some delinquent acts done by the people employed in the business sphere or public sectors show organised crime characteristics, entailing state capture as one of the possible avenues of development. The key element to prevent such acts, at least to a certain degree, is integrity, discussed here in terms of elaborating, in particular, the idea of *integrity profiling* and *integrity testing* with a view to further developing and implementing corruption prevention.

2 HOW TO COMPREHEND THE CAPTORS

Some delinquent acts encountered in business and governmental spheres of human society are in fact types of organised crime, because they (a) in some instances, show the characteristics of organised crimes, or (b) organised crime groups are involved/connected to otherwise legal business or governance activities. A big step forward in the development of these acts on an even higher level of delinquency is state capture, where the state is not captured just by typical organised crime groups, but also by financial elites, which one could regard as a non-typical organised crime group. In both capture cases, the proponents must commit the acts featuring both organised crime characteristics and white-collar delinquency, if the elites are to succeed in gaining control over governance.

2.1 Similarity and interconnectivity of organised crime, business and governance

Three out of four broad concepts analysed in this paper, organised crime, business, and governance, operate in an extremely similar manner and/or are strongly interconnected, as the basic premises underlying them are the same: management of people, management of capital, hierarchy, etc. Many authors and scholars see a resemblance between a government entity and a business entity, not to mention that the personnel in top government positions *were*, *are* and *will be* the people with degrees in economics, business, or management, and there are cases of people entering politics from their company held positions. There seems to be a sig-

nificant degree of tailoring of business-like management techniques to government organisation needs (Wal et al. 2006). Secondly, some business entities can be established by government bodies and are subsequently in a better position to be awarded public contracts (Oxford Analytica: Should Government Be Run Like Business? 2006). Also interesting are the findings of Freeman, Martin, and Parmar (2006), realizing that, in the past, governments were shelters or havens for businesses, while nowadays businesses, in turn, are responsible for spreading democracy. The decisions made by business leaders impact many constituents. A historical overview shows that hierarchy, distribution of power, and bureaucracy were first designed by the governments in Ancient Rome and China, and were only later adopted by the private industrial sector (Volti 2008).

Similarly, there are several authors and scholars (Sellin (1963; Vaknin, 2000; Ponsaers, 2002; Hobbs, 2004; Scheinost, 2006; Enderwick, 2009) who see certain resemblances between legal (and most successful or transnational) business and organised crime groups that they regard as one kind of illegal business organisations. Hobbs (2004: 423) also notes that "particularly when the impact of economic crime is fully acknowledged, we can concede that contemporary organised crime groups reside upon a terrain that is fundamentally indistinguishable from that occupied by legitimate economic entities". This brings us to the second reason allowing for a similar comparison of organised crime with business or governance: not only are they similar in operation, they are actually extremely intertwined. The connections between the stakeholders are simplified in Figure 1.

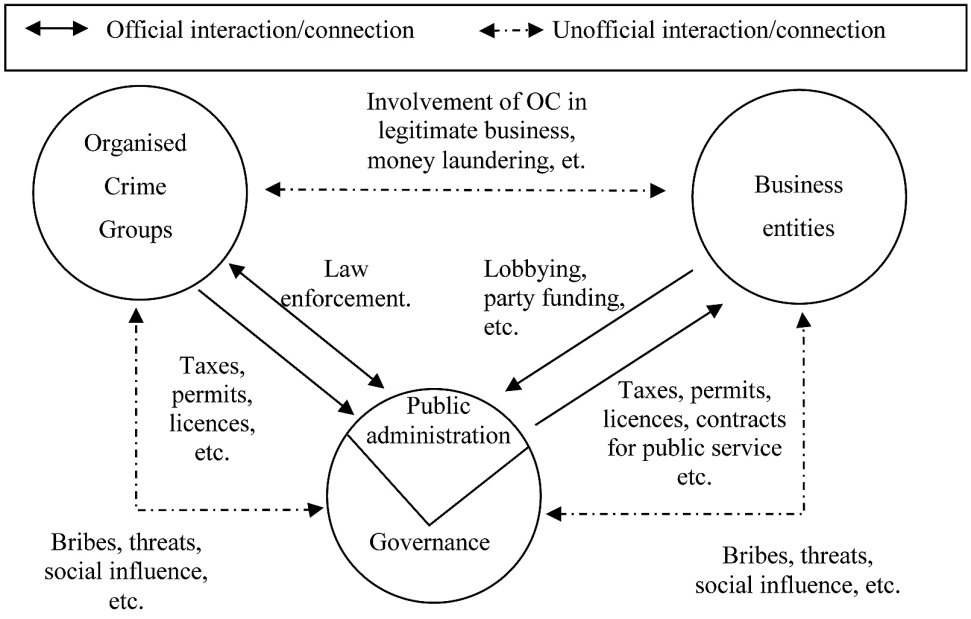

Figure 1: Interactions and connections between organised crime, business and governance

As we can see, there are two basic ways of how these social spheres interact with each other. The first and most obvious is the "official" interaction. Public administration, or state administration, is at the core, serving as an intersection point where, willingly or not, all three spheres meet. The government runs the state administration, and business crime and organised crime (mis)use it for their own purposes. The business sector and the state administration are connected through the administration's mandate to issue working permits, collect taxes, monitor development, etc. According to Scheinost (2006), the public administration is one of three key factors important for the functioning of organised crime: the organisations providing goods and services, the public that demands these goods and services, and the public services that tolerate and cover-up these relationships for their own profit. In addition, there is the government that tries to prevent and control organised crime trough law enforcement, on the one side, and to control businesses by way of regulations, on the other.

Then there is "unofficial" interaction, in which organised crime (ab)uses sectors of legal economy (Ponsaers, 2002) through undertaking various legitimate market activities (Walker, 2000; Ponsaers, 2002; Marzulli, Zambito, & Smith, 2009; Enderwick, 2009) that are not always just "[...] a windscreen to hide behind" (Ponsaers, 2002: 199). Stores, bars, and firms are not just fronts to launder money, they are actually working and profit making companies used to launder money, though they may otherwise also be totally legitimate companies, only founded on dirty money.

It is important to have these similarities and connections in mind when exploring the motives, intent, and modus operandi of these financial, fraudulent, or corruptive acts. Due to the common characteristics of operations carried out in governmental and business spheres, the crimes (and delinquent acts) may be similar in nature (employee thefts, various frauds, misuse of funds, misuse of power, corporate/state intelligence leakage, acts of corruption, work place harassment, negligence, etc.), or/and done in a similar manner (frauds or thefts by fixing the books, "simple" steeling, computer breaches, abuse of social networks or one's occupational position for gaining funds, access, dominance, etc.). In most cases, the motive is economic gain or occupational success leading to it (Coleman, 1987). Other motives may stem from the perpetrators' want of recognition of their cleverness, geniality, dominance, higher status among peers, or from their vanity and arrogance (McGee, 2005; Doig, 2006; Shover & Hochstetler, 2006). These acts are developing into the crime of choice, as the economic goals can be achieved legally or illegally (Pečar, 1996).

Booth states that the premises of the similarity in operations and interconnectivity are core to our endeavours aimed at resuming and refreshing Southerland's

labelling of certain economic crimes as organised crime (van Duyne, 2006).[1] If organised delinquent acts done in business or governmental spheres show the classic white-collar characteristics, such as the position of power or respectability of the perpetrator[2], then we can speak of very dangerous acts[3] which, unfortunately, are not always crimes, as the ruling elites are able to stop the criminalisation or penalisation of such acts. Or, as Cottino (2004: 344) states, "the interconnections between the legal system, on the one hand, and the structure of power relations within society, on the other, imply that the latter affect both the definitions of what has to be considered deviant and the way laws are applied. In other words, laws are legal constructions and, consequently, crimes are also. Therefore, the fact that the line varies between what can be considered illegal and what cannot, makes it of primary importance to look at power and at its related mechanisms, in particular at those that tend to blur this line and those which preserve it". It seems that many agree that white-collar crime can be organised crime, but not all organised crime is white-collar crime. When delinquent acts in the governmental or business sphere are done in an organised ('organised' as 'collective') fashion, we only speak of an organised group, but when such acts are done by those exercising their power on the highest level of decision making, we regard it as (organised) white-collar crime. If an organised group (whether white-collar or not) has powers to influence either development or implementation of legislation, or if state institutions are misused for personal gain, then what we are dealing with is state capture, but it cannot develop if it is not assisted by those positioned in the highest governance positions. In some cases, state capture becomes the ultimate goal of a number of (non) typical organised crime groups. In that sense, state capture also becomes *maximus obstaculum* to prevention of an entire list of delinquencies.

2.2 Central and Eastern Europe (CEE) as an Example of Questionable Elite as State Capturer

One would think that there are not many academics and experts who would dare to openly dispute attempts of classically viewed organised crime to influ-

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1 A warning is in order here. Southerland uses the term "organizational crime" (Wheeler & Rothman, 1982; Hagan & Parker, 1985; Coleman, 1987), which for some is not equal to "organised crime", because it can be used, on the one hand, to denote, on the one hand, the crimes committed *with* or *in* an organisation (see Shover & Hochstetler, 2006), or those committed by way of using *organizational positions and resources*" (Parker, 1985: 303), on the other. We believe it to be the latter, as we have noticed that Sutherland often uses the term 'organisational' to describe collective behaviour, hierarchy, etc. Also see Sutherland & Cressey (1978).

2 From the time when Sutherland first introduced the term 'white-collar crime', defining it as "[...] the crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland & Cressey, 1978, p. 44), many scholars have switched focus from the 'criminal' to the 'crime'; therefore, the difficulty here is that in some categories that get to be called white-collar crime, almost a half of the violators can be unemployed, a matter which undercuts the original intent of the concept of white-collar crime to call attention to abuses of power by those in leadership positions (Brown, Esbensen, & Geis, 2010: 441).

3 Levi (2008: 367) also stresses that "[...] there are few legal constraints on the depiction of white-collar as 'organised' crimes."

ence creation, adoption, and modification of legislation, or at least its implementation. The idea of a (business and political) elite in the role of an influential agent in creation and modification of law is not new, though still rather unpopular. Duvanova (2007) states that experts arguing about the extent to which businesses influence politics are polarized, both sides being equally defended by many authors. The massive changes in political systems in CEE resulted in corresponding changes in financial flows in those countries. More than embarking upon a path to wellbeing and enjoying the benefits non-totalitarian regimes usually bring, people had to take on the tasks of curbing corruption, fighting the emerging oligarchs, and compensating for the capital their states lost in the transition, among other things. All this can be and is a result of state capture. It seems that especially vulnerable to state capture are young democracies which, in the height of transition, often simply "copy–paste" certain laws, or allow for the circumstances in which the law develops without due attention of the proper, true experts.[4] "The legal systems in developing countries are mostly established through means of legal transplantation by adopting Western civil law. Most African countries, countries in Latin America, and East Asia (China, Japan, and South Korea) transplanted Western civil code into their legal system" (Jiang, 2006: 8). Elites with their financial capital (including organised crime) can feel quite at home with the "transition chaos", quickly seizing the opportunity to influence the law making process. As Wedel (2001: 8) points out, "[...] as the command structures of the state broke down, informal groups and social networks were well positioned to step into the space left by the vacated structures".

Though "simple copying" of laws causes some damage, these damages are formalistic in nature – not being adequately transplanted or adjusted to meet the social-cultural characteristic of society. Even more damage is done by those crucial laws that have not even been subjected to any attempts of copying. Negligence with regard to legislation, i.e., adoption of the acts of legislation developed in other countries as a result of original processes of historic trial-and-error, shows numerous adverse effects. In criminological sense, such negligence represents a good breeding ground for the delinquent acts that will go by not criminalised or penalised, nor will they be properly investigated, prosecuted, or even generally legally recognized and classified. In the case of CEE researchers, please note there exists a prevalence of social networks (incorporating politicians and business people) *trying* to bear influence on legislation (Dobovšek & Meško, 2008) and "[...] perhaps [on] the very nature of the state" (Wedel, 2001), and *succeeding* at it. The rule of law in a given country suffers when the use of bad informal institutions there is widespread in terms of corruption, clientelism and elite agreements. Researchers

[4] As one reviewer has noticed and asked, is there such a thing as an improper expert? Unfortunately, there is. These are the people on high academic levels and with scholarly and educational achievements that otherwise attest to their credibility. Yet, in some cases, these credentials may be, at some point or another, for sale to the best bidder. They provide the idea, and the term "academic" provides the "credentials". See Meško & Koporec (2010) for the discusion on such issues.

have found evidence that CEE countries do suffer from inadequate rule of law due to bad informal institutions (Guasti, Dobovšek, & Ažman, 2012). The latter are probably a means to an end, a tool purposefully used to capture the state in a country. The true extent of how a country is really captured and how frequently bad informal institutions are used as a tool remains unknown. This situation is a product of confronting the results of various studies applying different methodologies, of clashes between outside and inside evaluators, and differences in points of view. Slovenia, for example, is evaluated as a low captured country, even though more than a third of the interviewed entrepreneurs admitted to paying bribes to be awarded government contracts, to influencing legislation, and the like (Hellman, Jones, & Kaufmann, 2000). Freedomhouse.org evaluates us as a free country, despite serious problems with media independence (Habič, 2012). Slovenia ranks well on the scales of almost every organisation and index, like the Bertelsmann-Transformation-Index, the Human Development Report /Index, the OECD, and the Gini coefficient, even though the ombudswoman and the Red Cross are getting more and more appeals and the Government refuses to acknowledge the reports drafted by our anti-discrimination institutions (ibid). Only the latest report of the Slovenian Commission for the prevention of corruption shows that there are strong indications that Slovenia has problems with systemic corruption (Annual Report 2010 [with the addition to May 2011]). At face value, Slovenia is perhaps perceived as a well functioning state, but from the inside it seems that it has developed somewhat ideologically biased laws, which somehow makes us look good — but we do not implement them (Habič, 2012). We share a good number of problems with other CEE countries, particularly those related to health care, public procurement issues, improper influence on legislative processes, to mention just a few (Hellman, Jones, Kaufmann, & Schankerman, 2000; Dobovšek & Meško, 2008; Matei & Popa, 2009; Guasti, Dobovšek, & Ažman, 2012; Habič, 2012). Like many others (Grzymala-Busse, 2003; Habič, 2012), we have found that the grip of political parties' influence seems unshakable.

3 DISCUSSION ON THE PREVENTION OF ORGANISED CRIME

Repression is not the best approach to reducing the volume of crime and the damage it causes, and organised crime is a good example of that. Corruption, a frequently used tool of organised crime, is particularly incompatible with repressive approaches. Severe penalties can backfire, as informers would not come forward for fear of being penalised (Lambsdorff, 2007). It seems that acts of corruption and the like remain the best crime example of the cost/benefit criminological theory. Repression and reactive-investigative behaviours are not only rarely successful, but they also have a limited effect on further favourable development. It is prevention that is more successful in reducing crime. In modern times, any prevention of any

type of criminality was a threefold approach, but in "post-modern" times, one can speak of four stages of prevention: the classical trio spans primary, secondary, and tertiary prevention, while the latest idea features the concept of a so-called post-prevention incorporating all measures to be applied in order to provide for necessary sanitation and remedy the consequences of criminal acts. As prevention goes, when fighting and preventing general and most typical crimes (robberies, thefts, crimes of violence, smuggling, etc.), we also fight the organised crime, or as Levi & Maguire (2004) put it, we influence the sub-structure of organised crime. We can safely assume that prevention aimed at one type of crime will influence another, and vice-versa. Similarly to integrity, ethics and anti-corruption, actions aimed at improving one of these fields in one sphere of society will manifest in another. Therefore, these actions must address all social segments simultaneously. Measures must be taken in public and private sectors, and the political will is, therefore, a key-element *in* and *for* creating proper legislation (Oquist, 1999). Here, integrity as a foundation of prevention and global wellbeing is like the end of the rainbow: we see it, we know there is one, but we just cannot get to it. It is, nevertheless, the necessary abstract concept we know is a prerequisite in fighting corruption or/and, for that matter, state capture/organised crime.

Prevention of organised crime is gaining more and more support, and some proper and very successful approaches have been developed, as well. However, prevention is still relatively feeble, for it remains equated with repression and law enforcement. Furthermore, we often hear ideological anti-corruption speeches that promote ethical codes that are practically "toothless", though they are actually propagated as anti-corruption legislation. On the other hand, the proper anti-corruption legislation rooted in the institutes like reversed burden of proof, appropriate political party funding, rule of law, and transparency of assets often remains sluggish, too, if applicable at all. Figure 2 explains why it is so.

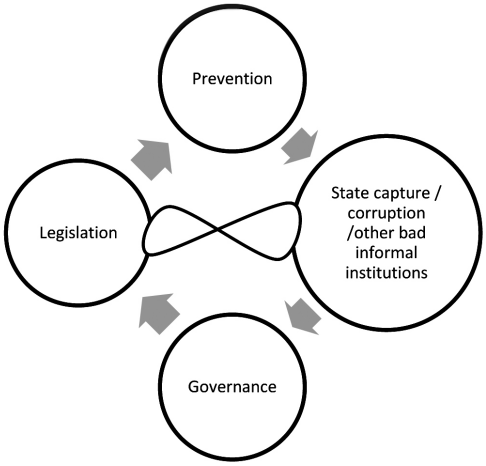

Figure 2: Loophole of a proper preventive development

There is a simple reciprocal relationship between prevention of organised crime (including white-collar delinquency or state capture) and the political will to encourage the development and implementation of preventive measures. These must be developed and implemented, and political will is necessary to do so. However, preventive measures can affect future business and behaviours of those who constitute the political body making decisions concerning preventive measures, on the one hand, as well as the business of those that are tightly connected to these same politicians, on the other. Correct preventive measures (transparent legislation, property monitoring, suitable and skilled personnel positioned in the appropriate positions, stimulating work environments, inspectors and clerks with strong codes of ethics, etc.) would hamper the improper behaviour of those likely to prosper in the circumstances lacking such preventive measures. There is pallet of ways to influence and stall the development of proper legislation or its development, ranging from acts of corruption (buying votes against implementation) to extortion and the use of violence (threats to families of policy decision-makers). And yet, it seems — unfortunately, though — that sometimes those making decisions about preventive measures are the ones significantly benefiting from their absence. As a result, the causes of poorly developed and/or loosely implemented (im)proper crime prevention approaches are but disguised forms of self-preservation advocated by the individuals in power (politicians, ministers etc.) and those involved in corrupt businesses, recognizing in proper preventive measures threats that would jeopardize either their status or their economic positions.

The development and implementation of proper prevention require proper legislative support. Their absence leaves groundless, stuck in a vicious circle where organised crime or state capture hinder the development and implementation of proper preventive and reactive legislation while these, in turn, are precisely what is needed to stop further development of state capture.

The key element to break this vicious circle is integrity, for the people of high integrity would not engage in *volte trading* or be (heavily) involved in business dealings where improper preventive measures would negatively affect good business practices, nor be involved with those who are otherwise engaged in corrupt actins[5]. Braendle & Stutzer (2011: 17) argue "that the individual characteristics of politicians matter for public policy choices and government outcomes. This contrasts with the reasoning of many political philosophers and political economists that good governance is (solely) the result of institutions which allow that politicians are held accountable for their behaviour. According to this latter view, it is useless to call for more competent and honest politicians in order to remedy malfunctions such as corrupt behaviour".

[5] Furthermore, even when some proper preventive measures are in effect, integrity is needed, and it is often seen as a crucial element of prevention of organised crime (Buscaglia & Dijk 2003; Schoot, 2006). The subjects in charge of carrying out preventive measures need to act with high integrity.

To further complicate the matters, the true extent of a candidate's integrity manifests after the elections, when the positions in the administration have already been taken and, unfortunately, the only grounds for dismissal of a public official is their conviction for a criminal offense, or their resignation, of course. Both occasions are extremely rare. Unethical conduct (in decision-making, as well) is criminalized only provided that it fits precisely formulated concepts of corruption (such as offering or accepting gifts). It goes without saying we cannot expect that someone who lacks integrity will make the right decisions, or suddenly make an ethical decision and resign once it is proven they have done something unethical but not (yet) lawfully criminalized. Nor can we expect that a political body comprising such individuals will demonstrate the political will necessary to develop resources required to create adequate acts of legislation or implement the requirements to eliminate corruption, organised crime, and state capture.

3.1 The Problems of Integrity

Integrity is a concept with many undermining flaws. Though highly desirable, it most often remains a highly praised "word on paper", lacking its behavioural implementation. Most often, it is used in electoral campaigns or highly praised ethical speeches, but when the demand for its practical implementation is pressing, these promises fall short of materialization, mostly due to the fact discovered by Sackett and Wanek (1996, quoted in Wanek, 1999: 187) in their review of over two hundred journal articles, books, convention papers, and other sources, "[...] the construct of integrity is ill-defined". It seems that in the attempt to define integrity we get submerged in a sea of synonyms not only tapping on the semantic content of *consistency* (Jones, 2000; Koehn, 2005), *ethics*, *morality*, *honesty*, and *conscientiousness* (Becker, 1998), but also drawn into regarding it as being synonymous to these concepts. Cox, Caze, and Levine (2008) emphasised the puzzling aspect of integrity noticeable when people of integrity act immorally and [*when* and *if*] integrity is defined as a facet of personal consistency (i.e., when a person is true to their standpoints even when these may be in contrast with social norms).[6] The consensus has it, however, that "integrity is synonymous with goodness" (Koehn, 2005: 126). For the purposes of this paper, we use the definition that embodies high integration of the desired social norms, such as that by Oquist (1999: 125), where integrity is "[...] personal or social embodiment of ethics, even in circumstances where personal or social risks and losses are entailed", or that by Delattre (2011: 325), where it is a "settled disposition, the resolve and determination, the established habit of doing right when

[6] At this point, we should note that the aim of this paper is not to capture the full complexity of integrity, ethical codes, and similar concepts so frequently heard in the speeches by politicians and government officials. At this point, we merely want to provide a brief sketch of complexity of integrity, as well as how it benefits the people in power.

there is no one to make you do it but yourself". We perceive integrity as a high degree of internalization of (globally) desired social norms. Unfortunately, the concept of integrity has an abstract referent, meaning that the latter can be seen in rare instances only. One of the ways to judge a person's integrity is to "look" and thoroughly analyse their behaviour in various situations. In the case of politicians, policy makers, and any other public officers in key positions, the judgments regarding their integrity levels are often based on the effects of their improper behaviours, meaning that the damage has already been done, even more so because the very person, usually a member of the parliament or a governmental body, often remains in the office.

There are, nevertheless, a few tools and methods empowering us to assess a person's integrity level before any damage is done, and integrity tests are one of them. They are a useful tool to either pre-examine or re-test integrity of a given subject in governance, business, and organised crime. Gregory & Hicks (1999) note that a good public service organisation must be organised and developed in a way that its officials are ethically/morally competent, not only technically. It is true that even technical competence is hard to achieve if selection and employment screenings are done trough networking, nepotism, clientalism, or political affiliation. Should the management be selected on these premises, the staff on lower levels, as politically opportune as they might be, will not function properly without proper skills. Further, all those who come in contacts with (classic or elite) organised crime, such as health inspectors, tax inspectors, environment protection officials, clerks issuing permits, and others[7] should undergo integrity testing. According to Davis & Rothstein (2006: 407), "even small-scale unethical acts can affect an organization and its members. These effects may not be visible as they occur but can manifest themselves in the attitudes and behaviours of employees who observe them". Looking up the hierarchy of policy makers, they also should be tested before they start their service and then throughout their career, for behaviour and morality of a person can change because of the circumstances, which is something particularly true of politics.[8] Nowadays, people see politicians as selfish and interested only in personal financial benefits or prestige (Denhardt, 2002). Also, "Many citizens are so alienated from the concept of self-governance that they think of government as something separate, not a reflection of their own will, though some others would like to participate directly in re-creating the machinery of government to allow for genuine self-governance" (Box, 1999: 21). "Democracy has grown so remote from the everyday lives of people that it no longer bears a clear relationship to

[7] For examples see Pečar (1996); Shover & Hochstetler (2006).

[8] In all organisations with high tolerance to deviant behaviours, and also due to the rarity of white-collar prosecutions (Sutherland & Cressey, 1978), many of those that see public officials get away with it', particularly if these people are their bosses, are additionally motivated for committing similar acts (Coleman, 1987; McGee, 2005; Koehn, 2005; Davis & Rothstein's, 2006; Thoms, 2008). Nevertheless, not all those crimes are white-collar crimes.

common experience" (Hummel & Stivers, 1998, in Box, 1999: 21). We must also note that "leaders whose lack of integrity results in scandal may be less able to perform their duties successfully, as other officeholders may be loathe to work with a beleaguered leader, and precious time and resources must be spent dealing with the scandal rather than important policy issues" (Newman, 2003: 336-337). Therefore, people need politicians and administrative workers with high integrity, because "if we lack integrity, there is nothing that our egos will not do to acquire wealth, status, and fame" (Koehn, 2005: 132). Therefore, we propose that the public sector introduces integrity testing to all levels of hierarchy, though this might prove a much more utopian idea than that of integrity testing public officers at crucial points of public administration, including health, safety and environmental inspectors and all those issuing specific licences, building permits and change of land use permits. These services may seem harmless at first glance, but they may cause serious damage and endanger people's lives if not performed impeccably. On higher levels of hierarchy, integrity could bring a stop to elite state capture.

4 CONCLUSIONS

When speaking of democracy, Bovens (2005: 182) stated that "democracy remains a paper procedure if those in power cannot be held accountable in public for their acts and omissions, for their decisions, their policies, and their expenditures". Integrity has a role in this, as Koehn (2005: 133) puts it: "[...] when integrity is lacking, we refuse to hear what others are telling us about the situation". But one must be careful in promoting integrity. Kaufmann (2005: 88) says that "a fallacy promoted by some in the field of anti-corruption, and at times also by the international community, is that the best way to fight corruption is by fighting corruption—that is, by means of yet another anti-corruption campaign, the creation of more anti-corruption commissions and ethics agencies, and the incessant drafting of new laws, decrees, and codes of conduct. Moreover, in some settings, the disproportionate emphasis on prosecutions—typically of a few corporations or individuals, and often of the political opposition—at the expense of a focus on prevention and incentives for integrity, has reduced the effectiveness of anticorruption efforts...//... Overall, these anti-corruption initiatives-by-fiat appear to have little impact, and often serve as politically expedient ways to react to the pressure to "do something" about corruption. Often, this results in neglect of more fundamental and systemic governance reforms". Similar opinion on the uselessness of ethics regulation legislation is shared by Atkinson & Bierling (2005, p. 1004), confirming this kind of regulation will not "reduce episodes of ethical theatre". Lambsdorff (2007: 27) also notices a lack of integrity and other honourable personal characteristics, adding that "buzzwording" alone and statements of capacity building, strengthening of diverse legal foundations, and

promotion of integrity will not improve the situation, as they usually fall short of materialization. Clearly, it is time to bring integrity from the realm of abstraction and find ways of manifesting, implementing, and enforcing it in real life, for as pointed out by Donaldson (1989, as quoted in Verhezen, 2010), attitude issues are not very high on the list with business people. We believe that implementing integrity tests or integrity profiles is a way to pre-examine the personnel employed in the most crucial state positions. Any of those that cannot be pre-examined should be tested by investigative journalists or NGOs, like our European parliament member Zoran Thaler was (the Slovenian MEP who resigned amid corruption claims in 2011). It is a fact that for the lack of legal foundations we cannot test members of parliament before they are sworn in and given the status of a public servant, but we believe that the legislation should be changed so as to allow this as a proactive measure.

Finally, since corruption indexes and different reports assess Slovenia as a country of low corruption and low state capture, we certainly need more time to deal with our own skeletons in the closet. It seems that Slovenia can serve as one of the best examples or research subjects, for Treisman (2000, p. 439) points out that countries with at least forty years of consecutive democracy behind them enjoyed a significant, though small, corruption dividend. We are just starting to acknowledge we do have a problem with corruption, the next step is to properly suppress it.

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THE IMPACT OF CORRUPTION ON THE RULE OF LAW IN THE REPUBLIC OF SLOVENIA – FACTS VERSUS PUBLIC FICTION

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ABSTRACT

Purpose:
The paper analyses findings on how corruption affects the Rule of Law in Slovenia through different points of view – theoretical, professional public and statistical facts.

Design/methodology:
This work combines various methods by using in-depth interviews of professionals and the public, the analysis of 167 corruption cases, and results of public opinion surveys.

Findings:
Overall, on analysing all statistics, corruption cases, professional and public perceptions concerning the significance of corruption, we discovered that corruption, its influence on society and its constitutional factors is increasing, where in practice, everyone attempts to avoid obligations and find loopholes into the law in order to benefit. There is a common belief that illegal behaviour and negative consequences to the Rule of Law is due to human greed, inconsistent regulation, insufficient institutions and the role of informal networks. The main consequences are increasing levels of mistrust in public institutions, inequality, negative economic effects and environmental destruction.

Research limitations/implications:
We focus only on Slovenia, which is why the findings could be, on the one hand, relevant to Slovenian society due to the analysis of Slovenian facts and findings or to a wider world of experts dealing with corruption issues.

Originality/value:
This paper extends understanding of the relation between corruption and the Rule of Law where, finally, all aspects are involved – theory; statistics; analysis of identified corruption cases and the response of professionals and the public.

Keywords: corruption, the Rule of Law, cases of corruption, in-depth interview, Atlas.Ti

1 INTRODUCTION

In Slovenia public opinion[1] and statistics[2] show that corruption is rapidly increasing, developing into new forms and is spread throughout all areas of the society, particularly in the public sector. Even so, there are few proven cases of corruption per year in Slovenia but citizens perceive corruption as a major problem. As van Duyne (1997) discovered persons involved in corruption could be civil servants at all levels, individuals from corporations or politicians at either the local and state level. As such according to Jager (2003) corruption tends to turn government services into market commodities that can be simply bought. This kind of 'perversion of government' clearly undermines the very foundations of the modern concept of government and the Rule of Law. In such a way as Lambsdorff (2005) warned corruption is associated with structural governmental and administrative problems including the lack of the Rule of Law and weak or non-existent jurisdiction. Furthermore, according to van Duyne (2004), it is corruption that has the greatest impact on the Rule of Law. The global situation regarding these issues is illustrated by Leite and Weidmann (1999), Dreher and Schneider (2006) and Uslaner (2008) who argue that countries with a strong Rule of Law have less corruption.

There are also many different links between corruption and the Rule of Law where a number of theorists and practitioners (for example: Ades & Di Tella (1999) and Fisman & Gatti (2002)) fail to find any positive association between the Rule of Law and corruption. Goel and Nelson (2005) find that corruption declines with the degree of civil liberties associated with democracy, Chowdhury (2004) concluded that corruption declines with Vanhanen's (1992) democracy index, while Triesman (2000) thinks that the duration of democracy, defined as the number of uninterrupted years in which a country is democratic, reduces corruption. Furthermore, Borlini (2008:73) explains that "*corruption is capable of endangering political and social stability and security, undermining the values of democracy and the Rule of Law, jeopardizing social, economic and political development.*" At this point we have to quote van Duyne (2003:13) who stated that "*Corruption is correlated with all sorts of negative economic and financial indicators, such as low economic growth, low quality education and deficient health care.*" Moreover, participants at the European and world conferences (e.g. Octopus Conference of November 2006, Poverty - corruption – development, 2011 and others) discovered that corruption has an impact on the Rule of Law in that it may exacerbate inequality, distort elections and political competition between parties, prevent transparency and accountabil-

[1] Commission for the Prevention of Corruption (since 2002) runs annual public surveys on corruption "Stališča o korupciji". Retrieved from http://www.kpk-rs.si/index.php?id=48.

[2] Official statistics of Courts (http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/), State Prosecution (http://www.dt-rs.si/sl/vrhovno_drzavno_tozilstvo/porocila_o_delu_drzavnih_tozilstev/), Police (http://www.policija.si/portal_en/statistika/index.php) and Commission for the Prevention of Corruption (http://www.kpk-rs.si/index.php?id=38).

ity, diminish the voice of citizens, and further weaken the confidence and participation of citizens in democracy. If we further analyse international conventions[3] we can conclude that they emphasise that corruption threatens the Rule of Law, democracy and human rights, undermines good governance, fairness and social justice; distorts competition and hinders economic development; and, endangers the stability of democratic institutions and the moral foundations of society.

Although Slovenia is a parliamentary democratic republic and governed by the Rule of Law[4], previously mentioned statistics and public surveys show that most cases of corruption are carried out by public officials who disobey laws and regulations with the sole purpose of personal gain. In this manner, as Dobovšek and Škrbec (2005) and Dobovšek and Meško (2008) found through research on informal networks[5], that in Slovenia corruption and the Rule of Law go hand-in-hand in influencing democratic values of the Republic of Slovenia, and where, in general, most people respect the Rule of Law but, in practice, attempt to find ways to in avoid specific legal regulations, exploit loopholes to make profit or to find advantage. Informal networks as "an informal circle of people able to and willing to help each other", and contacts (»a person who is able and willing to help another«) (Grødeland Berit, 2005:4) makes in this matter unequal treatment of citizens and corruption conduct.

With the above in mind, analysed surveys[6] in Slovenia revealed that there were enormous energies focused on research on the Rule of Law, democracy and corruption, but never into the quantitative and qualitative study of direct, or indirect, influences of corruption on the Rule of Law and their consequences. That is why in 2010 we began the project – a quantitative research to try to identify facts about corruption in Slovenia, identify the interaction between corruption and Rule of Law and how corruption affects the Rule of Law. To gain insight we initially analysed (using a text analysis method) all cases of corruption[7] in the Republic of Slovenia which were identified by the Commission for the Prevention

[3] *Criminal* Law *Convention* on Corruption No.: 173 and its *Additional Protocol*; *Civil Law Convention* on Corruption CETS No.: 174; *United Nations Convention Against Corruption* (*UNCAC*); *United Nations Convention Against Transnational Organized Crime* and *OECD Convention on combating bribery of foreign public officials in International business transactions*.

[4] Where nobody is above the Law and where public officials and citizens have to act in accordance with the constitution and law.

[5] Research was primarily done by Norwegian Institute for Urban and Regional Research (NIBR). It was an analysis of Corruption in the Spheres of Public Procurement, Party Funding, Lobbying and the Judiciary in the Czech Republic, Slovenia, Bulgaria and Romania" during the period 2003-05. Project was coordinated by Åse Berit Grødeland (Researcher).

[6] Corruption climate 2001 and 2004; Commercial and business environment, business ethics, and unofficial payments 2002, 2004 and 2006; Perception of the citizens of the Republic of Slovenia regarding corruption 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009; Conditionality, corruption and informal networks: An analysis of corruption in the spheres of public procurement, party funding, lobbying and the judiciary in the Czech Republic, Slovenia, Bulgaria and Romania 2003; Corruption in media 2008 and other. All available (in Slovenian) at: http://www.kpk-rs.si/index.php?id=48.

[7] There were 167 such cases which are available only in Slovenian language at: http://www.kpk-rs.si.

of Corruption of the Republic of Slovenia since 2004. We also analysed 45 in-depth interviews with professional and public persons between 2010 and 2012. In doing so, we intended to test and compare results with findings[8] from existing research on informal networks in Slovenia carried out in 2003.

2 DEFINING CORRUPTION AND THE RULE OF LAW

For the purposes of this work we used the definition of corruption as it is presented in the Integrity and Prevention of Corruption Act (Official Gazette of the Republic of Slovenia, Number 69/2011-UPB2 – hereinafter IPCA) as *"any violation of due operation of functionary or responsible persons in the public or private sectors, as well as the operation of persons instigating violations or persons who can take advantage of the violation through directly or indirectly promised, offered or given or required, accepted or expected benefit for themselves or for another person"*. According to this working definition of corruption, further terms should be explained: (a) ''violation'' can be defined as improper, excessive, wrong, incorrect or improper usage; (b) ''due operation'' is an obligation to carry out public or private functions under the entrusted power or under the provisions; (c) ''benefit'' which does not relate simply to receiving money, valuable assets, favours or promises of favours; but also encompasses increases in power or status.

As regards the Rule of Law, we used Article 2 of the Constitution of the Republic of Slovenia which defines: *"Slovenia is a state governed by the Rule of Law and a social state"*. The official comment of the Slovenian Constitution (Šturm ed., 2002) defines the fundamental elements of the Slovenian Rule of Law: a) Separation of powers; b) Protection of individual human rights and freedoms; c) Formal acts are adopted by the elected representative body (according to democratic principles); d) Public authorities (including administrative and judicial) are bound to the Laws and the Constitution (Principle of legality); e) State power to citizens is greatly limited and consequently measurable and predictable; f) Legal certainty; g) The principle of trust in the validity and sustainability of the Law; h) Prohibition of the retroactivity of Laws; i) The principle of proportionality; j) The principle of clarity of the Laws; k) Independent judiciary; l.) The possibility for judicial review of administrative decisions; m) Constitutional complaint against the court decision; n) The principles of *nullum crimen sine lege* and *nulla poena sine lege*; o) The principle of fair treatment in the courts and other state institutions. These entire elements combine together to represent the working definition of the Rule of Law for the purpose of this work.

[8] Dobovšek (2004) concluded that reasons why corruption is so extensive in Slovenia can be found first of all in the decay of values in newly developed democracies, incapability of superiors, immorality of individuals in public life, lack of internal supervision and inequality in front of the law. Corruption is a conflict between public interest and the market. Corruption is not a crime without victim because destroys some democratic principles that should be used by officials when they make decisions. Such behaviors can bring general mistrust in the state's institutions.

3 METHODOLOGY OF RESEARCH

According to the aforementioned review of the available literature, we concluded that there were no empirical surveys to discover if, and how, corruption influences the Rule of Law in Slovenia. Therefore, we analysed corruption cases and talked with professionals and try to fill this gap.

3.1 Corruption cases

The Commission for the Prevention of Corruption of the Republic of Slovenia adopted, at its establishment in 2004, 237 *opinions of principle*[9] (hereinafter OP) showing if specific conducts or actions which met the definition of corruption. Out of these 237 cases, the Commission found, in 167[10] cases, that the analysed conducts of individual persons, in public or private sectors, met the legal, and our working, definition of corruption. All cases are publically available on http://www.kpk-rs.si/sl/nadzor-in-preiskave/odlocitve-in-mnenja-komisije in the Slovenian language.

3.2 In-depth interviews

For the purpose obtaining qualitative data, we used in-depth interviews with 45 professional and members of the lay public which consisted of a cross section of the following categories of respondents: police (5 officers), prosecutors (5) and judges (5), political party representatives (5), media representatives (5), national NGOs in the field of corruption (3), professors and researcher from Law and Security studies (5), anti-corruption agency representatives (5), representative from Court of Audit (3) and Human Rights Ombudsman (3). The interviews were completed between October 2010 and April 2012. Some of the respondents were chosen by their superiors[11], some of them by using informal contacts[12] and some of them by using a snow-ball method[13].

3.3 Method used

For the analysis of all corruption cases and interviews we chose the *method of text analysis,* which was used for exploratory insight into the structure of the

[9] The Commission prepares a document called opinion of principle, where simply identifying and justifying corruptive practices and does not evaluate criminal or other liabilities of the individual, but is assessing the actions of individuals to see if they meet the criteria, conditions and definition of corruption, as defined in article 4. of IPCA. Opinions of principle are based on actual cases, reports.

[10] We should remind readers that one opinion of principle may contain several conducts of corruptive practices. The opinion of principle 219 deals with 4 different conducts of corruptive practices and several perpetrators, so that their number is not equal to the number of opinions of principle, where corruption has been detected.

[11] Institutions themselves provided the most suitable persons for interviews.

[12] We called friends on position to help us with finding suitable persons.

[13] We asked respondents to point us other whit whom to speak and have interview.

phenomenon and for descriptive research of the basis and interrelation between the corruption and the Rule of Law. T*ext analysis* was conducted using the software programme tool – ATLAS.Ti6, a tool for research and the study of larger quantities of text. This method of programme-operation examines and studies the characteristics of the research phenomenon, which can be inferred from the text (in our case, principles of opinion and interviews). To assist, a process of coding the text was carried out with the above-mentioned software programme, namely: individual parts of the text (sentences, paragraphs or the complete opinions of principle) are attributed with the phenomenon – a label or a common denominator (a paragraph addressing public procurement is coded or labelled with a code of 'public procurement). In this way, we obtained texts which were isolated and identified with these phenomena and gathered together under a code[14]. In this way, the data could be organised (Silverman, 2001). Coding and organising previously random parts of texts allowed us to reduce the scope of the data and link the fragmented meanings of the research subject into a content and meaning of a completed whole. Examination of the data obtained thus allows new and deeper understanding (Babbie, 2007).

4 RESEARCH AND FINDINGS

4.1 Identified corruption practices in Slovenia

The results of the qualitative study of identified corruption cases in Slovenia (Dobovšek & Škrbec, 2011, Dobovšek & Škrbec, 2012) have shown (see the attached graph No. 1) that in Slovenia, the Rule of Law is being breached in the area of basic constitutional elements – mostly the principle of legality - the obligation of the executive, legislative and judicial authority to respect the constitution, laws, regulations, other administrative provisions and codes of ethics. The threat is represented by corruption which occurs most often (and is most significant) in the public sector. Public officials and state functionaries - the perpetrators of corruption cases in majority of cases, are in breach of constitutional principles in order to benefit over third parties. In doing so, they violated numerous regulations in the field of public procurement, decision-making processes in

[14] *Example of coding or text analysis:* One of the principles of the Rule of Law requires the operation of all subjects to be in accordance and in compliance with the constitution, Laws and secondary acts (principle of legality). Here we used judgements of the Constitutional Court and constitutional provisions to consider in detail what the Constitution requires from different entities. Identified criteria were then under one name (code) »Breach of the principle of subordination of the executive and judiciary (government officials) to the Law« coded into ATLAS.Ti6 (other codes can be found in attached graphs – squares with names represents codes). In this review, we defined the starting point of the opinions of principle. When reading these, we identified the breach of these criteria, for example an infringement of any provision by the government officials and connected this breach with the generated code (or hyperlink). In this way, we also reviewed and coded other principles of the Rule of Law, which were compared with the description or the explanation of the corruption handling from the opinions of principle.

administrative proceedings and state management. The most common cause for corruption is found to be human greed and survival.

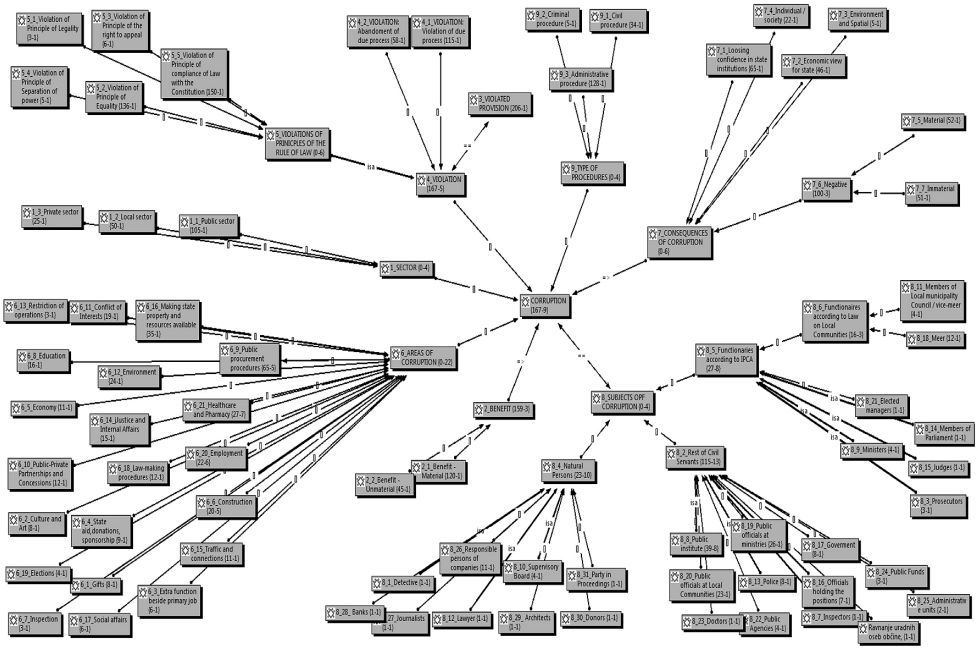

Figure 1: Characteristics of corruption cases in Slovenia[15]

Benefits to one person negatively affect another person. In this way, by analysing the benefits and violations of principles of the Rule of Law, we identified (graph 1) 100 cases of negative consequence, both financial and non-financial, to the state, its environment and its people[16]. First, non-financial negative consequences were shown by the loss of the Slovene public's trust in state institutions as corruptive acts were carried out by public officials – even by those who have the obligation for detecting, prosecuting and preventing illegal and corruptive acts. Besides, the public also has negative opinions about public institutions due to corruption in the employment procedures where employment can be obtained by those who happen to have good contacts within such institutions or who are members of informal networks. As we found, negative consequences are also evident in the effect of the Slovenian natural environment which shows us that perpetrators are not concerned about the effect of their behaviour on nature. In this particular way, Slovenia has lost some of its finest agricultural land and important parts of natural parks.

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15 Legend for all graphs: »CORRUPTION« represents name of the code; Numbers in brackets »(167-9)« represent: 167 – number of corruptive acts and 9 – mutual relations amongst codes (in this case code »CORRUPTION« was related to 9 other codes (»Areas of Corruption«; »Sector«; »Violations« and other). Line between codes represents only connections.

16 In this manner it was proven that corruption has negative impact on the principles of the Rule of Law.

We also discovered that area of public procurement is the most critical[17] issue for Slovenia - the actual costs of direct and indirect spending due to corruption are extremely high and are mostly due to the violation of the principal of rationality where public officials are obliged to award public contracts in such a way as to ensure economical and efficient use of public funds and an effective realisation of its goals defined in compliance with regulations governing the use of the budget and other public funds. Officials have to formulate public procurement procedures in such a way as to ensure non-discriminatory treatment of economic operators and thus make public contracts accessible to a wider circle of economic operators. By doing the contrary, the State has lost large amounts of money from its budget.

These results points to clear and definitive negative impacts of corruption on the Rule of Law – in terms of people's loss of trust in government institutions as well as in terms of damage to the economy. All the aforementioned results regarding breach of the principle of legality confirm the results of research on informal networks, mentioned at the outset, which established that approximately 75 % of respondents were of opinion that citizens in Slovenia abide by the Law and regulations, while noting that each strives to find loopholes in those regulations by which he or she could gain personal advantage or profit (Škrbec, 2006). This means that in Slovenia respect of the Rule of Law already stands on shaky ground.

4.2 Results of in-depth interviews

We will divide the results of our analysis of information obtained through interviews into the following groups – Rule of Law; Corruption and the Impact of Corruption on the Rule of Law (please see also attached Graphs 2, 3 and 4 where results are shown in more precise way).

a) Rule of Law

As we can see in Figure 2: About the Rule of Law respondents generally understand the Rule of Law as a set of norms, both written and unwritten, to which all entities (both physical and legal persons) are subjected to and must act accordingly. This is the Principle of legality[18] of the Rule of Law which represents the formality of compliance of laws and other regulations. Such laws have to be in accordance with the Constitution, and be clearly defined and published in ad-

[17] Followed by areas such as: Managing state and local properties and resources; Healthcare and Pharmacy; Employment and other as seen in graph No.1 (code: Areas of Corruption).

[18] If we connect respondents' opinions on the Rule of Law and its characteristics with the constitutional principles set out in the Constitution of the Republic of Slovenia and Commentary of the Constitution of the Republic of Slovenia, it is found that respondents speak about the principle of legality, equality, harmonization of regulations with the Constitution, protecting and ensuring fundamental human rights.

vance with the aim to be accessible to everyone. Above all, respondents warned that rules have to be arranged, applied and approved in the manner to provide equality and justice to all residents (Principle of Equal treatment). Unfortunately, this is not an issue in Slovenia and the principle of Equal treatment is defined by respondents as an "unattainably ideal", because Slovenia "has differing views of the Rule of Law" - one for the poor and those who are not members of informal networks, and another for the rich and powerful, who are members of informal networks and therefore better placed. The Principle of equality[19] is pointed out by respondents through all the interviews; it seems that the latter is even more important than the Principle of legality in regulation of social life in Slovenia. The use of the term Rule of Law seems too easily to manipulate[20]. The interviews show that Slovenians are somewhat egoistic because they comply with regulation only when it is of benefit to themselves. Otherwise they quickly attempt to by-pass regulations or avoid things that are not fitting their needs.[21]

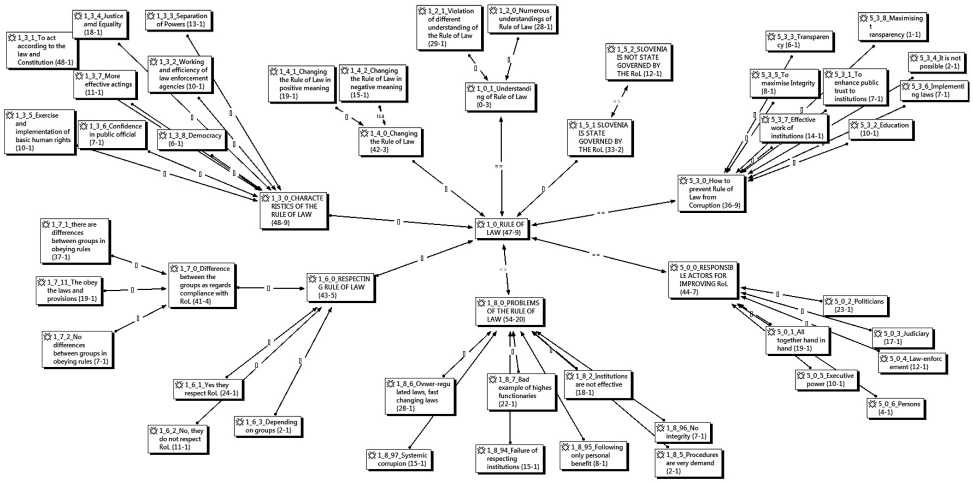

Figure 2: About Rule of Law – Interviews

Regardless of the bad experiences and opinions of respondents it can be found that the Rule of Law improves from year to year and that Slovenia is a state largely governed by the Rule of Law. But in the same breath respondents stated

19 Corruption for them is nothing more than a violation of the Principle of equality, because they define corruption as a conduct that brings benefit only to certain people - and thus appears as a privilege only to some, but not all in society. Definition of corruption in this context, according to the respondents, may be: corruption is the unequal treatment of persons in society.

20 Despite the clear definition of the Rule of Law by the respondents, it was found that this term can be interpreted differently - depending on the circumstances and whether this is for the pursuit of benefits. This leads to the misuse of the term and the definition of the Rule of Law. Abuse of this concept occurs, according to the statements of the respondents, amongst top officials in Slovenia, particularly politicians.

21 It was found in a 2003 survey on informal networks that respondents stated that judges are the most law-abiding, followed by civil servants and citizens. At the bottom of the scale were politicians.

that it was not necessary that the state, although governed by the Rule of Law, also worked well. In this manner, problems of laws occur mainly where the gap occurs between the normative and the real. This is not the only problem of the Rule of Law – from research there are also occurrences of: a) bad legislation and legislative procedures (frequent and constant changes in regulations under inadequate procedures without involving the public[22]); b) setting a poor example by the highest officials - politicians (not only because these are the individuals who must comply with rules and regulations, but more importantly, they have been selected by the public to be their most appropriate representatives, working for the benefit of all); c) the ineffectiveness of the authorities and institutions: and, d) lack of trust in the country (absence of trust in legal institutions, and lack of faith in the Rule of Law).

b) About corruption

Respondents (Graph 3: About corruption) defined corruption in many different ways but all interpretations reflected the following common elements: a) the participation of at least two persons, b) undue benefit and c) the abuse of power or position and duties. Such actions are seen by the majority as improper conduct and are seen as a major problem in Slovenia. On the other hand, corruption has become, according to the respondents, normal practice especially in the health sector (gifts to doctors; queue-jumping) as well as in the private sector (provisions). In addition, the use of informal networks of contacts is not something that is forbidden, and respondents defined them as something useful and an every day issue.

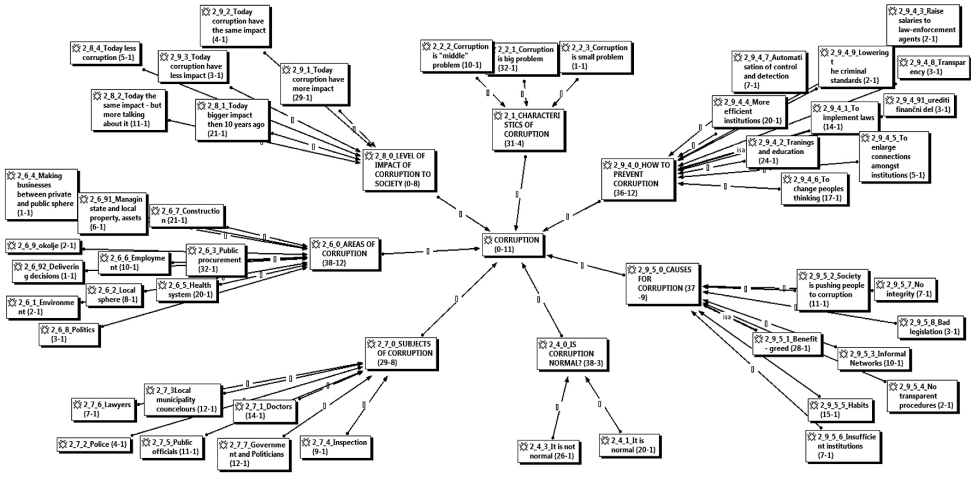

Figure 3: About Corruption

[22] This has led to confusion, overregulation and mutual mismatch of laws.

According to the respondents corruption in Slovenia is the most prevalent in the field of public procurement, construction, health and employment, followed by local government bodies, m*anaging state and local self-government assets,* politics, environment and other matters. The most corrupt individuals were employees in municipalities or local officials - mayors, municipal councillors, doctors, politicians, inspectors and public officials with decision-making powers. As such, corruption is now a more common problem in Slovenian society and now has a greater impact on social life than it has had in the previous 10 to 20 years[23]. Corruption in Slovenia occurs mostly because of greed - individuals cross the line of legal only to gain material benefit and better status. Corruption is not for survival, but for the acquisition of additional material benefits, status or other benefits. Other causes of corruption are: a) old habits (in Slovenia many things were achieved by by-passing the law and finding loop-holes – seemingly a past custom in the Balkans, b) society forcing individuals to act in corruptive way where it seems that anyone who is honest is in reality a fool, and a person who is not law-abiding is normal and "cool" or the concept of "if a functionary can, why can't I?"); d) connections and acquaintances, informal networks and the small size of Slovenia which enables individuals to find easier ways to resolve problems through informal networks and contacts; e) inefficiency and non-transparency of control institutions where insufficient level of ethics and the integrity of individuals exists and f) inadequate and flawed legislation.

c) The impact of Corruption to the Rule of Law

Corruption has a direct impact on the Rule of Law – this was the consensus of all respondents. Its influence is manifested in various ways (please see Graph 4: The impact of Corruption to the Rule of Law), the prime example being the illegal lobbying and corrupt law-making processes, where respondents also spoke about state capture and the use of informal networks. This practice is actually common in Slovenia, especially according to the opinion of principle No. 220, where it was found that officials attempted to adopt legal provisions on the basis of unsubstantiated claims and assessments. The second most striking influence of corruption on the Rule of Law is seen as a violation of the Principle of legality - subjects have to be bound to the Constitution, laws and other regulatory rules. Respondents equated corruption to the violation of the rules and procedures. It is to be concluded that corruption affects the Rule of Law through the violation of the basic principle of states govern by the law. On the other hand, respondents do not only equate the violation of the provisions of corruption, but also corruption involving unequal treatment of individuals. The latter is, accord-

[23] Respondents were asked about their experiences (representatives of police, prosecution and courts) and about their feelings (lay public) regards level of corruption in the past (10-20 years ago), with the request to compare it with the up-to-date level of corruption (and its impact on society). The same results were also found in the research on informal networks in 2003 (Dobovšek & Škrbec (2005) and in the annual research "*Perception of the citizens of the Republic of Slovenia*" regarding corruption (years: 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009).

ing to the respondents, the third most significant impact of corruption on the Rule of Law. These corrupt practices give advantages only to a certain group of people and leaves all others by the wayside, those not being entitled to privilege or benefit. Such findings confirm the results of research on informal networks in Slovenia in 2003, where it was found that membership of an informal network, where members also use corrupt methods to meet their needs, enables advantages to its members through the flow of important information, assistance in employment and other forms of benefit or solutions to specific problems. The most powerful and influenced by this matter are politicians who are regarded by the respondents as a problem of a state governed by the Rule of Law, because they set a very bad example[24] to all other citizens.

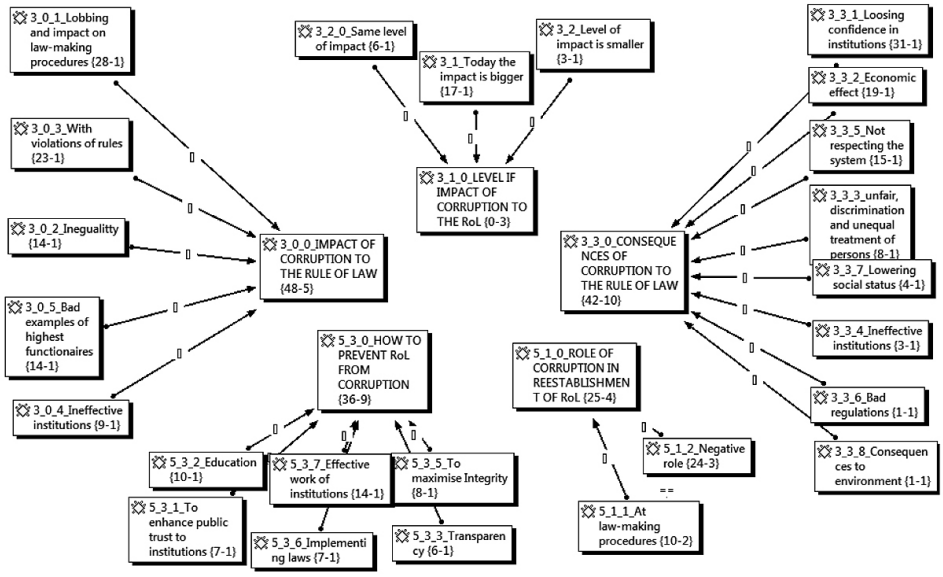

Figure 4: The Impact of Corruption to the Rule of Law

Undesirable and disastrous consequences have arisen due to such an impact of corrupt practices on the Rule of Law. Respondents highlight as the worst and most typical consequences as: a) loss of confidence in institutions, questioning the legitimacy of authority and confidence in people holding power and in the functioning of the state itself; b) negative economic impacts, actual financial cost, as well as loss of competitiveness; expensive living conditions; lower quality of life and standards of living); d) the decay of values and the loss of the sense of morality where people accept corruption as a norm and e) the failure to comply with the system, resulting in inequality and inefficiency of institutions.

[24] Respondents kept repeating the same phrase "If they can do it, we can too". Again we talk about the violation of the rules - and this, as we described above, constitutes a breach of the principle of legality (an essential element of the Rule of Law).

5 CONCLUSION

According to the literature review the impact of corruption to the Rule of Law is negative and most problematic in public sphere, where as a consequence corruption makes government services market commodities that can be simply bought. Such theoretical wisdom was proven by professionals and public as well as by the analysis of identified cases. The study of both sides shows that corruption affects the Slovenian state which is governed by the Rule of Law through the violation of the Principle of legality and the Principle of equal treatment which are the two basic elements of the Slovenian doctrine of the Rule of Law. Such findings enables us to confirm the results of research of informal networks in 2003, where respondents pointed out that membership of informal networks (where members use corrupt methods to meet their needs) enables unequal advantage to its members through better and easier solutions: enabling things to happen faster; making possible the flow of useful information between members and others; gaining of business and public procurement biddings and employment; increase of power and influence, and taking control over existing situations. The most powerful and influential are politicians (functionaries), who are marked by the respondents as a problem of a state governed by the Rule of Law, because they provide a poor role-model to all other citizens.

Apart from lowering the level of citizens' trust in public institutions and state officials, which is a crucial consequence, there is also a negative economic issue. According to the respondents, corruption cases affect the state through fiscal losses where the exact financial damage cannot be calculated. As we found, the negative consequences are also shown in the effect of the Slovenian natural environment which makes clear that perpetrators are not concerned about the environment. In this particular way Slovenia has lost some of its best agricultural land and most important sections of natural parks.

According to the respondents, corruption is now a more common problem in Slovenian society and has greater impact in social life than at any time in the past 10-20 years[25]. Corruption in Slovenia occurs mostly because of greed. Individuals cross the border of legality only to gain material benefit and better status. Corruption is not for survival but for betterment. Such a finding is directly shown from the analysis of identified cases, where, as we could see from the attached graph, benefits derived from corruption are both material and immaterial (obtaining business via public procurement, illegal employment etc).

Past habits – where in the Balkans people by-passed the law and found loopholes in regulations and procedures – are evident even today. The problem has increased in such a way that society itself is seen to force people to act in corrupt ways because individuals who can navigate their way around are seen as normal

[25] Such findings also confirm the results of research of informal networks in 2003.

persons. People try to find easier ways to resolve problems through informal networks and contacts – and the latter is geographically easier in a small country where everyone can be seen to know each other. As such, corruption has become largely normal behaviour especially in the health and private sectors.

To solve this epidemic the public needs to change its behaviour and thought process about corruption and its consequences. As respondents stated, individuals do not have enough integrity and ethical values – the most important thing to them is to have more, and to have it faster. Such measures are not enough because it takes time to change habits. That is why there is a call for a joint commitment from all public institutions to fight corruption together and to enhance the transparency and efficiency of law enforcement institutions.

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INTEGRITY TESTS – A NEGLECTED TOOL OR OBJECT OF RIDICULE

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ABSTRACT
Purpose:
The purpose of this paper is to present and highlight the problems in the definition of integrity, especially in Slovenia, but, most importantly, to present the integrity test as a way of strengthening, promoting and encouraging integrity performance and behavior in our society.

Design/methodology/approach:
This paper is based on a foreign and domestic literature review.

Findings:
First and foremost, integrity is ill defined causing different problems; many of them are connected to integrity tests, like the implementation, reliability and effects that integrity tests bring to the table. Given this situation, we must also concentrate on some other solutions for helping the development of integrity, such as media reports on the importance of integrity behavior and establishing ground rules and, therefore, punishment for violations.

People, especially those in crucial positions (inspectors, managers, public officials), should demonstrate integrity in their behavior by performing their functions properly, so integrity tests would contribute to keeping the actions of these officials in line with expectations about integrity.

Originality/value:
The value of this paper is highlighted by publicly visible breaches of integrity and increased attention by the media on this topic. The paper would be of interest to those who are concerned or charged with the problem of integrity.

Keywords: Integrity, integrity test, straightening integrity behavior

1 INTRODUCTION

In normal social settings people judge others' integrity on the basis of patterns of behavior. This means that judgement about a person's level of integrity is a reactive one. This does not represent any major problems in the majority of daily situations and is, generally speaking, a norm in social relations (e.g. we learn of

others' integrity through time and, in the worst of cases, we suffer emotional damage). Yet the capitalistic world in which we live has placed a price on problems of integrity. Employees who lack integrity can bring financial damage to the company, and the time needed to examine a person's integrity is a luxury that most cannot afford. A concern is the basic effect of negative actions such as the loss of patent rights, damage to a company's image or brand, and lost trust in the institution, among others. Also, it must be said that not only private companies can be damaged by employees that lack-integrity. Or as Lasthuizen, Huberts and Heres (2011: 387) note, "*...that integrity is a quality of individuals as well as of organizations"*. The public sector and the highest of governance personnel must possess integrity as well. We wish to present some of the most basic reasons why this is so, as well as presenting tools that can help with integrity issues.

The paper is in four parts. The first part introduces the concept of integrity, its puzzling aspects and ascribed problems. The second part deals with the variety of integrity tests. The third then introduces a number of other possibilities to improve integrity, while last part sums them up.

2 (PROBLEMS OF) INTEGRITY

Starting this paper with such subversiveness into which we will dive momentarily is perhaps puzzling, but this is the very core problem of integrity. Despite being very ill-defined (Sackett & Wanek, 1996, quoted in Wanek, 1999: 187 - a premise that they found after they reviewed 200 integrity dealing journal articles, books, convention papers and other sources), integrity remains a highly praised word. For some integrity means being *true to oneself' – to be consistent in following our standpoints* (Calhoun, 1995; Jones, 2000; Koehn, 2005; Hansson, 2008), or to be consistent of words and deeds, for others *it's doing the right thing* no matter the result (Oquist's, 1999; Delattre, 2011). And as Becker (1998) notes, some equate it with ethics[1], honesty,[2] and morality[3]. Over-generalization and lack of criticism regarding the used definition of integrity is dangerous in terms of misleading and trickery. It can be said that we can characterize almost everyone from the whole world population as someone with integrity, if we use the "right" definition. Cox, Caze and Levine (2008) gave a great example, with their

[1] "*In a given group, ethics is the agreed upon standards of what is desirable and undesirable; of right and wrong conduct; of what is considered by that group as good and bad behavior of a person, group or entity that is a member of the group, and may include defined bases for discipline, including exclusion"* (Jensen, 2009: 18). "*Additionally, ethics can be defined as the collection of values and norms, functioning as standards or yardsticks for assessing the integrity of one's conduct"* (Benjamin 1990, quoted in Lasthuizen, Huberts, & Heres, 2011: 387).

[2] "*Honesty is the refusal to pretend that facts of reality are other than what they are*" (Becker, 1998: 158

[3] "*In a given society, in a given era of that society, morality is the generally-accepted standards of what is desirable and undesirable; of right and wrong conduct, and what is considered by that society as good or bad behavior of a person, group or entity*" (Jensen, 2009: 18).

note that when understanding integrity as a characteristic of personal consistency (following our standpoints) one can easily act immorally and in contrast with global social norms, taking Adolph Hitler, Stalin and other racist people as the most illustrative examples. They truly did follow their standpoints, but do we want to characterize them as having integrity? It seems that politicians still use this shirk aspect of integrity[4].

Some see integrity as more agile, adaptable to the social norms and expectations. For Hansson (2008), integrity is a personal property that determines a person's behavior in a social context and perception of this person in the eyes of others. Such definition somewhat explains acts that are morally acceptable in one part of the country, but not in another – like racist behavior, which is approved in some areas of the same country, but condemned in the others. Here we can also apply McFall's (1987) dualistic view of integrity, where integrity could be a form of moral relativism, where integrity is co-depending from individual choice or cultural norms. She elaborates the terms *personal integrity* and *moral integrity* – where the only difference is the *source of subjectivity*. Personal integrity can be the synonymous to be *true to oneself, being consistent*[5] and moral integrity is synonymous with following the wider-sociological desirable norms. The problem here appears when there is a clash between social expectation and personal beliefs (a non- racist person in a racist environment).

Yet for now integrity, no matter how perceived, is as Koehn, (2005: 126) underlines *"[integrity is] synonymous with goodness"*.

2.1 Integrity and governance

When the public elects a future member of parliament (and thereafter also a member of the government), when someone begins working in a public office or is somewhat otherwise employed in the public sector his/hers actions and behavior cannot be foreseen. Therefore we have no way of knowing about the level of integrity a person possesses. Only after improper acts have been carried out (and, consequently, a form of damage) we have a perception of that person`s integrity. Such problems are more and more often averted in the private sector by applying an integrity test, something that the public sector should start to consider seriously.

The public sector is especially problematic regarding the post-prevention, because even if e.g. a member of parliament can be marked and/or proven corrupted, the laws and actions he or she has influenced will not be dismissed. A

[4] Similarly is with the word accountability – *"one of those evocative political words that can be used to patch up a rambling argument, to evoke an image of trustworthiness, fidelity and justice, or to hold critics at bay"* (Bovens, 2005: 182).

[5] Becker (1998: 155): *"consistently acting according to any set of principles"*.

person can resign or even be involved in criminal proceedings (even though rarely), but he/she will often continue to receive a high salary, causing unjustified expenses to the country and public.

Secondly, as Newman, (2003: 336-337) pointed out: "*...leaders whose lack of integrity results in scandal may be less able to perform their duties successfully, as other office-holders may be loathe to work with a beleaguered leader and precious time and resources must be spent dealing with the scandal rather than important policy issues"*. Kellerman (2004, quoted in Burke, 2006) developed two categories of bad leadership, ineffective (those with incompetence, rigidness, and such) and unethical (corrupt, insular, callous or evil), the ones in the latter group fail to distinguish between right and wrong. And as Newman, (2003: 340) states, "*there seems to be an agreement amongst people, that people employed in important public office should be displaying some higher moral standards even in their private lives"*. People see politicians as selfish, only interested in personal monetary benefits or prestige (Denhardt, 2002). Furthermore, there is prevailing one-way political communication going on (politics do not listen to people and they do not include their ideas in decision-making) (Denhardt, 2002). Integrity has a role in this, as Koehn, (2005: 133) puts it: *"when integrity is lacking, we refuse to hear what others are telling us about the situation"*. Integrity is recognized as an essential element of every well performing organization and its employees (Pagon, 2003; Fine, 2010) and is a basic characteristic of good leadership (Pagon, 2003). Yet there is a second face to this coin as Lasthuizen, Huberts, & Heres, (2011: 384) state "*...while it is encouraging that there is a growing interest in the field and that more and more efforts are being made to develop approaches to governance that emphasize both effectiveness and ethics, it is now time to move forward towards more conceptual and theoretical clarity and it is urgent to invest in improving the methodology of measuring unethical behaviour or 'integrity violations'."*

When going down the hierarchy we encounter a number of key positions which must be taken by people of high integrity. Viewing the public sector more widely, we notice that people employed in administrative services of the state are characterized differently in different countries. In some countries they are seen as boring, robotized desk clerks, in others more humanized and in more supportive roles. Public administration personnel are also seen as lacking clear vision and understanding of their work, which should be to "*serve and empower citizens as they manage public organizations and implement public policy"* (Denhardt & Denhardt, 2000: 549). People attribute them with acts of corruption[6] and networking (for example: knowing someone in an important position or family ties, who assures you a job and then making their own network when employed). However, we cannot forget that there can be intrapersonal conflict in those administrative

[6] In one of the 2001 Slovenian studies about corruption 34 % of respondents believed that without bribing public administrative workers – public administration would work a "half worse". Three years later that opinion was shared by 46% of responders. Furthermore, belief that public servants are often bribed is a constant in all studies about corruption made in Slovenia (Škrbec & Dobovšek, 2009).

workers, as they are often the ones who implement the legislation and regulative laws, even though they maybe don't agree with the idea of that legislation (Jones, 2000), or they are threatened, offered bribes, extorted (Lambsdorff, 2007) etc. for some, at first sight, semi-legal matter. Armstrong, (2005: 2) describes citizen's expectations about public service: "*Citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis. Fair and reliable public services and predictable decision-making inspire public trust and create a level playing field for businesses, thus contributing to well-functioning markets and economic growth*". Or as Waldo (1980, quoted in Wal, Huberts, Heuvel, & Kolthoff, 2006: 321) stated that "*values and ethics should be the core of Public Administration*".

There seems to be a growing interest in integrity and leadership ethics among the private or public sector and governance (Storr, 2004; Lasthuizen, Huberts, & Heres, 2011). The authors of this paper believe that the use of integrity tests would enable the proactive development of ethical governance by employment screening of those employed at the most crucial positions of governance.

3 INTEGRITY TESTING

Even though there are numerous questions when we come to testing integrity, the goal of the following text is not to go into deep analysis of the integrity test, but to provide some basic insight.

Integrity tests are designed primarily for screening future employees who are thought to be at high risk for engagement in improper (thefts) or counterproductive behaviors (Alliger, Lilienfeld, & Mitchell, 1996). Goals pursued by integrity tests are: to ascertain whether it is likely that the individual public officer or a public authority is embroiled in a corrupt act; to *"increase the actual and perceived risk to corrupt officials that they may be detected"*; and to find out which public servants are operating in areas that are more exposed to corruption and have proven to be honest and trustworthy, and thus more suitable for promotion (United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators, 2004, p. 89-90). Of course, the points shown do not only apply to low level civil servants, the objectives of the integrity test can be implemented for policy makers, economists, inspectors, etc.

There are a number of various tests and ways to classify them. As we have noticed, the current and most common classification of integrity and, indirectly, integrity tests somewhat limits their serviceability, as in the majority of cases one classification is used among the private sector, others among policing, etc. We have never encountered all varieties of test being used in one sector.

3.1 Integrity tests

A review of worldwide literature reveals that are three basic ways of implementing integrity tests. We have (a) Paper & pencil tests (b) Situation-based tests and (c) Psychophysical tests.

Paper & pencil tests[7] are the most frequently used and are often separated into two types. Most authors distinguish between overt and personality-based tests (Alliger, Lilienfeld, & Mitchell, 1996; Wanek, 1999; Schmidt, Viswesvaran, & Ones, 1997). Overt integrity tests are also known as clear purpose tests, as the purpose [of the test] is clear to the test taker, they are designed to directly assess attitudes regarding dishonest behaviors (Alliger, Lilienfeld & Mitchell, 1996; Schmidt, Viswesvaran & Ones, 1997; Sturman & Sherwyn, 2009; Martin & Austin, 2010) especially regarding theft (Sackett, 1994; OTA[8], 1990; Ones & Viswesvaran, 2001; Berry, Sackett & Wiemann, 2007). Some overt tests ask specifically about past illegal and dishonest activities as well (Schmidt, Viswesvaran, & Ones, Validity of Integrity Tests for Predicting Drug and Alcohol Abuse: A Meta-Analysis, 1997).

On the other hand, personality-based measures (also referred to as disguised purpose tests or covert tests) assess personality traits such as dependability, reliability, conscientiousness, adjustment, trustworthiness, and social conformity, thrill seeking, trouble with authority, that are presumably related to integrity and aim to predict a broad range of counterproductive behaviors at work (e.g., violence on the job, absenteeism, tardiness, drug abuse, theft) (Alliger, Lilienfeld, & Mitchell; Schmidt, Viswesvaran, & Ones, 1997; Berry, Sackett, & Wiemann, 2007; Sturman & Sherwyn, 2009).

Some examples of paper and pencil integrity tests for overt test are the London House Personnel Selection Inventory; Employee Attitude Inventory (EAI), the Phase II Profile, the Milby Profile, the Trustworthiness Attitude Survey, the Pre-employment Analysis Questionnaire, Employee Integrity Index, Reid Report, Stanton Survey, Tescor Survey, IntegriTEST, and for covert, Personnel Reaction Blank, the PDI Employment Inventory (PDI-EI), Reliability Scale of the Hogan Personality Inventory-Reliability Scale Personal Outlook Inventory, the Employment Inventory (Personnel Decisions, Inc.) and the Hogan Personality Inventory Reliability Scale (Alliger, Lilienfeld, & Mitchell, 1996; Ones & Viswesvaran, 2001; Berry, Sackett, & Wiemann, 2007; Ones, Viswesvaran & Schmidt, 2003; Sturman & Sherwyn, 2009; Fine, 2010).

Some emerging tests of similar nature and a form of replacement of standard paper and pencil test are Conditional Reasoning,[9] Differential Framing Test

[7] Though perhaps being overly-obvious, we still have to make a note that, though these tests are remarked as paper and pencil (as the test taker has originally filed a form in paper format) this concept is nowadays replaced or amended by the verity of electronic devices.

[8] Office of Tehnology Assesment, U.S. Congress

[9] Developed by Lawrence James and colleagues (2005 quoted in Berry, Sackett, & Wiemann, 2007) –"con-

(DFT), various derivatives of Other Criterion-Focused Occupational Personality Scales (COPS), Biographical Data (Biodata) tests and other various data scales (Conscientiousness[10] and Locus of Control) structured and unstructured integrity interviews and voice response[11] (Camara & Schneider, 1994; Ones & Viswesvaran, 2001; Berry, Sackett, & Wiemann, 2007). However the usefulness of which still needs to be researched and examined while the clinical (psychoanalytical) measure of integrity (e.g. Minnesota Multiphasic Personality Inventory (MMPI)) (Sackett, 1994; Wanek, 1999), has more history of usage.

Situation-based tests are most often named in connection with managing and preventing police corruption. We named them situation-based integrity tests because they are used *"in the form of contrived situations to observe the reaction of an officer"* (Girodo, 2000). Girodo (2000) stated about [police officers] integrity that a person cannot say that his/her integrity was tested if he/she has not yet been in a situation where he/she could *do the wrong thing.* Deliberately creating morally-questionable situations and engaging specific or random police officers in those situations can be a sort of integrity test. Behavior responses of police officers who are not aware that *"this is just a test"* are the best indicators of their integrity (ibid). A similar opinion is shared by Dobovšek (2005) that such situation-based integrity tests could be used to screen employees of public administration who demonstrate deviant behavior.

All integrity tests, but especially situation-based tests, can either be *targeted* or *random*. *Targeted* can be used to help verify the genuineness of an allegation or a suspicion of corrupt behavior of a single individual (United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators, 2004) while a *random* test is carried out when a unit is believed to be showing overall delinquent performance of duties (Girodo, 2000).

Persons who can conduct such tests can vary from police officers, outside public service employees, private detectives, (investigative) journalists or other watchdogs (and in such a way evading problems of entrapment) (Bac & Bag, 2000). So this situation-based integrity test can be easily transferable into other work places. For example, an investigative journalist can offer a bribe to a politician, etc.

Psychophysical tests are used least frequently, but are perhaps best known due to the polygraph. Polygraph tests were one of the first "integrity tests" used more widely. Due to the problems accompanying polygraph testing in general,

ditional reasoning" is based on conception *"that people use various justification mechanisms to explain their behavior and that people with varying dispositional tendencies will employ differing justification mechanisms"* and this then reflects a certain personality characteristic (Berry, Sackett, & Wiemann, 2007: 285).

[10] "*Within the framework of the Big Five theory of personality, conscientiousness „reflects dependability; that is, being careful, thorough, responsible, organized, and playful," and it also „incorporates volitional variables, such as hardworking, achievement-oriented, and persevering*"" (Barick & Mount, 1991, quoted in Becker, 1998: 158).

[11] "*Voice response format, where candidates listen to test items by phone and respond using the phone keypad"* (Berry, Sackett, & Wiemann, 2007: 287).

and especially after it has been made illegal for most employment settings, they were replaced with paper and pencil tests (Sturman & Sherwyn, 2009; Saxe, 1994; Sackett, 1994).

Though nowadays polygraph testing is not any less controversial or seen as reliable (Kearney, 2006; Aftergood, 2000), it's still used for employment screening for more specific occupations (Engleman & Kleiner, 1998). It is most often used in connection with law enforcement, (counter) intelligence and the other broad field of safety agencies (Handler, Honts, Krapohl, Nelson, & Griffin, 2009). Other such psychophysical reaction and corresponding measures include changes of pupil diameter changes, brain fingerprinting (Barrett, 2001), voice stress recognition, etc.

Polygraph testing is, unfortunately, synonymous with lie detector (Fienberg & Stern, 2005) or honesty testing, but in fact is far from that, as there is no evidence of a unique physiological reaction to deceit (Saxe, 1994). "*The basic premise is that when an individual is lying or evading some "truth-laden" statement, the individual in essence "fears" detection. This "fear" emotion is then hypothesised to cause a change in the individual's physiology that can be detected, which can then be used as an index of "deceitfulness". As an individual becomes "aroused" by the deception being perpetrated, we expect to see the heart rate increase, blood pressure increase, skin conductance increase, skin resistance decrease, respiration rate increase with perhaps depth decreasing, and skin temperature decreasing (as adrenalin invokes evacuation of the peripheral blood flow). If looking at pupil size, then this would be expected to increase*" (Barrett, 2001: 3-4).
Table 1 presents some basic tests and the way they are classified in various groups.

Table 1: Summarized overview of integrity test

Method of implementation / Type	Sub-Type	Focus	Example
Paper & pencil*	Overt	Random	London House Personnel Selection Inventory, Employee Integrity Index, Employee Attitude Inventory (EAI)
	Personality-oriented		PDI Employment Inventory (PDI-EI), Personnel Reaction Blank, Hogan Personality Inventory Reliability Scale
	Clinical measures		Minnesota Multiphasic Personality Inventory (MMPI)
	Biodata		Job compatibility measure
	Interviews (structured and unstructured)		Reid Integrity Interview
Psychophysical tests	Polygraph	Targeted	Concealed Information Tests (CIT); The Relevant-Irrelevant (RI); Comparison Question Tests (CQT)
	Brain fingerprinting		
	Pupil diameter changes		
	Voice stress analysing		
Situation based	Undercover		Bribes
			Control delivery
			Mystery shopper**

* Paper and pencil tests are nowadays conducted via electronic devices.

** See part of this paper titled Discussion And Conclusions on page 16.

The authors of this paper believe that all previously described integrity tests can bring better results and effectiveness if used in a more combined fashion.

3.2 Problems regarding integrity tests

Some encountered issues and problems regarding integrity tests are general, like legal and ethical standards of privacy, potential discriminatory consequences and effects (religious affiliation, social stigma, labeling), the potential restriction of opportunities for job applicants, possible misuse of data, and others (Sackett, 1994; Camara & Schneider, 1994; Berry, Sackett & Wiemann, 2007; OTA, 1990). But some are co-dependent to the specific types of test. Paper and pencil tests have issues regarding problems of definition of "honesty" (Saxe, 1994), commercialization of test, execution not done by psychologist etc. (Sackett, 1994). "*Moreover, some items on integrity tests, and the constructs they purport to measure, bear some similarity to items and constructs found in other psychological personality tests that are not typically considered integrity tests by their publishers or by independ-*

ent reviewers. There is disagreement in the field regarding the criteria by which to distinguish honesty and integrity tests from the broader family of personality tests" (OTA, 1990: 3).

One of the aims of an integrity test is to determine if the future employee would conduct a work place theft. Ones & Viswesvaran, (2001) study showed that integrity tests are less reliable in flagging "theft oriented" employees, however other counterproductive behavior and overall job performance can be predicted a lot better using integrity tests. Lasson & Bass, (1997) noticed in their study that integrity tests are also resistant to socially desirable responding. As all other tests that try to measure some personality characteristics, integrity tests are not immune to faking (Alliger & Dwight, 2000; Berry, Sackett, & Wiemann, 2007), neither are they totally reliable. Alliger & Dwight, (2000) conducted a meta-analysis of studies on faking on integrity test. They concluded that personality based integrity tests are more resistant to faking, compared to overt tests. Coaching as well had only limited effect on covert tests scores (Alliger, Lilienfeld, & Mitchell, 1996). While Berry, Sackett, & Wiemann, (2007: 284) expose one interesting research premise *"...though respondents can fake, there is still not definitive evidence that applicants do fake".* Psychophysical tests have fewer problems with faking, as one cannot fake slow breathing and decreased conductance, but one can master various forms of autogenic training and control some of the body's functions. It is the responsibility of the test performer to spot such attempts as, in falling to do so, one can fall to recognize potential threats. But it seems that false positives occur far more frequently, especially under the various stresses that are in play at that moment, as the level of pressure can be derailed from the test taking itself, or of test takers` concerns (Saxe, 1994). Paper and pencil tests have similar problems, where integrity tests may actually "penalize" those who are extremely honest by nature (Fine, Horowitz, Weigler, & Basis, 2010) as they will admit to meaningless thefts, like taking a pen from the office.

There is another problem Alliger & Dwight (2000) are exposing. They believe that when integrity testing will become more common, the future test subjects will know "what they are dealing with" and that will result in more preparations and knowledge of how to influence the test scores.

The biggest issues of situation-based tests are provocation and entrapment (or this can be used later in trial merely as an excuse). As "*the principle at issue in an integrity test relates to whether or not a test scenario provides the subject with an equal opportunity to pass or fail, and to what uses (behavioral reinforcement, training, disciplinary or prosecutorial) the test results will be put"* (ACLEI[12], 2011: 7), though such tests enable the investigator or test conductor to gather a good deal of incriminating evidence (Girodo, 2000; Dobovšek, 2005).

[12] Australian Commission for Law Enforcement Integrity, Australian Government

While problems of polygraph test are widely known, it's Aftergood's, (2000: 393) summarization that describes the problem best *"...Does the polygraph work? In a trivial sense, of course, it does. The polygraph machine will accurately measure cardiovascular activity, depth and frequency of respiration, and changes in skin conductance due to perspiration. It will also separately record how each of these factors changes after verbal stimuli.../ /...Although the data recorded by polygraph testing may be completely accurate, the proper interpretation of the data will always be uncertain."*[13]

The research on the topic of how a tested person responds to an integrity test deals mostly with paper and pencil tests. Respondents do not have especially positive reactions to such tests, but response varies in regard to the type and manner of the integrity test (Berry, Sackett, & Wiemann, 2007). Polygraph testing causes similar responses (Aftergood, 2000).

3.3 Conditions for implementing an integrity test

There are numerous concerns regarding integrity tests but, like all tests, even integrity tests have their deficiencies. That is why they have to be implemented with defined conditions and rules and selected carefully in terms of purpose and fairness.

When choosing the right integrity test for your necessity "*an employer needs to evaluate each individual test on its accumulated reliability and validity evidence, there is no shortcut*" (Wanek, 1999: 190).

One of the most important issues when it comes to the execution of an integrity test is, who will carry out the test. Psychologists and all testing professionals have a certain responsibility "*to prevent misuse of assessments and information*", unlike unqualified persons (personnel managers, supervisors), although they are the ones who use integrity tests most often (Camara & Schneider, 1994: 116). Tests have to be evaluated independently (Sturman & Sherwyn, 2009) and scores should remain confidential (Wanek, 1999). An integrity test must meet the criterion of fairness, so it must not discriminate against, abuse, exploit or otherwise put applicants at some disadvantage or discomfort (Karren & Zacharias, 2007). Especially in paper and pencil tests, the employers need to gain the consent of those who will be taking the test and inform them of its purpose (OTA, 1990).

Integrity tests in general must be implemented with the strictest discipline. Situation-based integrity tests must fight against abuse of power with witnesses and audio or video recordings of the actual event that must be as realistic as possible to ensure the fairness and eliminate the possibility of temptation that is "*greater than that to which he or she is normally exposed*" (United Nations Handbook

[13] We shall not go into the details of reliance, accuracy and effectiveness of polygraph testing, as this would demand more space than we are permitted.

on Practical Anti-Corruption Measures for Prosecutors and Investigators, 2004: 91). Also a random repetition of targeted or random testing should be carried out (ibid.).

3.4 Efficiency Of Integrity Tests

If the premises of proper implementation are met then the results of the test will undoubtedly be more credible. "*Integrity tests are viewed by employers as one tool in the armamentarium of personnel screening techniques, which can also include other tests of personality and/or cognitive ability, background checks into criminal history and credit records, reference checks, blood or urine tests, handwriting analysis, and personal interviews*" (OTA, 1990: 31).

Most frequent findings indicate that an integrity test is successful for predicting job performance and broad counterproductive behaviors on the job (Camara & Schneider, 1994; Ones & Viswesvaran, 2001), can reduce workers' compensation claims (Sturman & Sherwyn, 2009) and can to some degree predict absenteeism (Ones, 2003). United Nations have listed integrity tests in their handbook as efficient tools for curbing corruption, "*embracing both prevention and the prosecution of corruption*" (United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators, 2004: 89). Mostly, used paper and pencil (overt and personality-based) tests correlate with conscientiousness, agreeableness, and emotional stability (Ones & Viswesvaran, 2001), which is certainly useful for some employers.

With regard to psychosocial testing and integrity efficacy, evaluations are obscured, as the majority of sectors that are using one of the psychosocial methods to test "honesty" must deal with classified information, non-disclosure clauses and similar. Results show that some "right" persons are flagged and others pass (Aftergood, 2000). Among numerous polygraph tests the one most convincing is the s.c. guilty knowledge test (GKT), *"a multiple-choice test, whose item stems concern knowledge that only a guilty subject would have. A test of a theft suspect might, for example, involve questions such as „Was $100, $500, or $1,000 stolen?" If only a guilty suspect knows the correct answer, a larger psychophysical reaction to a correct choice would indicate deception. With a sufficient number of these items a psychometrically sound evaluation could be developed"* (Saxe, 1994: 71). Unfortunately, this is more of a reactive test then predictor for future deviance, because the questions are mostly generic (Fienberg & Stern, 2005).

3.5 Foundations for fostering integrity

In order to achieve the state where people will perform their duties with integrity, a number of important mechanisms must be used. Those are transparency,

accountability, prevention, enforcement and education. All are well described in the handbook prepared by the United States IRS Center.

Transparency is described as"*the ability of citizens, public officials, and civil society to obtain the material information that they need to make informed decisions and hold public sector agents accountable".* Therefore, the main objective is to establish transparency of operations and the transfer of information from public sector to private sector (public institutions, organization, customers, users) (Tools for Assessing Corruption and Integrity in Institutions, 2005: 13). In our experience some of the public information is otherwise accessible and available, but difficult to find, or „hidden" on the websites and often difficult to understand. Such cases were found and are often present in Slovenia (NIS: Slovenia, 2012). Some institutions are not familiar with the law and therefore available information is limited.

Another mechanism to sustain integrity in the public sector and otherwise is accountability that *"operates by specifying the relationships between public officials' behavior and performance on one hand, and rewards and punishments on the other"* (Tools for Assessing Corruption and Integrity in Institutions, 2005: 14). Thus, accountability, in other words calming responsibility, can be carried out through internal control systems and through independent external control (independent investigation and other measures, auditors, ombudsman), as well as by interaction with civil society, which represents the external control (media-investigative journalism, non-governmental organizations) (Tools for Assessing Corruption and Integrity in Institutions, 2005). Accountability also reinforces the duty of public institutions and officials to answer to voters (punishment for bad management or policy). Gregory & Hicks, (1999: 7) speak of "*democratic accountability"* which stands for *"maintaining public trust and confidence in the institutions of democratic government, and the obligations of public servants to account publicly, that is to report, explain and, if necessary, justify their actions and decisions to parliament, the courts and, in some cases, directly to the public".*

The aforementioned integrity tests play an important role in prevention and this important tool also includes *"reducing monopoly and discretion, rightsizing the civil service, separating private and public actors, and formalizing public-private relationships*" (Tools for Assessing Corruption and Integrity in Institutions, 2005: 14).

Enforcement goes hand in hand with accountability, as the effective implementation of laws and rules usually require administrative sanctions for negligence, poor performance or non-compliance and penalties for corruption (Tools for Assessing Corruption and Integrity in Institutions, 2005). This mechanism can be carried out by government entities or private sector (civil society, independent supervisory authorities and media). Anti-corruption agencies, ombudsmen and others importantly contribute to the enforcement of the laws and different rules, policies, etc. (Tools for Assessing Corruption and Integrity in Institutions, 2005).

And, the last but not least, is education, which embodies *"the identification, socialization, and institutionalization of values and related standards of ethical conduct that decrease tolerance for corruption and promote integrity in public and private sector relationships"* (Tools for Assessing Corruption and Integrity in Institutions, 2005: 14).

4 DISCUSSION AND CONCLUSIONS

Though there are numerous known variations of integrity tests, only Barrett's, (2001) deals with them more collectively. In most of the cases authors, though experts in their field, only concentrate on a limited variety of integrity tests. As we have mentioned, this somewhat limits their usability. Testing key personnel's integrity should be done with the option to choose the proper integrity test from the whole palette of available tests; one should not limit himself to only one type / implementing kind.

Testing the public sector should not be limited only to policing[14]; it should be broadened to all spheres and sectors. There are a number of good practices worldwide. For instance, *"the New South Wales Ombudsman conducts a "mystery shopper" program in which customer service of government agencies is tested by Ombudsman staff posing as customers. Rather than to test the conduct of individuals per se, the purpose of these tests is to collect information about service standards and administrative systems and thereby improve public administration"* (ACLEI, 2011: 5). Regarding the effectiveness of tests, Wanek, (1999: 193) states *"that integrity tests exhibit internal and temporal stability, and have respectable levels of criterion-related validity across a wide variety of counterproductive and productive criteria".*

While there are known instance of managers and employers who strive to implement integrity testing for their subordinates, there still remains a question of what about the integrity of those managers and employers. Organizational culture either fosters a good integrity climate or it presents an impediment towards it. Politics and the public sector are no different in that regard.

As the employer desires a trustworthy and honest employee, so does the public from their elected Members of Parliament.

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[14] *"Since 1994, the New York City Police Department (NYPD) has been practicing a very intensive programme of integrity testing. Simply stated, this means that the Internal Affairs Bureau creates scenarios based upon known acts of police corruption, such as the theft of drugs and/or cash from a street level drug dealer, to test the integrity of NYPD officers. The tests are carefully monitored and recorded using audio and video electronic surveillance and numerous "witnesses" are placed at or near the scene"* (United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators, 2004).

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ART CRIME IN SLOVENIA AND THE RESEARCH OF PROSECUTION FILES

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ABSTRACT
Purpose:
The purpose of this paper is to present the characteristics of criminal offences against art and cultural heritage in Slovenia and to present preliminary findings of study about prosecution files on art crime.

Design/methodology/approach:
This paper is based on a literature review and on preliminary findings of a study on art crime in Slovenia. The study included a review of prosecution files from the years 2005 to 2010.

Findings:
The media and the public in Slovenia did not pay almost any attention to crime against art and cultural heritage a few years ago. Today the picture is a little bit different. It is true that there is not a lot of art crime in Slovenia but it is necessary to pay attention to these cases. We must to realize that cultural heritage and art present a significant role in maintaining our history. If the piece of art is damaged, we lost it for ever.

The police records show that around 150 crimes against art and cultural heritage are committed per year. The paper presents the results of a study of prosecution files about art crime. The most frequent art crimes are theft, smuggling, illicit import and export of art, a fraud and vandalism. In most files the theft is committed in-churches, at residential buildings, in galleries and in other places. The results show that in most cases the offender is male. Thefts are committed primarily at night. The places where the crime is committed are not protected (either physically or technically) in most cases. Offenders are not aware that some subject is a piece of art or a piece of cultural heritage. Because of this they are not aware of damage that they made with their acts.

I have to highlight the problem that I found out during the study. The prosecution files in Slovenia are stored by the name of the offender or the victim. Because of this it is very difficult to find files that are related with art crime.

The reason why this kind of study is important is to identify the features of this kind of crime. This would help us in preventive actions.

Research limitations/implications:
The research limitations are related to data collection, because a sample was small and limited to five years. But nevertheless the data does suggest some important characteristics of art crime in Slovenia.

Originality/value:
This work is one of the first studies of art crime in Slovenia and the first research on prosecution files about art crime. The findings should be interesting for criminal investigators, private security and others who are dealing with works of art.

Keywords: art crime, cultural heritage, investigating art crimes, prosecution file

1 INTRODUCTION

Art crime is present in society for centuries and even today artworks are often the subject of crime. Different types of art crime have been developed through history: from theft, burglary, robbery, forgery, fraud, unauthorized export and import and even vandalism. Criminal offences against works of art are considered as one of the most sophisticated ways of violating the law. We must be aware that when art or cultural heritage is stolen, damaged, looted, or smuggled, the loss is material and intellectual (Durney, 2011).

Art crime presents large international problem. Because of large incomes and only 2 % successfully prosecuted crimes, organized crime and terrorist groups also got involved in this kind of crime. The criminals involved in art crime can be found at all levels of society.

Most people look at art as a crime without victims. However, with this we can not agree. Most stolen art is worth much more than their market price, because they belong to all of us and represent our history. Stealing art injures places of our history, which is invaluable (Wittman, 2010). The sum of stolen art around the world has doubled in recent years. According to the FBI data the sum has reached 6 billion dollars. It is true that Slovenian arts do not reach so high sums on markets like in other countries but they are still high. For an example we can take one of the last stolen painting Mileva Zakrajšek painted by Ivan Grohar. It was estimated for 100 thousand Euros.

Art theft is most well-known of all crimes involving art and antiquities. Stolen art is often a subject of fraud. After stealing a painting well-organized groups create a brilliant fakes which they sell as the originals. With this kind of crime the offenders get a lot of money which they invest in other crimes (Dobovšek, Charney, & Vučko, 2009).

A criminal investigation of art crime presents a major problem for investigators. The main meaning in investigating art crime is the co-operation of police, private investigators, museums, galleries and other experts. Also international cooperation is required and participation of international institutions (Tidewater, 2011).

The purpose of this paper is to provide an overview of what is currently known and current thinking about possible improvements to investigate art crime.

2 ART CRIME IN SLOVENIA

Compared with other countries art crime in Slovenia does not present a big issue. Police treated around 150 cases of art crime per year. Many art crimes are not reported to police and offenders are not always arrested. Museums and galleries do not want to admit their own security failures, while private collectors may not have declared ownership of some arts in their collection. The result is that only a part of art crimes are reported (Conklin, 1994).

We can divide art crime in into four major groups: theft, fraud, vandalism and unauthorized export and import. There are some robberies and arson but they are really rare.

If we look at the statistics we can see that Slovenian police does not investigate a lot of cases about art crime per year. But its investigation it is very important because the subject of a crime is an art and it is often item of special cultural heritage, having a role in maintaining the nation's history. Theft and unauthorized archaeological excavations most frequently endanger the sites dating from the ancient Roman period, as well as sacral facilities, especially churches, from which liturgical objects (icons, old theological scriptures, chalices, crosses, and reliquaries containing the relics of saints) are stolen. This kind of art and antiques reveal the cultural identity of a nation.

Investigation of art crime is demanding, art offer is limited but people are still looking for new artworks. Because of this illegal business and black market with art is still present.

Works of art are often links to our past, so they must be protected, no only because of the monetary value but also because of important part of our cultural heritage. The issue of art crime and cultural heritage is not a high frequency statistic, but it is much more difficult to investigate. The main problem is that the investigators and the police officers do not know much about art and the artists who help them with investigation do not know anything about investigation (Wittman, 2010). This is the reason that there is no successful investigation without close cooperation between the police and artists, art historians and other art experts. The police have the assistance of professional services, the Ministry of Culture, Inspectorate for Culture and Media, Institute of Protection of Cultural Heritage, archaeologists, galleries, curators, artists and the court appraisers, whose expertise contribute to the successful investigation of art crime and crime against cultural heritage. Also it is important for police cooperation with other international institutions and international police cooperation.

Such international cooperation has often a positive effect. At the beginning of October 2011 Russian investigators passed to Slovenian police two paintings from the beginning of the 19th century which were stolen eight years ago from a private

building of a Slovenian businessman Franc Riemer. They found them in a Russian antiques shop where stolen artworks had all ready appeared. The Italian police tracked down 5 of the 35 stolen paintings in April 2012. In this case we can see how important is international police cooperation in the fight against art crime.

After reviewing the statistics below we can see that data about art crime in Slovenia are very different. For example we can take the year 2006. According to data provided by the Criminal Police Directorate 63 art crimes (Table 1) were committed. In other data (Table 2) they report that this year 34 crimes against art were committed. According to information provided by the police message to the public in March 2007 201 art crimes in year 2006 were committed. The Public Relations Division of the General Police Directorate said that 119 crimes against art and cultural heritage were committed in year 2006.

Table 1: Number of art crimes in Slovenia

TYPE OF CRIME	NUMBER OF CRIME						TOTAL
	YEAR						
	2006	2007	2008	2009	2010	2011	
THEFT	38	45	21	32	54	49	239
FRAUD	0	2	1	2	2	1	8
UNAUTHOR-IZED EXPORT AND IMPORT	0	0	0	1	0	0	1
VANDALISM	25	19	7	7	10	12	80
TOTAL	63	66	29	42	66	62	328

Table 2: Place where the art crime was committed

YEAR	PLACE WHERE THE ART CRIME WAS COMMITTED							TOTAL
	Museums	Religious site	Castles	Archaeological sites	Galleries Antiques	Private collection	Other	
2006	1	2	/	/	3	13	15	34
2007	8	2	2	/	3	3	10	28
2008	/	9	1	1	1	20	23	55
2009	2	12	2	0	6	12	4	38
2010	1	13	1	/	4	22	29	70
2011	2	18	/	/	2	17	20	59

Perhaps the reason is that art crime and crime against cultural heritage are considered in the context of property crime. It is necessary that the police begin to address art crime as an independent category and not in the context of property crime and that investigators obtain some knowledge of the works of art.

The investigators and the police officers are dealing with art crime in their daily work. They do not have any special knowledge and because art and cultural objects are not photographed before stealing or damage they do not know how it was look like before the crime was committed. For the collectors and individuals who have at home any artwork, it is advisable to survey and photographs their artworks.

Like other types of crime, art crime is not always reported to police (Conklin, 1994). This is the reason that the data are incomplete and reports only a fraction of the total art crime activity.

The recovery rate for stolen art remains particularly low, in some cases as low as 2 to 6 percent. It is even rarer to both recover stolen art and successfully prosecute. Because the greatest amount of data and subsequent analysis come from solved cases, ideally involving both the recovery of stolen goods and successful prosecution of the criminals, it becomes understandable that limited data are available on art crime (Charney, Denton, & Kleberg, 2012).

3 PILOT RESEARCH OF PROSECUTION FILES

The reason why prosecution files were analyzed is to expand review of art crime in Republic of Slovenia. In the prosecution file we can see not only the data from prosecutors but also the criminal charges and the convictions, if they occurred. We can see the whole picture of the case if we look into the prosecution file.

The research of court cases is still in progress. I will present the results of pilot study which was made on the basis of 16 prosecution files.

The pilot research was made with the analysis of prosecution files. With the help of staff at the prosecutor's office I tried to collect as many prosecution files which are considered art crime between 2005 and 2010. In Slovenia there are 11 district state prosecutors' offices. As the prosecution files, dealing with crimes against art guided or stored under name and surname of the offender or the victim, it will be difficult to find all the files dealing with art crime. The files were be collected by prosecutors who deal with such cases.

Based on the literature review I made a variable map which helped me to check and assess the files.

The research limitations are related to data collection, because a sample was small and limited on five years. But nevertheless the data does suggest some important characteristics of art crime in Slovenia.

3.1 Results

The most frequent art crimes are theft, illicit import and export of art, a fraud and vandalism (Figure 1).

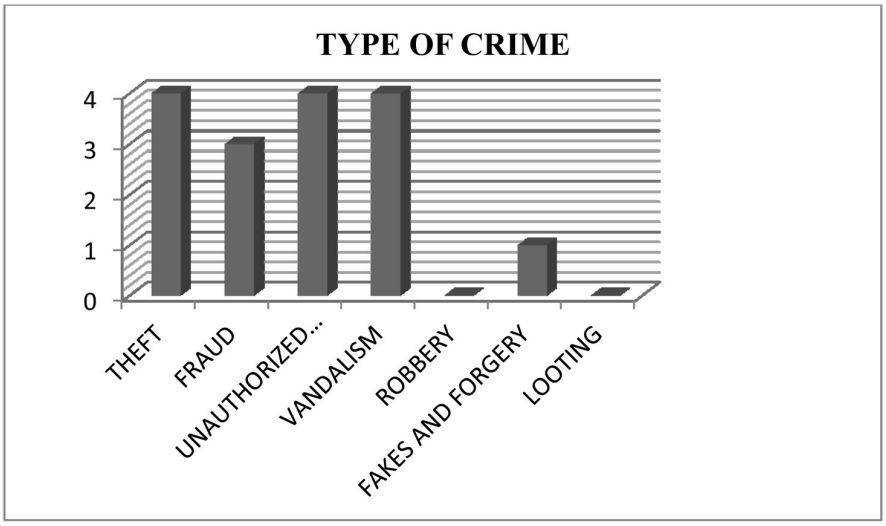

Figure 1: Types of art crimes

The results show that in most cases the offender is male, average age of the offender is 51 year, in most cases the offender has secondary school and does not have criminal record. In two cases the offender is unknown.

Thefts are committed primarily at night. The places where the crime is committed are in most cases private buildings which are not protected (either physically or technical). Subjects of art crime are: paintings, coins, historical and religious objects. In cases of vandalism the objects of crime were statues. Offenders are not aware that the subject of a crime is a piece of art or a piece of cultural heritage. Because of this they are not aware of damage that they made with their acts. Offenders did not plan the crime in advance.

During the police investigation we can find out that owners report the crime to the police. The crime scene search is made in most cases. After this the police collect official notice about the crime.

But nevertheless in all cases the prosecutors order to the police that they have to collect more information from art experts and notice about the circumstances (who was a primary owner, where the painting was exhibited before the theft).

In six cases there was a criminal trial. In one case the offender received a prison sentence, in one case the person was released of all charges and in 4 cases the sentence was a probation sentence. In other cases the criminal charges were

dismissed because there was not enough evidence that the suspect was guilty or was not a reasonable suspicion that the suspect has committed a crime.

The police records show that is committed around 150 crimes against art and cultural heritage per year. As I already mention the police statistics are very different. But during the research I found out that the statistics are wrong. From example for year 2007 the statistics show that this year was not any unauthorized export and import of art. When I was doing the research on District state prosecutors' office in Krško I found out 2 files that were about unauthorized export and import of art and cultural heritage.

4 CONCLUSION

The media reporting about art crime in Slovenia increased in last years. Public awareness is very important because art crime might be reduced if the public were better informed about the seriousness of art crime.

Due to a fact that a pilot research was conducted on a small sample of files from years 2005 to 2010 the results can be generalize. The findings are important for investigators, art owners and other people, who are working with arts or cultural heritage. Significant emphasis should be given also to the preventive action. It is necessary that the police begin to identify art crime as a unique category of crime and not as property crime and that investigators have some special training for investigating art crime.

It would be recommended also to use advanced forensic marking – SelectaDNA as it proven to reduce theft, vandalism and robbery, in some cases up to 85 %. It serves as undeniable proof of ownership in court proceedings and police to find a relationship between the offender and the crime scene. SelectaDNA products are designed to deter potential offenders - reflective stickers on items and warning signs on buildings warn potential offenders that the property is protected. Some insurance companies even require labeling of the property as a condition for insurance.

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3.
SECURITY STUDIES

"IDENTITY THEFT"

THE OSCE AND HUMAN SECURITY

Authors:
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ABSTRACT
Purpose:
The purpose of this article is to examine - in the light of the practice and theory of human security since the concept emerged in the 1994 UNDP Human Development Programme - weather or not the OSCE "does" human security, and if, how a "human security approach" could benefit the organisation.

Methods:
Relevant OSCE's documents will be reviewed in order to examine how the human security is defined in the OSCE context.

Findings:
The term human security is seldom used within the OSCE. Anyhow OSCE's understanding of security mirrors human security. The OSCE considers security as comprehensive - reflected in the three dimensions: human, politico-military and economic/ecological. Human security could serve as a bridge which connects these three dimensions. Human security can become a vision around OSCE members may be able to converge more successfully than around the OSCE present thinking in the box of three security dimensions if they are willing to further advance the organisation's original purpose to not only provide stability in the OSCE region but also effectively make people more secure in their everyday lives.

Originality/Value:
The article gives a valuable insight into different dimensions of the OSCE's understanding of security and human security as a bridge which connects these dimensions. The OSCE could use the essence of the concept of human security to foster cohesion and to remain innovative.

Keywords: OSCE, human security, comprehensive security.

1 INTRODUCTION

Formerly known as the CSCE (Conference on Security and Cooperation in Europe), the OSCE (Organization for Security and Cooperation in Europe) was originally set in motion by the Helsinki Final Act of 1975. Signed by 35 member states, including most of the eastern and western European states, Canada, and the United States, the Act served to regulate the process of détente between East and West. Following the Cold War, the OSCE has been expected to function as a security organization to prevent conflict, and to promote democracy in the former Eastern Bloc.

From its inception, the CSCE served as an international body whose sphere covered military, economic and human dimensions. From the national security perspective, the OSCE model has successfully combined national security and human security. It has a history of providing opportunities for its participants to discuss security issues of "national" and "international" importance, such as the Soviet invasion of Afghanistan in 1979. Promoting military CBM through the OSCE process is a notable achievement of the OSCE in the realm of national security. On the other hand, human security issues also occupy an important part of the OSCE's operations, and range from land-mine issues to human trafficking. The OSCE was originally formed as a kind of forum for discussing issues of military and human dimensions, and was a political result of East-West power politics.

The OSCE mechanism serves both military security and human security, which emphasizes the importance of the role this international security organization plays. The OSCE can afford to address both military security and human security simultaneously and at the same level. Some international organizations *are* often overtly treated as comprehensive types of organization, but even in these cases, the organizations define their main task in a dimension of either military security or human security. For example, NATO is usually regarded as a military security organization, and the Council of Europe is usually regarded more as a human security organization.

The OSCE itself has rarely used the term "human security," despite the United Nations' high priority on the issue. In reality, however, the OSCE has conducted some concrete works of "human dimension," such as promoting democracy and human rights. The words "human dimension" in the OSCE context have been used since the Concluding Document of the Vienna Meeting, adopted in January 1989. They are used in combination to include fundamental human rights clauses, referred to as "Principle VII," and humanitarian issues, named as "Basket III"(Co-operation in Humanitarian and Other Fields)" in the Helsinki Final Act, and cover such areas as human contacts, promoting international information flow, and cultural, sport- or educational cooperation. Human dimension, therefore, covers most aspects of human security.

2 THE ORIGINS AND THE NATURE OF THE OSCE[1]

The OSCE process started in early 1970s as a forum for dialogue between East and West. A series of conferences served to enumerate principles on which Eastern (Warsaw-pact) states and the Western states could agree. After two years of negotiations in series of conferences in Geneva and Helsinki, the Helsinki Final Act was signed by the 35 OSCE Heads of State or Government on 1 August 1975.

[1] This article will use the term OSCE to refer to both the prior and the current body.

The three 'baskets' formed the core of the Helsinki Final Act. Today, these 'baskets' are usually referred to as the OSCE's three 'dimensions', which are as follows:

- The politico-military dimension
- The economic and environmental dimension
- The human dimension

The OSCE takes a comprehensive approach to the *politico-military dimension* of security, which includes a number of commitments by participating States and mechanisms for conflict prevention and resolution. The Organization also seeks to enhance military security by promoting greater openness, transparency and co-operation. Basket I issues are focused primarily on a set of principles to govern relations among states in the realm of security and on specific »confidence-building measures« (CBMs).

Basket II issues concerned cooperation in the fields of economics, science and technology, and the environment. Activities in the *economic and environmental dimension* include the monitoring of developments in this area among participating States, with the aim of alerting them to any threat of conflict; and assisting in the creation of economic and environmental policies and related initiatives to promote security in the OSCE region.

The commitments made by OSCE participating States in the *human dimension* aim to ensure full respect for human rights and fundamental freedoms; to abide by the rule of law; to promote the principles of democracy by building, strengthening and protecting democratic institutions; and to promote tolerance throughout the OSCE area. The Helsinki Final Act acknowledges as one of its ten guiding principles[2] "respect for human rights and fundamental freedoms, including the freedom of thought, conscious, religion or belief". This constitutes a milestone in the history of human rights protection. For the first time, human rights principles were included as an explicit and integral element of a regional security framework on the same basis as politico-military and economic issues. This acknowledgement has been reinforced by numerous follow-up documents. There is no hierarchy among these principles, and no government can claim they have to establish political or economic security before addressing human rights and democracy. It is the OSCE view that a free society allowing everyone to fully participate in public life is a safeguard against conflict and instability.

[2] Of primary importance in the Final Act is the "Declaration on Principles Guiding Relations Between Participating States" (the so-called 'Helsinki Decalogue') including the following 10 principles: 1. Sovereign equality, respect for the rights inherent in sovereignty; 2. Refraining from the threat or use of force; 3. Inviolability of frontiers; 4. Territorial integrity of states; 5. Peaceful settlement of disputes; 6. Non-intervention in internal affairs; 7. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; 8. Equal rights and self-determination of peoples; 9. Co-operation among states; 10. Fulfilment in good faith of obligations under international law.

Since its beginnings, the OSCE has followed a process approach. The Helsinki Final Act provides for regular follow-up conferences and meetings. Until 1990 there were no formal institutions. Even now, a strong emphasis is placed on the process-aspects. The OSCE process consists of the convening by the participating states of periodic inter-governmental conferences, meetings, and consultations to discuss the relations between the participating states, based on the principles of sovereignty and equality. This is very important for understanding the OSCE human rights framework. First, it means that there is a forum for discussing the implementation of the standards agreed in previous meetings. Second, it has led to a set of successive OSCE documents specifying and elaborating the human dimension commitments adopted in past documents (Glover, 1995).

Until the adoption of the Charter of Paris for a New Europe, the institutional structure was very limited; no secretariat existed, the country hosting a meeting made the agenda, consulted all participants and provided services. At the OSCE summit in Paris in 1990, the "Charter for a New Europe" was signed to mark the transition from the politics of the Cold War. The OSCE took on a permanent structure with a small secretariat and formally became the Organization for Security and Cooperation in Europe at the Budapest summit in 1994. The concept was to make it a "light" organization without a strong central bureaucracy, but with a mechanism that could oversee an increasing level of activity. Like other OSCE documents, the Budapest declaration was adopted by consensus but did not take the form of a treaty requiring ratification by member states. Thus the OSCE, unlike NATO or the United Nations, had no formal legal "personality" that would give it standing in international law.

Since the Paris Charter, the countries agreed to hold highlevel meetings on a more regular basis; generally, there is a meeting of Heads of State or Government every two years while the Foreign Ministers meet annually in the Ministerial Council, the main decision-making body.

The OSCE today consists of a Permanent Council of representatives of 56 member states, a Secretariat, a Conflict Prevention Center, an Operations Center, and a variety of special representatives and advisors to the Chair in Office on subjects ranging from freedom of the media to policing, and from the economy to the environment. A Forum on Security Cooperation (FSC) is also located in Vienna and deals with arms control and confidence-building measures stemming from the Stockholm Conference of 1984-1985 and the limitations on Conventional Forces in Europe.

The political leadership of the OSCE is entrusted to the Chair in Office (CiO), who is a Foreign Minister from a participating state. This position rotates every year. Day-to-day political guidance comes from the CiO's representative in Vienna, who is the Chair of the Permanent Council. General policy guidance

comes from the annual Ministerial Council, a gathering of Foreign Ministers of all participating states, and from periodic summits. These bodies carry out the normative function of the OSCE and the setting of standards and goals that should be adhered to by European states. While these normative acts are not legally binding, and are often ignored by governments, over time they have a clear cumulative effect.

To help the OSCE to fulfill its mandate, the Organization has developed several specialized institutions. Operational OSCE institutions outside Vienna include the OSCE High Commissioner on National Minorities (HCNM) in The Hague and the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw. The OSCE Parliamentary Assembly, headquartered in Copenhagen, brings together parliamentarians from OSCE member states and supports democratic reforms throughout the region. The Standing Committee of the Assembly occasionally appoints ad hoc committees to cover special issues. These *ad hoc* committees, for example, have worked on issues related to Albania, Belarus, and the Stability Pact for Southeastern Europe.

3 THE CONCEPT OF HUMAN SECURITY

The concept of human security is related theoretically to the liberal school of thought in International Relations and Security Studies focusing on individuals as key subjects of security. This concept emerged in the post-Cold War period in the early 1990 when two international organizations, OECD and UNDP, started to quote the concept in their annual reports. It became really popular at the end of the 90s when Canada and Japan adopted it as an official policy.

For the first time the concept of human security emerged in the 1994 *UNDP Human Development Report*[3]. Since then its definition and meaning have been widely debated. The UN Commission on Human Security defines human security as "the vital core of all human lives in ways that enhance human freedoms and fulfillment" (Liotta & Owen, 2006: 37-54). A more exhaustive definition of human security is offered by Liotta and Owen who argue that "in ethical terms, human security is both a 'system' and a systemic practice that promotes and sustains stability, security and progressive integration of individuals within their relationships to their states, societies and regions. In abstract but understandable terms, human security allows the individuals the pursuit of life, liberty and both happiness and justice." (Liotta & Owen, 2006:40). But, it has often been argued

[3] Dr. Mahbub ul Haq first drew global attention to the concept of human security in the United Nations Development Programme's 1994 *Human Development Report* and sought to influence the UN's 1995 World Summit on Social Development in Copenhagen.

that if all components of well-being are included in a definition, the concept will lose its meaning (King & Murray, 2002). Namely, in other words, by narrowing the definition of human security, it becomes easier to develop effective policies in practice. King and Murray (2002) include the notions of "freedom from fear" and "freedom from want" – two terms introduced in the UNDP's 1994 report. As a people-centered approach, the UNDP more specifically identified seven security dimensions: economic, food, health, environmental, personal, community and political security.

According to Shahrbanou Tadjbakhsh , in a nutshell, human security means:
1. The recognition of new threats beyond traditional tools of violence
2. The recognition of new security referent objects beyond the state (with emphasis on people and communities)
3. The recognition of how development, human rights and security are interlinked (Tadjbakhsh, 2009).

Human Security is part of human development and human rights. It is also about feeling safe on the streets or being able to influence political decision-making. Human Security policies are concerned with crisis management, but they go beyond crisis management since they offer a perspective on crises. Human Security is about how we respond to an urgent physical or material threat to individuals and communities. From a Human Security perspective, the aim is not just political stability; it also encompasses notions of justice and sustainability. Stability tends to entail the absence of overt conflict or, in economic terms, halting a downward spiral of GDP or the value of a currency (Kaldor, Martin &Selchow, 2008). In recent years, the international community seems to have learned how to stabilise conflicts; how to reach and sustain peace agreements and how to stabilise economies ('Final Report of the Commission on Human Security', 2003). But it has not yet learned how to address the security of individuals and communities and deal with crime, human rights violations and joblessness.

The growing interest in human security since the early 1990s has to be seen in the historical and social context relating to the erosion of the narrow, state-centric, militarized national security paradigm in practical and academic terms (Seppä, 2011). The (traditional) security discourse has changed in line with the idea of human security from military conflict between sovereign states towards the well-being of citizens within states.

Development of human security as a concept can be divided into two different "waves of debates" (Gottwald, 2012). The first round of debate during the early post-Cold War era was characterized by the changing security paradigm and thus was heavily concentrated on the debate between state-centric vs. human security. The discussion on the changing security paradigm not only concerned

the broadening dimension but also the deepening of the notion of security captured within three basic questions: 1) Security of whom? 2) Security from what? and 3) Security by what means?

However, human security does not bypass the traditional state-centric security paradigm. In fact, human security accepts the state as the main provider of security but adds two important conditions. First, in contrast to the realist paradigm, human security considers the democratic, rights-based state to be the most effective and legitimate provider of security. Second, sovereignty is redefined as responsibility and is therefore conditional upon the state's willingness and ability to provide human security (Tadjbakhsh & Chenoy, 2007). Apart from the changing referent object, human security promotes different means to protect security. As opposed to the hard power of the military, security should be provided by soft power, long-term cooperation and preventive measures.

The debate within the human security concept has focused on different schools and definitions whereas a distinction between political definitions on the one hand and academic definition on the other should be made. [4] Within the political discourse, the concept of human security has been defined in many different ways by a variety of actors according to their own interests and fears.

Deriving from the UNDP's interpretation of the human security concept, the debate at the academic level is mostly located between the minimalist/narrow and the maximalist/ broad definitions of human security. The most minimalist/narrow definitions of human security focus on the notion of 'freedom from fear', meaning to ensure the individual's safety from direct threat and referring to their physical integrity and the satisfaction of basic needs[5]. The maximalist/ broad approaches encompass both 'freedom from fear' and 'freedom from want'. The broad definition concentrates on threats, both direct and indirect, both objective and subjective, which come from traditional understandings of insecurity, underdevelopment and human rights abuses.[6] According to Keith Krause, a narrow definition of human security is the only one possible, justified by its analytical quality and its policy applicability in opposition to the maximalist/ broad approaches encompassing both 'freedom from fear' and 'freedom from want', which were criticized as constituting useless 'shopping list of treats' (Krause, 2004).

The main critique of human security as a concept refers to the vagueness of the idea and its broadness especially concerning the epistemology of threats. The

[4] A detailed overview and classification of academic and political definitions of human security has been provided by S. Tadjbakhsh and A. Chenoy (2007: 7-139).

[5] The minimalist approach to human security, i.e., 'freedom from fear', is adopted by Canada and the Report of the International Commission on Intervention and State Sovereignty, *A Responsibility to Protect (in 2001)*. This approach concentrates on direct threats to individuals' safety and to their physical integrity: armed conflict, human rights abuses, public insecurity and organized crime.

[6] The maximalist broad approach is adopted by the UNDP, by the Government of Japan, and by the Commission on Human Security (2003).

human security approach is said to be conceptually hollow and, moreover, of very little use in theoretical terms. Furthermore, the 'securitization of economic, social, political, environmental and human rights issues is constantly criticized by many scholars who see the broadening of the term 'security' leading to the point where it loses its signification.[7]

A problem in finding a coherent and accepted definition affects the applicability of the concept to the respective policy-making. It is thus recommended to take a narrower approach in applying human security to policy, rather than a holistic one.

4 THE OSCE CONCEPT OF SECURITY

Since its beginnings in the early 1970s, the OSCE has taken a broad and comprehensive approach to security that has encompassed three complementary dimensions (initially the 'three baskets'), all of which are viewed as being of equal importance. Closely related to the comprehensive nature of security is the OSCE's co-operative approach to security, which rests on the underlying premise that security is indivisible — meaning that co-operation is beneficial to all participating States while the insecurity in and/or of one State can affect the well-being of all. Therefore, no participating State should enhance its security at the expense of the security of another participating State. Moreover, co-operative security comprises the notion of OSCE co-operation with other international organizations and institutions and OSCE Partners for Co-operation. The various aspects of security are viewed as interconnected and interdependent.

The OSCE was the first security organization that conceived of and adopted a concept of comprehensive and co-operative security, which the participating States have reaffirmed in major documents and decisions taken since the Helsinki Final Act. While revolutionary at the time, and still innovative today, the OSCE's unique approach to security is a crucial part of its record of achievements. This approach to security has allowed the OSCE to manage change in Europe from one century to the next.

The essence of the OSCE approach to security — entailing the idea that the protection of human rights and fundamental freedoms and economic and environmental governance is as important for the sustainability of peace and security as is politico-military co-operation — was initially formulated in the climate of détente and rapprochement that prevailed in the early 1970s.

The Organization had to respond swiftly to the political, economic and security related transformations that came as a result of the historical changes of the

[7] For a detailed overview of the human security critiques and counter-critiques, see Tadjbakhsh and Chenoy (2007).

early 1990s - the end of the Cold War, the fragmentation of the Soviet Union and the Socialist Federal Republic of Yugoslavia and the creation of newly independent states. Increased tensions and armed confrontations within and between participating States were catalysts for decisions on security and confidence-building measures, on early warning and the prevention of conflicts, crisis management and the peaceful settlement of conflicts as well as the protection of human rights and the rights of persons belonging to national minorities. Efforts to assure regional stability became paramount and the OSCE was entrusted with assisting in international crisis prevention and post-conflict rehabilitation activities. Co-operation on issues related to democratic governance and economic development was enhanced and strengthened. Principles and modalities for co-operating with international and regional organizations were adopted. The OSCE's approach to security was firmly consolidated in the waning 20th century.

The OSCE entered the 21st century as a consolidated organization which began to address more specifically new security threats and challenges. In the Maastricht 2003 *OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century*, the OSCE's ability to address new challenges affecting the security of all participating States was acclaimed on the basis of, "its multidimensional concept of common, comprehensive, co-operative and indivisible security."

5 HUMAN SECURITY AND HUMAN DIMENSION IN THE OSCE

The OSCE itself has rarely used the term "human security," despite the United Nations' high priority on the issue. In reality, however, the OSCE has conducted some concrete works of "human dimension," such as promoting democracy and human rights. The words "human dimension" in the OSCE context have been used since the Concluding Document of the Vienna Meeting, adopted in January 1989. They are used in combination to include fundamental human rights clauses, referred to as "Principle VII," and humanitarian issues, named as "Basket III"(Co-operation in Humanitarian and Other Fields)" in the Helsinki Final Act, and cover such areas as human contacts, promoting international information flow, and cultural, sport- or educational cooperation.

The Istanbul Summit Declaration (paragraph 2) called for improving human security: „we need the contribution of a strengthened OSCE to meet the risks and challenges facing the OSCE area, to improve human security and thereby to make a difference in the life of the individual, which is the aim of all our efforts' (Istanbul Summit Declaration, 1999). In the OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, adopted at the Maastricht Ministerial Meeting in 2003 this position was repeated verbatim (Eleventh Meet-

ing of the Ministerial Council, Maastricht, 2003). Also at the Vienna Ministerial Council in 2000 was stated that the organisation's intention is to foster human security so as to improve the quality of life of all individuals within the OSCE region. In the OSCE context human security was implicitly defined as 'the safety of the individual from violence, through armed conflict, gross violations of human rights, and terrorism' (Eighth Meeting of the Ministerial Council, Vienna, 2000). More specifically, the Bucharest Ministerial Meeting in 2002 stated that the mandate of the OSCE High Commissioner on National Minorities 'defines the modern concept of human security' (Ninth Meeting of the Ministerial Council, 2002). These references, scattered over a number of OSCE's documents hardly make human security a guiding principle for the organisation's work.

According to Gerd Oberleitner the absence of human security language in OSCE official documents since 2003 seems to indicate uncertainty within the organisation on how to approach this new concept (Oberleitner, 2008: 68).

Support for human security came from states with simultaneous membership of the OSCE and of the Human Security Network[8]. The Dutch OSCE chairmanship in 2003 presented human security as one of their priorities and defined human security as a combination of peace and the rule of law in which the fight against trafficking, security for minorities and socially vulnerable groups, and offering protection through stronger national institutions, appropriate legislation and the rule of law must be assigned a high priority.

Since 2006 Asian OSCE partners led by Japan, seek to promote human security within the OSCE area (Shiozaki, 2006). The OSCE-Thailand Conference in Bangkok in April 2006 considered human security — due to its overlap with the OSCE's concept of comprehensive security — as relevant for OSCE forums (14th OSCE Ministerial Council, 2006). In a Workshop on Promoting Human Security in the OSCE Area in Vienna in May 2007 interested OSCE delegates and academics explored the value of the concept for the OSCE.

OSCE practice is to a large extent about human security, too. This is, in particular, the case with its human dimension, but also the economic/ecological dimension. More specifically, the organisation's work on trafficking in human beings, children in armed conflict, and small arms and light weapons are areas in which a number of activities have been undertaken by the OSCE which, in other settings, are referred to as 'human security issues'(Buchsbaum, 2002).

The OSCE's way of thinking about security, the organisation's activities and its very structure are very much in line with what human security postulates. The essence of the OSCE concept of security as comprehensive and cooperative ultimately geared towards protection and empowering the individual. The openness

[8] Austria, Canada, Greece, Ireland, Norway, the Netherlands, Slovenia and Switzerland.

of human security initiatives to cooperate with NGOs so as to empower and engage the individual has, also, a long-standing tradition in the OSCE. Furthermore, the organisation's history shows the same pragmatic approach that puts practice over theory in solving security crises (Oberlaitner, 2008: 70).

After all, it could be said that there is overlap between the idea of human security and the organisation's perception of security. But, is there added value for the OSCE in taking on board the concept of human security? What can an OSCE based on the idea of human security offer which the present OSCE cannot?

The OSCE divide security in three dimensions and only one of these three dimensions- the human dimension - focus on the individual and develop operational tools to protect human rights and foster individual security. Having in mind that the OSCE concept of security is divided in three dimensions, perhaps human security has the added value to serve, as a bridge which connects these three dimensions.

6 CONCLUSION

The OSCE could use the essence of the concept of human security to foster cohesion and to remain innovative which is crucial for OSCE reform (Kemp, 2006). Probably, such a human security approach may not be appreciated by all OSCE members. Namely, some of them are not willing to further advance the organisation's original purpose which is to provide stability in the OSCE region. But, for those in the OSCE who are willing to make people more secure in their everyday lives, human security can become a vision around which they may be able to converge more successfully than around the OSCE's present thinking in three dimensions.

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THE SCOPE OF THE GENERIC CAUSES FOR THE CRISES IN THE TOURIST INDUSTRY

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ABSTRACT
Purpose:
The paper presents a scope of the generic causes of crises in the tourist industry, founded on an analysis of safety and security elements while travelling, which are the centre of focus/attraction for travellers, tourists, tour operators, travel agencies and government institutions as well as the Slovenian Ministry of Foreign Affairs.

Design/methodology/approach:
Using descriptive and causal-non-experimental research methods we analyse the risks on journeys, but also the basis and consequences of the security crisis in the tourism industry. We used the internet to collect data in the analysis of case studies of the different causes of crises.

Findings:
The causes and consequences of the crises in the tourist industry are generically being repeated and have ever increasing global consequences for the tourist industry at the international level. Aside from the financial and economic elements, security issues are an ever increasing cause for the co-dependency of tourism in the international, global environment. The generality of the causes and consequences of the crises is the condition to predict the probability and causality of specific risks at specific tourist destinations based on the analyses of security situations. The cumulative value of probability and causality represents the threat level upon which we can determine curative and preventive measures to prevent or decrease the consequences of the crisis.

Research limitations/implications:
The developed scope of crises in tourist industry has never been the subject of a critical analysis or a discussion by the tourist or security profession.

Originality/value:
The analysis results of specific security elements during the occurrence of crises have enabled a comprehensive overview of the causes for the crises in the tourist industry. They are the consequences of an unstable security environment and the events connected with it. The causes for the crises are generic in nature, as they can either occur frequently at the same destination or the same causes can occur at various destinations. Based on these findings a refined scope of the generic causes for the crises in the tourist sector has been designed and interpreted.

Keywords: security, safety, tourism, crisis, destination

1 INTRODUCTION

Notwithstanding the slogan „tourism is the means to acquire peace" which was extremely popular among tourist subjects (tourist industry, tourist professionals or individuals from the academic sphere), Hall, Timothy and Duval (2003) emphasise the fact that tourism on the macro level has little influence on peace and safety and add that tourism is more dependant on peace and safety than vice versa. These statements need to be supplemented by the fact that safety, as an element of quality, is the key of all the tourist destinations but the specifics of certain safety crises can affect the development of tourism at a specific destination differently. By the specifics of safety crisis we understand its size, accompanying consequences and the media attention it brings.

Grizold (1999) emphasises that the universality of safety is clearly seen from the integrity of its content, entanglement of all the areas of life and work of society (economics, politics, society, culture, education, environment, military etc.) and mutual interaction and interdependence of all living things and nature. In the modern globalized world certain sources of security threats, and consequentially crises, are becoming a transnational problem; they are spreading regardless of national boarders (Prezelj, 2005). Similar findings are seen in Dobovšek (2009) who claims that the global dimension of tourism has caused that the security problems do not only affect tourism at a specific destination, region or country, but that they influence the global tourist flows and cause imbalances and fluctuations in the global economy.

With the first terrorist attack oriented directly on tourists in Luxor in 1997, when under the shootings of Islamic extremists 62 people died, uncertainty settled in international tourism. In the industry which was always considered an industry that was kind to humanity (a sort of a "smokeless industry" which connected people of different cultures), it became clear (especially after the 9/11 attacks in the U.S. in 2001) that the crises (in tourism) are not only the concern of the cyclical movements of global economy but are also becoming a part of a so-called "new reality" (Klančnik, 2004). A Tourist industry of a specific destination is not directly dependant on the security situation in its environment but also on the wider safety environment (we can call it global safety) – if we remind ourselves of the consequences on travel logistics across the world brought by 9/11 terrorist attacks in New York.

Many sources of risk and critical situations which endanger the safety of tourism (narrower or wider) are directly influencing the success of tourism. Safety and all its elements became a key factor of quality and development of tourism and needs to be considered seriously on all tourist offer levels (safety of tourists and tourist destinations). According to Mansfeld and Pizam (2006), people cancel their booked trips, avoid booking trips to an affected destination or, those who

are already in the affected destination, move to a safer place or return home. There is also a change in risk-taking tendency of various tourist segments. Some people use risk-related travel information prior to destination choice.

When looking at the history of crises in the tourist industry we see that the number of crises is at least as high as the number of tourist destinations and circumstances of tourist industry. The crises which directly or indirectly influence the tourist industry can be basically categorized by the time of their escalation. According to the time of escalation we can find sudden (rapid) and longer lasting crises. Some types of crises (natural disasters) have a typically rapid transition to a state of crisis while some transitions are slow and need several years to return to the normal state (floods in New Orleans, tsunamis in Indonesia, earthquakes in Haiti and Japan). The crises with complex long-term consequences mostly highlight the critical views and questions with different dimensions (nuclear disaster in Japan in 2011). A case of a rapid or sudden transition to a state of crisis is a terrorist attack where usually their return to normal state is much faster (Sharm el Sheikh in 2005). Some of the crises transit slower (epidemics, pandemics of infectious diseases and other infections) but return to normal state fast. There are also crises where the transit to a state of crisis is long lasting (the influence of organized crime at a certain destination) and the resolution of crisis is slower and takes a longer time. According to their duration, Ritchie (2009) also divided crises into three categories. The first category is called the immediate crisis, which includes crises with very little or no warning in advance. Therefore, organisations are unable to research a problem or prepare a plan before a crisis hits. The second category is called the emerging crisis. These crises progress slower and they may be stopped or limited by acts of the organization. The last category, sustained crisis, includes crises that may last weeks, months or even years.

When deciding on traveling to a tourist destination or deciding on a tourist service we consider safety as a priority which is usually more important than the expenses. Safety is the factor which can change a travel from a pleasant experience to a complete nightmare. The real value for assuring safety is realistic and useful information. Most modern countries prepare useful and up-to-date information for their citizens who travel to certain countries because the tourist industry is among industries that globally generates one of the largest GDPs. Global Tourism's direct contribution to GDP in 2011 was US$2 trillion and the industry generated 98 million jobs. Taking account of its direct, indirect and induced impacts, Travel & Tourism's total contribution in 2011 was US$6.3 trillion in GDP, 255 million jobs, US$743 billion in investment and US$1.2 trillion in exports. This contribution represented 9 % of GDP, 1 in 12 jobs, 5 % of investment and 5 % of exports (WTTC, 2012). The EU tourism industry generates more than 5 % of the EU GDP, with about 1,8 million enterprises employing around 5,2 % of the total labour force (approximately 9,7 million jobs). When related sectors

are taken into account, the estimated contribution of tourism to GDP creation is much higher: tourism indirectly generates more than 10% of the European Union's GDP and provides about 12% of the labour force (EC, 2012).

Because tourism is highly dependnt on safety we have decided to explore the correlations between safety and the causes for crises, and their influence on tourism at certain tourist destinations. Based on the findings we develop a methodology for evaluating the level of risks for the occurrence of crises at the tourist destinations on the theoretical elements of crisis management in tourism. There are many causes and occurrences which influence the safety of tourism, this is the reason why we designed the scope of the generic causes for the crises in the tourist industry (Figure 1). We wanted to show the size and the range of the causes for crises occurring in tourism. We categorized causes as the regular or irregular and as socio-political or natural-technical. On the substance level we divided the crises in to seven groups (Figure 1).

2 CRISIS MANAGEMENT IN TOURISM

Crisis management is a relatively new discipline which started to develop in the 1990's, after the occurrence of the Asian financial crisis. The authors (Wilks, 2006; Wilks & Page, 2003) mostly agree that the US terrorist attacks on 9/11 changed our understanding of safety in the international tourism forever. Many new realizations were brought after the attacks on other places and countries (Casablanca, Riyadh, Jakarta, especially Madrid and London), after the threats of new health dangers (SARS, bird flu, A1H1N1), after the increased number of natural disasters (tsunamis, earthquakes, volcanic eruptions) and finally the obvious signs of climate change and global financial crisis.

The most important authors of crisis management in tourism are Jeff Wilks (University of Queensland, Australia), Eric Laws and Bruce Prideaux (both from James Cook University, Australia) and Dirk Glaesser, coordinator of the risk and crisis management programme at the World Tourism Organization in Madrid. The fact that the leading theoreticists in crisis management in tourism are Australians (Donna Pendergast, Peter Leggat and others, together with the previously mentioned authors) is not surprising. The majority of crisis occurrences, from natural disasters to intentionally caused interferences, in the first decade of this century appeared in Asia. Let us mention the two terrorist attacks on Bali, the bird flu and tsunami in the Indian Ocean. The Australian researchers received much information that was available quickly, at the same time they had full support from The Pacific Asia Travel Association – PATA. The European literature in this field is considerably modest even though the cases of crises at the turn of the 21st century were not rare. Let us mention the terrorist attacks in Madrid

and London, the accident of the ascending railway car in Kaprun, Austria, British concerns with the mad cow disease (BSE), Anders Breivik's terrorist attack in Norway, the eruption of Icelandic volcano Eyjafjallajökull and outbreaks of violence in many European cities because of the economic recession. Only some of these cases were direct tourist crises but all of the occurrences negatively contributed to the tourist industry.

The international tourism which reached an incredible rise in the past twenty years cannot solve its specific difficulties only with basic economic theories of crisis management. Tourism is a multidisciplinary field. The basic structure of international tourism (Gee, Makens, & Choy, 1997) shows that companies (tour operators and travel agencies, hotels, hotel chains, airlines, bus companies, theme parks etc.), as well as local, regional and national tourism organizations, many professional associations, as well as companies whose success or survival is only indirectly dependent from tourism (taxi drivers, florists, agro-industry) are all included in the tourist industry. This means that if tourism is in crisis all of the previously mentioned factors are in it as well.

We agree with the definition (Ivanuša, Lesjak, Roša, & Podbregar, 2012) that crisis management in tourism presents the activities before the occurrence of crisis situations, activities during the crisis (acute) period and the activities after the crisis; and that crisis management means a holistic approach to complex global risks, dangers and problems. When reacting to crisis, the collaboration of different subjects (interdependence) is essential. The crises differ in cause, duration and consequences. Malešič (2004) highlighted some characteristics that are common to most of the crises: the threat to basic values (territorial integrity, the rule of law, respecting human rights, ensuring public safety, etc.); time limitations at decision-making in unexpected situations (public authorities, private institutions or civil society); uncertain conditions (these are changing rapidly, the causes may be different, both internal and external); awareness of decision makers that every decision made has certain consequences, and errors are almost not allowed; limited possibility of using previous information and resources; limited availability of existing sources of information required for the decision; constant possibility of change and characteristics of crisis situations; more concrete internal and external control over decisions; possibility of obstruction of those, responsible for solving the crisis; and major psychological burden of people, responsible for resolving crisis situations. Kash and Darling (1998) agree, and claim that it is no longer a case 'if' a business will face a crisis; it is rather a question of 'when', 'what type' and 'how prepared' the company will be when dealing with it. Both statements illustrate that although organisations are able to design pre-crisis strategies to help with the crisis management they are often unable to prevent a crisis from occurring. However, the real challenge is not to recognise crises, but to recognise them in a timely fashion (Darling, Hannu, & Raimo, 1996). Authors such as Burnett (1998) and Kash and Darling

(1998) note that decisions undertaken before a crisis occurs will enable more effective management of the crisis, rather than organisations being managed by the crisis itself. Proactive planning through the use of strategic planning for crises will help reduce risk, time wastage, and poor resource management, and will reduce the impacts of crises that do arise (Heath, 1998).

When establishing the scope of generic causes for crises occurring in tourism and for forming the methodology of evaluating the level of risk for crises occurrence, we also need to categorize crisis according to its intensity. Crisis management usually categorizes crises in three phases of intensity. In the potential phase the possibility of crisis occurrence is little but we can, according to the information and the data analysis, presume the problems may occur. In the latent phase the concrete signs of crisis are clearly seen but they can be prevented with certain actions or functional legal measures for eliminating the consequences. The final phase is called the acute phase where the crisis is in full swing, it's signs are obvious, there is no time for preventive measures, there is less and less room for decision maneuver and most of the time the consequences and damage are seen. When the tourist destination deals with the acute phase, demands immediate decisions and counteraction in order to influence the further development of a destination again positively and to restrict the negative consequences as much as possible (Glaesser, 2006).

3 FACTORS AND CAUSES FOR CRISIS IN TOURISM

There are many different kinds of definitions for the word crisis. However, the word crisis comes from the Greek word "krisis", which means decision or differentiation. Keown-McMullan (1997) and Henderson (2007) claim that a crisis is a triggering event which causes or has the potential to cause significant change. Every crisis is unique and unexpected; urgency and danger are characteristic for them. Crises reach a crucial point when change is inevitable. Malešič, Bašič, Hrvatin, Polič (2006) describe the crisis as a situation where the core values are threatened, the time for measures is limited, the conditions are uncertain and stressful While some authors define the crisis as a state, Vrečko (2002) understands it as a time limited process which starts when conditions for decreasing of the existing state appear or when limitations for reaching the given system appear and these conditions continuously decrease or deviate from a desired situation. After reaching the peak of the decreasing or deviating state by building suitable measures, the system is returning to a new or a desired state; at that time the process of crisis ends.

The facts show that the number of crisis situations which directly affect tourism is rising and this is the reason why the countries, where an important share of

the GDP comes from tourism, try to limit or prevent the causes for the crisis occurrence. Direct and measurable damages caused by different forms of crises in tourist industry are great. As an example of this, the Bali bombings in 2002 were a terrorist attack where tourists were targeted. 202 people, mostly British and Australian citizens, were killed. The 2002 bombings had a huge impact on Bali's tourism, which is shown on the decline in the hotel occupancy rate from 69 % to 19 % (Ritchie, 2009). Terrorism is strongly influenced by politics. Terrorists use tourists as targets for tactical reasons, to gather more publicity and therefore terrorists have a strong bond with tourists. After a terrorist attack, planned vacations are likely to be cancelled and tourists might substitute locations with those they believe to be safer (Henderson, 2007). Other types of crisis are natural catastrophes, which are usually unstoppable and unpredictable. However, both tourism and climate change have effect on natural catastrophes. Potential threats which occur because of ecological crime and are primarily seen in nature in the form of negative changes and natural disasters, are also harmful for tourism. The importance of safety element for protecting the environment is also considered by Meško, Bančič, Eman and Fields (2012) who emphasise that the threats to the environment and natural disasters as a part of the consequences of threats have incredibly risen to the top of the scale of safety problems of modern society. The most often and problematic threats are connected to the deterioration of the climate. More often and more serious are the natural disasters which are followed by the lack of energy sources which consequently cause panic among people; the lack of water and war threats because of the »black gold« modern human life is not possible. One of the threats is also the acid rain which destroys soil, plants, animals, human skin, cultural heritage and buildings (Eman, Meško, & Fields, 2012).

The next type of crisis included in this thesis is a health crises, especially pandemics. Health crises are more avoidable and controllable than other crises. Pandemics spread easily among humans, which is why tourism is one of the reason for them to spread around the world (Bagans & Tapola, 2011). An example of health crises is also Foot-and-Mouth Disease (FMD), confirmed in the UK in February 2001, since the outbreak of the disease in 1967. A total of 2030 cases of the disease were identified and a total of over 4 million animals were culled during the crisis with worldwide media broadcasts showing burning carcasses of culled animals. Miller, Ritchie, Dorrell and Miller (2003) have predicted that losses for English tourism in 2001 would be £5bn, while in 2002 and 2003 reductions would total £2.5bn and £1bn respectively. A total of 150,000 jobs were thought to be directly at risk and 3,000 small rural tourism businesses faced the treat of failure. We must not forget that the travel and tourist industry is one of the biggest industries in the world and that in most of the countries it is between the top three industries (Goeldner, Ritchie, & McIntosh, 2000) and this is the reason why the consequences are more significante.

To better understand the scale of the possible causes for crises in tourism, which in a geographical category can be local, regional, interstate or global, we are going to look at the scope of the generic causes for the crises in tourism (Figure 1). Safety crises are primarily the crises brought by potential causes. This is especially important from the viewpoint of preventive and curative measures for preventing the crises occurence as well as eliminating their causes and consequences. We divided the causes between socio-political and natural-technological on the x-axis. On the y-axis we divided the causes into regular and irregular. This is how we got four quadrants in which we inserted six groups of causes for crises where one of the groups of causes was set at the intersection of the x-axis and y-axis, and the other at the zero point of the x-axis. In quadrant I we set the symmetric of natural-technical and regular causes as System Errors as a group of causes for crises in tourism. In quadrant II., we set a »group« describing socio-political and regular causes for where next groups were described: Incrrect Communication and Market/Economy. At the zero point of the x-axis, between quadrants II. and III. (with the same influence of regular and irregular causes and under the influence of socio-political causes) we put the group of causes that we named Unfit Tourist Infrastructure. In quadrant III., we inserted, as a »group«, the socio-political and irregular for causes the next groups: Unusual Behavior and Handling and Conflicts of Wider Range.

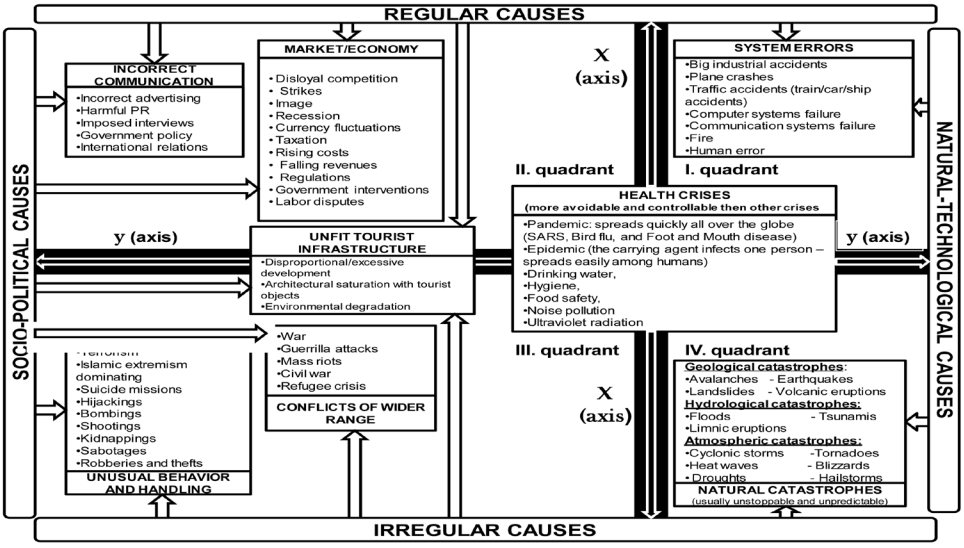

Figure 1: The scope of generic causes for the crises in the tourist industry

In the quadrant IV., we inserted, as a »group«, natural/technological and irregular causes in the group Natural Catastrophes where we can find geological

catastrophes, hydrological catastrophes and atmospheric catastrophes. At the intersection of x-axis and y-axis we set group of crises related to health because they are under the influence of all four causes for crises. The term generic causes of crises in tourist industry was used because equal or similar (generic) causes for crises appear at different tourist destinations. By dividing the groups of safety crises to four quadrants we can discover their occurence, level of risk and measures for more efficient consequence prevention or elimination. In quadrants I. and II. we can see crises which are more common and predictible, therefore we can easily prepare efficient preventive measures to eliminate them or decrease their impact. In quadrants III. and IV. we see uncommon or irregular crises. Their occurence is more difficult to predict and define and preventive measures for elimination of this type of crises are more difficult to prepare and perform. Crises from quadrant III. and IV. need to be accompanied by planning and careful preparation of curative measures which are performed at the time of the crisis occurence. The purpose of these measures is to reduce the damage caused by the crisis. The crises in quadrants II. and III. which occur because of the socio-political causes are usually limited to specific tourist destination or geographically connected destinations. The crises occuring because of natural-technological causes have consequences that affect wider geographical areas. The consequences of the crises from quadrants I. and IV. mostly affect more tourist destinations. Because of the characteristics of specific groups of crises we placed the health crises in the crossing of all causes. The reason for our placement is the fact that efficient preventive measures for certain health crises can be prepared, while for some health crises this is not possible. At the same time certain health crises are limited to specific areas while others can spread to very large areas and affect more states/countries/tourist destinations.

The people responsible for the preventive or curative measures at crisis occurrence can, in the process of planning, take experience from similar or equal (generic) crisis situations from the past as a basis. The fact is that certain causes for crises can appear anywhere across the world, while certain causes for crises can appear only in certain destinations because of their social, political, natural (geographic) or technological characteristics. This means that some destinations are more receptive to certain causes and sorts of crises (because of their geographical position some destinations are more threatened by tsunamis, hurricanes and earthquakes. Other destinations are, because of their socio-political factors, more receptive to conflicts of greater dimensions, terrorism or crime). Regardless of the type of the crisis that affects a particular destination, each and every phenomenon causes problems if not a total blackout at work and development of a tourist service.

4 SAFETY AND SECURITY OF A TOURIST DESTINATION

The traditional idea of national security was entered in to the concept of safety in tourism (Hall et al., 2003). It includes sufficient number of measures with which the country can successfully assure the safety of its territory, the safety of society and the safety of its citizens in cases of real and unreal threats. This means that the safety of tourism at different destinations is regulated by the country and its institutions where concrete destinations and its tourist subjects (transport, hotels, spas, restaurants) are located. The forms and ways of ensuring national security on one hand and the chosen standard of safety on the other, have a direct impact on tourist flow and the tourist and traveler visits within the country. Within the country the national security deals with protection of the environment without which tourism hardly exists. Sotlar, Tičar and Tominc (2012) emphasise the fact that the natural environment »needs« a context within (and in relation to) which basic functions of social environment are established and provided.

At the same time environmental problems and threats are solvable at a group level, through (unselfish) (co)operation of national states which are still the leading actors and creators of national and international safety. But modern reasons for the causes of crises usually have transnational dimensions, especially in times of total globalization. Within this fact we can find the reason that in the context of crisis management subjects, which are aware of the potential outburst and/or intervene at actual crisis occurrence, cooperate on an international level.

Because of the massive flow of information and data on the World Wide Web we can choose destinations which are most fitting to our personal needs and preferences. The success and quality of certain tourist destination is therefore dependent on safety. When at tourist destinations or in their vicinity threats of safety appear, they always leave a track in tourism (Dobovšek, 2009). Cvikl and Artič (2008) went even further with their statement that it was possible only to measure the components of tourist destination endangerment while the safety of tourist destination could not be defined since it was not measurable. Riots and risks at different destinations may have a discouraging effect on tourists because safety is at the top of the pyramid of values because of the direct impact on health which is an important value in human life. In the past unpleasant safety issues (crime in Mexico, eruption of volcano in Iceland, Haitian earthquake, riots in Egypt, nuclear disaster in Japan, tsunami in Indonesia, terrorist attack in New York) had already stopped the growth and development of tourist destinations. The listed negative safety threats and crises slowed down the development of tourist destinations for a shorter or a longer time, depending on the response of all the people and sectors involved in the tourist industry at a specific destination. Tourist destinations offer their services in different packages with which they increase their competitive advantage. In their complete of-

fers they can include cultural heritage, natural values, culinary delights, different forms of cultural, health, art, relaxation and sport activities, fun and last but not least, safety. When talking about the elements of a tourist offer, important from the point of view of sustainable development, we must emphasise the quality of water which is becoming a natural value at some destinations. The safety crises which affect the quality and the integrity of water are especially dangerous because water is very sensitive to biological, chemical and radioactive pollution. Sotlar (2010) emphasises the fact that water protection and its control should not be focused only on drinking water but also on other water sources (surface and underground waters – rivers, lakes, seas) which also have an impact on the quality of drinking water and industrial water use (in food industry, for energy, farming, traffic, tourist industry etc.). Each of the tourist offer elements includes the safety elements, at the same time a high security standard of a destination is a competitive advantage by itself. The World Economic Forum (WEF) report, which is published every other year, includes a report on competition in tourism in 133 countries, and proves that safety is an important competitive advantage. In the report safety and security as a competitive advantage have their own pillar in which a country is evaluated according to four elements (business costs of terrorism; rellability of police services; business costs of crime and violence; road traffic accidents).

The diagnosis of risks in the tourist industry is directly linked to the formation of safety evaluations of specific tourist destinations. In the safety evaluation the safety risk is analysed and defined. The level of possibility of a safety risk occurrence and the level of consequences are defined. The level of risk is the product of possibility of risk occurrence and its consequences for tourism at a destination. Podbregar, Lesjak, Roša & Ivanuša (2011) emphasise that the risks and threats must be recognized, defined and afterwards managed. The safety zone and its sources of risks and threats directly affect tourism, global tourist flows and popularity of tourist destinations. If countries wish to reach and maintain the positive trends of tourist industry growth, the safety risks and threats must be maintained (Dobovšek, 2009). Ambrož (2002) emphasises that overall safety of a tourist destination and the possibility of assuring personal safety are two factors which influence the tourist's decision of using the services again. Different theoreticists agree that the intersection and the relation of factors that influence the individual's evaluation of the level of crime or the possibility that he/she becomes a victim of a criminal act are important.

Despite different public measures of crime level, the main influence on an individual's evaluation are his/her personal feelings about the safety level and about the tourist destination as a whole (Nicholls, 1976; Fujii & Mak, 1980; Walmsley, Boskovic & Pigram 1983; Chesney-Lind & Lind, 1986; Kelly, 1993; Hall & Jenkins, 1995; Pizam & Mansfield, 1996; Prideaux, 1996 Ryan and Kinder, 1996; Pizam, Tarlow & Bloom, 1997; Michalko, 2003). These findings are further justified by

article 1, line 4 of the UNWTO (2006) code which exactly defines the competences and responsibilities of countries and local government in the field of tourism safety: »It is the task of the public authorities to provide protection for tourists and visitors and their belongings; they must pay particular attention to the safety of foreign tourists owing to the particular vulnerability they may have; they should facilitate the introduction of specific means of information, prevention, security, insurance and assistance consistent with their needs; any attacks, assaults, kidnappings or threats against tourists or workers in the tourism industry, as well as the wilful destruction of tourism facilities or of elements of cultural or natural heritage should be severely condemned and punished in accordance with their respective national laws«.

The possible cause of an unwanted damaging event (ISO 17799, 2005) represents the possibility of risk – the threat. The influence of the threat (crisis), the vulnerability of the destination (Figure 2) can come from the geographical position, political or social state, the climate, technological (under)development and similar.

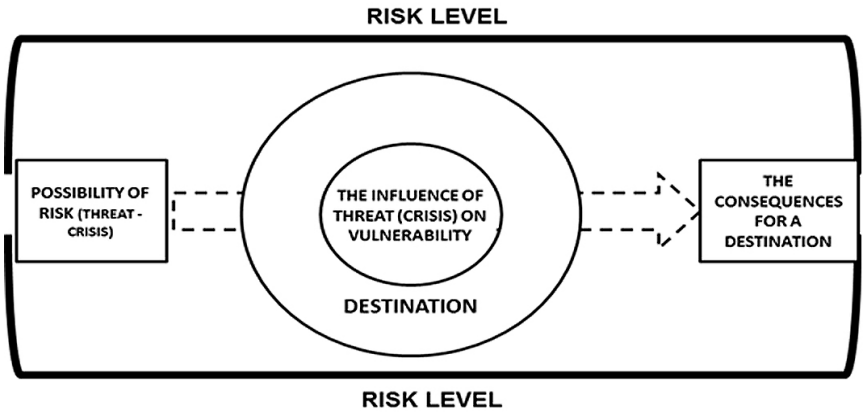

Figure 2: Vulnerability of a tourist destination

The vulnerability of a certain destination is a characteristics or a weakness of a source because of the level of risk – crisis and its consequences are smaller or bigger. The possibility of a risk occurrence is also determined by the vulnerability of a destination. The level of vulnerability is set by the level of preparedness of all subjects of a specific destination to deal with the risks preventively as well as curatively. The possibility for the occurence of the potential risk and the consequences brought by the potential occurence represent the level of a specific risk. The analysis of risks covers the possibility that the cause for the crisis will activate, the possible consequences and their size.

5 METHODOLOGY FOR PREPARING THE EVALUATION OF RISK LEVEL OF CRISES IN TOURISM

For the purpose of evaluating risks we included matrices and techniques which enable the quantitative approach to evaluate risks (Tipton and Krause, 2004) with specification of the used categories in the developed methodology. Some of these categories can be divided in to smaller categories, if necessary. The main aim for managing the risk is recognizing the risk, evaluating it and determining the measures for managing the risks. To make an evaluation of the risk, it is first described and the possibility of the occuring risk and its serious impact on tourism at a destination is evaluated. The control list of risks presented below with matrices of risk can be very helpful. The methodology sets the procedures for recognizing and evaluating the risks and suggests possible measures. Of course, the risks must be determined for each destination because the destinations have different social, political, natural and technological characteristics. The four-level scale is set intentionally. When choosing three- or five-level scales, there is a middle, neutral evaluation, mostly used in practice; at the same time its interpretative value is the lowest. For evaluating the possibility of risk occurrence and the evaluation of consequences on tourism at a specific destination we formed Table 1.

Table 1: Qualitative and quantitative evaluation of possibility and consequences for occurence of crisis in tourism

Evalua	**1**	**2**	**3**	**4**
Possibility of risks (Pr) – a threat for crisis	Not expected – occurence of risk is not expected	Possible – occurence of risk appears only in exceptional circumstances	Very possible – occurence of risk can appear at any time	Expected – crisis will occur at any risk threat
Severity of consequences (Sc)	Minimum	Managable	Serious	Catastrophical

On the basis of calculation of the risk level: Pr x Sc = level of risk, we can form a table where we can see the intersection of consequences and possibility. We can determine what level of risk is the critical risk (C) – from 13 to 16 points; high risk (H) – from 9 to 12 points; serious risk (S) – from 5 to 8; points and low risk (L) – from 1 to 4 points (Table 2).

Table 2: Evaluation of risk level

	Seriousness of consequences			
Possibility of occurence	Catastrophic 4	Serious 3	Significant 2	Minimum 1
Expected – 4	C	H	S	L
Very possible – 3	H	H	S	L
Possible – 2	S	S	L	L
Not expected -1	L	L	L	L

With the help of the evaluation of the risk level (Table 2) we can plan preventive activities and curative activities (Figure 3). The matrix for evaluating a specific risk shows that we can determine basic potential causes for a crisis, factor of possibility and consequences of risk occurence with which we can calculate the level of risk and possible measures. The measures can be divided in to preventive measures which can be established before the potential risk occurs and the curative measures which we predict at risk occurrence. In addition we can determine the critical level of risk where the possibility of risk occurrence and critical consequences is big.

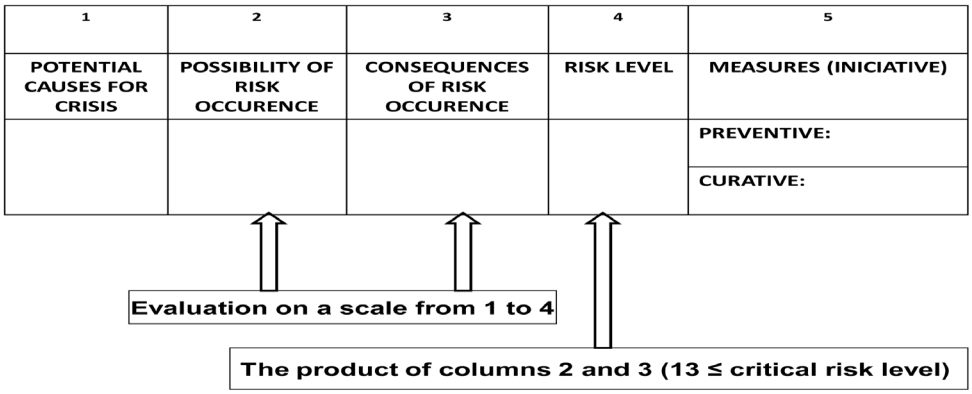

Figure 3: Matrix for evaluating a specific risk

The matrix for evaluating risks depends on the people responsible for the implementation of safety measures. If the matrix is prepared by national tourist organization, the people responsible for the matrix are different subjects on a national/state level. When tourist agency prepares the measures for the tourist destination they offer, other subjects are responsible.

As an example of a risk matrix for the tourist destination we will show the risks associated with the causes, which were described in Figure 1 defined as „conflicts of wider range" (war, guerrilla attacks, mass riots, civil war, refugee crisis, illegal immigration), for various tourist destinations in Egypt and Tunisia. Hall (et al., 2003) emphasises that often military conflicts occur in areas where the history is of priceless value for tourism, such as the Taba border between Israel and

Egypt or Afganistan which was the main transport route between Asia and the Mediterranean and Europe for thousands of years.

Table 3: Risk levels for tourist destinations

Field of risk / **Tourist destination**	War risk	Civil war risk	Mass riots risk	Refugee crisis risk	Illegal migration risk	Guerrilla attack risk
Egypt – Cairo	**L**	**S**	**H**	**L**	**L**	**L**
Egypt - Alexandria	**L**	**S**	**H**	**L**	**L**	**L**
Egypt – Red Sea coast	**L**	**L**	**L**	**L**	**L**	**S**
Tunis – Tunis	**L**	**S**	**H**	**L**	**L**	**S**
Tunis – central and western part	**L**	**S**	**H**	**L**	**L**	**H**
Tunis – Djerba	**L**	**L**	**L**	**L**	**L**	**S**

From the matrix we can see that the risk levels of the same causes for crises at different tourist destinations in one country can be different. The importance of the analysis and evaluation of the risk level for the tourist industry is found in the case of Egypt during the revolution of 2011. Slovenia was one of the few European countries which evaluated Egypt as a single tourist destination. Other European countries evaluated Egypt according to the level of risk by dividing it into the central cities with riots and revolution (Cairo, Alexandria, Soma Bay, El Gouna). Estimated levels of risk differed significantly between these destinations. If the larger cities were critically evaluated when taking into consideration the level of risks, due to the mass riots and the possibility of civil war, the destinations along the coast of the Red Sea were evaluated as safe. Due to this fact, Slovenia was the only country in the EU that evacuated its tourists from Sharm el Sheikh and Hurghada. Damages and costs were high for Slovenian tourist agencies. There were material costs, damage in business cooperation with local tour operators because the confidence between business partners was endangered.

6 CONCLUSION

Safety problems in tourism cannot be labeled as new social challenges in postmodern society because in history travelers were always exposed to dangers on their journeys. The travelers who, in modern society, are divided into travelers

and tourists, never felt completely safe. This feeling was not affected by the way of traveling or by means of transport used – traveling by foot, horse, carriage, car, boat or plane. In the period of globalization the security issues in the tourism industry have become a comprehensive and a complex phenomenon (Michalkó, 2001). Safety in travel and tourism activity is the primary and fundamental condition to their success. In the 1990's authors like Sönmez, Apostolopoulos and Tarlow (1999) discovered that statistics on travel from around the world clearly show that tourism urgently needs to increase the sense of security of each destination for its development. In the last fifteen years the safety, for various reasons and occurences, has been under the spotlight, and this is the reason a reduction of negative feelings and fears about the security situation at a particular destination is becoming the key to a successful tourism industry. Given the fact the travel and tourism activity for the entire international economy, the European Union and Slovenia, is extremely important, the safety of the country as a tourist destination is a competitive advantage for both, the travel and tourism industry as well as for all other entities of the economic development. The importance of safety in the travel industry (the range of tourist destinations and transportation offered by the tourist agencies - tour operators) needs to be highlighted. The travel industry as a tourist industry has a strong and direct impact on all other sectors of tourist activities, such as accommodation, catering, conference tourism, and also on other sectors of the economy that depend on business trips and visits. It is widely expected that the travel agencies (travel industry) will focus their attention to travel safety at a tourist destination. They can find help in the presented methodology for evaluating the risk levels for crises occurence at a specific destination which is included in their offer. Regular inspection of potential causes for crises, collecting information online and through media, representatives and business partners at a destination, enables efficient and simple analysis of a safety situation. Care and means to assure tourist safety can be a competitive advantage or weakness for the tourist agency. The safety in traveling became a sort of »the Sword of Damocles« above the heads of the wider travel public which is not understood as a priority among the travel agencies. It would be subjective to claim that travel agencies are not an important source of information and advice from different points of view when it comes to travel safety. Also the Package Tours Regulations (European Economic Community,1992) orders the travel agencies the responsibility for health and safety of their clients and introduces provisions if they do not provide accurate and complete advice and information in this field (Grant, 1996).

In the article we wanted to answer some important questions that deal with causes for the crises which have a direct or an indirect impact on tourism. At first we wanted to answer the question if we can make an overview of all the causes for crises. For this purpose we analyzed the causes for crises and on the basis of our findings formed a matrix into which we inserted the scope of generic causes

for crises (Figure 1) and defined the connections and relations between them. We must emphasise that all the crises that have an impact on tourism are at the same time safety crises, which is important from the viewpoint of preventive and curative measures. The next question to be answered was connected to the evaluation of each crisis. The crises were evaluated and categorized by defining the level of risk they bring. Only then could we create the matrix of the level of risk for each crisis cause, into which we added the potential preventive measures to prevent crisis or to eliminate the cause, and the curative measures for eliminating the consequences and the cause for crisis. With these tools we can, for each tourist destination, define the levels of risks for specific areas of causes for crises. Simon (1997) states that the solutions in social sciences and in education field are not certain or optimal but mostly acceptable, since everything in society and in the world changing on daily basis. In this regards, we are aware of the fact, that this is an acceptable and not an optimal solution.

If in a particular country or a destination a security crisis occurs, it has a great impact on tourism. The desire of every tourist industry is to restore the confidence of tourists and safety in their country or destination as soon as possible after such crisis. Huiji and McKercher (2003) came to interesting conclusions that tourists generally have a short-term memory in terms of security situations at some destinations because they will take a trip to the same destination as soon as the immediate danger disappears. History teaches us that security disasters have a devastating effect on the flow of tourists, but the fact is that tourist destinations react differently to the impact of security crises. There is a significant difference between the origin/cause of the crises (Figure 1). If the cause is man-made (war, terrorism, civil riots), the consequences of distrust of the specific destination is much larger than in the case where the cause is natural (earthquakes, tsunamis, volcanoes). It should be emphasized that natural disasters (e.g. Haiti) in fragile states also have long-term consequences, as they will cause the collapse of the rule of law, which consequently means less security. In stable countries natural disasters (hurricanes in the U.S.) have a smaller effect. These examples show that the response of a specific destination to the generic causes of crises depends on their development, stability and order. The more the destination's (country, region) administrative, technical, social and political environment is regulated and stable, the easier it will be to cope with preventive measures for safety crises or counter the consequences of the crises and create the original state.

The impact of regulation of the environment on the crises occurrence (where the cause is irregular behaviour and handling, usually crime) is particularly interesting. Meško (2001), in his review of the various crime analyses with prevention planning and creating an environment, notes that the external environment characteristics show if the environment is under control, if people cared for it and think that it is not appropriate to commit offences. The environment can be

recognized as the size of the tourist micro destinations. The regulated environment should influence its inhabitants in a way to promote greater concern for tidiness, to have more contact with neighbours or roommates, to use the environment for pro-social purposes, to control the micro destinations and to eliminate criminal acts. For the possible perpetrators such an environment represents a higher risk, a bigger chance of apprehension. The increased control over the areas gives the impression that people are committed to a safe life without any crime. In any case, there are a lot of direct and indirect links between the regulated environment and sustainable tourism, because the latter requires, encourages and facilitates the planning and designing of the environment which helps to prevent the above mentioned crises. The interweaving between sustainable tourism and crime prevention is certainly an area that presents a challenge for its in-depth research.

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IMPLEMENTING CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED) IN ORDER TO ASSIST THE ECONOMY

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ABSTRACT
Purpose:
The Republic of Slovenia is obliged to ensure the safety of its citizens. Growing crime rates reduce the quality of life and increase the financial and material costs borne by all citizens. The Police and other state bodies are primarily responsible for providing security. Since the security gained the status of a commodity, private security companies or entities also play an important role in providing security, particularly in the corporate sector. The role of economic organizations that provide the security of the citizens in a broader sense (e.g. social safety, healthcare, and fire safety) cannot be ignored. Government agencies, private security companies and economic organizations can work together as partners in CPTED in order to reduce the incurred costs.

Design/methodology/approach:
The method applied herein is based on the analysis of scientific publications, international research papers, reports on the work of the Slovenian Police, laws and executive acts. The analysis also consists of findings based on authors' own experience by introducing specific forms of police cooperation, thus providing examples of partnership between the Police, private security companies, state bodies on state and municipal levels, and economic organizations.

Findings:
CPTED has not been yet widely applied in Slovenia and represents a challenge to the partnership among the Police, private security companies, and other state institutions with regard to economic development and securing the logistic and other processes related to economic activity.

Research limitations/implications:
The research is limited to the current state of CPTED partnership in Slovenia as a form of collecting OSINT in order to deal with crime prevention more effectively, and as an opportunity for economic development.

Originality/value:
This issue has not been discussed comprehensively in Slovenian publications, with the exception of the concepts of social self-protection system and the role of the head of the police district from the 1980s. A method for a potentially more success-

ful functioning of CPTED is presented in the paper, including suggestions for further development and work in this field, which is treated separately in Slovenia.

Keywords: crime prevention, situational prevention, CPTED, OSINT, Slovenian police, private security

1 INTRODUCTION

Seeking answers on how to reduce crime rates which grow in numbers each year and at the same time cause an increase in the amount of damage felt by all citizens, including those across the national border, requires connection and cooperation among state law enforcement bodies, private security companies, and all the citizens. Due to fast and hardly predictable social and economic changes that have an impact on the foundations of our society, the changes in the field of criminality demand continuous and immediate responses to new forms of criminal offences and risks which is reflected in a necessary change of the system responsible for managing the policies of crime prevention. Furthermore, globalization makes it possible for criminal activities to spread because of the wish for big and quick earnings, not paying attention to the damage inflicted on the society.

The effectiveness of management in the field of crime prevention depends on intelligence and security data from OSINT. OSINT can be collected by all who cooperate in managing and performing crime prevention, as those who possess the data have advantage over their opponent.

An effective form of crime prevention is CPTED, which is a combination of strategies of natural surveillance, territorial reinforcement, daily access control, activity support, and environmental maintenance. In the following, the effectiveness of CPTED is indicated on the basis of the included research papers and CPTED implementation. The annual work plans and annual reports on the work of the Slovenian Police since the year 2007 indicate that the efforts made by the Slovenian Police in relation to CPTED are negligible. The activities have in fact been implemented only in the field of community policing – one of the CPTED strategies.

At the end of this paper, potential partnerships and working methods in the field of CPTED in Slovenia are presented.

2 OPEN-SOURCE INTELLIGENCE (OSINT) AND CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

People in the distant past knew the importance and advantage of possessing information. Since the creation of written language, texts about the importance of intelligence data have existed. In the period between 400 and 320 BC, Sun Tsu (Sun, 2007) published the handbook The Art of War, in which he wrote about the meaning of collecting the data in order to decide on how to adopt further strategies (Prašiček, Podbregar, & Ivanuša, 2012).

OSINT can be gathered from newspapers, books, maps, scientific publications, tape recordings, electronic mediums, web contents, radio and television (Podbregar 2008), at fares, from people, etc. A part of OSINT is also the direct sensory perception as experienced in a public place, which is designated in The Protection of Public Order Act (ZJRM-1, 2006) as any premises that are unconditionally or under specific conditions accessible to anybody.

Collecting, analyzing, and aggregating gathered data and information interpretation are indicated in various Slovenian and foreign scientific publications as being a part of an intelligence activity. Both terms, intelligence activity and intelligence information, will be used below in the sense of collecting, analyzing, aggregating and interpreting the data gathered from OSINT. Collecting the data from OSINT does not occur in the same way as gathering of information by the intelligence services, which usually heavily infringe on people's rights and freedoms, and the classification of which is graded in accordance with the law and intended only for a small group of people or certain individuals (Podbregar et al. 2010: 20).

Even though the intelligence activity is mostly associated with providing support to state decision-makers, it can be applied anywhere. The intelligence activity is tightly connected in all aspects, even with regard to policy-making (Lowenthal, 2009). CPTED is definitely a field, in which the importance is placed on the interaction among those that are directly involved with crime prevention (Police, private security companies) and other state bodies on state and municipal levels (e.g. administrative units) which have an impact on reducing criminal offences in performing their work.

With the cooperation among the Police, private security companies and state bodies in the field of CPTED, a form of establishing an intelligence community in Slovenia could be possible. During the 1980s in Slovenia, there was a concept of a police district covering the local community area (Čas, Kupnik , & Vršec, 1985) that was similar to intelligence communities in the USA and UK (Lowenthal, 2009 and Sir Omand, 2009). With the proper analytical processing of OSINT

it is possible to obtain intelligence information that is not valuable only for the Police, but as such it should be also shared with corporate entities (Steele, 2002; 2006; 2006a).

The intelligence cycle is comprised of the direction, data collation, analysis, data dissemination, feedback and review (Ratcliffe, 2009: 7).

The model of managing the intelligence activity as shown in Figure 1 can be used as a guideline with regard to the cooperation and work among the Police, state bodies on state and municipal levels, private security companies, and other parties which collaborate or would collaborate in implementing CPTED.

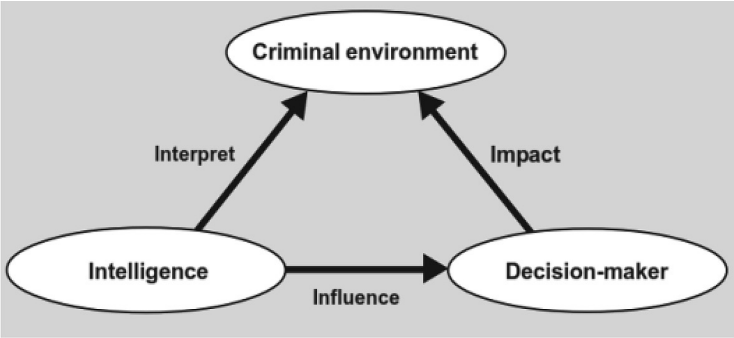

Figure 1: A simplified intelligence-led policing model (Source: Ratcliffe, 2003: 3)

3 SITUATIONAL CPTED

Criminal activities cause dissatisfaction, fear, material and social damage, and stress to people who live in such an environment. Corporate entities that operate in a criminal environment can also suffer financial losses caused by the material damage, the decrease in contracts signed with business partners, the avoidance by business partners fearing the criminal activities occurring in the area of their counterparts, or due to the illegal interventions in logistic and other business processes related to corporate entities (Jere & Čas, 2011).

In the current crisis, the success of corporate entities and their processes is especially important, as through employment they can provide people with social safety, healthcare, and coexistence. Ultimately, the performance of the state depends on its economic success. The state is obliged to provide safety and secure the property of its citizens in accordance with the constitution and the laws which is carried out by law enforcement bodies, such as the Police, inspection services, etc. Besides the law enforcement authorities, the state's public admin-

istration consists also of administrative bodies with legislative powers that can significantly contribute to crime prevention. In accordance with the Spatial Planning Act (ZPNačrt, 2007), the Ministry of Infrastructure and Spatial Planning of the Republic of Slovenia and self-governing local communities – municipalities – are obliged to provide a harmonious spatial development based on consideration and coordination of different developmental needs and interests that are of public benefit in the field of security, thus protecting the citizens from criminal activities. Therefore, in accordance with the legal provisions, the competent state and municipal bodies must facilitate expressions of interest made by individuals or groups of citizens and enable the participation of all the persons interested in the procedures related to preparing and adopting spatial planning documents. Every citizen has the right to be informed about the previously mentioned procedures and to get involved by making suggestions and giving opinions, while the concerned administrative bodies must enable anyone to inspect the planning documents, their technical documentation and other documents related to spatial planning, and inform the public about matters with regard to previously said procedures.

While the socio-economic systems across the world and in Slovenia have changed, the conditions in the field of crime prevention have also changed. The Police have slowly begun to lose their primacy in providing the security also because of the reduction of the funds needed in order to carry out their work. Changes in economic relationships caused the grey area in the field of security to be covered by private security companies as corporate entities, thus providing the security partly moved in the private sector (Pečar, 1991). The security has become a commodity that one can acquire according to the amount of his or her financial resources (Čas, 1995). The provision of private security is increasingly expanding. By passing the Private Security Act (ZZasV-1, 2011) in Slovenia, private security was qualified as an economic activity intended to safeguard persons and property which is being regulated by the State in view of public interest for the purpose of securing public order, public safety, and the safety of the clients, third parties, and security personnel directly performing the said activity.

With the Decree on obligatory setting-up of security service of Public Gathering (2010), the Republic of Slovenia imposed an obligation on the organizers of public gatherings to establish and ensure a security service provided only by persons with a valid licence who meet the conditions that enable them to perform private security services. Furthermore, the state established various forms of specialisation, professional training and a required in-service specialisation and professional training of security personnel which contributes to the quality of providing private security services (Čas, 2012). Based on the previous statements, private security definitely plays an important role in crime prevention.

3.1 Situational Crime Prevention

Situational crime prevention is one of the most typical forms of prevention activities which includes defining the problem, planning, implementation of the measures, and evaluation of the effects of the prevention activity (Meško, 2002: 257). It seeks to reduce the opportunities for certain criminal activities by increasing the risk integration and aggravating and decreasing the possibilities of earning with crime or with the diffusion of benefits (Clarke, 1995: 91). Situational crime prevention is mainly aimed at reducing property crime (shoplifting, burglary, robbery). Theoretical efforts cover different theories of opportunity, including routine activity theory and rational choice theory (Clarke, 1995). The scope of the situational theory of effect is reflected in mechanisms of rules connecting individual characteristics to delinquency in view of the offender's perception of choices and ways of committing offences, and the inadequacies of substantive research of delinquency. It is assumed that the effect of the risky lifestyle is extended to the disorder in the neighbourhood. Both characteristics are linked to the situational connection of delinquency exposure (Pauwels, 2010).

Situational crime prevention requests means provided by the authorities (Forrester, 2002; Wilson & Kelling 1982, 2003). However, police officers are not very satisfied with the situational crime prevention, as it is mostly carried out outdoors patrolling on foot and is regarded a hard job considering the weather (rain, snow, heat, cold) and other conditions.

Nevertheless, besides the authorities and the Police, private security companies, corporate entities located in the neighbourhoods and their inhabitants also take part in crime prevention (Čas, 2007; 2008). The disorder in the neighbourhood is one of the connecting factors of delinquency exposure (Pauwels, 2010), thus it is neccessary to design and maintain the neighbourhood environment and reduce the opportunities to commit crime offences. Therefore, discussions were held and empirical research in crime prevention through environmental design was made which included all the persons who are engaged in an economic activity (shopping centers, parking garages, parking spaces, shops) and live in the neighbourhood.

3.1.1 Crime Prevention Through Environmental Design (CPTED)

The term 'crime prevention through environmental design' (CPTED) has been used since the mid-1970s, when the appropriate term that would facilitate the description of opportunities for an active spatial security was being chosen. CPTED was therefore one of the central points of research and one of the most popular suggested means for primary crime prevention in Europe, North America and Australia in that period (Reynald, 2011: 69–70). An increasing vol-

ume of empirical research was engaged in researching the benefits, effects and justification of CPTED. Based on the produced results, it was concluded that the results depended and varied according to the size of the premises concerned and the way in which the results were measured. As for property crime, it is not important who owns the property, nor its maintenance, physical state and the symbolic obstacles designed to mark the property. Nevertheless, some of the statements regarding the premises are in contradiction to the type of surveillance with potentially unclear visibility of the objects built in order to reduce the crime rates (Reynald, 2011; 2011a).

In the case study "The Townsafe Partnership" (Forrester, 2002), the strategy developed by the Merseyside Police in the Central Wirral area in England in cooperation with a number of organizations from the community of Birkenhead was presented. The people from Birkenhead wanted to bring about the revival of the traditional heart of their city and make it a unique vibrant place where people would want to live, work and spend their free time. Based on the interviews, focus groups questionnaire surveys and statistical analysis, the study explores the areas such as fear of crime, business confidence, levels of social exclusionary factors within the community, unemployment, truancy, health and housing. The project was launched because of high rates of property crime, shoplifting and vehicle theft. The Central Wirral Police was responsible for managing the problem. The Townsafe Partnership was focused on two main areas – retail crime and public order. As regards the retail crime, the security staff from all parts of the retail shopping area met on a monthly basis with the Police, store managers and the Town Center Manager in order to review the performed activities, share information and adopt the tactics for the following month. The principal characteristics of the strategies included crime prevention through environmental design (CPTED), which was based on the request for a change of all the structures in order to give the public a feeling of safety. The staff employed in Town Center went through a training programme, so that they could contribute to crime prevention and perceive the opportunities for fighting crime. To make Birkenhead a safe place to live in, work and visit, they were linked by radio to the Community Patrol Control Center, which managed the CCTV (close-circuit television) cameras in Birkenhead and had a direct line to the Wirral Police District Control Room. The strategies also included the respect for order, shop mobility provided by volunteers who accompanied disabled shoppers during their shopping trip, and school contact programme providing the cooperation between teachers and police officers. The effectiveness of the strategies was reflected in the reduction of crime rates during 1996 and 1999 as shown in Figure 2.

Burglary dwelling	reduced by	43%
Burglary other than a dwelling	reduced by	29%
Theft from shops	reduced by	19,5%
Theft of motor vehicles	reduced by	22%
Disorder	reduced by	30%
Juvenile Disorder	reduced by	33%

Figure 2: The reduction of crime rates from 1996 to 1999 in the area patrolled by the Townsafe Patrol Team (Source: Forrester, 2002)

The key factors of the successful reduction of crime rates were a result of various comprehensive analyses of the problems encountered by the partnerships, university research studies, group focusing, data collection, and information provided by corporate entities added to police data. The analyses enabled the making and usage of action plans. The success factors were related to the problems of crime management carried out by police units which consequently led to the arrests of the suspects. The true power of the Townsafe Partnership project lay in steering group committees and attracting dynamic people from local businesses, governing authorities and the community, which in concert acted in a very strategic way and were effective in fighting the problems in the community. Based on the study conducted in The Hague, Netherlands in 2007, Reynald (2009; 2010; 2011) concluded that approximately 19 % of the citizens actively monitor their environment, while the study based on a larger sample from 2008 pointed out the usefulness of monitoring the property and the neighbourhood. Both studies pointed to the positive connection between the option of monitoring and crime prevention or active security and the available options, monitoring and immediate intervention of the citizens on their property or part of the street. A risky lifestyle (Pauwels, 2010) is a strong and firm indicator of juvenile delinquency. Risky situations in three important areas are reflected in exterior characteristics of the individual: what the adolescent does in his or her free time (e.g. risky behaviour, such as drinking alcohol and taking drugs), spending free time in risky places (e.g. wandering the streets), and befriending delinquents. The empirical tests follow the logical structure of a simple multi-level cross-section that enables to test the level intersection of the connections between the individual and the neighbourhood. First the sources of ecological changes in the short period of the adolescent's delinquent behaviour were defined by including the key variables in the structure of the neighbourhood. Therefore, it was clearly defined which differences in his or her delinquent behaviour can be found independently of the demographic components of delinquency and the clear variables of the environmental structure that are typical for delinquency. Moreover, correct assumptions were made about the delinquent lifestyle that remains unchanged throughout the neighbourhoods. Assuming the impact of regular influences, no changes inclined towards a risky lifestyle were observed. On the other hand, if the risky lifestyle can be shown on

the basis of the neighbourhoods, it is necessary to assess which level of disorder in each neighbourhood can explain the differences among them that are related to the inclination towards a risky lifestyle. Finally, the influence of the disorder in the neighbourhood related to the connection between the lifestyle and delinquency can be evaluated by equalizing the monitoring of important variables that cause the connections with delinquency. From a study conducted in Antwerp – the second biggest city in Belgium and the biggest in the Flamish Region, with approximately 500,000 citizens, and an important university and recreational city – it is evident that all the respondents originated from the neighbourhoods in which they lived. The demographic variables consisted of a preview of the effects related to the structure of the neighbourhoods, including variables such as gender, immigrant's background, family structure, and family disadvantages. Multi-level regression analyses and testing based on increasing the assumptions were used to define the changing nature of the neighbourhood in regard with the inadequacies. Multi-level models are required for analyzing the collected data and they provide a correct evaluation of clearly connected effects. They are available in a micro model and in one or more macro models depending on the number of estimated casual effects. It was established that the models including the risky lifestyle, in which the neighbourhood plays a changing role, different levels of individual inhabitants and values are casually connected. As regards the short-term delinquency, the importance of the first level is placed on the connections among the time period, gender, immigrant's background, family structure, family disadvantages, anti-social values, and risky lifestyle. The importance of the second level is placed on the connections related to quarrels among residents (Pauwels, 2010).

Despite the advantages of collecting vital data in the field of CPTED, there are also some limitations. The concepts of CPTED have different implications and only some of them were used in measuring related to previously mentioned studies. Furthermore, there are limitations that have implications on what can be observed and how often the individuals as well as the community react on key information with regard to the programme and the performance of the relevant authorities (Reynald, 2011: 79).

A number of studies conducted on the structure of the neighbourhoods represent the crossing of various parts and may not be appropriate for making a distinction between the youth's growth in relation to the neighbourhood, as it is based on assumptions (Pauwels, 2010). A simultaneous research of influences originating in the neighbourhood that affect delinquent behaviour was strongly based on inadequacies and criticism. Researchers always relied only on their own reports on juvenile delinquency. Thus, the studies always reflected the characteristics of the implications in the neighbourhoods that were basically directed at the levels of the changes in the neighbourhood in relation to delinquency monitoring for variables with a demographic background (Pauwels, 2010). In 2007 (Deming, 2010), the United States Department of Justice awarded a grant to the ASIS Foundation

to establish Business Watch Programmes in midsize to large organizations (with more than 500 employees). More than 37,000 security professionals employed in private security companies who are members of ASIS International participated. The private security companies were focused on developing educational and information materials on organizing a Business Watch Programme, and crime prevention techniques. Their success was based on the reliance on the following six steps: diagnose the environment, create a vision, develop goals, form working partnerships and alliances, design a system for aligning the resources, and institutionalize the programme. The organizations in which the programmes were implemented came to the conclusion that they benefited from joining them because of the efficient efforts made in the field of crime prevention and investment compared to the value of other strategies. In a number of cases, the Police have been successfully developing watch programmes in cooperation with the intelligence agencies. Nevertheless, the programmes that the private security companies are involved in, do not include all the necessary steps, but comprise the organization of and a sistematic approach towards the formation of a watch programme carried out by private security companies. The Police can conduct their work in the community and the monitoring process in cooperation with private security companies, thus contributing to crime prevention.

3.2 CPTED in the Republic of Slovenia

Based on the annual police reports, it is evident that the number of crime offences and the amount of damage caused since 2007 has increased, as shown in Figure 3. It can be concluded that despite slightly smaller or higher numbers of criminal offences, the amount of damage caused has increased significantly.

	2007*	2008*	2009*	2010**	2011**
Number of criminal offences	88,197	81,917	87,465	89,489	88,722
Damage (1.000s of EUR)	106,774,8	112,531,3	278,043,8	577,313,9	448,113,1***

Figure 3: Number of criminal offences and the amount of damage caused (in 1000s of euros) between 2007 and 2011 in the Republic of Slovenia

Sources:

* Annual Report on the Work of the Police for the years 2007, 2008, 2009, 2010, 2011 (Policija 2008; 2009; 2010).

** Annual Report on the Work of the Police for the years 2010, 2011 (Policija 2011; 2012).

*** The rate of the economic crime is 64,9 % or 176,325,1 EUR.

If increasing crime rates do not seem to raise any concern, the increasing amount of the damage caused definitely does. In the USA, they reached the same conclusion. Based on the reports of the Bureau of Justice Statistics at the Department of Justice, the amount of crime damage increased from 14 billion dolars to 44 billion dolars between 2004 and 2007. In total, it has increased for 315 % since 1987 (Harkins, 2010). Therefore, in implementing CPTED, the models without crime and the security model were used, and five main strategies were appointed: natural surveillance, territorial reinforcement, daily access control, activity support, and environmental maintenance (Schneider, 2010).

Therefore, the need for CPTED in Slovenia is definitely substantial and it could contribute to a reduction of crime offences as well as crime damage.

In reviewing the mid-term plan for the development and work of the Police for the period of 2008–2012 (Policija, 2007) and annual police work plans for the years 2007, 2008, 2009 and 2010 (Policija, 2007, 2008a, 2009a, 2009b), it can be concluded that in carrying out their work, the Police have been planning the cooperation with other subjects and the implementation of a community-oriented police work for reasons of crime prevention. But it cannot be established if the Police have been considering the implementation of CPTED as a form of partnership in cooperation with state bodies on the state and municipal levels, corporate entities, private security companies, and other subjects of private security, i.e. investigation companies and self-employed investigators, security consulting agencies, and civil self-defence (Čas, 2010).

Through its establishment and development, private security as an economic activity plays an important role in CPTED (Sotlar & Meško, 2009; Čas, 2000; Sotlar & Čas, 2011). The Chamber of the Republic of Slovenia for Private Security (ZRSZV, 2012) issued a publication with the intention to advise the users of security services in selecting an appropriate and trusted private security contractor. Prior to the previously mentioned publication, the book entitled "Private Security for Users of Security Services" was published for the same purpose (Čas, 2007).

An active involvement of state bodies on state and municipal levels which are responsible for spatial planning in accordance with the Spatial Planning Act could contribute in the field of CPTED to a long-term environmental planning, which would create significant problems for criminals and criminal groups in committing criminal offences, as well as helping to reduce crime damage.

Since crime damage affects also the corporate entities, it would be useful to include them in the implementation of CPTED.

Finally, CPTED would incorporate a tightly connected community, which would in turn connect with its neighbouring areas. Taking into consideration the globalization process, this could also be applied to foreign countries and corporate entities from abroad, when help would be needed or asked for.

4 DISCUSSION

Fast social and economic changes are hardly predictable and have an impact on the foundations of our society. Certain individuals and groups longing for big and quick earnings, for which they are willing to commit illegal or criminal offences, should also be taken into consideration. Thus, the changes in the field of crime suppression demand continuous and immediate responses to new forms of criminal offences and risks which is reflected in a necessary change of the system responsible for managing the policies of crime prevention. Furthermore, globalization makes it possible for criminal activities to spread across the world, therefore making it even harder for conducting the work related to crime prevention.

In Slovenia, most of the work in the field of crime prevention is carried out by the Police. Playing the role of a »lone ranger«, it cannot be completely successful in preventing or fighting the crime. The Slovenian Criminal Police employs professionals that can take the lead in managing, organizing and planning the activities in the field of crime prevention. The field of CPTED has not been yet widely applied in Slovenia and can offer opportunities for the partnership among the Police, state bodies, private security, and corporate entities.

The number of criminal offences has been increasing each year or staying at the same levels. The amount of material damage which has been quickly and increasingly growing and has exceeded millions – in some foreign countries even billions – should be a cause for concern.

The concept of CPTED was developed in the 1970s. During its application, it was being researched and its effects were scientifically monitored, evaluated and analyzed. In the countries where it was implemented, it was established that the number of criminal offences, mostly those related to property crime (e.g. shoplifting, burglary, robbery, etc.), was reduced for more than 30 %. CPTED incorporated the partnerships among the Police, which was responsible for the activity, private security companies, corporate entities, and residents from the areas where CPTED was implemented. The main focus was to educate the residents employed in corporate entities and to bring the attention to whoever worked or was connected with environmental design related to CPTED areas. The purpose of educating the residents was to establish a means of communication, to present them with the risks of crime exposure, and explain them their role in CPTED (monitoring through home windows, reporting suspicious actions to communication centers, etc.). The CPTED strategies were based on surveillance (citizens on patrol or electronic security), territorial reinforcement (increasing the perception of risk to criminals and the sense of security to people), access control (increasing the perception of effort and risk in order to commit crimes, maintaining the premises, cooperation among residents), activity support (carrying out various activities in the area, thus decreasing the opportunities for

criminal activities), and environmental maintenance (maintaining and caring for the clear environment which is related to the broken windows theory).

In this case, the concept of social self-protection that was carried out in the Republic of Slovenia under the authority of the SLO ("general civil defence") and the DS ("civil self-protection") committees operating in primary organizations marked by collective work, such as business companies, and local communities, the work of which was based on activities involving all the workers and citizens with the intention to provide security in their environment should also be taken into account (Čas & Frlec, 2009). In this concept that was similar to CPTED, the head of the police district played an important role. The police officer (head of the police district) was responsible for providing security together with the workers, residents, business companies, and other individuals in the local (community) areas that could contribute to better safety and the reduction of crime rates (Čas et al., 1985). In that period, there were approximately 45,000 criminal offences in Slovenia which is a much lower number than the current one.

Based on the studies and practices related to CPTED which were conducted throughout the world, it can be established that CPTED is a successful strategy when used in neighbourhoods and shopping centers. Nevertheless, the critics of CPTED strategies point out that it can shift the criminal activities from one area to another which was also concluded on the basis of situational crime prevention and providing of security (Čas, 2008).

Implementing CPTED in Slovenia would definitely be a useful contribution. Based on annual police working plans and reports on the work of the Police from the years 2007–2011, it is evident that the Slovenian Police has not been paying attention to CPTED in the field of crime prevention, as their preventive measures concerned only preventing and detecting environmental crime. It is further evident that emphasis is placed on community-oriented police work, which is one of the CPTED strategies. Until the mid-1990s in Slovenia, the concept of the police district had a similiar role as the CPTED strategy. It was an area, in which the head of the police district together with the workers, residents, business companies, and other individuals contributed within their possibilities to better safety by providing information and carrying out various activities.

The partnerships among the Police and the state bodies on state and municipal levels which are responsible for ensuring the safety of the citizens, private security companies, business companies, and residents living in the CPTED areas could begin to develop into intelligence communities, such as those in the USA and UK. In order to carry out the organization, management and implementation of CPTED strategies, providing information is of great importance. It can be said that all who cooperate in implementing CPTED are considered as open-source intelligence. Each partner is a professional and an expert in their own field. Feed-

back data or information that have an effect on further stages of directing the collecting and aggregating of data and on a renewed interpretation of data are especially important. The intelligence information can also have an influence on policy-making on state and local (municipal) levels and in the field of private security. In planning the CPTED strategies, the critical views on CPTED should definitely be considered and potential areas, in which the crime could move to should be anticipated. Therefore, crime prevention strategies for the said areas should also be adopted. It should be taken into account that crime damage affects all citizens, not only those living in areas with the highest levels of crime.

Considering CPTED from a broader perspective with regard to ensuring the safety of all the members of the society, it can be established that the field of crime prevention is not related only to the Police, other state bodies responsible for ensuring the safety of the citizens, private security entities, corporate entities and residents of a certain area, but also to the security of logistic and other procesess related to corporate entities, the security of which should not be considered as irrelevant (Jere & Čas, 2011). In CPTED, the educational component carried out by educational institutions with the mission to educate the citizens starting at the lowest levels of society (kindergarten) definitely makes an important part of the process. The educational organizations at the university level can take an important role in cooperating with business companies in order to redesign the existing construction and other elements or develop new ones that would be made out of environment-friendly materials which would be used in the CPTED process. In a globally connected world, it is useful and necessary to cooperate also on an international level, as crime operates without limits and its acts are not affected by different political views, since the criminals and the criminal groups share a common goal, namely the material gains.

Based on previously mentioned estimates on the damage caused by criminal offences, it is useful to invest in CPTED. After all, the residents and workers employed in their neighbourhoods are severly stressed by criminal activities which provoke fear in them, therefore making them also tired and consequently less productive at work. It is assumed that a reduction in crime damage and an increase in work productivity based on CPTED strategies could make a positive effect on the Slovenian economy as well as at reducing the fear of crime. A more successful economy would contribute to a better existence and coexistence of the citizens, social safety, and healthcare. Overall, it would provide a better quality of life to all the Slovenians.

5 CONCLUSION

The pace of increasing crime rates and a worrying increase in the damage inflicted on the society require from the organizations responsible for ensuring the safety of the citizens an immediate response to modern forms of criminality and

its risks and quick adaptations in the decision-making processes. The main role is played by the state, regional and local (municipal) politics which do or do not provide the financial and material resources for crime prevention.

Based on studies and monitoring the effects of CPTED in several countries, it was established that property crime rates in certain areas dropped for more than 30 %.

A successful managing of CPTED in taking strategical decisions requires reliable and relevant data and/or information collected from open-source intelligence. The cooperation among the Police, other state bodies responsible for the field of security, private security entities, corporate entities and the citizens could form an intelligence community similar to those in some other countries (e.g. USA, UK).

In implementing CPTED, the critical views on its strategies should also be considered. Furthermore, adequate strategies should be prepared in order to provide proper security and response in case of incidents that could occur if criminal activities move to another area.

The partners in the CPTED process must clearly identify the appropriate frames, policies, and procedures which should be understood by all who are involved in CPTED. A proper and strict implementation of the CPTED policies can mitigate or substantialy reduce the effects of crime damage which in the end can reflect in profits made by business companies and increased financial income of all the citizens.

The process of globalization, which has influenced all the aspects of our lifes, has brought new knowledge and opportunities for criminally oriented individuals and organized criminal groups which can be used in order to commit criminal activities related to illegal acquisition of property.

Raising the awareness of and educating all the individuals involved in CPTED is one of the most successful means of fighting crime. Only an awared and educated individual living in the CPTED area can realize the dangers of criminality and the importance of implementing all the CPTED strategies in order to erase crime from the society or keep reducing the opportunities for success in commiting criminal offences.

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RISK MANAGEMENT STANDARDS – ENSURING INTEGRITY IN PUBLIC AND PRIVATE ORGANISATIONS

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ABSTRACT

Purpose:
This paper examines how organisations use different Risk management standards, guidelines and tools, ethical codes and other policies to ensure integrity, prevention of corruption and other misdemeanors.

Design/Methodology/Approach:
The paper combines the analysis of International risk management standards, guidelines and tools, applicable Slovenian legislation, Capital Assets Management Agency (AUKN) policies, competences of the Slovenian Directors' Association (SDA), policies of professional associations and characteristics of integrity plans.

Findings:
We found that risk management standards are useful to ensure integrity of organisations, its management and employees. Good examples are integrity plans which are mandatory for all public institutions. Some integrity policies from the AUKN and the SDA which have their own code of ethics and corporate governance codes and are used to provide high standards of ethics and integrity. Smaller companies and entrepreneurs may use the policies of professional associations but it is not obligatory.

Research limitations/Implications:
The study is limited to Slovenian institutions and the results could be applicable for both private and public sector institutions, presenting a good basis for further studies in this area.

Originality/value:
The paper extends the understanding of risk management models as a tool to ensure integrity and the prevention of corruption in private and public organisations.

Keywords: risk management, integrity, corruption, public sector, private sector

1 INTRODUCTION

Based on world[1] and Slovenian data (statistical indicators[2] of law enforcement and prevention institutions, and public opinion poll research[3]) crime is rapidly increasing. Such a trend can cause many negative social, economic and socio-moral consequences which affect national security as well as undermines social and democratic values. Traditional forms of crime such as theft and drug dealing are just part of a greater threat to state and society in which corruption represents the most significant problem. As such, it is focused to benefit those who govern, especially in the public sector, through the abuse of position[4] (Van Duyne, 1997). In this way corruption is rapidly becoming the norm in everyday business practice (Škrbec, 2012).

Both public[5] and private sectors have set up preventive measures in order to prevent corruption and other unethical, immoral, and illegal activities. Since 2004, the public sector is aware of the integrity plans, which are obligatory tools for all public sector institutions in order to identify risk and plan to eliminate them. According to the Law on Integrity and Prevention of Corruption Act (Official Gazette of RS, no. 69/11-UPB2; hereinafter IPCA) such plans are used to strengthen integrity[6], transparency and to eliminate corruption and conflict of interest[7] within institutions. It is a systematically organised collection of intended and thoughtful criteria, data, processes, tasks, practices, thinking, decision-making and operations to estimate the probability of the risks of corrupt, illegal or unethical practices within other institutions and the consequences of these practices, and to determine the measures and controls for their timely detection, control, and to

1 United Nations data (http://www.undoc.org.undoc/en/data-and-analisys/statistics/corruption.html); Transparency International data (http://www.transparency.org) and data of other international organizations (World Bank – www.worldbank.org; GRECO – www.coe.int/GRECO and others.

2 Statistical data of Slovenian police, State Prosecutor General and Commission for the prevention of corruption.

3 CPI index, The World Competitiveness Yearbook (1999), Corruption climate (2001 and 2004); Commercial and business environment, business ethics, and unofficial payments (2002, 2004 and 2006); Perception of the citizens of the Republic of Slovenia regarding corruption (2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009); Conditionality, corruption and informal networks: An analysis of corruption (2003); Corruption in media (2008) and other.

4 Criminal offence under 257th article of the Criminal Code (Official Gazette of RS, no. 55/2008 and mod.).

5 The public sector is comprised of state bodies, the administrations of self-governing local communities, public agencies, public funds, public institutions, and public commercial institutions, other entities of public law that indirectly use state or local budgetary funds including public companies and commercial companies, where the state or local communities are controlling shareholders or have prevailing influence (article 4 of 4th paragraph of Law on Integrity and Prevention of Corruption Act (Official Gazette of RS, no. 69/11-UPB2) in connection with 1st paragraph of Civil Servants Act (Official Gazette of RS, no. 63/07-UPB3 and mod.).

6 IPCA (article 4 paragraph 3) define "Integrity" as the conduct and responsibility expected of individuals and organizations in the prevention and elimination of risks related to the use of any authority, office, mandate or any other decision-making power contrary to the law, legally admissible objectives and codes of ethics.

7 IPCA (article 4 paragraph 12) define "Conflict of interest" as circumstances in which the private interest of an official person influences or appears to influence the impartial and objective performance of his public duties.

prevent the formation of new ones. This maintains or increases the integrity of the person (Commission for the Prevention on Corruption, n. d. -a).

The private sector has different tools for risk management[8]. For private organizations the most important is competitive advantage[9], which could be defined as a set of factors and skills which enable sustainable and better competition (Dimovski, Penger, & Peterlin, 2009). In the battle for market share, many managers and employees use practices which, by definition, could indicate corruption[10] (Škrbec & Pristavec, 2012). Companies should not only be selling as many products as soon as possible, but should also have in place authentic elements of good business management and staff who strive for integrity in all aspects to prevent the possibility of the emergence of corruption (Maric, Mešnjak, & Pfeifer, 2011).

Both private and public sectors also use ethical codes of conduct to provide integrity in institution. In most cases this codes are just functions of good practice and are not obligatory. In such a way every organization should achieve integrity in its environment[11] in order to gain a greater reputation in society by reducing operating costs. It is true that corruption can in the short term help companies to grow and obtain benefits, but in the longer term it has a significant impact on the business in terms of the prosecution of those who are responsible, a poor reputation in the environment in which organization operates and a loss of business partners and customers (Škrbec & Pristavec, 2012). The responsibility of each institution is to manage its risks and to eliminate them. The purpose of our work is to present the characteristics of the methods and techniques of identify risks in public and private organisations and to identify the differences between them.

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8 Risk management gives companies the opportunity to review the relevant information for decision making and confirmation of hypotheses about the connection between actions and results in a systematic way. It is a mechanism for assessing how the company can be exposed to corruption and which work places may have the greatest risk of exposure to corruption (OECD, 2005).

9 Skočir (2008) notes that, a risk management becomes lately one of the key activities in the financial sectors of financial and non-financial companies. Greater importance and need to actively engage with risks such as continuing Skočir (ibid.), mostly stemming from increased exposure to various business risks as a result of the increasing unpredictability in international business and financial environment.

10 For the purposes of this work we used the definition of corruption as it is defined in the IPCA as "any violation of due operation of functionary or responsible persons in the public or private sectors, as well as the operation of persons instigating violations or persons who can take advantage of the violation through directly or indirectly promised, offered or given or required, accepted or expected benefit for themselves or for another person".

11 Organization with integrity is an organization that has employees with integrity, at the same time acts in accordance with ethical standards written in codes of ethic of organizations, and the applicable law (Commission for the Prevention of Corruption, n. d. -b).

2 THE PUBLIC SECTOR AND INTEGRITY PLANS

The public sector had not recognised mandatory administrative tools to eliminate the risks of corruption until 2004. These integrity plans were introduced by the Prevention of Corruption Act (Official Gazette of RS, no. 2/2004; hereinafter PCA). This law (it was replaced by Integrity and Prevention of Corruption Act in 2010) required that state agencies and local authorities were obliged to adopt a plan of integrity, which represented the actions of legal and factual nature, to eliminate and prevent the possibility of the emergence and development of corruption within the institution. The PCA defined that these plans shall include assessments of exposure to corrupt institutions; identity the person responsible for the integrity plan; a description of the process and method of decision-making by identifying exposed tasks and preventive measures to reduce opportunities for corruption. Each body had to develop the plan and to inform the Commission for Prevention of Corruption which controlled the adoption of the plan and its implementation within institutions. The IPCA again defined integrity plans in 2012[12], with no major differentiations to the PCA, as a tool for a) building and monitoring the integrity of the organisation and b) identifying and addressing the vulnerability of the organisation and its employees for the occurrence of corrupt conduct. Based on the identification of the relevant risks of corruption in different areas of the organisation, integrity plans were used to assess what risks are presented to the organization and to identify measures to reduce or eliminate them.

In implementation, the integrity plan is basically a systematic and documented process in which all employees are actively involved. They identify, analyse and evaluate risks and propose appropriate counter measures and communicate them. In this process of communication, they come to a consensus on possible best solutions involving all individuals and organizations. Moreover, they create and enhance a common knowledge and integrity which is particularly important when solving complex problems where cooperation is essential. This is also a characteristic necessity of effective prevention of corruption (Commission for the prevention of Corruption, n. d. -c).

Integrity plans do not create or increase the integrity of organizations by itself, but this happens only with their implementation, i.e. when an organisation effectively eliminates risks identified by integrity plan. The basic elements for the implementation of integrity plans, and thereby increasing the integrity of the organization, are personal commitment, dedication to leadership and employee organisations. The process of drawing up and implementation of integrity plans

[12] National assembly of the Republic of Slovenia adopted Incompatibility of Holding Public Office with Profitable Activity Act on February 2006, which abolished the The Commission for the Prevention of Corruption and the Prevention of Corruption Act and also the integrity plans. From February 2006 until June 2010 the integrity plans were not mandatory for the public sector.

are based on ongoing reviews and updating risks measures, to eliminate risk (Commission for the Prevention of Corruption, n. d. -d).

The Slovenian model of integrity plan is developed on this basis and using (Kulevska Črepinko, 2011):

- international conventions, standards and principles for the prevention of corruption which have been transposed into national law (UNCAC[13], COE conventions[14] and other);
- ISO 31000, which was published in 2009 as an internationally agreed standard for the implementation of the principles of risk management;
- Australian / New Zealand Standard: Risk Management, Principles and Guidelines (AZ / NZS ISO 31000:2009);
- The methodologies used by the Slovenian state auditors to control financial risk - and INTOSTAI COSO and "Victorian Managed Insurance Authority (VMIA), Handbook of "risk management, development and implementation of a risk management framework".

2.1 Process of drawing up the integrity plan

The first step of an integrity plan is to identify all the risks which could threaten the organisation. This is done through analysis of legislation, work processes, organisation, human and other factors that may represent a source of threat. Once we have identified all risks we have to make a comparison between the existing preventive measures and assess whether they are effective and efficient. In the next phase, we evaluate all risks from the perspective of probability of occurrence of an event and the resulting consequences to the organisation, to colour-code the level of risk - where red represents an extremely high risk that is not managed and requires immediate action; yellow a medium-high risk which means that it is necessary to monitor these risks because they are not fully resolved and may even escalate; green representing a risk which is identified, already controlled and does not represent a threat to the organisation. The last phase is to define measures to eliminate risk, identify deadlines and persons who will be responsible for monitoring and implementing measures. Throughout the entire process it is necessary to communicate to all employees and identify new solutions and potential new risks and how they will be eliminated. The integrity plan's objective is to change all risks to green where the probability of loss is low and the consequences very small.

[13] United Nations convention against Corruption
[14] Criminal Law Convention on Corruption, Civil Law Convention on Corruption

2.2 Ethical codes in public sector

Codes of ethics and conduct are written guidelines issued by official bodies or professional associations to its members to help to comply with its ethical standards (BusinessDictionary.com, n. d. -a) They are a combination of the highest moral and ethical principles, instructions and recommendations on professional behavior in the workplace. The public sector in Slovenia has more than 21 codes of ethics or codes of practice in its sector, for example The Code of Police Ethics, The Code of Notary Ethics, The Code of Conduct of Public Employees and others. The main values, moral and ethical principles, which are exposed in all these codes are those of integrity, honesty, loyalty, responsibility, accountability and team work. One of the ethical codes in the public sector is The Code of Ethics introduced by the Slovenian Directors´ Association (SDA) which is an important one for the private sector because it is used in companies that have investment of state capital and / or are companies which are floated on stock market.

The above-mentioned process is also defined in the private sector and differs only in the use of various standards and their optional identification of risks. We will examine the features and characteristics.

3 THE PRIVATE SECTOR AND RISK MANAGEMENT

For companies in the private sector, it is important to create a competitive advantage and profit that allows its existence, development and expansion. In the battle for market share, management, supervisory board members and employees can all employ corrupt business practices. Such practices are largely incurred in business relations between the private and the public sectors, when it influences the preparation of public procurement procedures and changes legislation that affects the business. Managers often offer gifts or other forms of material awards to public servants who have key information or have a key role in the decision-making processes. Such practices also occur in business relationships between companies within the private sector where management or employees are dealing with controversial business practices including the abuse of authority, economic espionage, or the proffering or accepting of gifts which cause significant economic disadvantages (Škrbec & Pristavec, 2012).

3.1 Risk Management

Risk management is becoming an important business driver where stakeholders have become much more concerned about risk. Risk may be an accelerator of strategic decision and it may be a cause of uncertainty within the organisation. An enterprise-wide approach to risk management enables an organisation

to consider the potential impact of all types of risks on its processes, activities, stakeholders, products and services. (Airmic, Alarm, & IRM, 2010)

On the basis of the Companies Act (Official Gazette of RS, no. 65/2009 and mod., hereinafter CA-1) all companies must present in a financial report (if it is important to assess the assets and liabilities, financial position and profit or loss), objectives and measures of financial risk management, including measures to protect all of the most important types of planned transactions[15]. The Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Official Gazette of RS, no. 126/07, hereinafter FOIPCDA) requires that management shall ensure that the company provides regular implementation of the measures of risk management, such as liquidity and capital suitability, and all other measures of risk management[16] which are, under the rules of the corporate finance profession, necessary and appropriate as regards the types and extent of operations carried out by the company.

On the basis of a study on the economic and business environment, business ethics and unofficial payments in Slovenia in 2009[17] (Valicon, 2010), it was found that the most common corrupt practice in public procurement procedures is an assignment of conditions given to the provider. Such, and similar, practices are morally and ethically controversial and may even be a criminal offence[18]. As such, they have long term negative impact on the organisation. In the case of the disclosure of such actions, it may lead to several negative consequences, for example: loss of reputation, loss of business partners, loss of customers and the prosecution of suspects. Valicon (2010) also notes that the proportion of companies in the private sector implementing plans for risk management is very small (6 % of small businesses, 1 % of medium and large companies) and 62 % of small businesses and 39 % of medium and large companies do not use any methodology at all to address risks (CAF[19], ISO standard,

[15] 4th paragraf of article 70 of CA-1.

[16] When meeting such the obligations the management shall take into account all the risks to which the company is or could be exposed in its operations, and which include first of all credit, market, operational and liquidity risks.

[17] Target group: companies with profitable activity; Sample size: n = 300; model is representative of the size of businesses: small businesses (5 to 49 employees), medium-sized companies (50 to 250 employees), large enterprises (over 250 employees); Target person in a company is who has a leading position in the organization.

[18] The offense is man's unlawful conduct by law for urgent protection of the legal values of a crime and at the same time determines its characteristics and the penalty for the guilty offender. (Criminal Code, Official Gazette of RS, no. 50/2012)

[19] The Common Assessment Framework (CAF) is a Total Quality Management (TQM) tool inspired by the Excellence Model of the European Foundation for Quality Management (EFQM) and the model of the German University of Administrative Sciences in Speyer. It is based on the premise that excellent results in organisational performance, citizens/customers, people and society are achieved through leadership driving strategy and planning, people, partnerships and resources and processes. It looks at the organisation from different angles at the same time, the holistic approach of organisation performance analysis (EIPA, 2006).

PRSPO[20]). These, and similar methods, are used by 15 % of small businesses and 47 % of medium and large businesses. 25 % of companies use measures such as operations control; internal audit; checking business partners; unannounced individual checking of companies and order checking.

Risk management (as defined by the international standard ISO 31000) amongst other things, enables an organisation to: increase the likelihood of achieving its objectives; encourage proactive management; be aware of the need to identify and treat risk throughout the organisation; improve the identification of opportunity and threat; comply with legal and regulatory requirements and international norms; improve mandatory and voluntary reporting, governance, stakeholder confidence and trust; establish a reliable basis for decision making and planning; improve controls; effective allocation and use of resources for risk treatment; improve operational efficiency; enhance health and safety performance; as well as environmental protection (International Standard ISO 31000, 2009).

Mueller (2007) sees risk management as a process for management, directors and other staff who are responsible for the preparation of the strategy, to identify events that may affect the business and to manage the risk so that it remains within the limits of sensitivity in order to provide a reasonable achievement of entity objectives. It is important to consider the following key factors: risk management is a process implemented by people within the organisation and applied by setting strategies throughout the organisation.

3.2 Risks in the private sector

We recognise several definitions of risk and understand it in several ways. In most cases, risk has one of three meanings (Hampton, 2009):

- The possibility of loss or injury through accident or misfortune.
- The potential for a negative impact, a decline in brand value or market competition.
- The likelihood of an unforseen event causing damage or loss.

The International standard ISO 31000 defines risk as the effect of uncertainty on objectives with the following characteristics which we must be considered. An effect is a deviation from the expected. Objectives can have different aspects (e.g. financial, health and safety and environmental goals) and can apply at different levels (such as strategic, organisation-wide, project, product and process).

[20] National Quality Award in Slovenia named "The Slovenian Business Excellence Prize" is the highest recognition given by the Republic of Slovenia within the national quality programme for the achievements in the field of quality of products and services as well as business quality. It is based on criteria of the EFQM Model, and the award is very similar to the EFQM award process (Kern Pipan & Leon, 2004).

Risk is often characterized by reference to potential events and consequences or a combination of these and it is often expressed in terms of a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence. Uncertainty is the state, even partial, of deficiency of information related to, understanding or knowledge of an event, it consequence, or likelihood (International Standard ISO 31000, 2009).

Persons responsible for risk management (administrators, directors, managers and other staff) in an organisation need to develop meaningful sets of categories of risk on the basis of the recommendations of the selected risk-management model and on the specifics of the organisation, its internal structure and its field of work.

As a baseline for developing a meaningful set of categories for organisation we have to (according to Duckert (2011)) consider that the following categories of business risk are critical: financial, legal liability, regulatory compliance, corporate image, industry specific, data integrity and reliability, confidentiality of data, safeguarding proprietary data, disaster recovery / contingency planning, operations. Companies have to ensure that each type of risk receives equal treatment and consideration. We can also use a different distribution of risk, such as: injury, liability, financial, operational or strategic risk (IRM, 2002).

Organizations can use different international standards and frameworks for risk management[21]. Moeller (2007) and Duckert (2011) represent the COSO[22] framework of risk management as three-dimensional cube, where:

- vertical columns represent the strategic objectives of enterprise risk (strategic, operational, reporting, compliance),
- horizontal rows represent risk components (internal environment, objective setting, event identification, risk assessment, risk response, control activities, information and communication, monitoring),
- plane columns represent multiple levels of the organisation, from headquarter level to individual subsidiaries. Depending on the organisation, there could be many "slices" (subsidiary, business unit, division, entity level and other).

The ISO 31000:2009 risk management framework is compatible with the COSO framework, but is easier to understand, more practical and flexible. The data in the standard can be customised for development of guidelines for the assessment of existing methods of risk management. The main difference between ISO 31000 and COSO ERM is in the heart of assessment and risk management methodology. ISO 31000 focuses on the consequences and provides a framework that helps take into account the effects of the current event. This is illus-

[21] E.g. The COSO framework, ISO 31000:2009 framework, AZ / NZS ISO 31000:2009 and other.

[22] The Committee of Sponsoring Organizations of the Treadway Commission

trated by the definition of risk as "the effect of uncertainty on objectives". COSO ERM is focused more on events and not to the consequences of these events. This is illustrated by the definition of risk as "the possibility that an event will occur and adversely affect the achievement of the objectives." (Airmic, Alarm, & IRM, 2010).

According to IRM (2002), the risk management process can be represented as a list of concerted activities. There are several alternative descriptions of this process, which usually consists of the following contents or phases: a) definition of the organisation`s strategic objectives, b) risk assessment (analysis, identification, description, estimation and evaluation), c) risk reporting (threats and opportunities), d) decision e) risk treatment (tolerate, treat, transfer, eliminate), f) residual risk reporting and g) monitoring.

To conclude, risk management should be a continuous and developing process which runs throughout the organisation`s strategy and the implementation of that strategy. Strategy should be transferred to the operational level, where each leader and employees is aware that risk management is part of their daily work. That is why it is so important that risk management must be integrated into the culture of the organisation by the introduction and implementation of an effective policy and programme led by the most senior management (IRM, 2002).

3.3 Ethic codes in the private sector

The private sector in Slovenia recognises more than 30 ethic codes of professional and non-professional associations (for example: workers in the field of social pedagogy, human resource experts, librarians, literary translators, engineers, estate agents and others). There are some main ethical codes used in the private sector, especially for companies which have investment of state capital and companies which are floated on stock market, e.g.: The corporate governance code for companies with state capital investment, introduced by The Capital Assets Management Agency of the Republic of Slovenia (AUKN), the Code of Ethic and Corporate Governance Code introduced by Slovenian Directors´ Association (SDA). Each of them has a major impact to ensure integrity within private sector. They combine values such as honesty, responsibility, integrity and loyalty in principals and policies, for example the principals of equality, transparency, reporting, fair work, auditing and internal system control.

4 CONCLUSION

Risk management is a recently used process in organisations in both sectors but more especially in the public sector due to the deadline for submission of integrity plans in June 2012. Institutions were obliged to carry out the entire process

of drawing up of integrity plans or risk management by that date. The obligation to use such tools for risk management also represents the principal difference between the public and private sectors. The private sector in Slovenia does not have a legal obligation to prepare an integrity plan or risk management. There are few exceptions which are defined by law. Another difference is in the breadth of the risk assessment methodology. The public sector is not focused only on the financial sector, but on all elements which are important for the institution such as work processes, financial management, human resources, organisational and other conditions. The third important difference is in the control and monitoring of the process of risk management. In the public sector, The Commission for Prevention of Corruption has a supervisory role. As such, supervision is reflected not only in the control of who provided the plan but also of the preparation of the background, training programs and the advice in enhancing integrity and eliminating the risk of corruption. The private sector does not have such body.

Some standards that are used in risk management and provide the general framework of risk management, which are flexible depending on the type of organisation (public or private sector; manufacturing or service-oriented; number of employees; annual turnover; profit; complexity of the organisational structure etc) can be used in both sectors. Based on data we can conclude that there is a small difference between the risk management tools used in both sectors. The only difference is the purpose of risk management which is rigourously proscribed in the public sector.

Based on these findings, we should highlight the question of whether it would be reasonable for private companies to adopt similar tools such as the integrity plan, as an internal act of the company and should this be mandatory for medium and large companies. The implementation of that kind of act or risk management standard would show that company as trustworthy and could have competitive advantage in the field of public procurement. Such a system is already in place in Japan and Malaysia (UNODC, 2012), where the state invites private companies to accept Integrity Pacts on a voluntary basis. If such pacts are agreed, then the private company is committed to respect and implement national and international anti-corruption acts, and become the controlled by state agencies. If the organisation does not adopt such an agreement, it can be put on a blacklist which prohibitions the conduct of business with public institutions for five years.

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CYBERCRIME IN SLOVENIAN ENTERPRISES

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ABSTRACT
Purpose:
Endangerment from cybercrime is increasing since enterprises have become a part of the global cyberspace and are now more dependent on modern technology. Cyber criminality in the sphere of business comprises a wide circle of perpetrators, from individuals to organized groups. All of them represent a different level of threat/risk to information security, and that is why enterprises should be familiar with their own vulnerability. This paper shows the state of cybercrime in Slovenian enterprises and spotlights the most dangerous cyber threats on which security measures should be focused.

Design/methodology/approach:
The vulnerability of Slovenian organizations in regard to cybercrime was investigated with the use of a questionnaire and by statistical analysis of the survey responses. Theoretical premises were formed by using the descriptive method with analytical techniques and by a synthesis of various viewpoints proposed by different authors.

Findings:
Cybercrime in the business sphere is becoming more organized and sophisticated, since information is the base-stone of competitiveness in the corporate world. In this age of ubiquitous information and communication technology, unauthorized acquisition and use of information capital has become attainable to many perpetrators. We have concluded that the greatest threat to corporate information systems weren't the most common forms of cyber criminality but the less visible cybercrime techniques used by the most sophisticated and organized perpetrators. It is evident that the present level of protection against cybercrime is inadequate therefore significant changes in organizational information security policies should be made.

Research limitations/implications:
The survey and analysis of cyber criminality in the Slovenian corporate environment were limited to a relatively small number of respondents because most organizations refused to participate in the survey. This lessens the validity of the survey results. We have also encountered biased responses about how much damage certain organizations have already sustained, because publicly acknowledging information security incidences tarnishes business reputation.

Originality/value:
An overview of the vulnerability of information systems regarding the qualitative and quantitative effects of certain forms of cybercrime enabled us to identify critical

vulnerabilities and the necessary measures which should be implemented to raise the current level of information security in the Slovenian corporate environment.

Key words: cybercrime, information security, vulnerability, organizations, Slovenia

1 INTRODUCTION

Because of the exponential increase and development of criminality, information security is becoming an important modern »commodity«, and also one of the most important aspects of maintaining general public safety. For several years now the international community has had to deal with the dilemma of how to control and minimize crime to ensure the safety of citizens all over the world. Some actions have had an opposite effect to the one expected; in recent years specific forms of criminality have proliferated. Because of increasingly more aggressive and repressive measures on one hand, and the development of the uncontrollable cyberspace on the other hand, the migration of delinquency into cyberspace was a logical consequence. Cybercrime is a relatively new form of criminality that has become widespread and a great problem because it compromises personal and organizational safety as well as national and international security. The special nature of these threats is evident from the unification of techniques used by perpetrators to achieve certain goals. Differentiating between types of cyber criminality is possible only by identifying offenders and their motives. Just as in the physical world, it's possible to find certain types of perpetrators in cyberspace; i.e. individuals, organised groups, corporations and governments. All use similar methods and tools to achieve different goals, and thus endanger different targets. Most often cybercrime techniques are used for material gains. Cyber criminals have developed alongside information technology, their activities are becoming more organised and sophisticated. The result is that the international political and expert public is now up against new aspects of cybercrime which don't just endanger individual users of information technology but put at considerable risk the stability of the global economy and international political relationships; the situation also affects the military preparedness of countries and the competitiveness of businesses. Organised cybercrime is developing because of the growing need for »information power«. Therefore, the need to ensure information integrity on many societal levels is growing, especially when the goal is to achieve an advantage over opponents and/or competition. If the cybercrime techniques of achieving information superiority are used by organized groups, especially government agencies and corporations, than it's possible to say that information warfare is a threat from which no entity, that is a part of the global cyberspace, can be safe from.

Because of their specific natures, cyberspace and cybercrime create numerous dilemmas in relation to questions of general security. Problems are created by the fact that cyberspace isn't sufficiently regulated and controlled, and that different users are interconnected in this very heterogenic space. All this affects the investigation of cyber criminality; law enforcement agencies often lack the necessary knowledge and techniques to tackle these types of crimes. We can see that »computing technology and telecommunications systems have created astounding opportunities for criminals. Never before in history has their reach been as long, the speed of crime been greater, the ability to work secretly been more assured, and the trail of evidence been so difficult to detect« (Roche & Nostrad, 2008). The Slovenian network intervention centre SI-CERT gets about 1700 reports of Internet abuses each year; some companies have discovered that they experience dozens of security incidences every day (SI-CERT, 2011). It›s expected that the damages caused by cybercrime will increase by 10 % by the year 2016 (Gartner, 2011a). This means that cybercrime poses a big threat to entrepreneurial structures operating in the global cyberspace, no matter where they are located geographically. Organizational information security is therefore just as, if not more, important as the information safety of individual users of sophisticated information technology. Slovenia is just as exposed to various cyber threats and offenders targeting the economy, political stability and international relationships as other countries.

Because of the dilemma of how to have control over security in cyberspace and maintain it, cyber criminals have exploited all the options available to them and developed/upgraded their criminal techniques. In the past fun and curiosity were the main motives for cyber criminals (Bernik & Meško, 2011), but today profiting from stolen data is their main goal. In addition, there are more white-collar cybercrimes related to various sophisticated kinds of cyber scams. Even though white collar criminality is usually typical of corporate managements, it›s possible to find, in this segment of criminality, individuals of different profiles and from various fields (O›Connell, 2011). Anderson (2008) noted that in recent years significantly more cases have been recorded of offenders abusing information and communication technology to destroy political, social and commercial structures; these actions are focused on espionage, anti-globalisation movements, international conflicts, anarchism, labour strikes, environmental movements and the fight for certain rights. Private industry exploited the advantages of cyberspace to create new revenues, the international organised crime communities to maximise their criminal proceeds, political groups to gain more power, and the military to wage new wars. Amongst different spheres, the economy is the one most in danger, as most of the daily average value of any corporation is in the form of electronic information (Završnik, 2005); any abuse of this capital brings opponents great benefits and advantages.

Commercial organisations dictate how society adapts to the information age and information technology. Those who successfully utilised the power of information and information technology in competition with other subjects seize power and have control in the highly competitive business environment (Alberts, Garstka, & Stein, 2006). The main reason why cyber crime migrated to the private sphere (Slocum, 2010) is the possibility to establish a balance between unequal opponents; in fact it›s a case of asymmetrical warfare where certain capabilities in the physical world don›t affect the capabilities in cyberspace. The basic tools of information warfare have been know for quite some time (Joyner & Lotrionte, 2001; Darnton, 2006, SANS Institute, 2007). The most important techniques and methods are: using espionage software (sniffers, keyloggers, etc.), DOS attacks, spoofing, information system break-ins, information theft, and social engineering. Besides these there are also other more common but less sophisticated ways to abuse information systems, e.g., viruses, worms, Trojan horses, spam, identity theft, blocking Internet pages, etc. (Svete & Kolak, 2011), but these usually aren›t a part of information warfare because they›re mostly in the domain of individuals with personal interests. The main goal of organised cyber criminals in the business and economic sphere is to gain an advantage over opponents by abusing confidential information, and that›s why covert operations are so significant. Information is usually abused by disabling information systems, by destructing information systems or breaking into systems and stealing classified information pertaining to security issues, corporate development and marketing plans, customers' data, product information, etc. Perpetrators don›t enter an organisational structure just from the outside, but also from the inside. The latter poses the greatest danger to corporate information capital. An international study (Fullbrook, 2009) showed that in times of economic instability there are significantly more cases of industrial espionage and data theft perpetrated by employees. At the same time, downsizing the labour force leads to outsourcing security functions, which has a significant impact on cyberspace security and all parties involved in cyberspace. The less people an organisation employees to take care of information security, the greater the risks; there's more room for mistakes which makes organisations more vulnerable, and spies, hackers, and other offenders have more opportunities to benefit the competition or opposition.

The highest level of endangerment is evident in organizational structures that are parts of the crucial infrastructure (Siroli, 2006, and High Tech Crimes within the EU: Threat Assessment, 2007), such as: information and communications, energy, banking and finance, physical distribution (transport sector) and the provision of vitally important goods to the people (water supplies, medical emergency services, government information systems, military information capital, etc.). According to Čaleta & Rolih (2011) two sectors should be particularly emphasized, namely the electricity supply and information and communication technology

that have an interdependent impact on other critical infrastructure. Danger is present in all business areas, especially for successfully developing companies with information valuable to competing companies and countries (e.g., the automobile industry, pharmaceutical industry, computer and security industry).

The first step towards maintaining an appropriate level of information security is the ability to detect and understand the true nature of cyber threats and one›s own vulnerability towards them. To determine in how much danger Slovenian corporations and businesses are from classic and organised types of cyber criminality, we conducted a survey which was focused on information warfare in the business sector.

2 METHOD

The consequences of cybercrimes represent certain dangers for corporations and since, so far, the extent of these dangers to Slovenian businesses haven't yet been determined, we analysed the current attitudes in regard to information warfare in several chosen Slovenian companies. Our goal was to uncover how much danger from cyber threats these organisations experienced at present and how well they are protected. Our study was conducted with the intention to alert Slovenian companies to the unpredictable state of information security and to the dangers of politically or economically motivated cyber attacks.

We researched information warfare in Slovenia by sending a questionnaire to several Slovenian organizations. The data was collected in November and December 2011 and the target population was employees in Slovenian information security companies. Our statistical analysis was based on information from 36 companies in the private and public sectors. The questionnaires were filled out by experts (75 % had college or university level degrees, 19.4 % had postgraduate degrees or a PhD), employees in information security and information technology divisions in different companies (in total more than 66 % of all respondents). 44.4 % of the organisations were from the public sector, and 55.6 % were from the private sector. Most organizations were middle size or big companies (in total 77.8 %).

The statistical sample doesn't take into consideration the organizational diversification of the entire business sphere. The sample comprises companies of different sizes belonging to different industries, but all are relevant to cybercrime issues (we included educational, financial, and security institution, as well as businesses) and the abuse of information capital. The statistical analysis was done by using SPSS software.

3 RESULTS

In the contextual part of our survey we were trying to find out how the interviewees understood information warfare, which threats they feared the most, and how they protect themselves from them. At the end we formed some recommendations, based on theory and empirical data, how to improve the current defensive measures and normative solutions.

As shown in Table 1 the representatives of the organizations participating in our survey understand the concept of information warfare; more than two thirds of these interviewees (64 %) thought that information warfare were activities aimed at disabling an opponents operations by using sophisticated information technology. A large number of them (52.8 %) thought that information warfare includes politically and economically motivated threats. They put in first place attacks on government institutions, then attacks on competing organizations. Judging by the answers it's evident that organizations perceive information warfare primarily as offensive or aggressive acts, less as defensive measures.

Table 1: The Perception of Information Warfare

Information warfare is perceived as:	n	%
the act of disabling the opposing party's operations by the use of information technology	25	69.4
politically or economically motivated cyber threats	19	52.8
a cyber attack on a government and/or it's agencies	19	52.8
abuse or manipulation of information belonging to another organization	14	38.9
abuse of mass media and propaganda	14	38.9
support to traditional warfare	14	38.9
protective measures to ensure the security of information and information technology	12	33.3
achieving the state's superiority in information security	7	19.4

The respondents to our questionnaires said that the most likely perpetrators of cyber crimes would be found among the current or former employees (Table 2); employees were the greatest threat to the integrity of information (theft, abuse, or loss of data). This assumption is reasonable because employees have the most knowledge and the best opportunities to access confidential data. In addition to employees, hacker, spies, and competing organisations were perceived as the most likely subjects to partake in information warfare. Government agencies, opposing interest groups and ideological groups were seen as the least likely to break into information systems.

Table 2: Perpetrators of Cybercrimes

Which of these perpetrators represent the greatest threat to your information?	Mean value
former employees	3.81
current employees	3.69
hackers, crackers	3.67
spies and competing organizations	3.03
vandals	2.97
domestic and foreign government agencies	2.22
opposing interest groups	1.94
ideological and religious groups	1.58

In addition to considering various types of possible offenders and the level of exposedness in the participating organisations, we also tried to determine the nature of the different cybercrime techniques these organizations had already encountered. We examined how frequently certain threats (14 different types) presented themselves and how dangerous these were; the responses were evaluated on a five-step scale. We were especially focused on the state of specific information warfare techniques.

The respondents felt that spam was the most frequently occurring cyber threat to their information systems (Figure 1), followed by viruses, malicious rumours, and the consequences caused by employees' negligence. The least often encountered threats were espionage software, DOS attacks, and unauthorised access and control over information systems – these types of threats are considered the main information warfare techniques.

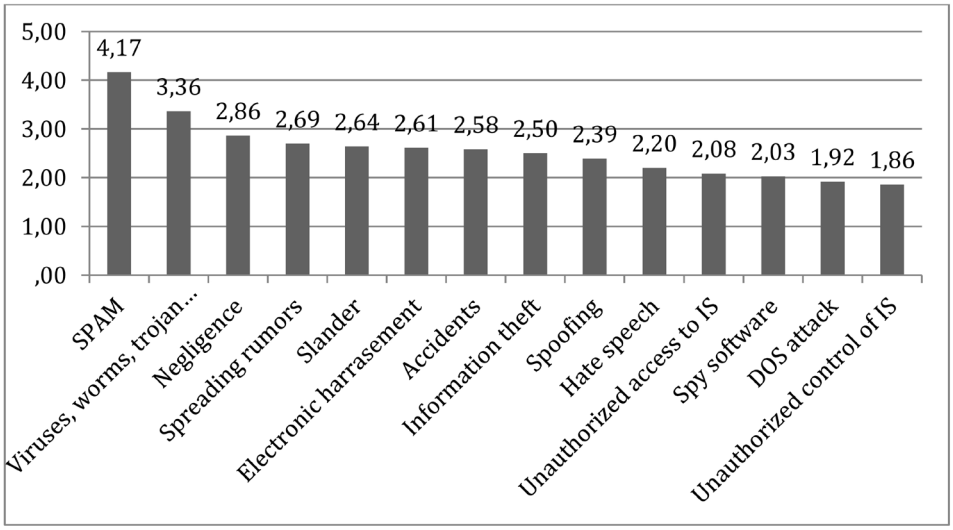

Figure 1: Frequency of Different Types of Cyber Threats

On the other hand Figure 2 shows that organisations perceive negligence and accidents as the most dangerous threats. From the viewpoint of information security the most dangerous threats are unauthorised access and unauthorised control over an information system. These are the two main techniques of breaking into information systems from either the outer or inner organisational environment with the intent to steel, damage or abuse confidential information. The organisations participating in our survey believed that the most dangerous threats were the ones that were the least frequent. The standard deviations show that the responses were unified and that heterogeneity wasn't a problem.

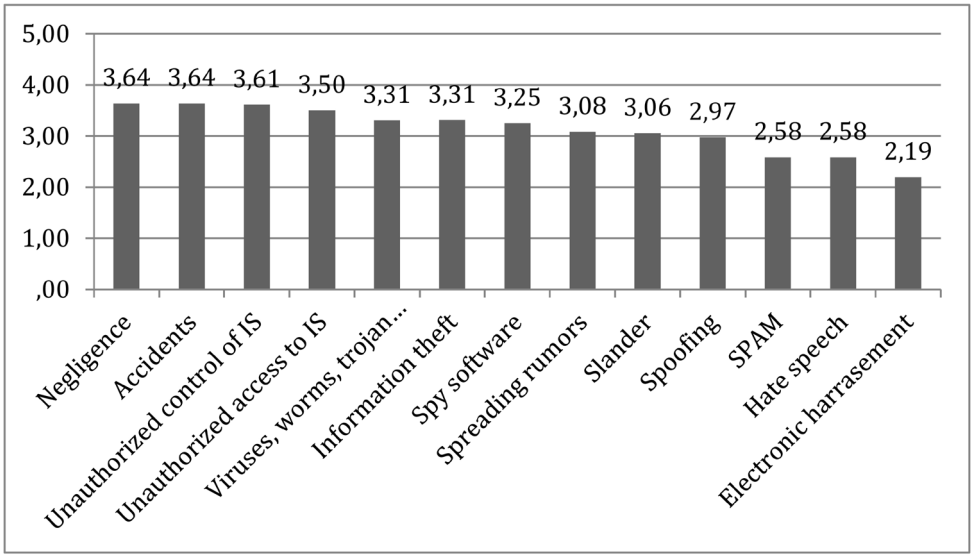

Figure 2: The Danger Levels of Cyber Threats

The analysis showed that specific cyber threats differ one from another in how often they occur and how severe a danger they pose, and that the most frequently occurring threats aren't necessarily the most dangerous. Therefore, we also checked the presence and aggressiveness of information warfare techniques in organisations with multi-variant statistical methods; the correlations between variables were determined by conducting a factor analysis. Although we had a small sample compared to the number of variables we conducted a factor analysis with the purpose of identifying correlations between them in relation to the frequency and danger of specific threats. All other necessary statistical conditions were fulfilled. With these factors, conclusions about the most dangerous and frequent threats were much easier.

Before conducting the factor analysis, we checked if all the acquired data was suitable for such a statistical analysis. The normal distribution of data test showed that the asymmetry and kurtosis of the distribution values were within

the required frames. We also tested how reliable our questionnaire was for the evaluation of the observed phenomenon. Table 5 shows that there were 14 variables for measuring cyber threats for which the value of Cronbach's alfa coefficient was 0.865, therefore, this part of the questionnaire was highly reliable. The value of the correlation matrix determinates was 0.001. Based on the determined values we can say that the multicolinearity of the data wasn't a problem, and so we conducted the factor analysis with all the chosen variables.

Our analysis gave three factors (Table 3). The total variance was 61.24 %, with differences for specific factors. The residual variance (38.76 %) can be ascribed to other factors, which weren't defined by our chosen variables. Five variables were ascribed to the first factor, five to the second factor, and four to the third factor. We called the first factor External Threats (slander, espionage software, rumours, unauthorised access to information systems, and DOS attack), the second factor Internal Threats (accidences and mistakes, employees' negligence, unauthorised possession of restricted information, unauthorised control over information systems, and hate speech), and the third factor Threats to Information Systems (circulation of viruses, worms and Trojan horses, spam, spoofing, electronic harassment). Based on the factor analysis we can see that the basic information warfare techniques (possession of confidential information, unauthorised control over information systems, espionage software, unauthorised access to information systems, and DOS attack) appear both in the external and internal environments of the organizations under scrutiny. Because the median isn't greater than 2 on a five-step frequency scale, these threats seem less important.

Table 3: Factor Analysis – Frequency of Cyber Threats

Cronbach's alfa coefficient: 0.865				
determinant: 0.001				
Kaise-Meyer-Olkin sample suitability coefficient: 0.735				
Barttlet's test (Sig.): 0.000				
percentage of total explained variance: 61.24				
F1: External Threats				
percentage of explained variance: 23.11				
mean value: 3.17; standard deviation: 0.78				
	F1	F2	F3	median
slander	0.87			2.00
espionage software	0.81			2.00
rumours	0.77			2.00
unauthorised access to information system	0.55	0.46		2.00
DOS attack	0.42			2.00

F2: Internal Threats				
percentage of explained variance: 21.62				
mean value: 3.39; standard deviation: 0.80				
	F1	F2	F3	median
accidents and mistakes		0.79		2.50
negligence		0.76		3.00
circulation of confidential information	0.39	0.76		2.00
unauthorised control over an information system	0.47	0.60		2.00
hate speech	0.51	0.52		2.00
F3: Threats to Information Systems				
percentage of explained variance: 16,51				
mean value: 2.76; standard deviation: 0.77				
	F1	F2	F3	median
circulation of viruses, worms			0.81	4.50
spam			0.72	3.00
spoofing		0.35	0.71	2.00
electronic harassment			0.59	2.00

We continued the factor analysis to examine the danger level of the threats in question. Eleven cyber threats were analysed. The participants in our study were asked to evaluate the danger to their organizations according to a five-step scale. Three variables (spoofing, employees' negligence, accidences and mistakes) were excluded for contextual and statistical reasons. The suitability of the gathered data was again. The normal distribution of data test showed that the values of asymmetry and kurtosis are within the required limits; Cronbach's alfa coefficient is 0.835 (Table 4).

Table 4: Factor Analysis – The Danger Levels of Cyber Threats

Cronbach's alfa coefficient: 0.835
determinant: 0.02
Kaiser-Meyer-Olkin sample suitability coefficient: 0.682
Barteltt's test (Sig.): 0.000
percentage of explained total variance: 68.84
F1: Information Warfare Techniques
percentage of explained variance: 38.98
mean value: 3.36; standard deviation: 0.98

	F1	F2	F3	median
unauthorised access to an information system	0.92			4.00
unauthorised control over an information system	0.90			4.00
espionage software	0.82			3.00
possession of restricted information	0.60	0.44		4.00
DOS attack	0.52			3.00
F2: The Human Factor as a Cyber Threat				
percentage of explained variance: 16.15 mean value: 2.91; standard deviation: 0.84				
	F1	F2	F3	median
rumours		0.90		3.00
hate speech		0.77	0.33	2.00
slander		0.69		3.00
F3: Electronic Harassment and Vandalism				
percentage of explained variance: 13.71 mean value: 2.69; standard deviation: 0.77				
	F1	F2	F3	median
spam			0.90	3.00
electronic harassment			0.76	2.00
circulation of viruses, worms	0.47		0.70	3.00

We calculated three factors, as shown in Table 4, which together explain 68.84 % of the total variance, and the residual can be ascribed to other factors which weren't part of the survey and analysis. We labelled the first factor, Information Warfare Techniques because it includes all the main techniques of this specific threat (unauthorised access to an information system, unauthorised control over an information system, espionage software, possession of classified information, and DOS attack), and has a mean value of 3.36 and standard deviation of 0.98. The second factor – The human Factor as Cyber Threat – included three variables (rumours, hate speech, slander) with a mean value of 2.91 and standard deviation 0.84. The third factor, which we called Electronic Harassment and Vandalism has three variables (spam, electronic harassment, and virus circulation). The mean value of the danger of the third factor was 2.69 with a standard deviation of 0.77. The factor analysis shows correlations between the main information warfare techniques. In relation to frequency, the same variables are less in correlation and more dispersed among different factors, but are extremely homogenous in terms of the level of danger they pose. The organisations participating in our survey believe that among all the possible dangers in cyberspace, information warfare techniques are far the greatest risk to their information systems and success. Information warfare techniques have the highest mean value among all the factors and the median also doesn't fall bellow the value 3. The

danger level of information warfare techniques was confirmed by the one-sided t-test of mean values, which we conducted to test the statistical characteristics of the mean values of all the mentioned factors. Table 5 shows that information warfare techniques with the statistical characteristic of Sig. < 0.05 represent a significant risk for all organisations because the lower and upper limit exceed the test value of 3 on a five-step scale of dangers. We also found out that electronic harassment and vandalism were the least dangerous techniques, but occurred most frequently in our sample of organisations.

Table 5: One-sided T-test of the Mean Values for the Danger Levels of Cyber Threats Factor

test value = 3		95 % confidence interval	
	Sig. (two-sided)	lower limit	upper limit
techniques of information warfare	0.037	0.023	0.688
the human factor as a cyber threat	0.512	-0.376	0.191
electronic harassment and vandalism	0.024	-0.568	-0.044

According to our findings that information warfare techniques represent a serious threat to information security in corporations and other organisations because of their possibly damaging consequences, 58.3 % respondents expressed their belief that information warfare techniques used to gain and advantage over competitors weren't legitimate. Even so, 41.7 % of the respondents felt that information warfare techniques could aid their organisation's development and success. We can conclude that 36.1 % of the organisations participating in our survey that had said that they accepted information warfare have already used specific information warfare techniques to achieve their goals

We were also interested in how organisations reacted to information security incidences. As shown in Table 6, the majority of organisation (97.2 %) taking part in our survey would, in case of an attack on their information system, first analyse the incident and implement protective mechanism on their own. A large number of organisations (86.1 %) would report the incident to the proper authorities or conduct and internal investigation of the incident without making a formal report (69.4 %). Some organisations wouldn't publicly disclose that there was an incident or wouldn't even confirm there was an incident. Generally speaking organisations use the appropriate procedures but are usually unwilling to share their experiences with other potentially endangered organisations. Only two organisations confirmed that they would be willing to alert the public to present dangers.

Table 6: Reactions to an Information Security Incident

In case of an attack on our information system we would:	n	%
analyse the incident and implement protective mechanisms	35	97.2
report the incident to law enforcement agencies	31	86.1
conduct and internal investigation	25	69.4
not publicly disclose the incident	6	16.7
not know the attack occurred	5	13.9
inform the public and alert others to the present threat	2	5.6
launch a counter-attack	1	2.8
dismiss the threat	1	2.8

Our findings are that all the participating organisations used technical solutions to protect their information systems. Table 7 shows that more than a half of the participating organizations (54.9 %) use architectural and management strategy to maintain information security in organization. This means that enough attention is focused on the technical aspects of information security, but more could be done to better inform users and security managers about cyber threats and how to avoid them. These conclusions are supported by the data shown in Table 8.

Table 7: Types of Protection for Information Systems

To maintain information security the organisation uses:	n	%
architectural strategy	16	45.71
management strategy	0	0.0
both of the above	19	54.92
total	35	100.0

In the past five years, just a quarter of the participating organisations had organised several tutorials per year for their employees/experts; the majority of organisations (41.7 %) had organised several seminars for their employees in the past five years. In a third of the organisations seminars were carried out sporadically or not at all. The problem is also that seminars are usually reserved for target groups, most often the employees who managed information security, but not for »ordinary« users/employees even though especially these individuals are most likely to become a risk or a threat to information systems within the organisation.

Table 8: The Frequency of Information Security Tutorials

How often has the organisation carried out information security tutorials in the last 5 years?	n	%
Never	7	19.4
once	5	13.9
several times	15	41.7
several times per year	9	25.0
total	36	100.0

The level of danger posed by organised cybercrime and the fact that employees weren't trained properly is in accordance with the opinions of our interviewees, that at present Slovenian corporations and other organisations aren't sufficiently protected against information and cyber attacks.

4 DISCUSSION

In general, the results of the analysis have shown that cyber criminality is indeed a threat to information security in Slovenian organisations. Information warfare techniques aren't just theoretical threats to business success, but a concrete and present danger. Organized cybercrime endangers different business environments, the private sector is evidently more at risk, but the public sector proved to be more aggressive in using information warfare techniques. The complexity of cyber threats is evident from the fact that some forms are partially legitimate, which makes it hard to deal with the phenomenon, as we learned from the participants in our survey. In light of these facts, it becomes understandable why information security incidences are usually dealt with internally and rarely exposed publicly. The organizations participating in our survey largely maintain their information security on the technical level, neglect human factors and don't really use preventive measures. This is a cause for concern since we know that the sources of most of the risk and threats are usually within organisations, and employees proved to be the most dangerous threat. Slovenian organisations are quite unprepared to deal with the problems of (organised) cybercrime and information warfare techniques because of the unpredictable nature of these phenomena and because this area isn't appropriately governed by law. Several experts (e.g., Bratuša, 2010; Čaleta & Rolih, 2012) have cautioned that Slovenia is unable to provide adequate protection against information warfare techniques, that's why it's time to make changes at all levels: user, organisational, governmental, and international.

Previous studies (Bernik & Meško, 2011) have show that the general public isn't well informed about or aware of cyber threats and the related legislation, there-

fore, we should implement concise and comprehensive laws, and see to it that the public is educated about these matters. Law enforcement agencies should also act consistently, and especially know how to navigate around legal and cultural obstacles in tackling cybercrime which is global and international. The international community is obligated to provide conditions in which cybercrime can be appropriately addressed and prosecuted. Organizations dealing with sensitive critical data and information systems are advised to implement national information security standards based on American examples which proved to be successful (e.g., the North American Electric Reliability Corporation, 2012). The current Slovenian information security strategy does cover the cyber aspects of security, but doesn't deal with these separately and thoroughly, and doesn't foresee the key element – cooperation between the public and private sectors to achieve adequate protection of the critical national infrastructure (Čaleta & Rolih, 2012).

To improve Slovenia's defences against cyber threats, various organizations or all the different links in the Slovenian information infrastructure should cooperate amongst themselves. Because there are more threats each year and because the nature of cyberspace is constantly changing at least 50 % of all corporations and other organizations will have to revise their information security policies by the end of 2012 (Gartner, 2011b). But first it will be necessary to change attitudes, business ethics, and perceptions about how legitimate it is to use certain cybercrime methods. Attention shouldn't be focused just on technical aspects but also on the users of information technology, because employees represent the riskiest element. Any organisation wishing to be successful and competitive can achieve success only by exploiting all the advantages of sophisticated modern technology, furthermore, it's also necessary for them to continuously invest in research and development projects, seek out new markets and highly qualified employees (Carneiro, 2007). Employees should constantly update their knowledge and undergo training to keep up with the development of information technology and cyber threats.

Organisations have relatively low standards of protection against cybercrime, especially in relation to psycho-social factors (organisational culture, attitudes, ethics, employee satisfaction, etc.), which is a shame, since positive attitudes towards these issues within an organisation are the best possible protection (Hinson, 2009). Prevention is the key factor in eliminating deviant behaviour, but preventive measures are often substituted by repressive measures (Meško, 2004), which demotivates employees. We found out that most organisations don't want to discuss information security incidences publicly, but instead rather conduct internal investigations of cyber threats and their consequences. This means that they consciously don't take into consideration the users' behaviour but also dismiss the possibility of being part of a early warning system, and alerting other organisation to cyber threats. This reluctancy to cooperate could be overcome by

establishing an anonymous alert system, so that organisations could be on the lookout and prepared in case of a cyber attack. A national information security system shouldn't overlook individual users, which also have important roles in upholding information security. But creating a culture of information security is really mostly up to the government, corporations, and other organisations. Surveys have shown us that people develop most of their habits regarding the usage of information technology in the work-place, so that is where they should be informed about information security issues (Talib, Clarke, & Furnell, 2010). And the government should make an effort to educated target groups of information technology users at the national level. All these measures have to be adapted to the level of the detected danger and, of course, the existing public awareness.

We concluded that information warfare poses dangers to all organisations with any sort of current information capital and which also participate in cyberspace. In future cyber threats will only become more pronounced and devastating, so it's necessary to focus attention on establishing cooperation between organizations from all economic sectors and also at the national level. It's important to correctly comprehend cyberspace as it is – a »place« where perpetrators and threats know no national borders or physical limitations. Organisations and governments should be equally »mobile«; international cooperation should transcend geographical, cultural, and legal obstacles, so as to keep up with the numerous perpetrators lurking in cyberspace. Governments and organisations should help the average or general user to become less vulnerable and to successfully avoid cyber threats at the work-place or at home. Ignorance is truly the weakest link in information security. It's not just groups of certain experts – information security managers and technicians – who need educational programmes, but also all users of information and communication technology, and all who have access to classified information.

We believe that the constantly changing technological and organisational environments demand that users' attitudes towards cybercrime should also change accordingly. Unconventionality is the most pronounced characteristic of cyber criminality, and this fact should be considered when dealing with the phenomenon, therefore, innovativeness and unconventionality should also be used in our efforts to prosecute cybercrime and minimise its influence. Cyber criminals act outside all known behavioural patterns; they are quite unpredictable in creating and combining new ways to achieve what they want. These negative circumstances are compounded by ignorance and incomprehension at national and international levels, leading to the use of traditional investigative methods and procedures, which aren't effective in cyberspace. We believe that the ideal of limiting the privacy of individual users in cyberspace to ensure better information security isn't acceptable anymore. Actually it's just a form of legitimately/legally ensuring information supremacy and enabling officials to abuse their mandates, while the level of information security stays the same, because the actions of all

the other perpetrators are unpredictable. If we wish to eliminate unconventional forms of criminality, we have to act in the same way, and ask governments to implement acceptable control mechanisms, taking into consideration that privacy actually means safety. Implementing protective mechanisms to guarantee information privacy and thus information security should be a priority to each individual user and every group in cyberspace. States or governments can retain their mandate to disclose identities, but only if circumstances warrant such breaches of privacy. And any breach of privacy has to be supervised. How to find the correct balance between privacy and supervision still remains a dilemma from which only perpetrators benefit.

It mustn't be forgotten that the most recent research results show that cyber criminals no longer act conventionally, but rather innovatively and totally out of the norm. They randomly combine know methods and techniques with new approaches, in other words, their actions are quite unpredictable. Investigations of cybercrimes are difficult because both users and law enforcement agencies are ignorant about cyber threats, don't really understand them or use conventional procedures and approaches. And this is why so few cybercrimes are thoroughly investigated. To better detect, investigate and prosecute cybercrime – thus making it possible for victims to get justification in court – we must first change our perception of cybercrime, then learn and be as inventive as the perpetrators. Conventional defences and investigative methods will have to be transformed, become more sophisticated and adapted to the nature of cybercrime. It's necessary to establish an equal balance between perpetrators and their prosecutors. The question is how to achieve this? Those who will find the correct answer, or at least part of it, will have a significant advantage over their competition and adversaries.

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ANALYSIS OF THE FRAUDULENT LETTERS A.K.A. NIGERIAN LETTERS

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ABSTRACT

Purpose:
Aim of this paper is to present result of analysis of numerous fraudulent messages otherwise known as "Nigerian letters".

Design/methodology/approach:
Paper is based on a literature review and semi-quantitative research. Using SPSS we have quantitatively analyzed data from a database that was compiled by the police (this is not to be mistaken for an official database) in order to explore traits of Nigerian letter frauds.

Findings:
The advance of Internet accessibility and usage caused the shift in the *Modus Operandi* of fraudsters from classic mail correspondence to e-mail correspondences, while the included stories generally remained the same. From time to time fraudsters incorporate some new ideas in the content of the letter or they develop entirely new content, which is then copied and sent out to enormous numbers of people. It also seems that these frauds have quite a resemblance and connection to other types of fraud, especially cybernetic frauds (like pilfering, phishing, or e-mail spoofing).

Research limitations/implications:
Though our research database was big enough there are some minor problems connected with it. The database is a product of the Slovenian police who intended to analyze the content of letters. Therefore because of police confidentiality issues database lacks some traceability. One would perhaps argue that the police use a methodology that is not always similar to academic one, but in this case the database possesses all the other necessary empirical attributes warranted for analysis. Finally, a clear problem is the obsoleteness of the databases that ended in 2004.

Originality/value:
As we could find no such analyses ever made in Slovenia and only limited analyses done abroad, we consider this approach new and novel. Moreover, because the content of the messages used in these letters is often the same and appear worldwide we believe that the value of the paper is widespread.

Keywords: Nigerian letters, frauds, cyber crime.

1 INTRODUCTION

While there are numerous definitions of fraud, they often share the same characteristics so one can easily speak of unified definitions. Such definitions are most often also incorporated in penal codes of countries and more or less resemble each other to such degree that they enable global, cross border prosecution (with minor expectations). They include statements regarding the illegality of the profit that was a product of trickery, deception, concealment, and so on. Frauds resemble legal economic business on one basic premise – they booth strive to maximize profit with minimum expense. This of course makes it more difficult in distinguishing fraud from normal business. Only on closer examination does the business deal revels itself as fraud, mainly due to the lack of economic logic (Lamberger, 2005).

Frauds normally fall in a so-called grey field of crime as there are rarely reported. The reason why victims do not come forward and report these crime ranges from shame, questionable money they lost, or the deal itself was questionable. Some believe that they have more chances for the return of funds if the fraudster is not in jail (Nigerian Advance Fee Fraud - U.S. Department of State, 1997; Lamberger, 2005; Tanfa, 2006; Ndjio, 2008; Ampratwum, 2009; Ross & Smith, 2011).

History has given us numerous forms of cons, financial frauds, property frauds, pyramid schemes, marketing frauds, cyber frauds and the like. One of the most well-known is the so-called Nigerian letter frauds[1].

1.1 What are Nigerian letters

The FBI defines Nigerian letter frauds as a combination of "*the threat of impersonation fraud with a variation of an advance fee scheme in which a letter mailed* (nowadays send by e-mail) *from Nigeria offers the recipient the "opportunity" to share in a percentage of millions of dollars that the author—a self-proclaimed government official—is trying to transfer illegally out of Nigeria*" (Common Fraud Schemes, 2012)[2].

[1] Name is a consequence of the fact that huge number of fraudulent letter came from Nigeria. They are also know as Nigeria scam, 419 frauds (named after a section of the Nigerian Penal Law), West African Fraud, West African Fraud Letters, Advance Fee Fraud, etc. Not just that these frauds are most know, the Nigerian fraudsters are massively involved in check fraud, non-delivery fraud, lottery, and other frauds (419 Advance Fee Fraud Statistics 2009, 2010). Despite mentioned in the title from now onwards we will use the term *fraudulent messages* as not only letters but also e-mails, instant chat messages and other forms of communications can be used and secondly because messages do not necessary come from Nigeria (Chiluwa, 2009).

[2] However, the true origin of such letter frauds can be found in 16. century in so-called Spanish prisoner scheme. In *Spanish Prisoner' con, businessmen were contacted by someone trying to smuggle the child of a wealthy family out of a prison in Spain. Of course, the wealthy family would richly reward anyone who helped secure the release of the boy. Those who were suckered into this paid for one failed rescue attempt after another, with the fictitious prisoner continuing to languish in his non-existent dungeon, always just one more bribe, one more scheme, one more try, away from being released* (Adogame, 2009, p. 554). There is also evidence that similar schemes ware done in 1840 (Onyebadi & Park, 2012). Nigerian has performed various schemes in domestic terri-

Of course, the countries named in messages from which the money is supposed to be transferred are not limited only to Nigeria. Other countries, which have a reputation of being chaotic, non-organized, in some other way troubled, are also named. Countries that are currently most often named are Iraq, Iran, Libya, Afghanistan, and other war damaged countries (419 Advance Fee Fraud Statistics 2009, 2010; Scamorama.com, 2012). In reality these messages do not always come from country that is mentioned in the message. While Nigeria and some West African countries truly are the point of origin, there are more than 69 countries from where these letter are send (419 Advance Fee Fraud Statistics 2009, 2010),[3] however the previously mentioned countries are just named as point of origin[4]. It was reported that in times when the primary mean of sending letters was still convectional post services, the tones of such letters were confiscated (Glickman, 2005; Ampratwum, 2009; Adogame, 2009; 419 Advance Fee Fraud Statistics 2009, 2010). Reasons why these fraudulent schemes are now worldwide include the idea that they demand minimum input of sources (because of the Internet and already thousands of written stories to be re-used) and that these con schemes bring fraudsters and con-artist additional gratification, such as feeling of smartness, superiority, and dominance (Tanfa, 2006)[5].

The money that is supposed to be transferred out of the country is often of dubious origin or a product of criminal activity. We could easily say that these offers are primarily offers for money laundering (Lamberger, 2005). Added to this is also an appeal for secrecy. The combination of money of questionable origins and a proposal for keeping the business deal a secret, creates a setting (Smith, Holmes, & Kaufman, 1999; Glickman, 2005; Schaffer, 2012) where naive victims really do try to "*elude local institutional or state oversight*" (Smith, 2009: 28).

Nowadays there are numerous sub-types of Nigerian letters frauds, which can be variously categorized, but the majority types of frauds are advance fee frauds. In this type of fraud, the aim of the fraudsters is to collect the money that victim

tory, but due to frequent repetitions of their stories and general modus operandi, they were easily spotted (Adogame, 2009). Nowadays known schemes received their attention in 1970 when letters ware primary send by mail to small business (it seems that they send letters to primary English speaking countries). Letters ware posted in Africa or Europe and contends of them was similar to described above (searching for "partners" who are interested in helping transfer some money out of the country) (419 Advance Fee Fraud Statistics 2009; 2010). It seems that nowadays they simply target anyone that is on-line.

3 See also Longe & Osoisan, 2011.

4 See the Ultrascan Research Services, (an international research organization) report for more data regarding countries from where fraudsters operate, or data regarding damages. From that report, it is seen that Spain, USA, UK; Ghana and China are countries (beside Nigeria that is still primary country) from where most fraudsters' rings and members of rings originate (419 Advance Fee Fraud Statistics 2009; 2010). Mayko, (2010b) describes a court case, where Nigerian national arrived in the USA under the pretence of marrying a USA citizen (who he met online), but was letter involved in number of advance fee frauds, that ware acted out with help of his partners that remain in Nigeria. He also sent them number of IT appliances for enabling them easer frauding. The fact that he was a USA resident also enabled them to fraud people easer.

5 See Tanfa's, (2006) work for application of other criminological, psychological, and sociological theories in reasoning why these crimes are committed.

gives voluntary believing it's "*an upfront payments for goods, services and/or financial gains that do not materialize*" (Advance fee fraud, 2012). The following Figure 1 shows a life cycle of a classical Nigerian letter fraud.

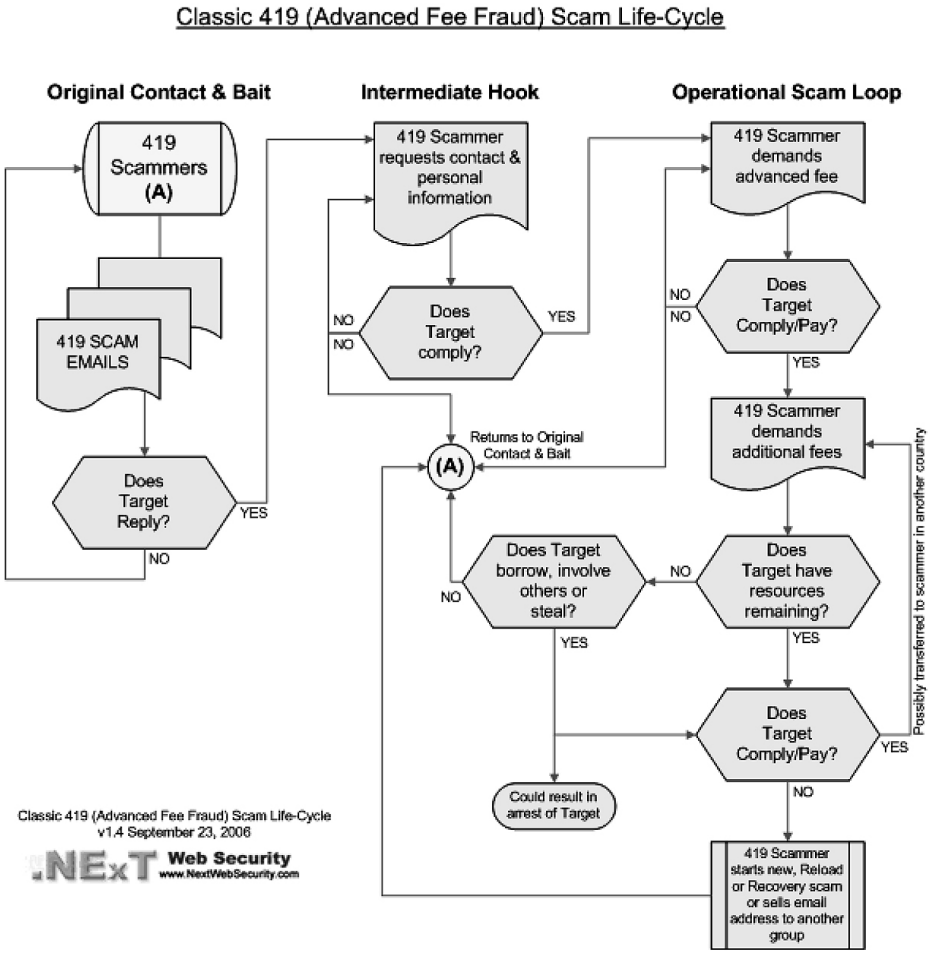

Figure 1: Nigerian Letter fraud lifecycle (Source: 419 Nigerian Advanced Fee Fraud Scam Lifecycle, 2012)[6]

Company letter heads, bank forms and other information that fraudster inquire in the correspondences is often used in future frauds (Wells, 2004; Tanfa, 2006; The 411 on 419 Fraud Schemes, 2007; Schaffer, 2012) and to give the impression that the letter is a true business proposal (Wells, 2004; Chawki, 2009; Onyebadi & Park, 2012). Fortunately, the private information and bank data, which fraudsters often inquire about in their messages, makes at least some of the recipients

[6] See Evans, (2005) for a good example of how the story and communication between fraudsters and their targets develops, by fraudster application of what could be said is mile form of social engineering and other con artist "reading the mark" methods.

more skeptical and guarded. On the other hand, the information that fraudsters do get can be used in attempts to clean out the victims' bank accounts or other forms of identity thefts (Chawki, 2009; West African letter fraud, 2012).

1.2 Fraudulent messages and their impact

There has been much attention devoted to these frauds due to their mass emergence and subsequently huge damages that these frauds have caused. Quantitative analyses of fraudulent messages seem to be a popular activity, conducted by academic and non-academics worldwide. Some analyze it in frames of grammar, storytelling, and linguistics (Cruickshank, 2001; Blommaert & Omoniyi, 2006; Schaffer, 2012; and others). Some even engage in playful correspondence making fun of the fraudsters and trying to turn the tables –this is called "scambaiting" (Damon, 2004; 419 Baiter, 2007; Rosenboum, 2007; The Nigerian Letters, 2012; 419 Eater, 2012; Scamorama.com, 2012)[7]. Products of such humorous corresponded writing have been even transformed to stage plays (Long, 2007). Approaches that are more academic include analysis of the cultural, sociological, legal, and economical frames of reference (Smith, 2001; Salu, 2005; Oriola, 2005; Adogame, 2009; Chawki, 2009; Ampratwum, 2009; Igwe, 2010). Smith (2009) has analyzed them in their cultural and sociological context. By doing so, he gives us a rather plain yet to all accounts true view of the reasons, motives and some modus operandi of these frauds, all deviating from the simple mutually activity "*...contemporary media coverage of the continent: economic and political disarray, rampant looting and corruption, desperate attempts to evade poverty.*" (ibid.: 33).[8] Media converge is used by fraudsters to paint the context and to persuade foreign victims. The better and more frequent the media coverage the more the picture of delinquent Africa is seen as real. In the end the very same fraudulent acts represent the final piece of the picture, further backing the stories that they first set up, except today they will be used on future victims. "*419 spammers both depend upon the chaos of the postcolonial state and contribute to the widely accepted perception of Nigeria and West Africa as rife with illegality*" (Zook, 2007: 78). Chang, (2008: 77) also shares similar believes "*fraudsters exploit the heuristic "seeing is believing" by presenting partial facts*[9] *to mask the fraudulent components of the mes-*

[7] However, some of these so-called scam-baiters ware seriously criticized for their racist behaviour (Zook, 2007; Rosenboum, 2007).

[8] Igwe (2010) claims that unemployed graduates ware first to take advantage of the bad situation in Nigeria. Unallocated funds, over-invoiced contract, corruption everywhere, etc ware a reality for Nigerian political and economic elite, however only corrupt and few have profited from it. Domestic newspapers reported about such deals and clever graduates mimicked the stories, without actually having any funds. Likewise Salu (2005) and Dixon (2005) also state that unemployed students with their knowledge ware used for scheming. While almost all authors (Smith, Holmes, & Kaufman, 1999; Tanfa, 2006; Zook, 2007; Adogame, 2009; Smith A, 2009; Ampratwum, 2009) and some scares testimonials (Delio, 2002) acknowledge, that mid 1980' collapse of world oil prices and therefore Nigerian bad economic state is to be blamed.

[9] These facts are for instance news about plane crashes, traffic accidents, natural catastrophes, actual bank/firms employees, etc. (Blommaert & Omoniyi, 2006; Chang, 2008; Mayko, 2010c; Freiermuth, 2011; Dead Bank Customers, 2012).

sage". Other heuristics that fraudsters abuse is when people make a positive/negative decision by mimicking behavior of a well-established person (like lawyers, doctors, and other professionals) or these persons give positive/negative proposals, claims, and supporting information for the decision (ibid.). They also use a so-called *the representativeness heuristic*, where people make biased decisions because the highly detailed messages appear to them as genuine (Chang & Chong, 2010). Freiermuth, (2011) in his analysis finds similar results indicating that fraudsters use well-popularized information (about Nigeria, other countries and other matters) to make the narrative of the message more credible. He also notes that there can be found some notions of reverse psychology in the messages (ibid.), while Onyebadi & Park (2012) note that messages are sometimes written in such manner that they shift the claim for trust from sender to the recipients[10]. Alternatively, these fraudsters use trust for propping the appeal (Dyrud, 2005)[11]. Analyses done by Cukier, Nesselroth and Cody (2007: 2) revels that fraudulent messages use language that "*seeks to mask indiscriminate solicitation with language that creates an illusion of intimacy, sincerity, and urgency*". Combining the questionable origin of the money (Lamberger, 2005), appeal for secrecy (Glickman, 2005; Schaffer, 2012), incorporating real events and statuses of the mentioned countries (Zook, 2007; Chang, 2008; Smith, 2009; Freiermuth, 2011) and the notion of urgent response (Tanfa, 2006; Chang, 2008), can in some provoke the application of such heuristics, while in others actives "it's too good to be true heuristic" (Chang, 2008). When exploring the reasons why people still fall for this well published, popular and well discussed *to good to be true* scheme, aspects of greed, capitalism and hope of turning luck are most mentioned (Lamberger, 2005; Glickman, 2005; Dixon, 2005; Dyrud, 2005; Tanfa, 2006; Peel, 2006; Cukier, Nesselroth, & Cody, 2007; Ndjio, 2008; Smith, 2009; Mayko, 2010c). Freiermuth (2011) states that those that are more greedy are also more easily persuaded in to the deal as they believes that they have an "upper hand", being smarter and more clever than the senders of messages because they consider Africans to be less educated (in comparison to them). Spelling errors in the messages seem to support these beliefs of lack of education, however these can only be a clever trick of the fraudsters (Glickman, 2005; Kovačič et al, 2010; Peel, 2006; Ndjio, 2008; Freiermuth, 2011; Onyebadi & Park, 2012). In an interview with ex-fraudsters by Delio (2002), it is clear that narratives of the messages are aimed to "*evoke someone who is "educated, upper-class, out of touch with the common people*". More easily tricked are extensive religious people, as they are more gullible and "*sincere Muslim or Christian will often open his door to anyone who claims to be a 'brother' or 'sister'. Hence, the hoax e-mail writers exploit this opportunity*" (Chiluwa, 2009: 644). Similarly Dyrud notes (2005) that

[10] For instance, the often write "*Can I trust you... / ...not betray us... / I can totally rely on...*" (Freiermuth, 2011; Onyebadi & Park, 2012).

[11] Dyrud (2005: 7) lists following examples: "*I am trusting you with my money" / ". . . I therefore need a honest, trustworthy and reliable assistance of a foreigner. . ." / ". . . trusting in you and believing that you will never let me down now or in the future.*"

several messages, that she analyzed, use appeals to religion, sympathy and pity. Signs that fraudsters abuse victims altruistic notions were explored by Ross and Smith, (2011, p. 4); they noted that *"victims of other advance fee scams said that they wanted to make extra money, obtain something they were entitled to receive, or take advantage of a unique offer. Victims of dating and charity frauds never nominated these reasons. Instead, they said they wanted to help out the person seeking their assistance or to support their relationship with the person"*. When the first barrier is breached and the person becomes involved and exploited, there comes in play the so-called "Concord effect",[12] where victims impute more and more money as they already have invested some funds and have an interest to receive some compensation or even profit finally (Chang & Chong, 2010). Moreover, people are always unwilling to stop sending money, as that would "*involve an admission of defeat and loss of the money"* (Peel, 2006: 4)[13]. In similar fashion some authors believe that older people are more often continuously defrauded, because firstly they have desires for some social interactions (because often are socially neglected) and secondly, they do not want to "fail" the perpetrators expectations because that would be rude and offensive (Kovačič et al., 2010). In the end it seems that composers of these messages are just great at social engineering (MSNBC, 2005, quoted in Dyrud, 2005).

1.3 Damages of fraudulent messages

Some individuals or organizations have establish high quality web pages, databases and other similar structures that aim to protect and inform potential victims of such frauds. On such debates you can find names that are used in letters, names of companies used, victim stories, examples of letters, etc. (Nigerian Frauds, 2003; Think Jessica, 2012; Nigerian Scams, 2012; Nigerianscams.org, 2012; ScamLetters.com, 2012; thescambaiter.com, 2012; 419legal.com, 2012). Despite this enormous attention, it is still worrying how much damage these frauds produce. Ultrascan Research Services has for some years now investigate the accumulated data regarding Nigerian letter frauds and in their conclusion they have stated that these types of scams are the world's most successful scams with 41 billion US dollar in damages (9,3 billion just in 2009) and millions of victims (419 Advance Fee Fraud Statistics 2009, 2010). Yet the same organization argues that reliable statistic on these frauds are unavailable as countries though having penalized different frauds, don't have a special category for Nigerian letter frauds; these then fall under the rubric of other frauds (credit card frauds, auction frauds, lottery frauds, etc.) (419 Advance Fee Fraud Statistics 2009, 2010).

[12] Effect named after the airplane project by the French and British Government, which invested more and more funds, event thug it was evident that the project will not be successful, as they have hoped (Robertson, 1999, quoted in Chang & Chong, 2010).

[13] See also Tanfa, (2006).

It needs to be said that legal entities are also being targeted and defrauded as well (Beaman, 2004; Oriola, 2005; Peel, 2006)[14]. Furthermore, due to various forms of scammers, victims could be prosecuted as they actually (knowingly or non-knowingly) engage in criminal behavior, such as money laundering, tax evasion, possession of stolen goods, gaining illegal funds (Smith, Holmes, & Kaufman, 1999; Edelson, 2003; Beaman, 2004; 419 Advance Fee Fraud Statistics 2009, 2010). Many authors also report about loss of life, when victims were lured to Nigeria or death was a consequence of frauds, revenge, anger, despair (Nigerian Advance Fee Fraud - U.S. Department of State, 1997; Mbakwe, 2001; Edelson, 2003; Tanfa, 2006; Zook, 2007). In the end we must also consider that high amounts of effort and a lot of time is spend by law enforcement agencies (some even have special departments for investigating these crimes), post services and other legal and civil entities (Edelson, 2003).

What is done to prevent and to investigate such crimes in the view of law enforcement? Due to the transnational characteristics of these crimes there seems to be worldwide pressure aimed at the Nigerian government and enforcement agencies. A number of legal acts were created and amended over time. All mentioned *lead to* and *actually enabled* the establishment of the Economic and Financial Crimes Commission (Chawki, 2009; Economic and Financial Crimes Commission, 2012). However, Oriola (2005) warns that the Commission has been given too many responsibilities that could hamper its effectiveness as it lacks manpower. Secondly, there are attempts for using or developing IT approaches to combat spam and e-mail, thereby containing advance fee fraud schemes (Edelson, 2003). Holt and Graves (2007) excellently point out that the e-mails that get through such spam filters are more successful in reaching possible victims.

2 ANALYSIS OF LETTERS

When people realize that they were cheated or are reporting the cases on mere suspicion, in majority they report it to the police, prosecution, or other institutions that deal with the protection of customers or financial monitoring (Lamberger, 2005). The Slovenian police has in the period from1999 to 2004 created a database of cases that resemble the Nigerian letter frauds. It must be warned that this *is not* an official database but a form of additional base that includes extracts from the letters (such as name of the sender, telephone number, amounts of funds and the like). The database was created for analyzing some trades of Nigerian letters frauds. In that time 536 cases ware included in the database from which this analysis was conducted.

[14] While among non-legal entities, it seems that older people - senior citizens more often succumb to these types of frauds (Mayko, 2010a). While Ross and Smith (2011) argue that age groups varies from study to study and it seams to the sub-type of advance fee fraud. At least as for USA goes men are victims more often than women (2008 IC3 Annual Report).

2.1 Data and Methods

The database consisted from 536 reports of fraudulent messages that were reported to the police. Information that was included was the date, name of the sender, sender's contacts, the companies in which the sender was supposedly employed, the percentage to be earned and the total amount of money that is in play. The database also included the name of the message receiver, however due to the classified nature of such data this variable was then recoded to only be seen if the receiver was a legal entity or natural person, while addresses ware recoded to only include area codes.

We also had eleven messages attached as an example from that era that we analyzed it in more qualitative manner.

2.2 Quantitative Analysis the police database

First we wanted to find out if the time of receiving a message has any importance. We have analyzed the frequencies regarding day of the month (to see if fraudsters send messages for times when paychecks' are received) and month of the year (if special periods, like winter when more people are at homes or holidays where also more people are at home and there is more mail sent – to mask the letters, as was mentioned that customs was examining letters). There was no specialty. As seen from the Figure 2 there were more messages send in November and February although we did not find any reason behind it. Because there is only a small increase and because letter are send from numerous countries we do not believe that the time messages were sent has any practical significance.

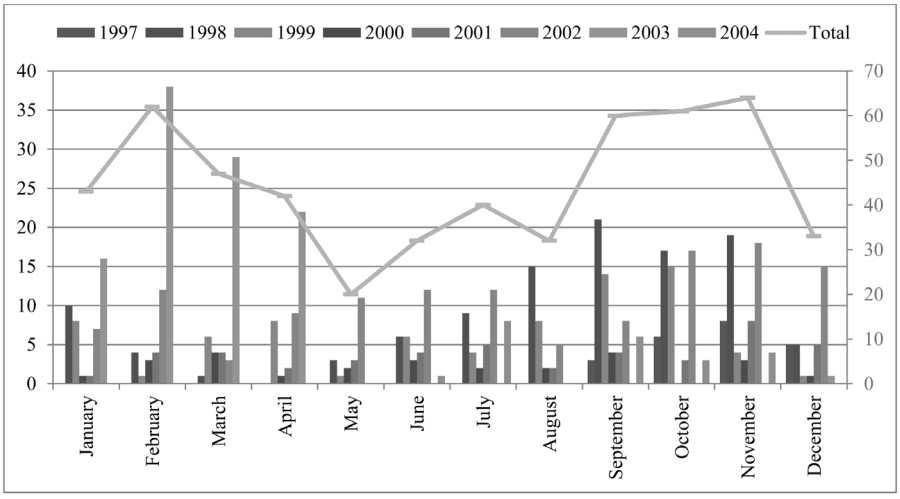

Figure 3: Frequencies in which month of the year was received/reported/ inputted

When exploring the number of messages send per year (Figure 3) we notice that the trend is somewhat oscillating, but as the database was stopped in early 2004, the trend cannot be confirmed.

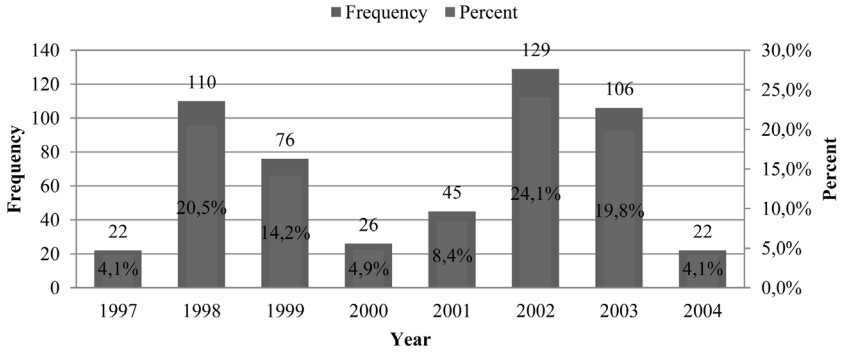

Figure 4: Frequencies of letter per year

We must make a note that decrease does not mean that there were less messages sent and therefore less victims or corresponding damage. This is the number of messages that were added to the databases.

When examining the names that were used there also are no specialties. There are numerous names used, several repeated multiple times, but no one more than seven times. Used names are often compounds of English names and African names. Our findings are summarized in Table 2.

Table 1: Some frequencies regarding in messages used names

Basic info of sender used names				
Unique names	Repeating names*		Missing	Total
450	86		0	536
Length of names**				
Name / surname	Name + Surname		Name + Middle name + Surname	Total
2	390		58	450
Sound of names***				
All western name	Western name - African surname	African name - Western surname	All African name	Total
39	187	44	180	450

* There several occasions that the names are almost the same, e.g. "Hajaia Mariam Abacha & Hajia Mariam Abacha / Idris Garba & Idris Garuba, etc. As SPSS is extremely precise any difference is counted as independent observation.
** It must be warned that names like Prince Robert, Prince xy, etc. are counted as "name + surname", even dough the surname was not actually given.

*** Sound of names instead of meaning of names or any other description of these set of variables is used because we believe that fraudster have a desire to emulate western or know names but are (non)deliberately typed wrongly. Example being "Chukwubeze Christoper, Patrik Gozie, Randey Mour". Also it must be said that classifying the names was made instinctive and we cannot vouch that all names that we group in certain group do actually belong there, especially when there are names like "Clif Omega, Lucki One, Maaxwel Kachi, Prince Maxwell". Some scholars with knowledge in these filed could research this in proper detail.

As mentioned previously the sender of the names often titles himself with degrees of doctors, lawyers, royalty, and the like. There is a custom that elite names often include family heritage (example: name+ surname + "*III / the third / Jr.*".) so we wanted to know if senders also apply these schematics. It was found that not all names include "elitism" and some are "plebeian" in nature. What could be in consistent with the literature is setting context that fraudsters try to create. The mixture of Western and African names gives an impression of educated, upscale individual who sent the message. This is one persuasive technique. On the other hand, the misspelled names give the impression about non educated persons sending these messages to people (victims to be) who may believe that they have an advantage in the proposed deal, this being a second persuasive technique.

Names of the companies that are used are also very diverse the ones that are prevailing are seen from the Table 3.

Table 2: Five most often used names of the companies that in fraudulent letters

Company*	Frequency	Percent [%]
Nigerian Nacional Petroleum Corporation	201	37,5
Petroleum Special Trust Found	26	4,9
Nation Electrical Power Authority (Nepa)	22	4,1
Federal Goverment Contract Review Panel	19	3,5
Cental Bank Of Nigeria	15	2,8

* Here, names are typed as they appear in the letters spelling errors are made by fraudsters.

In closer inspection, we noticed that some companies have extremely similar names (or were just spelled differently). There were approximately 45 occasions where no company was named. In such cases there is reason to believe that the money came from a private owner, or fallen dictator. When grouped by basic commonalities' the name of the companies we have the following results (Table 4).

Table 3: In what branch are named companies

Branch	Frequency	Percent [%]	Examples*
Oil / Petroleum	249	46	Nigerian Nacional Petroleum Corporation / Petroleum Special Trust Found / Beagon Oil Ltd / Special Adviser On Petroleun Matters
Bank	68	13	Cental Bank Of Nigeria / Diamond Bank Of Nigeria
In connection with Government - Abuse, Misuse Etc.	67	13	Federal Goverment Contract Review Panel / Federal Ministry Of Aviation / Federal Ministry Of Health And Social Service
Energy & Mining	41	8	Nation Electrical Power Authority (Nepa) / Siera Leone Diamond Milling Coropration / Ministry Of Energy And Mineral
Other Industry	9	2	Ajaokuta Steel Plant / Cooperative Agricultural Societies / Nigerian Bar Association
		Relative 7 1	Son Of Kabila / Son Of Julisu Nyerere, Tanzanija / Widow Of...
Not Classified by us	50	9	Black Farmer Of Zimbabwe / Inec / Feoma&Associates / Nigerian Chambe Of Commerce And Industries
Company Not Named	45	8	
Total	**536**	**100%**	

* Here, names are typed as they appear in the letters spelling errors are made by fraudsters.

In more than 90 % of the cases the receiver was a legal entity, a company, or institution of the public sector. We believe that there are many unreported cases from private residents, due to previously mentioned reasons.

As suspected the majority of the messages were send to addresses in our biggest cities. More than half of all letters were sent to our capital Ljubljana, other big cities followed but with no more than 10 percent of messages. In the reported cases such message were sent to a range of locations from small villages to the capital.

Offers that were included in the letters speak of millions of dollars, and commissions promised for those who are ready to get involved range from five to sixty percent with an average of 25 percent.

Table 4: Some cross-referencing and interpretation

	With repetition		Missing		Total		Without repetition*	
Letters where there was a	n	%	n	%	n	%	n	%
A sender	536	100,00	0		536	100,00	450	83,96%
A telephone number	408	76,12	128	23,88	536	100,00	288	53,73%
An e-mail	47	8,77	489	91,23	536	100,00	42	7,84%
Total contacts	455	84,89	81	15,11	536	100,00	330	61,57%
A company	491	91,60	45	8,40	536	100,00	115	21,46%

Some cross-referencing**	**No**	**#*****	**Meaning**
Telephone numbers x Senders	408		
Unique telephone number	287	51	Senders use several different names, but the same number.
Unique senders	338		
E-mails x Senders	47		
Unique e-mails	42	2	Senders used the same name but different e-mails. Example: name used was "BayoAfolabi"and the e-mails ware: bayoafolabi@box.ms; bayoafolabi@bax.ms
Unique senders	40		
Telephone numbers x Companies	397		
Unique telephone number	278		Here can be seen that number of messages that included telephone no. have not named any company. This are then probably scams that involve wills, black money scams, etc.
Unique companies	63		
Mails x Companies	33		
Unique e-mails	29	2	Same named companies used different e-mails. Can also mean different fraudster.
Unique companies	27		

* Because some messages inputted in the database ware actually the same, but received by different people/companies, we in the cross-referencing included only one sample.

*Here, we used SPSS function to examine in how much cases one variable is connected to another variable. Only cases where both variables ware present ware taken in calculus (number=No).

*** In the ideal case (if the name, phone, e-mail, etc) would be used only once then there would apply nx – ny = 0 (nx: number of unique "x" variables; ny: number of unique "y" variables). In any other cases (nx – ny ≠ 0), then some variables are appearing in conjunction with several other ones.

Over time messages including telephone numbers declined as seen from Figure 4.

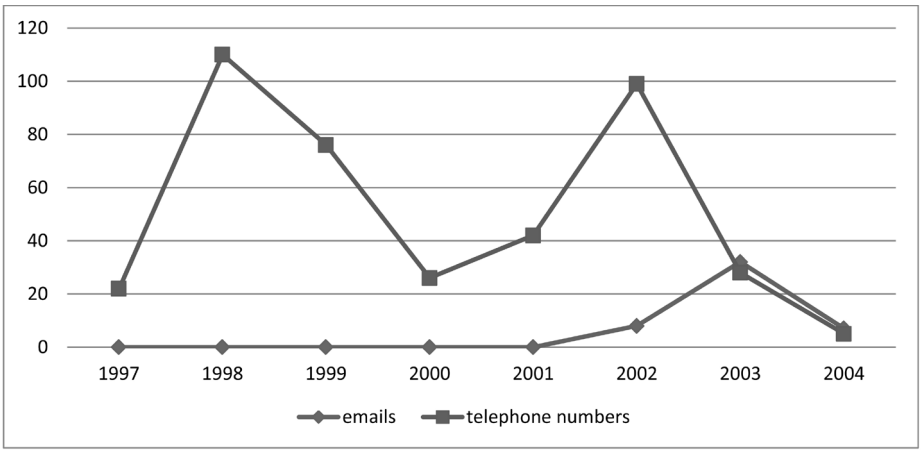

Figure 4: What was included in the message

When analyzing telephone numbers, by extracting the first three numbers that revel the country code (Table 6) we have noticed that the majority of numbers really do originate from Nigeria, but this trend has slowed. It is interesting that there is also one Slovenian number.

Table 5: Analyses of calling codes

Calling code	Country / Year	1997	1998	1999	2000	2001	2002	2003	2004	**Total**
234	Nigeria	22	106	60	13	20	42	13	0	**276**
278	South Africa	0	0	5	6	13	10	1	2	**37**
316	Netherlands	0	0	0	1	1	11	6	0	**19**
871	Inmarsat (Atlantic East)*	0	0	0	1	5	9	0	0	**15**
225	Ivory Coast	0	2	0	0	0	5	2	1	**10**
277	South Africa	0	0	0	0	3	5	1	1	**10**
271	South Africa	0	0	5	3	0	0	0	0	**8**
873	Inmarsat, Indian*	0	0	0	0	0	5	1	0	**6**
346	Spain	0	0	0	0	0	4	0	0	**4**
874	Inmarsat, Atlantic West*	0	0	0	0	0	2	1	0	**3**
228	Togo	0	0	0	0	0	2	0	0	**2**
229	Benin	0	0	0	0	0	0	2	0	**2**
233	Ghana	0	0	0	1	0	1	0	0	**2**
243	Congo (Kinshasa, formerly Zaire)	0	0	1	0	0	1	0	0	**2**
442	United Kingdom	0	0	2	0	0	0	0	0	**2**

Calling code	Country / Year	1997	1998	1999	2000	2001	2002	2003	2004	**Total**
150	America	0	0	0	1	0	0	0	0	**1**
177	America	0	1	0	0	0	0	0	0	**1**
220	Gambia	0	1	0	0	0	0	0	0	**1**
222	Islamic Republic of Mauritania	0	0	0	0	0	0	0	1	**1**
273	South Africa	0	0	1	0	0	0	0	0	**1**
386	**Slovenia**	0	0	0	0	0	1	0	0	**1**
496	Germany	0	0	1	0	0	0	0	0	**1**
669	Thailand	0	0	0	0	0	1	0	0	**1**
971	United Arab Emirates	0	0	0	0	0	0	1	0	**1**
121	America	0	0	1	0	0	0	0	0	**1**
Total		22	110	76	26	42	99	28	5	**408**

* Only active to 2008.

When analyzing e-mails, we were interested in the domain from which such messages were sent (Table 7). There are no specialties here. A number of message providers were used, and domains and suffixs almost never match with names of the companies.

Table 6: Suffix in received e-mails

GO.COM	5
YAHOO.COM	3
CARAMAIL.COM	2
ECPLAZA.NET	2
HOTMAIL.COM	2
LATINMAIL.CO	2
NETSCAPE.NET	2
VOILA.FR	2
YAHOO.CO.UK	2
ZWALLET.COM	2
BAX.MS	1
BOX.MS	1
DCMAIL.COM	1
ECPLAZA.COM	1
EUDORAMAIL.	1
HKETMAIL.COM	1
INDIATIMES.C	1
JUNO.COM	1
JUNO.COM2341	1
MAILCITY.COM	1

MAILXPRES.CO	1
MAKIL.COM	1
OFFICELIMITE	1
ONDIKOI.COM	1
PHANTOME-MAIL	1
QUICH.CZ	1
REDIFFAMAIL.	1
SIFY.COM	1
TOTALISE.CO.	1
TRUTHMAIL.CO	1
VOLIA.FR	1
ZAGO.COM	1
Total	46

Because the database is obsolete we have decided to re-examine the basic information in view of newer occurrences. We first conducted a primary frequency analysis of the variables in the database. We then searched the sender name used, the company names used, and e-mails in online fraudulent letter databases that are run and kept by volunteers. We also used Google for searching for examples of *when* and in *with what contexts* has the name from our database reappeared. Results are shown in Table 8. We have noticed that stories do reappear and so do the names, although not often in the same format.

Table 7: Old names in new letters

Random 20 names from 1998-2004	post 1998-2004 appearance	Most recent year	Same story	Same contacts
HENRY FASOYA	yes	2007	no	no
MORENIKE WILLIEMS	no	/	/	/
ADU KOJO	no	/	/	/
RICHARD KINGSLEY	no	/	/	/
BEN USENI	no	/	/	/
AMADI - N -KOLLINS	no	/	/	/
EDGAR HABIB	no	/	/	/
IGE MATHEW	no	/	/	/
LUKE IKEH	no	/	/	/
ISHMAN KOLO	no	/	/	/
JULIUS ORIAKU	no	/	/	/
DOSSO KOUSASSI	no	/	/	/
CECIL CHUKWUDEME	no	/	/	/
MUSTAPHA IBRAHIM	yes	2011	no	no
USMAN AHMED	yes	2012	no	no
NZANGA MOBUTU	yes	2008	no	no

Random 20 names from 1998-2004	post 1998-2004 appearance	Most recent year	Same story	Same contacts
SAM BELO	no	/	/	/
WILSON UBA	no	/	/	/
PETER BELLO	yes	2009	/	/
MIKE BRIGGS	As Mike - no, however there are several messages where Michael Briggs appear, however contacts cannot not be cross-referenced.			

3 DISCUSSION AND CONCLUSIONS IN VIEW OF POLICING

Our literature review and analysis show that fraudulent messages are a type of transnational organized crime. Despite the fact that they can be a product of a single individual there are more reasons to believe that there are numerous networks that commit such frauds. In favor of these claims are several indications. Examples include when victims are naive enough that they travel to meet a fraudster personally and are often greeted by faked "governmental staff in governmental offices", "banks" or other elite locations (Buchanan & Grant, 2001; Delio, 2002; Wells, 2004; Salu, 2005; Dixon, 2005; Glickman, 2005; Tanfa, 2006; Ross & Smith, 2011). Such creations demand organized groups of several accomplices. In addition, cooperation in the form of technology aid, and the forwarding of letters between migrated culprits and his/ her accomplices back in country of origin (Glickman, 2005; Tanfa, 2006; Mayko, 2010c), also indicate transnational organizations. Therefore, we concur with other authors that state that these crimes should be perceived as transnational crimes (Adogame, 2009). Going a step furtherer, there is a debate that drug traffickers and others are linked to fraudulent messaging and vice versa – yet there is a lack of empirical data to firmly support such claims (Smith, Holmes, & Kaufman, 1999; Smith D. J., 2001; Edelson, 2003; Glickman, 2005; Tanfa, 2006; Peel, 2006; Ndjio, 2008; Gastrow, 2010).

As majority of frauds are nowadays conducted with the help of the Internet indicating that cyber preventive measures must be further developed. Spam filters do block certain e-mails, and as large numbers of victims remain it seems that these spam filters have extremely limited effects. Technology companies have in certain cases established cooperation with law enforcement agencies and are developing investigative and preventive approaches (Harvey, 2009). However, cybercrime departments around the world who are most often tasked with among other things fighting fraudulent messages are still understaffed, and under financed (419 Advance Fee Fraud Statistics 2009, 2010), while financial institutions that actually enable the transfer of funds from victims to fraudsters are only seldom blamed as "in light of their purpose and capitalistic nature" and are therefore just "unfortunately" misused as a means for the fraudsters.

There seems to be a constant development of fraudulent schemes. We see one of the major dangerous in the fact that there are emerging mixtures of different types of frauds. Not so long ago one could more or less easily identify a Nigerian letter fraud due to the fact that the letter actually came from Nigeria or similar country, with contend for asking for a small fee that will bring huge profit. Nowadays, one can rarely identify the country of origin of an e-mail or recognize the content of messages to be fraudulent, as the fraudsters are able to incorporate newer technologies and abuse legitimate logos and other data of known and widely disperse companies. Companies and institutions whose logos were abused include Canadian Post, the United States Department of Agriculture U.S. Department of Transportation, UN, and other research and science organizations, NGOs and similar institutes and many others (Newman, 2008; 419 Advance Fee Fraud Statistics 2009, 2010; Tips for spotting fraudulent solicitation letters, 2012; USDA Warns of Fraudulent Letters, 2012; U.S. Department of Transportation, 2012; Science and Technology Meetings - Fraud Meeting Announcements, 2012; Monitoring fraudulent announcements, 2012; Tovrov, 2012).

Some fraudsters are even bolder and send messages in the name of law enforcement agencies like the FBI (Nigerian Letters: Scam Letter Archive, 2008; 2011 IC3 Annual Report). We could easily say that this is a form of phishing, while Peel (2006) states that there is reason to believe that Nigerians will take other form of cybercrime as well. Adegbite (2008: 23) on the basis of experience, trends and current intelligence also foretells that "*the current scam pitches, which appeal strongly to the victim's sense of greed (scams involving contracts, fund transfers, black money, inheritances, lotteries, precious stones and crude oil) will shift to emotional ones (scams involving pets, charities, religion and romance). Operational bases will most likely shift to Europe and North America to give prospective victims a false sense of security ('Nigeria' will not feature at any stage of the scam). Also, law enforcement in these jurisdictions focus mostly on violent crimes. AFF [advance fee fraud] scammers will acquire more knowledge and become more technologically sophisticated in carrying out major intrusion attacks to obtain account information on their own, instead of relying on other crackers and hackers. Spoofing and phishing attacks will increase with the recent introduction of e-payment systems in Nigeria and as scammers gain more experience.*" A resembling abuse of technology will probably be done in the future where phones, table PCs, and similar smart devices will be targeted and frauds modified to suit them. Social networking sites that are extremely popular worldwide are already being used by fraudsters (Nigerian Scam 2.0 Targets LinkedIn and Other Social Networking Sites, 2008). One other thing that we believe is also helping fraudsters, and they do not even know that it does, is that there are a number of legal games, prize draws, sweepstakes, like the one of Reader's Digest making it difficult in distinguishing those from the similar but illegal offers, especially for older or naïve persons. Alternatively, maybe those games as well should be illegal, as some countries have made them (Big money, big confusion, 2009).

Discourse in the view of policing or law enforced narrows to two basic principles; a preventive one, and an investigative one. While prevention more or less "*boils down to the homely admonitory maxim that 'if it seems too good to be true, it probably is' and these "formula" are not confined to official public advisory material*" (Smith, 2009: 29). No methods other that providing and conduction as much awareness as possible is currently seen as effective. The problem escalates when there are dating scams in play, where predispositions toward too-good-to-be-true are emotionally blurred as "*the fraud is based on the development of a 'romantic' or other personal relationship that may initially appear to be harmless*" (Ross & Smith, 2011: 5). Though spam filtering has reduce the number of messages that individual receives, this spam / fraud filtering and detection must be further developed (Edelson, 2003; Kerremans, Tang, Temmerman, & Zhao, 2005).

As prevention goes, we can say that in regard to past trends the content of newly emerging messages will include countries that will be at war, the newly disposed dictators, and similar motives. Where the next crisis will appear there will be "fortune to transfer", an idea that preventive policy developers could bear in mind. Tanfa (2006) reports that primary crime prevention simply includes disregarding the fraudulent messages to stop corrupt behavior of African leaders. Secondary prevention identifies business people being at higher risk for victimization so prevention could include methods to improve awareness, while tertiary prevention in the case of advance free fraud is also successful in preventing such frauds. But these may present a problem as it includes successful prosecution of fraudsters, which in most cases are "out of reach" as they are in another country under another jurisdiction.

The monitoring of transactions that are done through high-risk countries is good way to identify (potential) victims (Ross & Smith, 2011). Similarly the monitoring of certain activities in Internet cafes and call tracing could be useful (Tanfa, 2006).

Investigative approaches are more pretentious. These are cross boarder crimes and there is often a lack of cooperation with money transfer agencies (like Western Union) as none of the "*these show a self-cleaning ability to prevent theft from their clients nor do they thoroughly check their agents for criminal intent or taking part in scams"* (419 Advance Fee Fraud Statistics 2009, 2010: 14). There is also a need for better cooperation of investigative agencies and banks (Peel, 2006). Investigators favor the socio-economic fact that in Nigeria (where still the majority of frauds originate) and where then common population is discontent will quickly enriched fraudsters (Smith D. J., 2001). Unfortunate there are sometimes these fraudsters even admired for their cleverness and success (ibid.) or they use illegally gained funds to improve Nigerian (or other) quality of life (Peel, 2006). In every case these wealthier men and women easily stand out and investigative agencies could use this information about quickly accumulated wealth as sign of

suspicion. Identifying a person merely in cyberspace or through the use of online data has a downside as the names, addresses and other information that fraudsters use in these schemes can be a product of identity theft (Tanfa, 2006) and could lead investigators to the doorsteps of unsuspecting victims. Unfortunately, there is still wide-spread corruption very much present in Nigeria (Smith D. J., 2001; Igwe, 2010) and some police officers are actually not just letting fraudster away (Tanfa, 2006), but fraudsters work for them (Igwe, 2010). Due to the transnational nature of these crimes international police cooperation is way to curb these crimes (Aldred, 2008).

Legislation being the ground point for every law enforcement proceeding in cases of fraudulent messaging not so feeble. These crimes can be investigated and found culprits can be prosecuted under the rubric of many subtypes of crimes that always present part of fraudulent messaging. Moreover, response legislation is being developed and amended with over time (Oriola, 2005; Akinladejo, 2007; Chawki, 2009). But it would be wise to take note that "*Failure to properly classify 419 crimes as 419 crimes distorts any attempt to maintain even moderately useful statistics on the incidence of 419 fraud, minimizing the magnitude and omnipresence of 419 crimes attempted and committed*" (419 Advance Fee Fraud Statistics 2009, 2010). Also for consideration is Peel's warning (2006) that there must be an acknowledgment of the seriousness of such frauds, they should be openly spoken of and warnings must be made public. In short all of this must be taken more seriously.

In the light of the present so-called economic crises where there appears to be enough money for the upper standard and normal consumerism, and where there is a small but constant increase of unemployment and downsizing of salaries one must asked the question: will these matters affect the present and future frauds? More and more people will seek alternatives to make means perhaps by becoming easy targets for fraudsters. Occurrences of some types of Internet frauds have already increased because of the tough times (Lipka, 2009). Maybe even more worrisome is that in the face of losing hope for employment, educated and technological skilled youth will seek survival profit in immoral and unethical acts. Something that many authors agree on is that this t has happen in Nigeria and elsewhere (Delio, 2002; Ndjio, 2008; Igwe), and what Ndjio, (2008) sets this apart from being merely a reinvention of global capitalism, where ethic and morality of "business" became a part of the past. We do not know if the future is really so grim, yet we do know that the times in which we live, are fertile grounds for frauds. One can easily be targeted and one can easily go down the only way that has remained, that is pampering his or her conscience: as our elite does it too!

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MOBILE DEVICE USAGE AMONG YOUTH AND INFORMATION SECURITY

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ABSTRACT

Purpose:
Because of all the technological advancements in the recent past, mobile devices, which are easy to use, have now become a significant element in digital communication processes. Uninterrupted accessibility and the possibility of data exchange are the basic characteristics drawing youth to mobile devices. Information security and responsibility are key elements of mobile device usage. It's important that users are aware of and informed about both threats and the available protective solutions. A higher level of information security can be reached only by informing and educating mobile device users. Only knowledge can balance out the effects of information threats and create the necessary level of security.

Methodology:
We made a descriptive analysis of the available and relevant scientific literature in this field. The survey was conducted with the help of an online questionnaire about how well users (university students) are aware of the different security threats to mobile devices. Their responses were analyzed by statistical methods.

Findings:
Youths aren't well acquainted with the workings of their mobile devices and software. Members of the surveyed population are in danger of becoming victims of specific criminal offences because they don't know enough about existing safety measures, or just don't use them. Interestingly, their awareness of threats stops with standard dangers known from the past, but they aren't familiar with more contemporary cyber threats to mobile device users. The same can be said about their knowledge of protective solutions. It seems that most young people don't even use the most basic protection available for mobile devices.

Limitations:
Researching this area is difficult because of the sensitive nature of some relevant issues (personal knowledge and habits regarding mobile device usage). The participants in our study were reluctant to answer questions about information

security, the data they stored and exchanged, and their knowledge of related issues. Because this thematic is relatively new, relevant scientific publications have so far been scarce.

Originality:
The research of how people use mobile devices and how well they are aware of information security threats is still in its early stages. So far, not much has been published in scientific publications about security issues in relation to mobile devices usage.

Keywords: youth, cyber threats, mobile devices, information security

1 INTRODUCTION

Modern society dictates that people be constantly reachable and able to access relevant data anytime and anywhere without interruption. The need for up-to-date information constantly grows. Young people feel this societal pressure as the need to have uninterrupted access to cyberspace, to stay in touch with their friends and make new contacts. In the past adolescents, as well as other members of society, maintained face-to-face interactions, today human contact is being replaced by online interactions. Social networks, Internet pages for "meeting" peers, and heaps of software make communication for youth easy and fast. Nowadays even short interruptions in Internet connections, temporary inaccessibility of social networks and other communication channels seem quite unimaginable and inacceptable. Proof of this, are the steadily growing numbers of daily Internet users, and the changing ratio between the "stationary Internet" and the "wireless and mobile Internet". Of, course, the latter is winning (comShore, 2011). But mobile services are possible only because of the recent and significant development of mobile information technology. This is the technology that enables uninterrupted access to the Internet and offers us the possibility to use different modes of communication. Simple to use mobile devices and additional equipment attract users, but in our excitement we tend to forget about information security. It's true that no great amount of knowledge is needed to be able to use a mobile device and that these can carry out many functions automatically (e.g., searching for wireless networks, software updates, etc.), but is this truly desirable, is it what we want? Can we trust the automated systems governing our mobile devices, if we don't really know what these are doing in the background?

Cyberspace provides numerous benefits, but also dangers (Bernik & Prislan, 2012). Daily we can read about different new dangers which prey on mobile device users. Researchers of developments in information technologies can only confirm that this is so. Various cyber threats exist because criminal offenders wish to intercept, steal and abuse data which is exchanged via mobile devices,

or to abuse these devices to break into information systems. Most users aren't aware that they can, through carelessness, unwittingly become either victims or criminal co-offenders. This uncertain position should be taken into consideration with sentencing, even though the consequences of such carelessness could be grave and could also lead to international crime (Zgaga, 2009). Cybercriminals have many motives for their actions (Dobovšek & Dimc, 2010), but how cybercrime is perceived by the public largely depends on mass media (Meško & Bernik, 2011), who are predominantly focused on violent street crime in urban areas and other types of conventional crime (Meško & Jere, 2012). It's true that we don't need to know a lot about information technology to simply use a mobile device, but we do have to know specific things if we wish to use it safely. In this paper we discuss how university students habitually use their mobile devices and how much they know about cyber threats to mobile devices and whether or not they know how to protect themselves.

2 MOBILE DEVICES AND POTENTIAL DANGERS

In the past few years there's been a significant worldwide increase in the number of mobile devices sold, especially smartphones and tab computers. This trend has been detected by many research institutions. In Western European countries 28.2 million smartphones were sold just in the first quarter of 2012 (IDC, 2012). Forecasts for future sales are also very optimistic. Researchers at IDC (2012) predict that by the end of 2012 sales of smartphones will total 686 million units; and reach the number 982 million by 2015. According to the CEE Telco Industry Report about a study done by the GfKGroup (2011), which included 15 countries in Central and Eastern Europe, Slovenia seem to be leading with the highest percentage (27.8 %) of smartphone users, the second on this list is Turkey with 23.7 %, followed by Lithuania with 18.5 %. A study conducted by comShore (2011) included 5 European countries over a 3 month period. They learned that people aged 25 to 34 represent the largest group of mobile device users, and the second largest group are users aged 35 to 44.

These finding aren't surprising, because young people more frequently than older generations use mobile devices to connect to cyberspace. Most often they access online social networks (Facebook, Google Chat, Twitter, etc.); mobile devices have additional software to enable users to stay connected and interactive, and have a good overview of what their friend are up to. These trends aren't surprising because mobile devices are innovative, handy and quite useful for many purposes. Wireless networks and mobile devices which we use to connect to them practically anytime and anywhere have caused a shift from "stationary" to "mobile". Now we can work, play, access and exchange data, communicate and interact "on the go".

Young people use mobile telephones chiefly as a communications tool, as will be shown further on in our paper. We can't go past the fact that the number of different threats to mobile information technology grows just as rapidly as the number of mobile telephone users. Threats to mobile devices can act separately or in combinations (blended threats). The possibility that any threat – be it malware infection, data theft or something else – truly causes damaging consequences grows bigger if users don't know how to use their devices and software safely. Several research institutions regularly publish the finding of their surveys; most of them, among other things, report about changes in old threats or the emergence of new dangers in cyberspace. We can immediately draw parallels with the results gained through studies carried out by Lookout (2011) and Juniper (2011), which indicate a significant increase of different infections.

3 HOW YOUTH USES MOBILE DEVICES – A STUDY

To learn more about mobile device usage among young users we posted an online questionnaire in December 2011. Our study was titled "The Awareness of Cyber Threats to Mobile Devices". The questionnaire was available on the web portal "1ka" (www.1ka.si). We spread invitations to university students to participate in our study by e-mail, by social networks on the Internet, or extended personal invitations. The collected responses were then analyzed with the help of SPSS software tools. In total we analyzed 281 completed questionnaires. Most of the respondents were aged 21 to 25 years (47.3 %), in the next group were respondents younger than 20 years (26.2 %); 61.5 % of respondents were female, 63.2 % were male. We had to take into account that several respondents didn't fill out the entire questionnaire. This influenced our statistical sample population, so we added some notes about this to specific questions and answers.

Our online questionnaire told us how widespread the use of mobile telephones is among university students and what they most often use them for. Our finding showed that almost all (99.65 %) of the participants in our study regularly used a mobile telephone. A large percentage of them also additionally used other mobile devices, e.g., a tab computer or laptop. We also wished to learn which mobile telephone options the respondents to our questionnaire used most often, how well they were informed about different cyber threats to mobile devices, and whether or not they knew how to protect themselves.

Asked how frequently they used specific options on their mobile telephones the participants in our study could choose from the following answers (on the Likert scale): "I don't use.", "I'm not familiar with.", "I'm familiar with, but I don't use.", "I have the option installed, but don't use it.", "I use it occasionally.", "I use it." To make our findings clearer we distributed the results into two categories: "I use."

and "I don't use." Figure 1 shows which mobile device services/options are most popular among the participants in our study. The majority of respondents said they used their mobile device for photography, writing messages, and browsing the Internet. Only a minority of them said they used their mobile device for electronic banking and online document storage. In the middle we find respondents who said they also used their mobile device to synchronize contacts and calendars, and to automatically locate publicly accessible wireless networks. Our findings confirmed the facts we mentioned at the beginning: students use mobile devices chiefly as communication tools, to exchange messages, brows the Internet, and interact in online social networks.

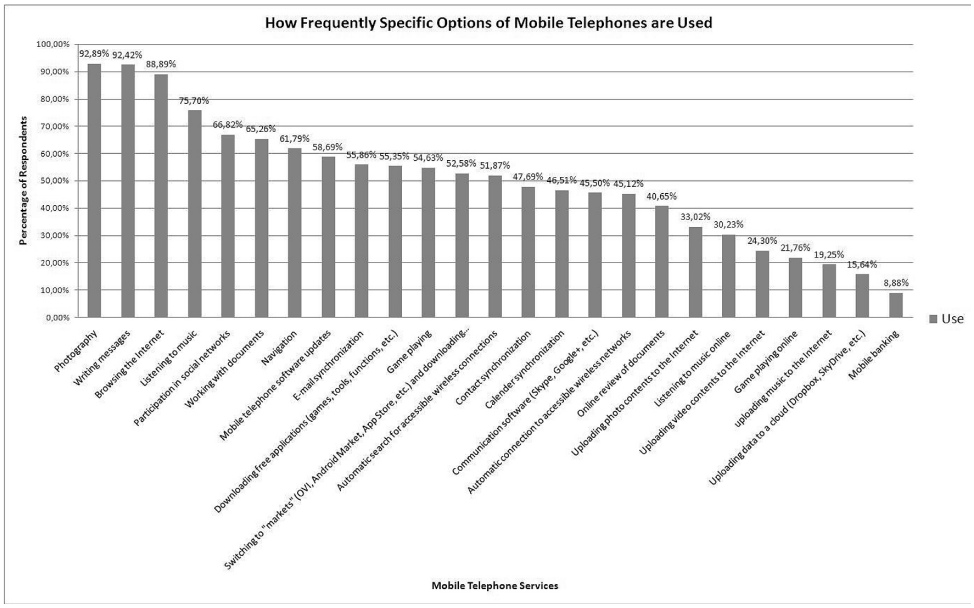

Figure 1: The frequency of the use of specific options on mobile telephones

Besides asking participants what they use their mobile telephones for, we also wanted to learn what they know about cyber threats to mobile telephones and the appropriate protection against these threats. In our study, the most commonly known threats were theft (89.4 %) and viruses (83.1 %) followed by blue tooth hacking, tracking, payment frauds, infections through applications, data alienation, interception of communications, automatic data transfer, browser infection, spy ware infection, drive-by-downloads, malware infection, phishing, and rootkit infection. These findings aren't surprising, because these threats have been around for some time. But it's quite a big concern that young mobile device users aren't better informed about sophisticated malware which is steadily proliferating. These results have shown us how well these users are informed about threats, but the question is still, what they do for protection.

All mobile device users (including students who usually don't yet have access to corporate and classified data) can protect data on their devices by implementing specific software tools and/or by data encryption. Encryption is a very effective protective method, if the encryption key is "strong" enough. It's possible to encrypt just some of the data on the mobile device, the whole system, or just the data that is transferred into cyberspace. In no way should data encryption impede mobile device operations. Gilaberte (2004) described several logarithms which can be used to encrypt data in different ways. Simultaneously users can raise the level of information security by using safer protocols (https), authentication (certificates), encryption and decoding (SSL), and safer connections (VPN) when they log-on to highly protected Internet portals (e-bank, e-mail, recently also Facebook and Gmail) or when they transfer sensitive data to their mobile device. Good examples are e-banking portals and e-mail portals, where the identity of a user is verified with different digital certificates. Strong passwords are also good protection for mobile devices. We should ask ourselves, if we truly do enough to protect our devices and data.

Table 1 shows some possible solutions which can protect mobile devices from cyber threats. Most respondents use standard PIN-code protection for their SIM-cards and antivirus software, but they aren't aware of more sophisticated tools, such as data encryption and remote deletion of data from mobile device. They do, however, know that there exist some other protective measures, e.g., PIN-codes, to limit access to certain applications, but they don't use them. This finding can mean that: (1) young users aren't well aware of the threats to information security and don't know enough about protective measures, therefore it's hard to prevent certain security incidences, misusages of mobile devices and data theft, even though some good technical solutions are available; (2) young users know about some protective measure but don't trust them enough to use them.

Table 1: How frequently specific protective measures for mobile smartphones are used

	I use	I'm familiar with, but I don't use	I'm not familiar with
PIN-code for SIM-card	89.6%	9.9%	0.5%
Antivirus protection	29.5%	49.3%	21.3%
Education	26.0%	41.2%	32.8%
PIN-code for applications	21.4%	56.8%	21.8%
Smartphone tracking	20.3%	50.2%	29.5%
Archiving contents	19.5%	44.4%	36.1%
Authentication	13.0%	43.3%	43.8%
Remote content deletion	6.8%	40.8%	52.4%
VPN connection	6.8%	40.8%	52.4%
Central control	6.3%	40.5%	53.2%
Data encryption	5.8%	54.4%	39.8%

Figure 2 shows the level of users' trust in security solutions. Most mobile telephone users participating in our study trust in PIN-codes for SIM-cards (also presented in Table 1). But only a small percentage of our respondents expressed trust in functions such as remote content deletion and VPN connections. Table 1 shows that these two security solutions are indeed used the least often.

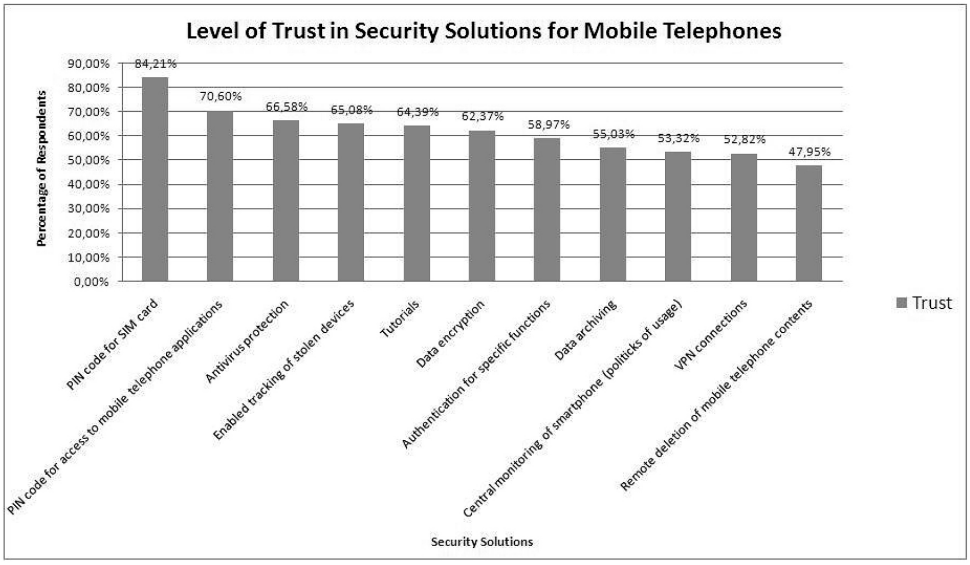

Figure 2: Level of trust in security solutions for mobile telephones

The number of mobile device users is rapidly growing and this trend will continue in the future despite the continuous proliferation of cyber threats to mobile information technology. It's up to us, the users of this technology, to make sure that we are as protected as reasonably possible. We can achieve this by ways of different technological and software solutions but also by educating ourselves about how everything works – the technology we use, the threatening factors, and the protective solutions. The best results can be achieved only if sophisticated technology is combined with knowledge and common sense. It's imperative that users stay abreast of recent technological developments, that they familiarize themselves with the functioning of new technologies, and then choose the most appropriate and efficient protection for the devices they use and the data they work with. The knowledge that users receive through different "channels" is most vital in the fight against the complex dangers of cyberspace. In our survey, we discovered that students use a lot of the services provided by mobile telephones, most notably the opportunity to stay connected to their peers, but it's also become evident that they don't know much about cyber threats to the technology they use. They obviously don't use protective measures as often as

they should, except some functions which are factory preset and run on mobile devices automatically (e.g., PIN-code for SIM-card). The level of distrust in security solutions proved to be quite high, which is a cause for concern – the participants in our study said they used specific protection even though they didn't really believe it was effective. The analysis and interpretations of our study all point to the conclusion that currently the main problem is that young users don't know enough: (1) about safe mobile device usage; (2) or about how these devices operate; (3) or about threats and information security guidelines. Only 67 % of the respondents agreed that being educated and informed is in itself a guarantee that users (and their devices) can stay adequately protected, but education is in fact the central point of all efforts to maintain information security.

4 CONCLUSION

The results of our study showed us how youths use their mobile devices: the almost all have them, but only a small percentage of them also used protective measures to maintain information security. This trend will predictably continue into the future if we don't try harder to change the current situation. On one hand, users should become more aware of the dangers, on the other, they should learn more about information security and how to achieve it. The logical path is to put more effort into educating and informing mobile device users, who really ought to know more about the technology they use daily, about the threats to their popular devices, and, of course, about the options available to them to become or stay safe in cyberspace.

No protective method or measure can guarantee information security if users aren't aware of their existence or don't recognize the necessity to employ them. A soon as someone buys a new mobile devise he should first familiarize himself with all the functions and setting of the new device, and stick to the safety guidelines given for connecting to the Internet and interacting in cyberspace. If a user isn't aware of the "weak spots" in his mobile device or knowingly doesn't protect them, then he can easily become a victim of cyber criminal.

Numerous organizations daily issue warnings about various threats to mobile devices, so there's no excuse for staying ignorant. Information security doesn't simply happen on its own, just passively listening to recommendations won't do it – it can only be achieved and maintained if each and every user of any kind of mobile device knows what he's doing and how to stay safe.

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MOBILE DEVICE ABUSES AND USERS' POTENTIAL CRIMINAL LIABILITY

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ABSTRACT
Purpose:
The time when we knew exactly where our data is located and could clearly delineate between private and business related data is over. Because of the increasingly spreading use of cloud computing technology, especially publicly accessible clouds with indeterminable physical locations, the line between private and business matters is no longer clear. Why do people use this technology even though it's risky? The answer is quite simple: Because cloud computing lowers expenses and offers a faster, more flexible and easier access to information technology and data. Mobile devices are a crucial element of this flexible data management technology called cloud computing. Mobile devices are convenient tools for working with and managing data. The problem is that different types of data and information get "mixed" in mobile devices – people use them to access private or corporate data in public and/or private clouds. Especially questionable is the safety of corporate data in a private cloud. Using a mobile device simultaneously for business and private purposes increases the vulnerability of classified information.

Consequently, users can be criminally liable for irresponsibly handling their mobile devices. In addition, the legal basis for defining users' criminal liability for the irresponsible usage of mobile devices is also increasing. This paper; (1) analyses the potential criminal offences for which mobile device users can be held accountable for, if they cause the loss of sensitive data; (2) discusses the issue of complicity, which is relevant if a mobile device is abused to commit a criminal offence, because the user/owner of the device was careless and didn't protect his device; and (3), also presents the issue of culpability in such cases.

Methods:
We made a descriptive analysis of the available literature pertaining to relevant fields of expertise.

Findings:
The usage of cloud computing is now wide-spread; the same can be said for the usage of mobile devices. Access to different types of clouds and data therein has erased the line between private and business related data. Irresponsible handling of mobile devices can lead to users' criminal liability.

Research limitations:
The availability of different cloud computing options, the possibility to manage and transfer data with sophisticated mobile devices, and also the possibility of data loss

(through theft) are delicate issues, both in regard to the question of responsible mobile device usage to the question of credibility.

Value:
Our paper gives an outline of suggestions/trends for the future evolution of information security relating to the usage of mobile devices and the access to data in clouds. Also, the criminal law analysis gives conclusions as to whether there are any shortcomings in the current Slovenian criminal legislation.

Originality:
Studying cloud computing in relation to information security and criminal law is a rather new direction; especially novel is the focus on the simultaneous use of various types of cloud computing options and different categories of data, and the possibilities of data loss and/or abuse.

Keywords: cloud computing, mobile devices, information security, criminal liability, complicity, culpability

1 INTRODUCTION

Modern technology has thoroughly changed how we live and work. Because information technology has become so mobile and flexible it has influenced the ways we communicate, make decisions, and handle data and information. Technology most obviously changed how we perceive and categorize the data (as personal, public, confidential or classified data, etc.) that we access and manipulate daily. As more and more people use mobile devices and cloud computing to take care of business and personal matters, the line between private and work related operations has practically vanished. Mobile devices, most notably mobile telephones, are rapidly becoming indispensable. Increasing numbers of people use them instead of personal computers. The innovative technology behind mobile telephones makes them incredibly useful to people of all walks of life. Youths see them as irreplaceable tools for maintaining constant communication with their peers; employees also use them to store and work with all sorts of data and information. Cloud computing, especially public clouds, are becoming increasingly more important "locations", where users store their data or simply use them as an e-mail service and communication tool which is an extension of their mobile device.

Cloud computing has become the *file rouge* of many debates between information technology experts and information security advisors. Cloud computing can be defined as the joint use of computer resources via the Internet which frees individual users from having to maintain an information system (hardware and software) or even know much about computer technology – the users only "care" is, the use itself (Glavač, 2009). The concept of cloud computing isn't ex-

actly new, but it's now possible because of a much improved Internet and the developmental state of information technology. Public clouds are the most easily accessible for general users. Sophisticated mobile telephones have made accessing data in clouds quite easy. Nowadays most new mobile telephones offer uninterrupted work or play online. The leap from a static workplace (i.e. desks full of computer equipment and information centers with terminals and servers) to a dynamic workplace (the location of the computer equipment is often no longer known or even relevant, at least not to the user) was possible precisely because of mobile devices (mobile telephones, tab computers, laptops, etc.). The downside of this development is that it's become more difficult to maintain information safety, and this is why users should become more aware of the specific security concerns regarding mobile information technology. The necessity to raise the level of user prudence has become more pronounced because the security threats are developing and spreading just as fast as information technology itself. Careless use of mobile devices can have grave consequences. The second half of this paper is dedicated to illuminating criminal liability for negligence and various misusages of mobile devices. We present specific criminal offences in connection to mobile device usage, which are punishable by law.

2 CLOUD COMPUTING AND MOBILE DEVICES

Cloud computing is mainly about the optimization of information resources and minimizing costs. TechNavio published a report on the current state in cloud computing and the expected future growth in this field. It's foreseeable that cloud computing will expand by 42 % between 2010 and 2014 (Infiniti Research Limited, 2011). Technological development and fast Internet connections have enabled us to, via a mobile device, access daily news, use electronic banking, manage e-mail accounts, etc. (Guillimein, 2009). Cloud computing has made utilizing mobile devices, to do all the above and more, less costly. One relevant question is, is it truly possible to access data at any given time? The other is, how well protected is personal and classified data for real?

The vast amounts of data that is available at any time are stored in corporate information centers and/or in computer clouds. Sophisticated mobile devices and software for these devices offer relatively simple pathways to corporate data (e.g. e-mail, documents, search bases, etc.). A fast and simple access to data is a key factor in managing and decision making processes. It's also crucial to implement information security, because this is the basis for the trust placed in information technology – i.e. in the accessibility and integrity of the stored data, in business processes, and in decision-making processes in organizations.

The idea of information technology and cloud computing as services has roots in times, when computer terminals were used and corporate networks were local

and unconnected. Due to the rapid development of technologies that enabled transfer of data through various networks and, of course, mobile devices the idea of cloud computing came to life. Cost effectiveness was also a key factor in this development. Companies are increasing more often choosing cloud computing because the economic crisis has forced them to decrease the costs of their information technology needs. A cloud or virtual space – a "place" where companies can use information technology systems and services – is seen as an opportunity to limit investments into information technology infrastructures and to lower maintenance expenses for on-site information centers (Rodier, 2011).

On the downside, cloud computing can also be risky, specifically from the information security viewpoint. Electronic mail, document storage, databases, and an additional backup location are just some of the services that users can lease from cloud computing providers. Cloud computing services can be separate, so as to take into account a user's needs and also information security. A corporation's own employees can maintain a secure private cloud by using passwords, encryption, redundancy, etc. Such a private cloud is usually located within a corporate information system. But users of a public cloud never know where it's physically located – it's just, obviously, on the Internet. Companies and other organizations can use public clouds to transfer all their information technology needs to the Internet. Hybrid clouds combine public and private clouds. The most sensitive data and information is stored in the private cloud within the corporate network, but to access it users makes use of the software resources of the public cloud (Glavač, 2009).

3 THE RISKS OF USING MOBILE DEVICES TO ACCESS DATA IN A CLOUD

The number of threats to mobile devices is growing from day to day. This trend has been detected by various institutions (Mcafee, Juniper, Lookout, etc.), which publish reports about the newest developments in this field. We can read in Lookout's report for 2010/2011 about the possibility that 1 to 4 % of mobile devices are »infected« because users download free software. The Juniper company reported that there has been a 400 % increase in the number of mobile devices (running on the Android platform) infected by malware. This report from Juniper also states that 85 % of users have inefficient software protection on their telephones. Protection can be adequate only if a user knows how his mobile device functions, what kind of software it runs on, and is aware of the nature of the data stored and manipulated via the device and cloud. It's also crucial to have knowledge of all the possible dangers and how to minimize security risk. Data which is accessible online should be encrypted, connections should be SSL and VPN, and users should pay attention to recommendations given them

by information security experts. Our aim was to carry out a survey which would help us determine how much mobile device users know about this technology, how they use their mobile devices, and if they are aware of specific security threats. Today's university students will soon be employees in the private or public sector, and they'll inevitably work with mobile devices and have access to sensitive data. Incompliance with information security recommendations can lead to severe consequences, possibly even criminal liability.

4 UNIVERSITY STUDENTS AS CURRENT MOBILE DEVICES USERS AND FUTURE EMPLOYEES – A SURVEY

In December 2011 we carried out a study of how university students use their mobile devices (telephones). We posted a questionnaire on the web portal "1ka" (www.1ka.si) for 21 days, and invited youths, by e-mail and Facebook profiles or in person, to participate in our survey. The survey questions were designed so that we would get an idea of what young people were using their mobile devices for, and which software solutions they preferred. We also wished to determine how much these users knew about security measures and threats to confidential data. The final analysis of the survey answers that we gathered was made with SSPS software tools. Some questionnaires weren't filled out completely, so the sample population for some questions varies. Most of the respondents were within the 21 to 25 years age range, the remainder of participants were youths under the age of 20; 61.5 % of all participants were female, 63.2 % were male; all had secondary school level education.

Table 1: Smartphones are used for:

Sample (n=216)	N	%
Only for private needs	126	58.3
For private needs, occasionally also for business purposes	56	25.9
For private and business purposes	31	14.4
For business needs, occasionally also for private purposes	1	0.5
Only for business purposes	2	0.9

Table 1 shows what students use their mobile devices for. It's no surprise that the majority of them (58.3 %) used mobile devices for private matters, but it was interesting to learn that almost 26 % also used them, at least occasionally, for business purposes, and 14.4 % constantly use them for both business and private

purposes. As we see, the line between business obligations and off-duty matters is already blurring. Today's students will be tomorrow's employees, and that's why it's important they know how to properly handle mobile devices, data, and cloud computing options.

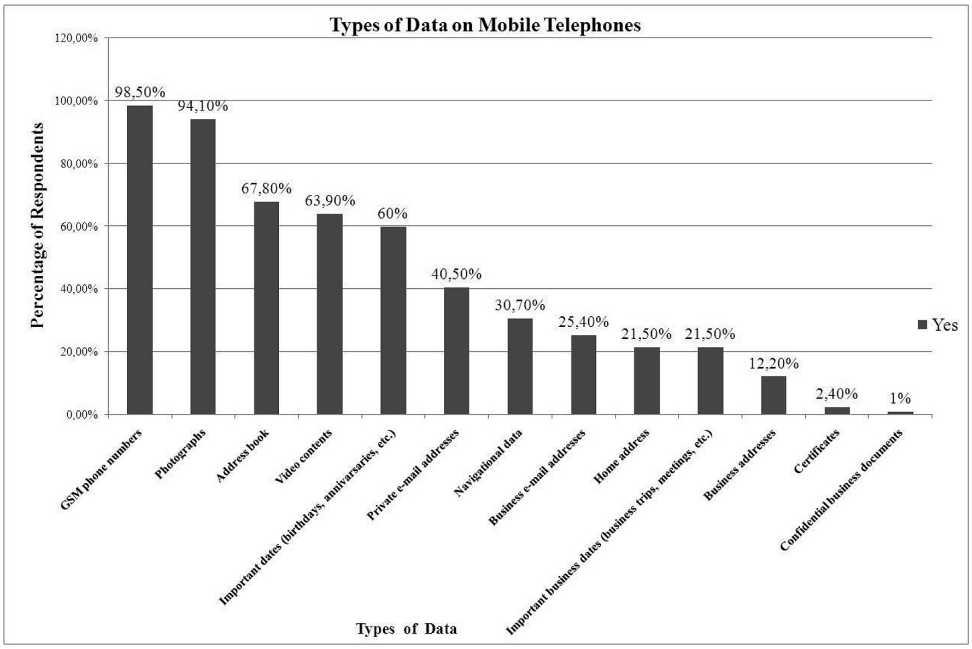

Figure 1: Types of data on mobile telephones

Figure 1 shows which type of data the participants in our survey stored on their mobile telephones – most often a list of contacts, their names and GSM telephone numbers, photographs and video contents. This is all mostly personal data. Some of the respondents admitted to also storing some business data (names, addresses and telephone numbers of business contacts, e-mail addresses, important dates, certificates, etc.) on their mobile telephones. In case something happens (cyber threats) all this data is in danger. Users should know more about how to protect and handle data stored on their mobile devices. Our findings are shown in Figure 2. We are most concerned about the low percentage of users who used data encryption; only 9.4 % had encrypted their most sensitive business data, and 6.9 % had so protected their personal data.

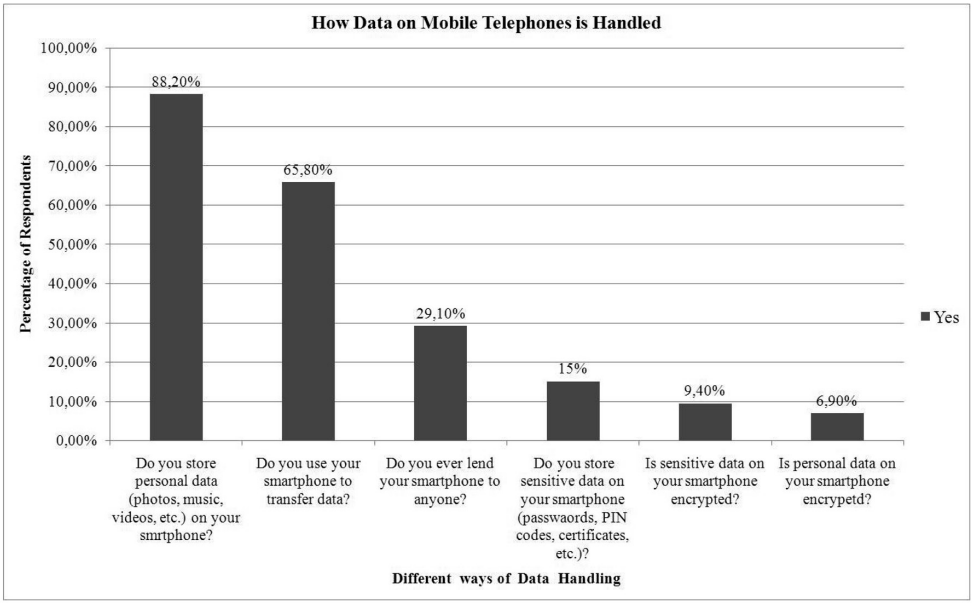

Figure 2: How data on mobile telephones is handled

5 INAPPROPRIATE USAGES OF MOBILE DEVICES AND CRIMINAL LIABILITY

The rapid global increase in the number of mobile device users poses several legal questions, especially regarding criminal liability (for more, see: Završnik, 2007: 453 and Završnik, 2005: 248) in cases of negligent or inappropriate usage. It's relevant, for example, (1) which offences perpetrated by a mobile device user can be incriminated or, put differently, which are the acts a user can be held criminally liable for; (2) whether the offence was committed by an act or by omission; (3) what was the offender's part in committing the criminal act (issue of complicity) and (4) which form of guilt is foreseen and for which the user will be held accountable for.

5.1 Relevant Criminal Offences

We can imagine at least two specific cases in which misusage of a mobile device and/or cloud can be construed as a criminal offense, if (1) a user uses his own mobile device to penetrate someone else's mobile device with the intent to acquire certain data, and (2) if a user is negligent and doesn't protect his mobile device from third persons intent on penetrating the user's mobile device by infiltrating it with malware or viruses. In the first case the user had abused his own

mobile device to perpetrate a criminal offence; but in the second case someone had abused a mobile device belonging to the user to penetrate an information system without authorization.

Because of the above-mentioned two possible scenarios, the Penal Code of the Republic of Slovenia 1 (Penal Code)[1] deems relevant two categories of criminal offences. The first is determined by the content of the unlawfully acquired data (through penetration of a mobile device). Here we see that the type of mobile or technologically similar device does not determine the criminal offence. The types of data in question are: personal data, (official, military, etc.) secret or confidential/classified data, business secret, and trade secret. Special definitions of these types of data can be found in the Penal Code or in the relevant legislation pertaining to the various related fields.

The term business secret was defined in the novella of the Penal Code[2], previous to that the relevant definition was the one in the Companies Act.[3] According to the Penal Code business secrets are all documents and data that are, by law, statute, regulation or other general legal act or decree issued by a competent agency or authorized persons, proclaimed as industrial, trade, bank or other type of business secret, and are of such relevance that their disclosure has or could have caused severe damages. This definition effectively corresponds with the definition of the term business secret as found in the more general Companies Act.[4]

What is classified data is defined in the Classified Information Act. Classified data can be both a fact or method pertaining to public safety, military defenses, foreign matters, intelligence activities; national systems, facilities, projects and plans relevant to public safety, military defenses, foreign matters, intelligence and other activities of government agencies; science and research facilities, technological, economic and financial matters vital to public safety, military defenses, foreign maters, intelligence activities and other activities of government agencies, which are defines as such and protected by the Classified Information Act from unauthorized persons. The key factor is that specific data has to be categorized as classified by an authorized official or agency because disclosure would or could endanger national security or political and economic interests.[5]

Trade secrets can also become protected data.[6] A trade secret is anything a professional obtains in the course of his employment. The Penal Code so states that professionals in the position of counsel for the defense, lawyers, doctors, priests,

1 Penal Code of the Republic of Slovenia1 , The Official Gazette of the Republic of Slovenia, 55/2008, 66/2009, 91/2011.
2 Official Gazette of the Republic of Slovenia, 91/2011.
3 Article 39 of the Companies Acts, Official Gazette of the Republic of Slovenia, 65/2009, 33/2011, 91/2011.
4 Article 236 of the Penal Code of the Republic of Slovenia.
5 Articles 2, 10, and 11 of the Classified Information Act
6 Article 142 of the Penal Code of the Republic of Slovenia.

social workers, psychologists and others are all bound to keep trade secrets (Deisinger, 2002: 145).

It should be noted that the data managed via mobile devices by corporations can also be personal data.[7] This, too, is not defined in the Penal Code, but in the Personal Data Protection Act.[8] Personal data is any data pertaining to a physical person. A physical person is definable/recognizable if he/she can be identified through verification of a personal document, identification number or other factors specific to his/her physical, psychological, economic, cultural and social characteristics or identity; taking into consideration that the verification methods for the identification of people shouldn't incur unreasonable costs, or demand excessive efforts or use of time.[9]

The provisions of the penal Code relating to the definitions of classified data are tied to correlating criminal offences, such as are unauthorized disclosure or acquisition of data. According to the Penal Code, each type of data has a correlating criminal offence; e.g., the Penal Code defines unauthorized disclosure or acquisition of a trade secret as a criminal offence committed by anyone who contrary to his obligations regarding the protection of trade or business secrets passes them on to an unauthorized person or enables someone without security clearance, or collects sensitive data with the intent to pass it on to unauthorized persons.[10] However, how a trade or business secret should be protected and who is obligated to do so isn't determined in the Penal Code. This is regulated by decrees accepted by a company or organization, and the document has to define exactly which type of data is considered a trade or business secret,[11] and how these should be protected.

The disclosure of classified information is similarly defined.[12] Disclosure can be committed by a person in a official position[13] or anyone else who, contrary with his obligations regarding information security and classified information, publicly discloses or passes on to third parties secrets, or enables a third party access to classified information, or collects classified information with the intent to pass it on to unauthorized persons. In this case also, the Penal Code doesn't define how classified information should be protected, since this is taken care of in the Classified Information Act and other relevant regulations.[14] In compliance with the Classified Information Act each organization must implement appropriate measures, systems and procedures to protect classified information at various levels,

7 Article 143. of the Penal Code of the Republic of Slovenia.
8 Official Gazette of the Republic of Slovenia, 94/2007.
9 Article 6 of the Personal Data Protection Act.
10 Paragraph 1, article 236 of the Penal Code of the Republic of Slovenia.
11 Paragraph 1, article 40 of the Companies Act.
12 Article 260 of the Penal Code of the Republic of Slovenia.
13 Article 99 of the Penal Code of the Republic of Slovenia.
14 For example, the Decree on Classified Information and the Decree on Classified Information in Communication and Information Systems, etc.

and has to restrict access to data protected by law.[15] The most relevant piece of legislation in this field is the Decree on the Protection of Classified Data in Information Systems. If someone who is legally bound, by the legislation and/or internal organizational documents, to protect classified data intentionally omits to do so, and so causes this sensitive data to be disclosed, commits a criminal offence, as defined by the Classified Information Act.

The Penal Code also defines unlawful disclosure of professional secret as a criminal offence: "Whoever unlawfully discloses a secret which he has become party to in his position as counsel for the defense, lawyer, doctor, priest, social worker or psychologist or by way of performing and other profession shall be punished[16]..." In this case, too, sanctioning isn't defined in the penal Code but in specific legislations which govern the conduct of specific professionals.

According to article 143 of the Penal Code anyone who unlawfully uses personal data, which may be kept only on the basis of the law or on the basis of the personal consent of the individual, to whom personal data relate; and anyone who publicly discloses or enables others to publish personal data, can be punished for the abuse of personal data.[17] The Personal Data Protection Act defines how personal data should be protected and imposes that anyone who is authorized to collect and process personal data is also obliged to provide proper protection for these data bases. The above mentioned law also stipulates that whoever legally keeps collections of personal data, must also use certain procedures, provide data protection, and name the individuals who are authorized administrators of such databases, and other who can, due to the nature of their professional assignments, access them.[18] These provisions must also cover issues related to information security, especially if people with access to sensitive personal data also use mobile devices.

The Penal Code also mentions criminal liability in connection to specific computer crimes – an attack on an information system and abuses of corporate information systems. The provisions pertaining to unlawful attacks on information systems[19] can be found under the chapter of the Penal Code that is dedicated to criminal offences against material possessions. An offender is anyone who unlawfully accesses or attacks an information system and acquires data without authorization or intercepts restricted electronic traffic with classified data; and anyone who uses, changes, copies or destroys unlawfully gained data; or anyone who unlawfully plants data into an information base or hinders the flow of data or interrupts the functions of an information system.[20]

15 Articles 38. and 40. of the Classified Information Act.
16 Paragraph 2, article 142 of the Penal Code of the Republic of Slovenia.
17 Paragraph 1, article 260 of the Penal Code of the Republic of Slovenia.
18 Article 25. of the Personal Data Protection Act.
19 Article 221. of the Penal Code of the Republic of Slovenia.
20 Paragraphs 1 and 2, article 260 of the Penal Code of the Republic of Slovenia.

The criminal offence of breaking into a business information system[21] is mentioned under the chapter dedicated to offences against the economy. The definition for this type of offence is narrower and more specific: "Whoever, in the performance of business operations, without authority inserts, alters, hides, deletes or destroys any data or computer program, or otherwise breaks into a computer system in order to procure an unlawful property benefit for himself or a third person or to cause damage to the property of another ..."[22] Here we again see that it's important to prove the intent to gain some material benefit from this offence.

As we are discussing various criminal offences, it's necessary to first delineate between them on at least two levels. We must look at:

- the relationship between different types of data and correlating criminal offences in relation to unlawful acquisition and disclosure of protected data[23]; and
- the relationship between the criminal offence of unlawfully acquiring and disclosing classified data on one side and »computer« criminal offences[24] on the other.

First important issue is the question of merger of offences in a case of protected data which can be placed under the terms classified information, personal data, official or trade secret. The answer to the question, whether we are dealing with one or more criminal offences can only be answered indirectly. We believe that it should first be determined which component of the data in question is predominant and most significant. Fictitious overlapping of offences can result in partial liability for the unlawful acquisition and disclosure of the data. The exception would be if the Penal Code didn't incriminate specific offences against specific data (e.g., the unjustifiable acquisition of a business secret is currently not incriminated). Our opinion is that in such a case preference should be given to the criminal liability of an offender for his mishandling of a different type of data, in which case his actions are in fact incriminated by law. The act of disclosing business and trade secrets is such a general criminal offence that the disclosure of protected data (both classified data and trade secrets) the offender should answer for his disclosure of the business secret or classified information (Deisinger, 2002:146), but not for the disclosure of a business secret. In our opinion personal data is special in relation to classified information.

On the other hand, we should also answer the question: Is the offender who penetrated a corporate or business information system and unlawfully acquired and/or disclosed data which can be placed into one of the above discussed

21 Article 237 of the Penal Code of the Republic of Slovenia.
22 Paragraph 1, article 237 of the Penal Code of the Republic of Slovenia.
23 Articles 142, 143, 236, and 260 of the Penal Code of the Republic of Slovenia.
24 Articles 221 and 237 of the Penal Code of the Republic of Slovenia.

categories,[25] criminally liable only for the unlawful acquisition and disclosure of classified data or for the breaking into the business information system or for both criminal offences? Because here different legal values are under attack it would be best to use the first described relationship between the two criminal offences. The perpetrator should answer for both crimes (the relevant criminal offence described in article 237 or 221 of the Penal Code and the criminal offence described in articles 142, 143, 236 or 260 of the Penal Code).

5.2 Act of a Criminal Offence

If the perpetrator´s act is unlawful disclosure of professional secrets, the Penal Code imposes incrimination of such act.[26] The same rule is applied to the unlawful abuse of personal data;[27] the disclosure or unauthorized acquisition of trade secrets[28], the disclosure of classified information[29]; and an unlawful attack on an information system[30] on one hand, and an unlawful attack on a business information system on the other.[31]

Even though in these cases the Penal Code only incriminates acts, offences committed by omission – acts which result in equally unlawful consequences as when perpetrators act voluntarily and with intent – are also punishable (according to the general provisions of the Penal Code). There is no criminal liability for "regular" offences performed by omission, as defined in article 17 of the Penal Code in these cases, because legislators had not defined the term omission in these criminal offences, a criminal offence may be committed by omission when the perpetrator has failed to perform the act, which he was obliged to perform (the irregular omission). An "irregular" offence by omission is committed if the perpetrator has not prevented the occurrence of an unlawful consequence. In such a case the perpetrator is punished if he neglected to act, and had so caused the occurrence of unlawful consequences even though he was obliged to prevent them, and if the criminal omission is of equal importance as the positive criminal act which caused the unlawful consequences (Bavcon et al., 2009: 155).[32] The perpetrator is liable if his irregular criminal omission (i.e. passivity) caused the occurrence of unlawful consequences.

In our case the passive mobile device user who doesn't actively protect certain data, which he is otherwise obliged to do, enables disclosure of this data by his inaction. His inaction is a criminal offence committed by omission only if he has

[25] After a thorough analysis of both categories, of course.
[26] Paragraph 1, article 142 of the Penal Code of the Republic of Slovenia.
[27] See: all paragraphs of article 143. of the Penal Code of the Republic of Slovenia.
[28] Article 236 of the Penal Code of the Republic of Slovenia.
[29] Article 260 of the Penal Code of the Republic of Slovenia.
[30] Article 237 of the Penal Code of the Republic of Slovenia.
[31] Article 221 of the Penal Code of the Republic of Slovenia.
[32] Paragraph 3, article 17 of the Penal Code of the Republic of Slovenia.

failed to perform the act, which he was obliged to perform – he was obliged to protect classified data but failed to do so because he didn't secure his mobile device.

This is important because the relevant criminal offences, as described in the Penal Code[33], can only be committed by someone, who was legally bound to protect the data in question. This part of the legislation is obviously about special criminal offences – *delictum proprium* – because persons without a specific mandate can't commit these criminal offences (Bavcon, 2009: 193). Otherwise, the appropriation of data is considered unjustifiable. In regard to these actions the essence of incrimination is precisely in the fact that protected data was accessed by someone, who wasn't authorized to do so and, therefore, also wasn't obligated to protect the data in question.

It can be said that a mobile device is a dangerous thing, when in the hands of a careless user; it's a device that should be properly monitored and protected, so that it doesn't become a tool which third persons can use to commit criminal offences (Bavcon, 2009: 162). Because this viewpoint further widens the field of criminality, we must warn that in this faze we're only talking about users' liability for criminal offences when all elements of unlawfulness are present. Therefore, the central question is, whether the criminal offence´s first element is present (the act); while the presence of other elements of a criminal offence have yet to be determined. The most difficult to determine is a user's culpability – can it be said that he was so unreasonably negligent that he is guilty of a criminal offence?

5.3 Complicity in Criminal Offences

When someone uses his own mobile device to penetrate someone else's mobile device to gain certain data, then he is the direct, physical criminal offender, for he had singularly committed an act qualified as a punishable criminal offence. If the user just doesn't properly maintain information security on his mobile device, and someone exploits this fact by planting malware or viruses into the negligent user's mobile device and penetrates yet another mobile device, then the negligent user is again liable for the committed criminal offence as a direct perpetrator. The third party or person, who planted the malware or virus, exploited the user's lack of knowledge and carelessness to penetrate another mobile device or information system, is also guilty of committing a criminal offence. The type of criminal offence is the same, the difference is who the offender is, but it's necessary to determine the level of complicity, culpability, and liability of all parties involved. In our opinion, if someone intentionally exploited a negligent user, it's possible to say we have a case of an indirect perpetrator and liability, as defined in article 20 of the Penal Code (Bavcon, 2009: 327). The

[33] The exception is the abuse of personal data.

third person is the one who had planed and prepared everything to commit the offence, but left just the final act to the unaware and negligent user of the attacked mobile device.

5.4 Culpability

An act punishable by law can always be sanctioned if it was committed with intent, but criminal offences done out of negligence are sanctioned only if it's so specified by the Penal Code.[34] Therefore, is should be noted that disclosure of the most sensitive data (classified information, business secrets), as the result of negligent conduct (careless handling of classified material and/or data storage devices), is also punishable by law.[35] Disclosures or illegal acquisitions of personal data and trade secrets on the other hand are legally sanctioned only when these acts are committed intentionally. The same applies to attacks on information systems and penetrations into corporate information systems.

Criminal offences, which are punishable by law, only if they are committed intentionally will most likely cause certain problems in practice, because intent will be difficult to prove in most cases. Unless a mobile device user intentionally misuses his device to penetrate another mobile device, one belonging to someone else, or knowingly lets a third person use his device to penetrate someone else's mobile device, it's difficult to say there really was an intent on his part. If a user's mobile device was misused (used as a tool to commit a criminal offence) because he was careless and indiscrete (not using PIN codes, antivirus protection, etc.)[36], then such a user could only be accused of negligence and definitely not of intentionally committing and criminal offence. Whenever a user discloses, without proper authorization, sensitive data which he is obligated to protect because he hasn't acted in compliance with information security regulations (careless handling of devices, enabling access to unauthorized persons, lack of password and similar protection, etc.) it's potentially a case of negligence but not of criminal intent. Articles 142, 143, 221, and 237 of the Penal Code don't cover this type of situation. Criminal accountability could be realized only if the data in question can be placed under the term business secret or classified information, as offences against these can consequently be sanction under articles 236 or 260 of the Penal Code.[37]

In real life law enforcement agencies will face problems because it will be difficult to spot and prove intent in a concrete case, and the criminal offence will not fall under the definition of liability because of negligence. It the offender doesn't bear a specific guilt, the user can't be held criminally liable for the criminal of-

[34] Paragraph 1, article 27 of the Penal Code of the Republic of Slovenia.
[35] Articles 236 and 260 of the Penal Code of the Republic of Slovenia.
[36] More about this in Markelj and Bernik (2011).
[37] There is, of course, the possibility of culpability under another relevant law or decree.

fence (except perhaps in accord with articles 236 and 260 of the Penal Code).

If a criminal offence committed through negligence is punishable (the punishable act of disclosure of or appropriation of business secrets and classified data), then the courts will be compelled to define standard definitions of negligence. The courts will have to draw a line between two actually possible situations: (1) a situation in which the offender can be reproached that he was aware of the possibility that his action could cause unlawful consequences (e.g., unauthorized disclosure or acquisition of specific protected data), but had thoughtlessly assumed that it wouldn't happen or that he will be able to avert the danger, or simply wasn't aware of the possible consequences even though he should have been aware, considering his knowledge and other factors, of the possible consequences of his conduct; and (2) a situation in which the offender can't be accused in the above explained sense.[38] The latter situation arises when an offender causes unforeseeable and unexpected irreparable damages even though he has acted with due diligence.[39]

Regarding third persons who exploit a user and his mobile device to penetrate the mobile device of yet another user, it's necessary to prove that the indirect perpetrator also intentionally tried to (illegally) acquire data.

6 CONCLUSION

The development and use of mobile devices and cloud computing will not stop, probably quite the contrary (as proven by the presented survey). It can be expected that in the future (mobile) even more people will use information technology and that there will also be more dangers which will, be it as separate or blended threats, prey on mobile devices and data (Markelj & Bernik, 2011). User will have to become more aware how important it is to protect their mobile devices and data, otherwise increasing numbers will become victims of cybercrime. Public awareness of cybercrime if largely influenced by mass media (Bernik & Meško, 2011), therefore educating users should become a priority. Only properly educated users of modern information technology will be able to uphold an adequate level of information security. With education and more knowledge we can also lover the fear of cybercrime (Bernik & Meško, 2012). Survey results from the research projects, like the one we used in our analysis for this paper, clearly show what kind of data users most often store on their mobile devices, and how they handle, store, and protect it. Users will have to consciously choose which data will be stored on or accessed by their mobile device, and assess risk. They will essentially have to answer questions, such as: What is the value of my data? Can I afford to

[38] Paragraph 2, article 26 of the Penal Code of the Republic of Slovenia.

[39] Paragraph 3, article 26 of the Penal Code of the Republic of Slovenia.

lose my data? What will the damage be, if my data gets stolen and/or disclosed? It's truly important to carefully think through what to store (and work with) on a mobile device and/or in a cloud; and decide what's safe to access, transfer and manipulate via the Internet. Data encryption should become standard practice, otherwise there will be an increasing number of users who have become victims of cybercriminals or even, unwittingly and unintentionally, had joined their ranks.

The proliferating use of mobile devices opens up several relevant and interesting legal questions. In principle, the general part of the Penal Code of the Republic of Slovenia suffices to prosecute mobile device abuse cases, as far as modus operandi, complicity, criminal liability and culpability are in question. Regarding the question of guilt there is a problem with the Penal Code, since some relevant offences are punishable only, if committed with intent; offences committed out of negligence therefore aren't punishable. We believe that it would be acceptable if unauthorized access and/or disclosure of classified data, defined as criminal offences punishable by law (articles 142 and 143 of the penal Code) stay so only when committed intentionally, but it would be sensible to give more thought to what to do about attacks on information system committed out of negligence. Nowadays, information systems are numerous and, in many cases, vitally important, so attacks targeted at them can have severe consequences. To limit criminality in this area, it might be prudent to add provisions to the Penal Code regarding grave material and non-material harm caused by the above mentioned criminal offences committed out of negligence. Furthermore, it would be best to find a standard definition for the term (non)intentional negligence, so that anyone would know which dangers users should and must be aware of, and will be held liable for in case of misconduct, be it intentional or out of negligence. Since in reality many scenarios are possible, they can't all be foreseen, therefore, public prosecutors and courts should be able to determine the nature of each specific criminal offence and discern what to do about it. It also seems inevitable that users/owners of mobile devices, as their numbers continue to grow, will have to become more aware of their own responsibility and possible culpability for information technology misusage. The more certain technological solutions are used by increasing numbers of people, the less acceptable it is to say: "I wasn't aware of the dangers and their consequences, and didn't know how to protect my mobile device and data from threats".

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E-BANKING SECURITY VIS-À-VIS USABILITY, FUNCTIONALITY AND EASE OF USE

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ABSTRACT
Purpose:
Purpose of this paper is to raise management and professional awareness of potential risks in the use of e-banking security and protection mechanisms. Indiscriminate use of security mechanisms can lead to overcomplicated solutions and raise potential consequences of improper use. Planning of e-banking service demands finding the appropriate balance between security, usability, and ease of use of e-banking services. Evaluation of the solution in terms of usability and functionality for the client should be an integral element in the design process and implementation of e-banking solutions.

Design/methodology/approach:
Findings rely on previous area researches and include best practice, standards and regulatory recommendations. Descriptive and comparative method for knowledge synthesis and SWOT analysis were used.

Findings:
Study exposes some consequences of improperly used security mechanisms. Rational use of safety protocols/mechanisms would largely increase e-banking services security and ease of use. Implemented security mechanisms should not affect the reduction in utility and usability of e-banking services. Effects of complex protective mechanisms require advanced user knowledge of information technologies, are impractical, and can create a counterproductive effect as users will try to look for shortcuts.

Solutions and requirements of security mechanisms in e-banking services, which can serve as a basis for further steps in commercial banks' web design solutions and mobile banking are presented. Proposals to ensure an adequate level of security while maintaining usability and ease of use for end clients are given. The findings are important for designers, developers, testers and specialists for security reviews of e-banking systems, as well as management and e-banking regulators.

Research limitations/implications:
Different shortcomings in the introduction of security mechanisms for e-banking services will be discussed. Services and solutions in relation to electronic money, or use of credit and debit card for online payments is not discussed. Guidelines for the introduction of user-friendly solution are proposed.

Originality/value:
Security elements in e-banking, their impact on usability and ease of use are defined. Real cases are evaluated. Solutions used in Slovenian banks will be compared to solutions used in European banks.

Key-words: security, usability, e-banking, evaluation, software design

1 INTRODUCTION

Today state-of-the-art e-Banking solutions are offering high flexibility, freedom, security and cost efficiency not only for the users but also for the bank. Due to the high development of e-banking solutions and spreadness (EU has 158 million e-banking users); cyber criminal became an enormous industry. Criminal groups have taken effective advantage of technologies and many challenges of e-banking theft have emerged in the form of cyber crime. This in turn makes investigations more complicated for law enforcement authorities (EU, 2012). Due to EU statistics nearly one third of internet users in the EU27 caught a computer virus in 2010 and 3 % of internet users in the EU27 suffered financial loss due to phishing or pharming attacks or fraudulent payment card use (Euro Stat, 2011). Slovenia recorded in 2011 among 27 EU countries the lowest levels of experienced identity theft (European Commission, 2012). Slovenia was not very interesting target in the past, because criminals were attracted to western banks such as large US Banks, afterwards followed German Banks and Polish banks. We can assume that Slovenia's turn will come as well (Božič, 2012). In August of 2012 more e-banking attacks were reported to Slovenian police (2012). Therefore banks must prepare to potential attacks and emerging risks in the future as much and as fast as possible. First step for all banks should be evaluation of their solutions to various risk scenarios. Short analysis of security mechanisms used in Slovenian e-banks showed most of them are still not prepared to newer forms of attacks (so called Man in the middle[1] and Man in the browser attack[2]), some of them not even to elementary attacks such as phishing and pharming. Slovenian banks in general have not embraced security mechanisms that other European banks already recognized as successful in defense against newer attacks.

2 METHODS

For the purpose of this article, we use descriptive methods and made thorough overview of the literature, relevant studies and practices that deal with the use

[1] MITM – Man in the middle attack; in this type of attack, the attacker implants in the communication between the user's computer and the bank's server, and can intercept the login password or code to enter the e-bank and execute attack.

[2] MITB - Man in the browser is an attack, where Trojan is installed on user web-browser, which is afterwards remotely controlled from intruder, and can alter transaction data and destination account without users notice.

of e-banking systems. We also used comparison method, where we draw special attention to the most recent threats to e-banking and evaluated most spread security measures used in European banks. The used methods offer comprehensive overview of e-banking usability issues where different security measures are adopted in accordance to threat presence. On the basis of research and analysis of previous studies systematic evaluation of security measures and their usability aspects can be done.

3 RESEARCH OF SECURITY MECHANISMS AND USABILITY ISSUES

e-Banking security should be first priority for parties, the bank and the user. But in real-scenarios users are not keen of ambiguous security controls, and effects of use of complex and error-prone security measures are contra productive, while they require advanced user knowledge of information technologies.

Therefore e-Banking usability is a key aspect and of critical importance when successful adoption of e-banking is in question. In this chapter usability issues will be highlighted.

Implemented security mechanisms should not affect the reduction in utility and usability of e-banking services. Comprehensive understanding of e-banking usability demands studying in depth it's functionality and ease of use. This has in large variety been done by different authors for most spread authentication and authorization mechanisms and additional security controls. Here within our study the usability, security, functionality and user mobility are observed from the viewpoint of usability in previous studies.

Usability, security, functionality, user mobility and ease of use are defined in order to evaluate overall usability of e-banking for the end user.

Usability of e-banking is defined as assembly of security, functionality, ease of use and system independency.

Security – e-banking security is defined as a set of security mechanisms, e-bank must provide suitable level of security and protection against current threats to e-bank.

Functionality solutions (functionality) in the context of e-banking incorporates effectiveness, efficiency and users satisfaction within security mechanisms.

Ease of use of e-banking is defined as simplicity and understandability of security mechanisms used for the end user. It is intended for the use of intuitive mechanisms, ease of memorizing the procedures and steps for the user. It is also

important that users effortlessly learn the proper use, as foreseen by the designers solution.

User mobility and system independency – users mobility is provided with portable security mechanisms, which can be easily used not only on one dedicated computer, but can be transferred for example from home computer to other environments. This is especially important in retail banking.

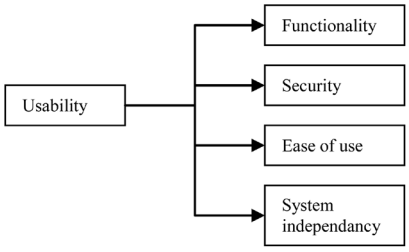

Figure 1: Usability, security, functionality, ease of use and system dependancy relationship (source: own)

Figure 1 illustrates the relationships between terms defined in this section. Usability consists of functionality, security, ease of use, user mobility and system independency.

3.1 E-banking solutions and security controls

In Europe there are in place large variety of e-banking security mechanisms and their comprehensive systematic categorization can be a challenge, while almost every single bank has some unique modification of the general accepted mechanism. For the purpose of this article we will categorize authentication/authorization methods as follows:

User identification – is made with something user knows (username) or something user has (Digital certificate, EMV CAP[3]).

User authentication – is made with something user knows (Password, One-time-password – OTP, Security Questions –very moderate in USA, less used in EU). Static password was recognized as vulnerable to phishing attacks (first intruder steals username and password and afterwards executes so called Off-line attack).

Transaction authorization - is usually needed when transfer of funds has to be made on foreign account. Some banks are still not using any authorization

[3] EMV interoperability technology for Euro pay, Visa and MasterCard payment transactions on POS terminals and ATM. CAP was developed as support for transactions made via internet or telephone.

mechanisms; some are using static TAN[4], OTP[5], mTAN[6] or iTAN[7] codes**.** After 2007 solutions with TAN, OTP, mTAN or iTAN were recognized as vulnerable to Man-in-the-middle attacks which can be done with stealing user-name, password and code for transaction authorization (TAN, OTP, iTAN, mTAN) in real-time. Therefore out-of-band transaction authorization generated on a separated channel and connected with transaction data has been introduced by online banks in response to various security attacks such as man-in-the-middle and man-in-the browser attacks (e.g. EMV CAP). Also some other security mechanisms which are not described in details, but are also used in EU Banks (e.g. PKI[8] in Austrian banks).

Table 1 represents authentication/authorization methods and vulnerabilities to relevant attack scenarios.

Table 1: Authentication Methods/Vulnerabilities to Modern threats (source: own)

Threat	User identification				User authentication			Transaction authorization				
	User name	Digital certificate		EMV CAP	Password	OTP	Security questions	NO auth.	OTP	iTAN-no link with trans.data	mTAN-linked with transaction data (SMS)	Authcode - linked with - transaction data (EMV-CAP)
		on disk	on smart card/ smart USB key									
Phishing	x	x			x		x	x				
Pharming	x	x			x	x	x	x	x	x		
Man-in-the-middle	x	x	x		x		x	x	x	x	x	
Man-in-the-browser	N/A	N/A	N/A	N/A	N/A	N/A	N/A	x	x	x	x	

In response to high-profile security breaches at American financial institutions, the Federal agency (FFIEC[9]) in 2005 enhanced Guidelines for Authentication in an Internet Banking Environment which is mandatory for all banks. In 2011 supplements to guidelines were issued, while some concepts described in the 2005 Guidance were too broad and inefficient. The new guidelines contain some essential controls which can prevent now-a-days attacks. Few among them are still eliminating usefulness and usability of e-banks, for example: »Number of transactions allowed per day, allowable payment window (e.g. days and times)

4 TAN - Transaction authorization number, usually written on a paper in sequenced order. When a number is used, it is not possible to use it once more time.

5 OTP – One time password is numerical code generated on security token device, valid only for one session or transaction. It can not be easily guessed, but it can be seized during active user session and abused by intruders within the session period.

6 mTAN- mobile Transaction authorization number is send to the user via SMS, transaction data are linked with mTAN, to avoid MITM attacks banks included in the SMS also information about account number and amount.

7 iTAN - indexed TANs are identified by a sequence number (index) and are randomly chosen by the bank. It can be implemented in various ways.

8 Private key infrastructure. Austrian banks use digital signatures for user authentication and for transaction authorization. The private key is stored on so called Bürgerkarte.

9 Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body of the United States government empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions.

«. Some of these solutions were adopted in European banks in order to prevent possible attacks, which may be efficient, but on the other hand they have negative implications on flexibility.

The essential and effective countermeasures for threat persistent approach are:
- the use of two-factor user authentication through different access devices, (FFIEC, 2011),
- all transactions had to be authorized before actual transaction has been executed,
- the use of out-of-band transaction authorization (FFIEC, 2011),
- authorization code has to include part of transaction data,
- enhanced controls over account activities,
- enhanced customer education to increase threat awareness (FFIEC, 2011).

Some EU banks attempt to protect against newer threats with auxiliary solutions which are not only inefficient, but have negative influence on usability:
- enforced daily limit of amount which can be transferred to foreign bank account,
- adding additional security layers (e.g. additional random number for transactions),
- on screen keyboards (they are not prone to visual key loggers[10]),
- CAPTCHA[11] used to provide another level of transaction verification, usually displayed with transaction details,
- Questions answering (with help of social networks personal data can be more easily guessed) (Rashid, 2011).
- Security mechanisms, which are currently recognized as one of the most effective defenses against all of the newer forms of attack (Phishing, Pharming, MITM, MITB) are already showing its weaknesses:
- prevented ease of use (users do not understand the technology, safety requirements and replace steps of conduction authentication sequence elements that must be used in each step) due to high cognitive burden users get to complete the task.
- prevented flexibility (users seek freedom and mobility), because the user is forced to work on the trusted device, which must comply with the same safety standards as a home computer, public computers (e.g. cyber cafés) which don't fulfill demands for trusted devices (Mannan, 2007). The problem could be solved by the introduction of mobile devices, but those are unfortunately exposed to other / additional risks (Hanacek et.al. 2008).
- extended time to use, time to execute the application transaction,

[10] Visual key logger is a program which captures the contents of the screen at certain intervals (record the position of the mouse at each shot) and makes sequence of images.

[11] CAPTCHA (Completely Automated Public Turing test to Tell Computers and Humans Apart) challenge-response test used in computing as an attempt to ensure that the response is generated by a person not an automated bot.

- imprudent implementation of two-factor authentication (such as EMV-CAP) can have negative effects, in the extreme case may even endanger human life (Drimer et.al, 2009).

3.2 Previous researches on usability issues

Previous studies (Belanche, 2012; Zahid, 2012; Pikkarainen, 2004; Snah et.al, 2007) proved that security and usability of e-bank are of critical importance in achieving user satisfaction. Schultz et al. (2001) predicted that secure and usable authentication will be an important factor of adopting and expansion of internet channel for commerce and e-banking activities. Weir et al. (2010) proved that the authentication process has a direct effect on security, the ease of use and convenience of a process.

Recent previous studies have researched the effects of existing most common authentication methods implemented in e-banks (AlZomai et al., 2008; Weir et al, 2009; Mannan et. al., 2007; Gunson et al., 2011; Hertzum et al., 2004; Hanacek et.al, 2008). The outcomes of the experiments brings into question whether the users can be made liable for errors and damage made when using such systems. The goal of the experiment conducted by Alzoimai et al. (2008) was to examine the usability of the SMS authentication scheme. According to the observations of the researchers only about 79 % of users would be able to avoid realistic attacks (will not recognize changing the destination account number in SMS message) and this means the Man-in-the-browser attack has succeeded.

Another research conducted by Weir et al. (2009) compared three different two-factor methods of e-banking authentication (push-button token, Card activated token, Chip and PIN Secured token). The research illustrated the usability-security trade-off when increasing layers of security are required. The experiment was designed to investigate customer perceptions of usability, convenience and security in two-factor (2-factor) authentication. No errors were observed in the use of the push-button activated OTP device. With the card-activated token, few problems of errors were observed, but no assistance was required. More errors were made with PIN-secured token, nine participants (out of 25 participants) required assistance to complete authentication. Participants relucted to read instructions because of its length; the majority did not read or follow the instructions straight away. Usability and preferences were very highly correlated for the push button token and PIN-secured token. The study pointed some important conclusions: The perceived security, convenience and usability relationship were not stable across all three designs. Participants chose their preference following usability and convenience rather than what they perceived to be increasingly secure. While the majority of customers were not prepared to sacrifice convenience and usability for what they considered increased security, a minority were willing.

Similar study conducted by Gunson et al. (2011) evaluated the usability and perceived security of two methods; single factor12 and two-factor authentication in automated telephone banking. Study showed offset by significantly lower perception of usability, convenience and ease of use for the two-factor authentication. Especially older participants were confused about the secret number13 (known only to the users) and access code (code generated on portable key fob). The hardware device for generating access code was criticized by the users as being inconvenient to carry around and was a mystery in terms what actual security is provided and how it worked (Gunson et al., 2011). Study, conducted by Mannan et al. (2007) provided an analysis of online banking requirements from usability issues, client agreements (for regular and electronic banking), security and privacy requiremens/reccomendations from banks websites. Survey suggests that user responsibility compared to banks responsibility is large and unrealistic, while users don't have enough skills to safely use the e-bank (e.g. check SLL site certificate, read and understand software agreements, estimate if system is infected with Spyware, install and configure firewalls). User must spend a significant amount of money to be eligible to use free on-line banking services (e.g. antimalware programs, consultancy of trusted third party specialized in computer security). Many security requirements are therefore too difficult for regular users and advertisements about 100 % online security guarantees mislead users (Mannan et al, 2007). A study conducted by the Hertzum et al. (2004) evaluated users' ability to implement the key activities of e-banking users (evaluation of 6 Danish e-banks): installation, logon, transfer of funds to another account and logout of the user. Main finding of the study was that users are able to carry one out of 5 activities; installation (PKI14), other activities (login, money transfer, logoff), are too complex for the users. The main reasons are:

- users do not have the knowledge to create a secure password. Some banks in the technical solutions demand complex passwords, but do not give instructions to create a secure password.
- completion of the transaction is a complex task for the user in three ways, the number of steps required to successfully complete the transaction, the number of security concepts that are presented to the user as well as the number of security passwords that a user needs to enter during the execution of a payment transaction.
- users are expected that, after the successful completion of the transaction they log off from the system, but actually this is not really done by users, because they do not understand the meaning of security tasks.

[12] The single factor approach is based on a »what you know«, the procedure demands recall of two randomly selected digits, from six-digit secret number (e.g. »Please give the Xdigit of your secret number followed and the Y digit«).

[13] Secret keys are high information entropy secrets (entropy is a measure of the uncertainty associated with a random variable), (Shunsuke, 1993)

[14] PKI – Public key infrastructure – user authentication in some banks is made with PKI. Installation of digital certificate on user's computer is required (in the process pair of private and public keys is stored in the signature file).

- Due to the authors (Hertzum, 2004; Alzomai, 2008; Lampson, 2009) findings in previous studies and other facts from practice, we can conclude that complicated security solutions cause those users:
- circumvent security controls which are complicated and demand reading of lengthy users manual,
- users ignore safety warnings which they don't understand (e.g. by clicking OK buttons, only to get rid off them as quickly as possible, without exactly knowing what warnings mean),
- a designed security controls are used in the wrong way, therefore errors come up (e.g. Authorization verification message),
- stop using e-banking solution or go to competitive bank (due to lack of solution flexibility and mobility).

Table 2: Comparison of authentication/authorization methods and usability, costs (source: own)

Authentication/Authorization method	Usability					Operational costs
	Functionality	User mobility	System independancy	Ease of use	Security	
User name and OTP	Middle	High	Middle	High	Low	Low
Digital certificate on disk for identification	Low	Low	Middle	Middle	Low	Middle
Digital certificate on smart media for identif.	Middle	Low	Low	Middle	High	Middle
Digital certificate for transaction authorization	High	Middle	Middle	Middle	High	High
EMV-CAP card identification/PIN	Middle	Middle	Middle	Middle	High	High
EMV-CAP transaction authorization (trans.data embedded)	Middle	Middle	Middle	Low	High	High
Mobile identification with digital certificate	High	High	Low	Middle	High	Middle
mTAN (SMS transaction authorization)	Middle	High	Low	Low	Middle	Middle

Above studies highlighted some usability aspects of single security mechanisms used in Banks. Table 2 represents some of these findings in sense of usability, security, functionality, user mobility, ease of use and operational costs.

4 APPROACHES FOR ACHIEVING USABLE SECURITY

Many approaches can be efficient in defeating against threats and inheriting usability of e-banking systems, but for the banks and solution providers it is essential they on the long term adopt the most essentials and appropriate ones. There are different approaches in achieving security measures. The main approaches, used on different levels are described in advance.

4.1 The involvement of users in software development life-cycle (Design and testing)

Solution providers should engage regular users when developing e-banking solutions. The design team should be user-driven (Gould, 1985), which means designers should deeply investigate the user's needs, capabilities and user life-

styles, before they went to design e-banking solutions. In the test phase of SDLC, test team should have representatives of regular users (test team members are usually technically competent users).

4.2 Threat Modeling approach adoption

Adoption of threat modeling approaches should be done in e-banking solution development organizations as well as on bank side. Threat modeling is an approach for analyzing the security of an application (OWASP, 2012). The threat modeling process can be decomposed into 3 high level steps (OWASP, 2012): Step 1: Decompose the Application, step 2: Determine and rank threats, step 3: Determine countermeasures and mitigation. Other approaches are possible (e.g. Microsoft, for more details see Moeckel, 2010).

4.3 Divide security and usability threat model

Security solution will only be successful if customer will think it's useful. Perceived website usability has a positive effect on user's intention to use the website (Belanche et al, 2012). With security solutions we want to outwit the intruder, not the legitimate user, therefore different usage and different threat scenarios should be defined. Kainda et al. (2010) presented a model for evaluation of security and usability scenarios, shown on Figure 2. This approach should be taken in consideration by e-banking developers.

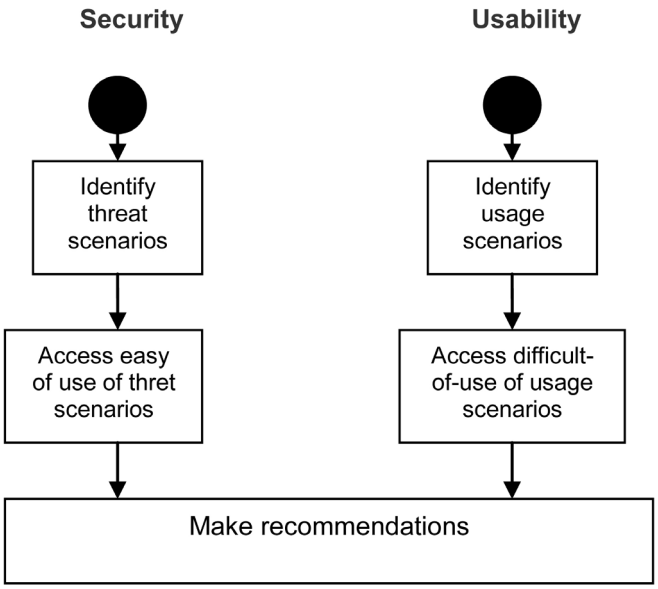

Figure 2: Process for security-usability analyses (source: Kainda et al., 2010)

4.4 User awareness-programs

Banks should develop user-awareness programs for e-banking users. Different trainings should be developed and user should have abilities to check their competences (e.g. e-learning programs) and possible errors they could do with inappropriate use. User awareness programs should include also security guidance and propose some antimalware or other free software for defeating against intruders.

4.5 Trusted devices

Users nowadays use for e-banking services desktop computer, mobile computers, and other mobile devices (e.g. smart phones, tablets). Users must ensure that up-to-date anti-malware software on all these devices is installed. Users don't have sufficient knowledge to ensure secure environment for e-banking. Therefore banks could offer trusted devices, which are not vulnerable to same threats as home computer or portable devices. At the moment such solutions would cost a lot and would be heavy to carry for the user. These would be an option for future according to technology development.

4.6 Extended Customer support

Services of customer support are in banks already established for resolving user problems, questions and offering guidance for using e-banking services. This service should be extended to technical service support, and offer a possibility, where user could came with their devices and technical stuff would install e.g. digital certificate on mobile device, update security programs if needed etc.

The above described principles are of key importance for the developers, programmers, and overall for the solution providers and as well for the banks. European banks should in order to defense against attacks, capture rather than reactive approach, take a proactive approach. Therefore they should adopt following practice:

- establish e-banking defense in depth,
- design layered security programmes,
- perform continuing reassessment of new risks,
- estimate existing countermeasures on regular basis,
- regulary and in comprehensive way inform e-banking users about newest threats and defenses.

5 DISCUSSION

We could divide European banks into two categories. In first category we would classify banks who have adopted e-banking services early in 1990 (niche players)

and through 10 years they were adding additional controls to existing solutions. Therefore some e-banking solutions became insecure, complex, error-prone and less user-friendly. For such solutions banks should perform security and functionality upgrade. This banks should first segment users into different groups (age, internet usage), and then analyze special needs of single user group, differences in life-styles, user capabilities and previous knowledge about information technology. On the basis of findings they should prepare individual solutions adjusted to user group needs. In second category we would classify banks that have adopted or upgraded e-banking solutions in recent years. Banks from second category should reevaluate existing e-banking security measures as well, investigate users experience with countermeasures, and take immediately action towards secure, user-friendly and usable solutions. In the introduction of the protective mechanisms of e-banks both designers and developers of e-banking solution, as well as the bank have to examine the impact on the usability and functionality of the solution. Banks who want to provide a safe, but also useful solution must necessarily establish procedures and mechanisms to obtain feedback from users. At this area we recognized greatest deficit, but on the other hand large opportunity for the banks and therefore further research in this area is necessary. Based on the previous researches, we assume that banks do not have adequate feedback:

- on whether users are able to ensure all security requirements,
- what are the real competencies and capabilities of users,
- how users understand the safety requirements,
- how the each single security mechanisms affect their ease of use,
- what kinds of systems do e-banking users actually use for highly sensitive on-line tasks (e.g. money transfer), and
- consequently their continued willingness to use e-banking.

Several steps were made by Slovenian banks with adding some new security mechanism (personal messages to user entry bank site, additional passwords, password change policy, and iTan variations for transaction authorization). But still, some solutions remain the same in their core, main architecture and design have not changed, therefore security gaps remain. Use of complex security mechanisms that do not provide appropriate security improvement is a burden for users which discourages them from adopting e-banking services. Banks should as early as possible adopt security measures which offer appropriate level of security and protect their solutions against newer attacks.

EU e-Banking market-place would need institutionary agency which would closely control e-banking market and define guidelines similar like FFIEC in USA. Also standardization of authentication and authorization methods used in EU banks is needed; otherwise European Union's goals for a common and regulated electronic marketplace will be very hard to achieve.

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SEARCH AND SEIZURE DATA IN CYBER SPACE – MECHANISMS TO PRESERVE AND REPRODUCE DATA IN A NON-VOLATILE FORMAT

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ABSTRACT
Purpose:
The purpose of the article is to present the origins, developments and trends in criminal investigation science /criminalistics in order to preserve digital evidence obtained by search and seizure data in cases of the remote computer, cyberspace and cloud search.

Design/Methodology/Approach:
The article is based on a review and analysis of the professional literature on criminal investigation, published in books and periodicals.

Findings:
Electronic data held on computer hard disks and other rewritable physical digital media can be considered to be a volatile form of evidence. This evidence can be easily altered or destroyed if left unprotected or without proper handling. As in the case of traditional evidence, the proponents of evidence normally carry the burden of offering sufficient support to authenticate electronic evidence. Therefore, a mechanism to preserve or reproduce the data in a non-volatile format is required. Physical acquisition (disk imaging) allows an entire hard disk drive to be reproduced or analyzed without the need to access the original hard disk. This process provides a safe mechanism to analyze, test and interact with data, while still providing the most accurate reproduction of the original. In this case the data copied can be said to be an exact duplication of the original, a more exact duplication than, for example, a photocopy of a page, because disk image allows you to recover deleted and ambient data.

In cases where data were obtained by searching in cyberspace, e.g. remote searching and browsing in the cloud, it is necessary to ensure the authenticity of the information searched and seized. Computer forensic examiners frequently use a number of methods to ensure the validity of the data copied including creating a digital signature (called a mathematical hash) of the data as it is read from the hard disk drive or similar physical media, so that the signature can be compared to the copied data. The mathematical hashing algorithm allows the examiner to detect if data have been altered or an error has occurred during the copy process. A number of commercial forensic acquisition products even embed the mathematical hash into

the electronic container that holds the forensic image. The authors give an overview of standard procedures of ensuring the authenticity of digital evidence by using a specific write-protection devices, either hardware or software that will eliminate the inadvertent or deliberate alteration of data in the case where only file or files are copied (logical acquisition), and when there does not exist a copy of the entire hard disk or similar physical media (physical acquisition). This process is essential if the original evidence has to be presented in some way, such as producing a forensic copy or performing a preview of the data to determine reasonable grounds to believe a computer will afford evidence in investigation.

Originality/Value:
The paper is the systematic overview of the history and development of procedures ensuring the authenticity of digital evidence obtained by remote searching, searching in cyber space and searching in cloud.

Keywords:cyberspace, cloud, remotesearch, searchandseizure data, criminalinvestigation, criminalistics, forensics, investigative.

1 INTRODUCTION

Cloud computing is a new term for a long-held dream of computing as a utility, which has recently emerged as a commercial reality. Cloud computing is likely to have the same impact on software that foundries have had on the hardware industry (Armbrust, 2009).

"Cloud computing" is the next natural step in the evolution of on-demand information technology services and products. To a large extent, cloud computing will be based on virtualized resources (Vouk, 2008). Cloud computing is the new information technology trend that moves computing and data away from desktops and portable PCs into large data centers. The basic principle of cloud computing is to deliver applications as services over the Internet as well as infrastructure. A cloud is a type of parallel and distributed system consisting of a collection of interconnected and virtualized computers that are dynamically structured and presented as one or more unified computing resources (Buyya, 2008). Distribution of data includes trans-border data distribution regardless of national boundaries.

Besides the advantages of cloud computing for legitimate users there are even greater numbers of opportunities for the misuse of cloud computing. Acquiring digital evidence on crimes committed by the misuse of computer and communication technologies in cyberspace and cloud includes the need for remote searching of computers and media for storage of computer data on known sites, and the need for remote searching of computers and media for storage of computer data and data browsing in a cloud. In the case of remote searching and seizing the data from media for storage of computer data at known locations

within the national jurisdiction the provisions of national laws that define the search of present physical media for storage of computer data are applicable.

In cases where data were obtained by remote searching hard disk drive or similar physical media on a known location within the national jurisdiction or by searching in cyberspace, e.g. remote searching and browsing in the cloud, it is necessary to ensure the integrity and authenticity of the information searched and seized. Once law enforcement has possession of the computer evidence steps must be taken to ensure that is not terminated and destroyed (Meyers & Rogers, 2004).

In this paper the authors present an overview of world-wide practices and their personal experiences in conducting criminal investigations including the search and seizure of computer data stored on a present hard disk drive or similar physical media. We also analyze the legal basis for remote and cross-border searches in known sites, in cyber space and in the cloud, the difference between the search of present hard disk drive or similar physical media, and the remote search of a hard disk drive or similar physical media and, of course, the methods of ensuring the authenticity of information searched and seized by searching the remote media for storing of the computer data on known sites and the media for storing computer data in a cyberspace cloud by using of a digital signature.

2 SEARCH AND SEIZURE ELECTRONIC DATA ON PRESENT REWRITABLE DIGITAL MEDIA

Standard procedures for the search, seizure and preservation of data in relation to computer data and systems in a country or computer data and system hosted abroad consists of two steps. The first step is going into physical locations and taking away a physical device, seizing it, then bringing the seized device to a lab and making an "image" copy. A second step is searching the "image" copy for evidence.

The practice of searching computers and computer contents in the criminal investigative activities undertaken by the police in the Republic of Croatia has been introduced gradually during the second half of the 1990s.Of course the tendency in the introduction of these measures and methods overlapped with the pace of introduction of computer data processing operations into the business operations of Croatian firms. Not only are computers increasingly becoming a source of possible evidence, but they also are a means for perpetrating new forms of crime. Initially the judiciary did not recognize methods and ways of exclusion and fixing of data stored on computers. Law enforcement officials and computer experts assumed the tasks and responsibilities of using the logic of exclusion and fixing of physical evidence in daily practice with limited financial resources and have modeled new practices and methods of work. Initially while computer drives were up to 60MB, before accessing a search the method of data

compression was used, and recordings were made on several (or more) floppy diskettes where the computer was located. Recorded material was supposed to guarantee the equivalence of searched contents. However, these methods required too much time, so the method of seizing computers with prior sealing was introduced to prevent any access to the computer until fixing of the data was accomplished and the search performed.

Over time the size of computer disks were intensively increased. In the case of a disk size of 1-5 GB, fixing of the data occurred on several Iomega Zip media (100MB or 250MB) or on a CD-R media (700MB). For disk sizes up to 50GB several DVD-R media were used, while for larger capacities the cloning of the disk contents on the hard disk drives (HDDs) by using the GHOST backup program in a forensic mode was used. For the capacities of modern HDDs this method of copying or cloning of the complete disk content became too demanding and too long. The solution was found in a fragmentary fixing of only those elements that were seen as beingrelevant to the investigation. Methods of seizing computers remained the same, but the procedure of the search changed significantly.

The entire search process is tracked through a record of search; the significant identification parameters of a computer (serial number, brand, processor type, RAM capacity, HDD capacities, and operating system identification data) must be written in the record. Also written on the record of search are locations of the found contents significant for the investigation. These must be written in the record and photo-documented and the significant contents must be fixed on some inerasable media (e.g. DVD-R).These media must be marked specially and their labels must be written in the record of computer search as well. It should be noted that in the case of the physically present rewritable media it is possible by using of appropriate software to make restoration in whole or at least in part of logically deleted files. These files can be indices that the owner of the computer had incriminating contents on the HDD of his/her computer. The application of such procedures and found contents must be especially photo-documented and written in the record of search. Of course the methods described above are related to search and seizure of the data from rewritable digital media such as HDDs, which have a specific location, i.e. are present on the site of the search (so called physical acquisition). However, when it is necessary to search the data at an unknown physical location, it is necessary to take use measures. This primarily relates to access to searched data, and then to ensuring the authenticity and validity of seized data.

3 LEGAL BASE FOR SEARCH AND SEIZURE DATAIN A CLOUD

The basic issues for access, searching and seizure data in a cloud are the location of the computer system and data.Cloud providers face a particular set of policy

issues. By their very nature Cloud services are borderless since users are only required Internet access and an Access Device, and providers the location of the datacenter(s) is irrelevant. Major Cloud service providers such as Google and Microsoft distribute their datacenters across the world. A Hotmail or Gmail user never knows on what server, in which datacenter, and in which country their mailbox is stored. The technological advantages to this approach include significant levels of fault tolerance and disaster protection, a more responsive user experience regardless of location, and the 'illusion' of limitless scale provided by these services (Kushida, Murray, & Zysman, 2011).

From a law enforcement or security perspective there is the need to trace the origin of atack or offence, to identify the offender in order to hold him or her accountable. The necessity of counter fight of cyber crime includes access to traffic data, content data or other stored computer data and subscriber information, as well as considering the possibilities of obtaining digital evidence regardless of the national jurisdiction or data location. Remote searching and seizing of digital evidence in cyberspace and cloud refers to a hard disk drive search or similar physical media that are not physically accessible and whose location is unknown. This includes the need for trans-border search and seizure of digital evidence. A trans-border search is defined as a search in which the Internet offers the opportunity to take unilateral measures to access data which are stored on servers in third countries, and in which agents of the state affected by the offense access the data without asking permission of the state in which the data are stored (Seitz, 2004). In order to obtain legal evidence in criminal investigation proceedings it is necessary that remote search and seizure is based on existing law. The high degree of agreement has been achieved regarding the remote search and seizure of open access data stored within a national jurisdiction as well as trans-border searches and seizures in a cyber space and in the cloud.There is no international legal standard procedure for trans-border access data, remote search and seizure of digital evidenceand data in a cyber space and the cloud, but it could be considered a legal search and seizure if based on a warrant, open access data, orbased on preliminary consent and legally obtained access codes.

3.1 Search and seizure data with warrant

The search and seizure of data based on a warrant are regularly referred to in search and seizure in a cloud within a law enforcement jurisdiction and performed according to procedural law provisions. Search and seizure of computer data stored in locations of a national jurisdiction based on a warrant will be legitimate if performed within the competency of the law enforcement body of the country hosting cloud servers, and in the framework of bilateral or multilateral agreements for mutual assistance and domestic law.

3.2 Open access data

Most legal systems accept the position that searches and seizures of open access data in order to obtain evidence for criminal investigations proceedings are a legitimate source of information. One state need not obtain authorization from another state when it is acting in accordance with its national law for the purpose of accessing publicly available (open source) data, regardless of where the data is geographically located. Article 32 of the Convention on Cyber Crime, represents the first agreement in international law which attends to the question of trans-border searches. According to Article 32 (a) of the Convention on Cyber Crime, a state may retrieve generally accessible data independently of the geographical location of their storage unit without having to ask for the consent of another state. A trans-border search with respect to generally accessible data is, as a result, explicitly permitted. Presently trans-border searches with respect to protected data are in principle impermissible (Seitz, 2004).

3.3 Access data with consent

Direct law enforcement access to cloud data abroad including trans-border access to data stored without involving cloud providers or authorities of the hosting country is in accordance to the Article 32 (b) of the Convention on Cyber Crime. Access to data or to the part of data in the search and seizure these data, authorized by the owner or other right holder, is always a lawful search and seizure. Consent must be voluntary and obtained before the search and seizure. It is not important whether the owner or other right holder gave the consent in advance by accepting the terms of use certain services or at the request of law enforcement. Voluntary consent includes the acceptance of public communication within a particular service and the consent of employees to be monitored in the use of the Internet. Consent refers to the data that are stored in the area of jurisdiction of the body that performs search or outside its jurisdiction. Accessing, searching, copying, or seizing data stored in a computer system located in another state is lawful, if acting in accordance with the lawful and voluntary consent of a person who has the authority to disclose these data.

3.4 Access data by legally obtained access codes

Search and seizure of data can also be carried out by the use of legally obtained access codes, regardless of national jurisdiction. In the case of Ivanov and Gorshkov access codes have been obtained from computers from which Ivanov and Gorshkov accessed their servers in Russia over the Internet. The passwords they used to access the servers in Russia were being recorded by the sniffer program. Afraid that relevant data might be deleted in Russia, FBI officers accessed the Russian servers via the Internet using the obtained passwords. They downloaded

250 gigabytes of data, including stolen credit card numbers and other evidence. Ivanov and Gorshkov were arrested on the same day. The two Russians were charged with multiple misdemeanors**,** and with the help of the data downloaded from Russia, they have already been convicted and sentenced to fines and prison sentences. Russia has taken the stand that the provisions of data by transborder search and seizure of computer data, in this particular case, is contrary to the principle of national jurisdiction (Seitz, 2004).

4 SEARCH AND SEIZURE ELECTRONIC DATA IN A CLOUD

In the modern technological requirements of business the more we can meet the need of search and seizure of data for which we cannot completely determine the physical location (or locations) where records are stored. Therefore, this is a logical collection of data (logical acquisition).The model that we suggest in principle is described in Figure 1. Of course, this is a simplified representation of a real situation. We assume that the investigator has authorized access to certain content that is located somewhere within the "cloud" i.e. Internet. Investigator accesses and manipulates the searched content via a workstation connected to the Internet. We assume the seizure of data fragments. We must be aware that such contents are quickly and easily changeable, and are therefore called "volatile" data. These contents are defined according to the U.S. legal terminology called Electronically Stored Information (ESI) (Marcella, Marcella, Jr., & Menendez 2007). The term has become a legally defined phrase as the US government determined for the purposes of the Federal Rules of Civil Procedure (FRCP) of 2006 that promulgated procedures for the maintenance and discovery of electronically stored information (Withers, 2006). The categories and services provided in the cloud are as varied as the customers that use them. Attorneys who must chase down data for litigation should be aware that cloud computing may dramatically expand the number of places that ESI may reside - and may significantly increase the complexity and difficulty of locating and obtaining that data (Cross & Kuwahara, 2010). When these data are in the form of files and minor elements of databases they can be seized (fixed) with similar procedures as in the case of search of the contents on physically present digital media. The record of search is, of course, very important here too. Since we cannot define the location of the searched data, we try to describe (or at least to assume) the location in as much detail as possible. These details are still necessary to be photographically documented, and we consider it necessary to also be video documented to prove both the temporal and spatial continuity of the proceedings.

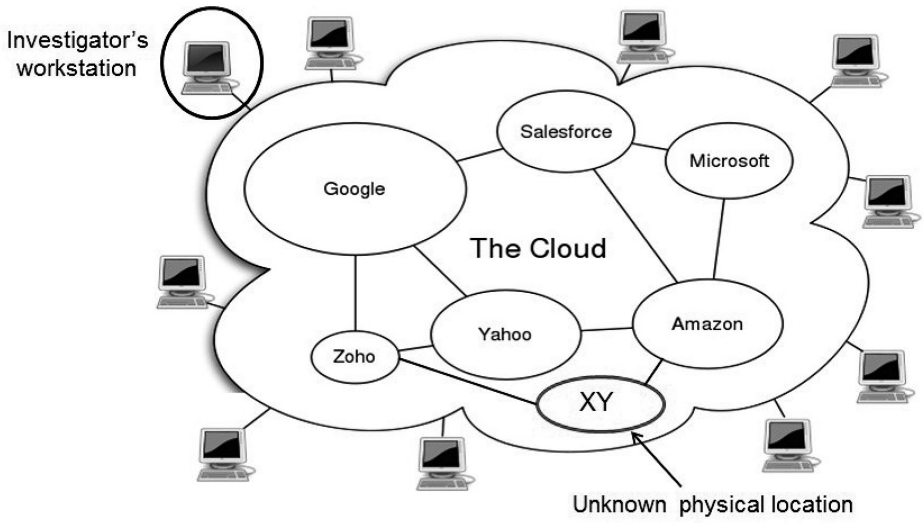

Figure 1: General presentation of the data search and seizure within the cloud

Of course it is not possible to restore logically deleted data, because it is a procedure that would be allowed only to the system administrator on the physical location of the particular server. This is especially case in the search and seizure of virtual contents inside of random access memory (RAM). Smaller amounts of data can be recorded on "non-volatile" media such as DVD-R and Blu Ray, and they can be stored on an external HDD with the sealing considering the possibility of later changes and deletions of the recorded content.

In cases where the amount of data is such that its seizure as described above is impractical, takes too long time or because the amount of data cannot be stored in this manner, the seizure has to be processed by forwarding the disputed data to the certified server of the institution that conducts the investigation. Since in this case there is the possibility of eavesdropping and the interception of data, it is important to take the necessary measures to protect and ensure the validity of seized data.

Applying measures to ensure data validity is also recommended in the case of storage of data seized from physical media through the investigator's workstation. In both cases it is necessary to photo and video document the names of excluded files, file creation time (timestamp) and the size of the excluded files. Of course we are aware that one should expect cases where the amount of data to be searched is so great that the only solution will be real and detailed locations of the resources that contain them, and blocking the entire functionality of the network segment (one or more companies) for the successful enforcement of the investigation.

Search and seizure of the ESI contained in RAM i.e. virtual environment, requires additional measures and actions (Wright, 2011). In computing terms virtualization is a broad term that refers to the abstraction of computing resources. Virtualization abstracts a physical resource into a virtualized resource that can be shared. Within a cloud many resources can be virtualized: servers, storage, software, platform, and infrastructure. and for this reason virtualizationis used extensively (Reilly et al., 2011).Those issues will definitely be the subject of our further research in implementation of the new forensic methods on the territory of the Republic of Croatia.

5 METHODS TO ENSURE THE VALIDITY OF THE DATA

In cases where the location of the server is unknown (somewhere in the "cloud") or is known, but the server is not physically available, it is necessary to take special measures to ensure the authenticity of the searched and seized information. Sought and found information should be copied on the investigators workstation.

To ensure evidentiary integrity of the original evidence the computer forensics process always begins with the creation of a perfect "bitstream" copy or "image" of the original storage device saved as a "read only" file. All analysis of the computer is performed on the bitstream copy instead of the original. The actual search occurs on the government's computer, not the defendant's. A bitstream copy is different from the kind of copy users normally make when copying individual files from one computer to another. A normal copy duplicates only the identified file, but the bitstream image copies every bit and byte on the target drive in exactly the order it appears on the original – including all files, the slack space, MFT, metadata, and the like. Whereas casual users make copies of files when their machines are running, bitstream copies generally are created using special software after the computer has been powered down. The bitstream copy then can be saved as a "read only" file, meaning that analysis of the imaged drive cannot alter it (Kerr, 2005).

Then, we should calculate a "hash" value for the relevant information. A hash is a complicated mathematical operation performed by a computer on a string of data that can be used to compare two files to determine if they are identical. If two non-identical computer files are each inputted into the hash program, the computer will output wildly different results. If the two files are exactly identical, however, the hash function will generate exactly identical output. Matching output from the hash proves that all the zeros and ones of the two inputted files are exactly the same. Forensics analysts can use these principles to confirm that the original hard drive and bitstream copies are identical. An analyst will

enter data from the original and then data from the bitstream image into the hash function. Matching outputs from the hash function will confirm that the bitstream copy is an exact duplicate of the original drive (Kerr, 2005). This is necessary because digital evidence once gathered must satisfy the same legal requirements as conventional evidence; that is, it must be authentic, reliable, complete, believable and admissible (in conform tocommon law and legislative rules (Reilly et al., 2011).

By applying the investigators private key it is necessary to encrypt the calculated "hash" value. This is the process of, so called, asymmetric encryption. By combining the encrypted "hash" value with the appropriate certificate we obtain a digitally signed document (information). The generated digital signature must be stored within the same digital container as the seized data. We must be aware that the process of asymmetric encryption is very complex and challenging given the processing power of computers that are used for this process. In Figure 2 we can see a schematic presentation of the described process.

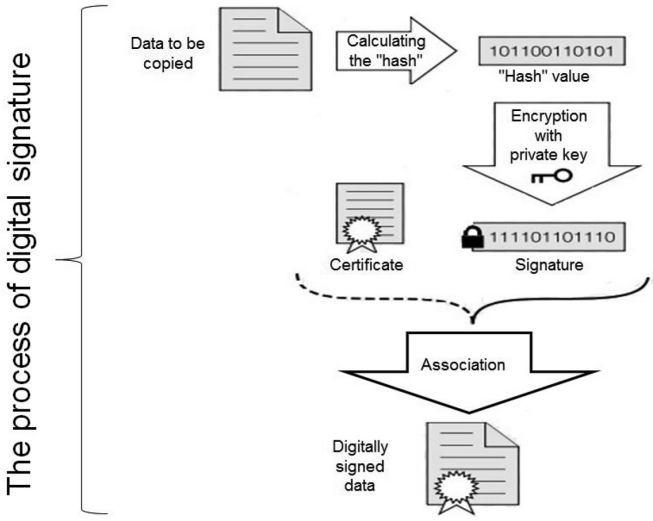

Figure 2: Generation of the digital signature

For the process of authentication and the review of digitally signed data we should carry out the procedure as shown in Figure 3. First we should calculate again the "hash" value of stored information. Then we should decrypt the digital signature by applying a public key (assigned to the e.g. Ministry of Justice site). Now we have an original "hash" value, which we have to compare with the calculated "hash" value. If these two "hash" values are equal our stored information is authentic, i.e. signature is valid and data are genuine.

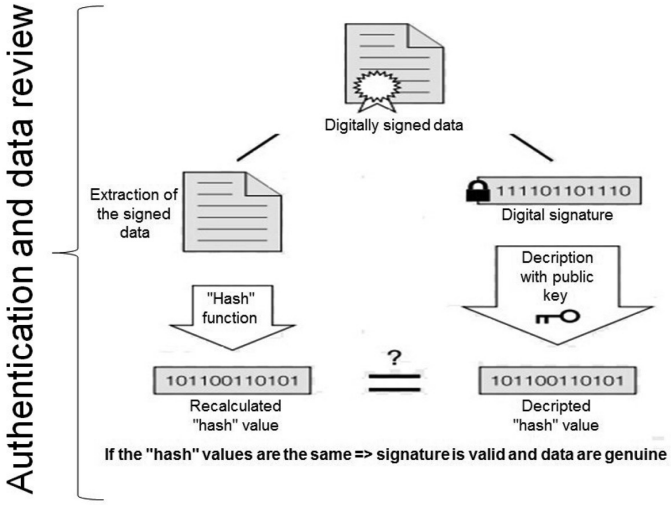

Figure 3: The process of data validation and review

Of course, a prerequisite for the described procedures is the existence of a public key infrastructure in the domain of justice (Ministry of Economy, Labour and Enterpreneurship, 2004). That means every authorized investigator would have to have a smart card containing his qualified certificate and private key for data encryption.

6 CONCLUSION

Forensic searches and seizures of computer data on a present hard disk drive or similar physical media remains an option to acquire digital evidence for the purpose of carrying out criminal investigations and criminal proceedings. The development of the information and communication technology, data storage in virtual media and hard disk drive or similar physical media, in cyber space or the cloud, conditions the definition of the legal framework for the remote forensic search and seizure of digital evidence in national jurisdictions, beyond national jurisdiction and in the area of more than one national jurisdiction simultaneously.

Computer forensic examiners in order to ensure the validity of the copied data often use a digital signature (based on mathematically generated hash value) of the data as it is read from the hard disk drive or similar physical media, such that the hash value extracted from the signature can be later compared to the hash value of the copied data. The mathematical hashing algorithm that we have explained and suggested as a method for ensuring of validity of the copied data is just one of possible solutions. True mathematical hashing algorithms allow an examiner to detect if data have been altered or an error has occurred in the

copying process. This process is essential if original evidence needs to be used to produce a forensic copy, or performing a preview of the data to determine reasonable grounds to believe a computer will afford evidence in the investigation. However, further research will show the optimal solution for ensuring the data validity considering the actual situation.

Digital evidence obtained by searching and seizing in cyber space or the cloud using commercial forensic acquisition can also be used as evidence in criminal proceedings.

As we already mentioned, forensic searches and the creation of data copies from present physical media and non-present physical media are conducted using the same principle. However, by searching the present physical media it is possible to obtain some information that is not possible to obtain in the case of non-present physical media. Search and seizure data from the present hard disk drive or similar physical media in addition to trustful copying the present data also allows the recovery of logically deleted data.

Remote searching and seizing data on a non-present hard disk drive or similar physical media, data in cyber (virtual) space and the cloud do not allow these possibilities. Regardless of the described shortcomings, search and seizure data in cyber space and the cloud as well as ensuring the authenticity of digital evidence by using a specific write-protection devices, is becoming an increasingly important source of digital evidence. However, while in the cases of standardized procedures where we usually take away physical devices and than make a copies of stored data, in the cases of data stored in the cloud, we only copy these data without any or with a minimum of disturbing the information system.

It still remains an open question which specific forensic methods will Croatia adopt. It depends on the process of harmonization of the legislative system with EU legislation.

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EXPOSURE OF SLOVENIAN PRESCHOOL CHILDREN TO PRESERVATIVES AND POLYPHOSPHATES

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ABSTRACT
Purpose:
The purpose of this paper is to examine the exposure of preschool children to daily consumed food preservatives and polyphosphates: sorbic acid, benzoic acid, nitrate, nitrite, sulphur dioxide and polyphosphates. To understand the r exact exposure to chemicals in food, data of consumed food intake and the concentrations of observed chemicals in food are needed. Methodology: Among the randomly selected regions in Slovenia, we randomly selected kindergartens and children aged from 2-6 years. The study included 190 children, 98 boys and 92 girls. Anthropometric measurements of children were conducted, so data on the sex, age, measured weight and height of the children were available. The dietary intake was based on the 3-day-weighed record method. The data from databases obtained from the official control and monitoring of food additive content in consumed food were used to calculate estimated daily intake (EDI). Such estimated exposure of each preservative and polyphosphates EDI was compared with acceptable daily intake (ADI) and expressed as % of ADI.

Results:
Average exposure to each preservative and polyphosphate EDI did not exceed the ADI. It is evident that the average exposure to nitrites and sulphur dioxide is relatively high, while intake of benzoic acid, sorbic acid, nitrates and polyphosphates is not so high. The mean daily exposure of children to nitrites ranged from 12,8 % to 28,3 % ADI, to sulphur dioxide from 14,3 % to 21,4 % ADI, while to sorbic acid from 3,8 % to 4,5 % ADI and polyphosphates from 1,8 % to 3,9 % ADI.

It is apparent that such exposure does not present any harm or threat to the observed children although we should consider the fact that ADI for the cumulative sum of preservatives and polyphosphates has not been set yet.

Keywords: preschool children, exposure, preservatives, polyphosphates, ADI.

1 INTRODUCTION

Environmental factors play a major role in determining the health and well-being of children. Accumulating evidence indicates that children, who comprise over one third of the world's population, are among the most vulnerable of the world's population and that environmental factors can affect children's health quite differently from adults' health (World Health Organization [WHO], 2006). One of the most important environmental factors, which has a strong impact on children health, is food. Children have different susceptibilities towards food during different life stages, given their dynamic growth and developmental processes as well as physiological, metabolic, and behavioural differences. Children consume more food and beverages per kilogram of body weight than adults do. Also their dietary patterns are different and often less variable during different developmental stages. Children's metabolic pathways may differ from those of adults. They have more years of future life and thus more time to develop chronic diseases that take decades to appear and that may be triggered by early environmental exposures. They are often unaware of environmental risks and generally have no voice in decision-making. The accumulating knowledge that children may be at increased risk at different developmental stages, with respect to both biological susceptibility and exposure, has raised awareness that new risk assessment approaches may be necessary in order to adequately protect children. Traditional risk assessment approaches and environmental health policies have focused mainly on adults and adult exposure patterns, utilizing data from adult humans or adult animals. There is a need to expand risk assessment paradigms to evaluate exposures relevant to children from preconception to adolescence, taking into account the specific susceptibilities at each developmental stage. The full spectrum of effects from childhood exposures cannot be predicted from adult data. Risk assessment approaches for exposures in children must be linked to life stages (WHO, 2006).

In almost all food categories preservatives are added to ensure a longer shelf life of food products. It is very important that only proven preservatives can be used by food producers, in certain food products and in allowed quantities. Exposure to each preservative must not exceed the acceptable daily intake (ADI), the amount of the substance considered to be safely consumed, daily, throughout a lifetime. This assessment is used to set the maximum amount of a particular additive permitted in a specific food, either as a specified number of grams or milligrams per kilogram or litter of the food or, if the ADI is very high or ''non-specified'', at quantum satis -as much as is needed to achieve the required technological effect, according to good manufacturing practice. To ensure that consumers are not exceeding the ADI by consuming too much of, or too many products containing a particular additive, the EU legislation requires that intake studies be carried out to assess any changes in consumption patterns (Emerton & Choi, 2008).

The vast majority of toxicity studies and risk evaluations deal with single preservatives and single chemicals. In reality, humans are exposed to large numbers of chemicals via multiple routes (Feron & Groten, 2002; Feron,Cassee, Groten, van Vliet, & van Zorge, 2002; Groten, Heijne, Stirum, Freidig, & Feron, 2004). So far, possible effect of mixtures of all chemicals and interactions between them, so called 'cocktail effect', have not been fully understood. Food additives are typically used in combination within processed foods and therefore collectively may have some adverse effects at the cellular level, even if their individual concentrations are below the ADI value (Lau, McLean, Williams, & Howard, 2005).

2 CONSUMER AS POSSIBLE VICTIM OF INVISIBLE THREATS

"Consumers by definition, include us all. They are the largest economic group, affecting and affected by almost every public and private economic decision. Furthermore, consumers are the only important group whose views are often not heard" (Kennedy, 1962). Consumer is a person who buys goods or services for personal needs and not for resale or use in the production of other goods for resale (Consumer protection Act, 2004).

Consumers expect a wide range of competitively priced, highly processed and convenient food products of consistently high quality. They expect it to be fresh, good looking, nutritious, wholesome, tasty and it must be primarily and absolutely safe. On the other hand, consumers have no direct means for the verification of their expectancies and have to rely completely on the food legislators and enforcement agencies (Anklam & Battaglia, 2001). Consumers could be victims of food poisoning, food adulteration and food frauds, misleading regarding food content (labelling), misleading indications, misleading descriptions, misleading pictures, food packaging (Jin & Kato, 2004; Gibson & Taylor, 2005; Tombs, 2008; Croall, 2009). In today's technological age, a reactive response to the consumer fraud is neither efficient nor effective (Holtfreter, Van Slyke, & Blomberg, 2005).

Consumers are privileged to have human rights. However, they come with certain responsibilities too - to seek, to evaluate and to use available information on products and services, to make healthier and better decisions for themselves and for their children. In case of exposure to different chemicals in food, consumers know that food product consist additives, but they do not know the quantity of them. Total intake is unknown, so how could parents be sure that the consumed food is safe for their children? It is very important to consider different sensitivity of population, especially among infants and children.

3 FOOD SAFETY

The main challenge in the area of agriculture is to provide sufficient quantities of food, which have to be of good quality and safe. Food production and food consumption are the primary aspects of our lives and are therefore subject to our care. To achieve these goals agriculture and food industry have to use in their production different chemicals such as pesticides and food additives. Without the use of chemicals the yields of fields will reduce, food production and the earnings will be considerably smaller. While with using chemicals the benefits are visible, the risks are often invisible, even they effects on us and make us vulnerable (Beck, 2001).

Safe food is food that is free from not only toxins, pesticides, chemical and physical contaminants, but also from microbiological pathogens such as bacteria and viruses that can cause illness (Golob & Jamnik, 2004).

There are main concerns regarding food safety. Consuming food is daily routine activity throughout lifetime. It is very important that such food does not cause health risk to consumer. Possible hazards in food are microorganisms, viruses, contaminants (toxins, heavy metals), pesticides and other chemicals. Consumer could be concerned and afraid of such hazards, but in many cases one does not know exact quantity of exposure and exact effect on his health. Therefore, it is very important to be aware of possibility of invisible threats in food. Food industry has a strong motive to make profit and many opportunities to manage it. Food operators try to convince consumers that they need their products, so they use all sorts of food additives, ingredients and advertising tactics to achieve better sale (Cheftel, 2005).

Consumers have the legal right to be protected (Xu & Yuan, 2009). The long-term health of consumers are also endangered by the use of foods and other consumer products of a vast range of chemicals and other substances that, while associated with long- term health risks, do not result in immediate harm. While there is a growing public concern about the number of foods and consumer issues, these facts have a lower political and governmental profile than the occupational health and safety or the safety of the environment (Croall, 2009).

The main authority concerns, regarding food safety, are to protect interests of public health, interests of food producers (economic view) and the consumer interests and their rights. It is not easy to make right decision and to achieve all that goals in practice at the same time. Recognizing possible invisible threats could assure better consumer protection. Furthermore, knowing all the risks of invisible threats in the food area help us to make corrective measures on time. These measures could make system for food safety more effective and give consumers better protection. The big challenge in the area of food safety for consumer health is the recognition of possible invisible threats in time. This can

help us to set up effective responses regarding those threats and risk assessment. Identifying all potential hazards that have to be assessed, eliminating or reducing them to acceptable levels, are the most important activities for achieving consumer protection, specially consumers' basic right to safety (Mičović, 2010).

3.1 Risk analysis

Public health decisions on the plausible risks of chemical exposures can include several possible outcomes. The ultimate goal is to implement a risk management action that will produce the desired reduction of risk. A risk analysis paradigm is a formal representation of a process that distinguishes the scientific bases from the risk management objectives and generally contains a component where the probability of harm is estimated. The overall risk analysis process includes risk assessment, risk management and risk communication, and involves political, social economic and technical considerations. Moreover, there is consensus among scientists that risk assessment should be an independent scientific process, distinct from measures taken to control and manage the risk. Risk assessors are responsible for scientific evaluation and their assessment should include possible harm and probability that the harm may occur (Benford, 2001). Risk management is the decision-making process involving the consideration of political, social, economic and technical factors with relevant risk assessment information relating to a hazard so as to develop, analyze, select and implement appropriate risk mitigation options. Risk management is comprised of three elements: risk evaluation, emission and exposure control and risk monitoring (WHO, 2004).

Risk management strategies may be regulatory, advisory or technological and take into account factors such as the size of the exposed population, resources required and available, costs of implementation and the scientific quality and certainty of the risk assessment. Risk managers are responsible for judgments concerning the acceptability of risk; they have to weigh risk against other factors including costs, benefit and social values, so called risk – benefit approach. Risk communication should include interactive exchange of information and opinions among risk assessors, risk managers, consumers and all other interested parties, often called stakeholders (Benford, 2001).

3.1.1 Risk assessment

The procedures used to estimate exposure to chemicals contaminants in food are essentially the same as those used for food additives (DiNovi & Kuznesof 2006). Exposure assessment should cover the general population, as well as critical groups that are vulnerable or are expected to have exposures that are significantly different from those of the general population, for example infants, children, pregnant women, or the elderly (WHO, 2005).

Risk is defined as the chance or probability of an adverse health effect occurring and the severity of that effect (Benford, 2001). Risk assessment is a scientific process, conducted by scientific experts, who may begin with a statement of purpose intended to define the reasons that the risk assessment is required and support the aims of the subsequent stages of risk management. Chemical risk assessment often does not have a formal statement of purpose (Benford, 2001). Generally, formal risk assessments are preceded by preliminary risk assessments. These are usually subjective and informal and may be initiated from inside or outside the risk assessment and scientific communities. A key consideration of these preliminary risk assessments is whether a formal risk assessment is necessary or not (WHO, 2004). However, risk assessment may be defined implicitly in a generic form, as in the terms of reference of an expert committee, such as the Joint Food and Agriculture Organization/ World Health Organization [FAO/ WHO] or Joint FAO/WHO Expert Comittee on Food Additives [JECFA]. Here, such assessments concern the definition of acceptable or tolerable levels of intake for a chemical in food that may require review and revision in the light of new information. It is a very important fact that risk assessment may need to be quantified differently for persons with different degrees of susceptibility. Risk assessment for chemical agents requires consideration of the factors mentioned before and these are generally encompassed within the stages of the overall risk assessment process, defined as hazard identification, hazard characterization, and exposure assessment risk-characterization (Benford, 2001).

Hazard identification is the process of identifying the type and nature of adverse health effects using human studies-epidemiology, animal – based toxicology studies, in- vitro toxicology studies, and structure-activity studies (cell cultures, tissue slices). Hazard characterization involves the derivation of a level of exposure at or below which there would be no appreciable risk to health if the chemicals were to be consumed daily throughout life. Exposure assessment is the evaluation of concentrations or amounts of a particular agent that reaches a target population: including magnitude, frequency, duration, route, extent. Risk characterization is the stage of risk assessment that integrates information from exposure assessment and risk characterization into advice suitable for use in decision-making (Benford, 2001).

The basic concept underlying any chemical risk assessment is the dose-response relationship. As described by Paracelsus nearly 500 years ago, "All substances are poisons; there is none which is not a poison. The right dose differentiates a poison and a remedy" (Winter & Francis, 1997). This means that any chemical substance is likely to produce some form(s) of harmful effect, if taken in sufficient quantity. Experts refer to a potential harmful effect as a hazard associated with that substance. The definition of hazard is "a biological, chemical or physical agent with the potential to cause an adverse health effect" (Unnevehr, 2003; Raspor, 2004; Armstrong, 2009). Whilst this may be appropriate with respect to

pathogenic organisms, chemical substances may be associated with a number of different adverse health effects, not all of which would necessarily be expressed in a specific exposure scenario. Therefore, experts dealing with chemical substances prefer to define the potential health effects as individual hazards which need to be considered separately during the evaluation. The likelihood or risk of that hazard actually occurring in humans is dependent upon the quantity of chemical encountered or taken into the body, i.e. the exposure. The hazard is an inherent property of a chemical substance, but if there is no exposure, then there is no risk that anyone will suffer because of that hazard.

Risk assessment is the process of determining whether a particular hazard will be expressed at a given exposure level, duration and timing within the life cycle, and if so the magnitude of any risk is estimated (Benford, 2001). Among the first objectives of a risk assessment is the determination of the presence or absence of a cause-effect relationship. If there is sufficient plausibility for the presence of such a relationship, then dose - response modelling (DRM) information is needed.

3.1.2 Acceptable daily intake (ADI) and estimated daily intake (EDI) of food additives

The concept of the ADI, is internationally accepted today as the basis for the estimation of the safety of food additives and pesticides, for the evaluation of contaminants and by this, for legislation in the area of food and drinking water. The ADI (Table 1) is an estimate of the amount of a food additive, expressed on a body weight basis that can be ingested daily over a lifetime without appreciable health risk (WHO, 1987).

Although, ADI has derived from the safety assessment of each food additive, their combined adverse effects are unclear and have not been widely studied. Food additives are typically used in combination within processed foods and therefore, collectively may have some adverse effects at the cellular level, even if their individual concentrations are below the recommended ADI value (Lau et al., 2005).

Table 1: Acceptable daily intake of preservatives and polyphosphates included into our study

Preservatives	**E number**	**ADI (mg/kg BW/day)**
Sorbic acid	E 200	0-25 (JECFA*, 1973)
Bensoic acid	E 210	0-5 (JECFA, 2002)
Nitrate	E 251	0-3,7 (SCF**; JECFA 2002)
Nitrite	E 250	0-0,07 (JECFA, 2002)
Sulphur dioxide	E 220	0-0,7(JECFA, 1973)
Polyphosphates	(E 450-452)	0-70(JECFA, 1981-2001)

*, **Acceptable daily intakes have been derived from toxicological studies by the former EU Scientific Committee on Food (SCF) and by the WHO/FAO Joint Expert Committee on Food Additives and Contaminants

Dose response modelling (DRM), used as a quantitative risk assessment tool for public health recommendations about chemical exposures, can be described as a six-step process. The first four steps—data selection, model selection, statistical analyses, and parameter estimation—constitute dose–response analysis. The fifth step involves the integration of the results of the dose–response analysis with estimates of human exposure. The final step involves an assessment of the quality of the dose–response analysis and the sensitivity of model predictions to the assumptions used in the analysis.

Extrapolation is a fundamental problem in the quantitative health risk assessment of exposure to chemicals that are toxic to humans in experimental systems. Adverse health effects of chemicals are, in the absence of human data, typically evaluated in laboratory animals at significantly higher doses than the levels to which humans may be exposed. Moreover, the data obtained in animals are very often misleading, as the animals used usually do not respond to the toxic compounds in the same way as humans (WHO, 2004).

The acceptable daily intake (ADI) is used widely to describe "safe" levels of intake; other terms that are used are the reference dose (RfD) and tolerable intakes that are expressed on either a daily (TDI or tolerable daily intake) or weekly basis. The weekly designation is used to stress the importance of limiting intake over a period of time for such substances (Herman & Younes 1999).

In order to calculate an ADI using the data from toxicity studies, the lowest dose should ideally result in no effects under the conditions of the particular study. That dose may be termed as the No Observed Effect Level (NOEL). Observed effects are referred to as assumptions; they cannot be made regarding effects that are not detectable by the methods used.

Some effects observed in toxicity studies may represent adaptive responses with no implications for the health status of the animal and would generally not be used as the basis for establishing an ADI. Effects that are considered to result in harm to the animal are referred to as "adverse", and therefore some expert committees use the expression No Observed Adverse Effect Level (NOAEL) (Benford, 2001). When using this approach NOAELs are identified in critical studies, to which appropriate safety or uncertainty factors are applied. Although the value of safety factors varies depending upon a number of factors, 100 is most often used, which is designed to account for interspecies and interspecies variations (Herman & Younes 1999).

ADI = NOAEL/ 100

Estimated daily intake (EDI) is value of chemical exposure, which can be determined by combining food consumption data with data on the concentration of additives in food.

The resulting dietary exposure estimate is afterwards compared with the relevant toxicological or nutritional reference value for the food additive concern, for example acceptable daily intake (ADI) or tolerable daily intake (TDI) (WHO, 2005). Usually EDI is expressed as percentage of value of ADI for each food additive.

If EDI is lower or the same as ADI, there is no concern regarding such exposure and we can assume that food additive intake among observed population represent no risk. If EDI is higher or the same as ADI, than exact risk assessment should be done on case-by-case base, and risk managers should decide and take effective measurements.

3.1.3 Preservatives and polyphosphates as chemical additives

For the successful production and selling of food the most important issues are quality, safety, shelf life and price of the food product. Quality food products are the source of suitable nutrients but it should havegood taste and look, but above all they should be safe for consumption and must not be harmful to the health of the consumer (Lu, 1991; Renwick, 1996; Emerton & Choi, 2008).

Additives are substances which are intentionally added to food products and are therefore amenable to be limited or, if necessary, prohibited altogether (Huggett et al., 1998). They are not main ingredients in food products but they are added to food with aim to improve technological or sensory properties (look, taste, texture, longer shelf life).

The authorization of food additives should be determined at to which of these additives may be added, and the conditions under which they may be added. One principle is that additives permitted for each sort of food and the other is ADI for this food additive. In certain food products, the addition of additives is prohibited (such as preservatives in dairy products) or limited (baby food).

To be precise, what allowance should be additive to achieve the desired effect? The principle is tied to h the lowest possible dose of additives to achieve the desired effect. It is very important to take into account the acceptable daily intake or other additive intake estimates and the probable daily intake from all sources. When the additive is used in foods for groups of consumers with special dietary needs, the acceptable daily intake of a food additive for this group of consumers should be considered (Emerton & Choi, 2008).

Preservatives are certainly the most important group of additives since they play an important role in ensuring food safety. They are used to protect against food poisoning so as to prevent the development of microorganisms and thereby prolong the shelf life and achieve stability of food products (Emerton & Choi, 2008).

There are natural and unnatural preservatives (Simon & Ishiwata, 2003) which prevent the growth of bacteria, fungi and viruses and thus prevent food from spoilage.

While food preservatives can increase the stability of food, polyphosphates give certain products organoleptic properties (taste, mouth feel and texture). Thus, there are also polyphosphates, which are added in the meat industry to a variety of products in order to make the meat retain more water that you add to food products according to a recipe. In the production of meat products phosphate additives primarily are used to increase in water binding, which naturally improves the taste. In cooked meat products this has precipitated adding 0.1 % to 0.5 % polyphosphate (Emerton & Choi, 2008; Uribari, 2009).

In addition to the meat industry, polyphosphates represent one of the key technological elements of the food additives used in the manufacture of cheeses, bakery products and a variety of drinks. Some studies have linked the intake of preservatives to the occurrence of allergic reaction, food intolerance and urticaria (Yang & Purchase, 1985; Hannuskela & Haahtela, 1987; Schultz-Ehrenburg & Gilde, 1987; Steinman, Le Roux & Potter, 1993; Hawkins & Katelaris, 2000; Merget & Korn, 2005, Andersson, Knutsson, Hagberg, Nilsson, Karlsson, Alfredsson, & Torén, 2006; Michaëlsson & Juhlin, 2006), so it is very important to find out exact exposure to food additives.

4 STUDY AMONG PRESCHOOL CHILDREN IN SLOVENIA

The purpose of research was to assess if preservatives and polyphosphates intake could be possible threat to the health of preschool children. It is assumed that intake of each food additive separately could not be so high or greater than ADI. However, it is unknown the total intake of all food additives per day. It is assumed that higher exposure to food additives is in relation to appearance with possible harm reactions among observed children. In the first place, it is necessary to find out the exact quantity of consumed food and then exposure to food additives, in our case preservatives and polyphosphates, added to food.

4.1 Methodology

4.1.1 Observed population

Among by randomly selected regions in Slovenia, we selected kindergartens and all children aged 2-6 years. Initially, the study included 250 children, representing all children of one section of selected kindergartens. Due to incomplete data, 60 children were excluded from observation. Therefore, the total number of children used in this study were 190, 98 boys and 92 girls. Anthropometric measurements of experimental children groups were conducted as for example data regarding their age and gender, weight and height. In the selected group, Boys and girls were divided into two groups regarding their age: 2-3.9 years and 3.9-6 years.

4.1.2 Food consumption data

The dietary intake is generally based on the 3-day-weighed record method in the kindergartens and homes. In the kindergartens subject to the research, we have weighed quantities of individual foods and dishes, randomly chosen and offered to the observed children. Quantity of food eaten by children at home, were collected by questionnaire, which were answered by parents. Data were calculated by average day and body weight of each child included into research.

Food intake (g) = food offered (g) - waste food on the plate (g)

I in this study we have obtained the exact amount of food eaten by each child inthreedays.

The specific types of food with regard to their food characteristics are presented in Table 2.

These are mainly processed industrially prepared food.

Table 2: Food categories included to study

Food category	**Food product**
Non-alcoholic beverages	Coca-cola, ice-tea
Fat spreads	margarine, butter
Bakery products	bread, cookies, pastry
Fruit products	dried fruits, jams, candied fruits
Confectionary products	chocolate like products, cream cakes, milk cakes
Meat products	salami, pate, hot-dogs
Snacks	salty snacks

4.1.3 Estimated daily intake of preservatives and polyphosphates (EDI)

Additives included in this research are preservatives: sorbic acid (E 200), benzoic acid (E 210), nitrate (E 251), nitrite (E 250), and emulsifiers: and polyphosphates (E 450-452);

To estimate the daily intake of preservatives and polyphosphates we had to combine food consumption data with data on the concentration of observed additives in food.

EDI = food additive concentration x food consumption per body weight

A calculation of the average daily consumption of specific groups of food per body weight for each child was made. Data from databases obtained from the official control and monitoring on food additives content in different food categories were used.

To calculate how much of each additive, the children ingested daily per kg of body weight, food additives were added together, equal and shared with the child's body weight expressed in kg and thus received the additive value in mg / kg body weight.

4.2 Comparison between ADI and EDI

To assess the safety of food additives exposure, the ADI of each food additive was carried out. The estimated daily intake (EDI) of each additive is acceptable and safe if its value is lower or the same as ADI. To determine the safety assessment among the observed children regarding exposure to preservatives and polyphosphates, the EDI was compared with ADI, and expressed as a percentage of ADI.

5 RESULTS

5.1 Characteristic of observed sample

The study included 250 preschool children, but, as shown in Table 3, we have 60 excluded from consideration. The reason for this was that in the absence of some children in kindergarten at the time of carrying out research or incomplete information on foods eaten at home, provided by the parents. Those exclusions result in 190 children, 98 boys and 92 girls aged 2 to 6 years being included in the study. The sample of children was divided into two age groups: 2 to 3,9 years and 4-6 years, and was divided by gender: girls (F) and boys (M). In the first age group there were 31 boys and 20 girls and in the second age group there were 67 boys and 72 girls. The average body weight of each child in the first group of boys was 16,86 kg ± 1,74 kg and among girls was 14,95 kg ± 1,44 kg. In the other age group, the average weight was 20,61 kg ± 4,03 kg among boys, and 19,60 kg ± 2,96 kg among girls.

Table 3: Observed population

Group	Gender	Number of children	Average body weight (Kg)	Standard deviation
2-3,9 y	M	31	16,86	1,74
	F	20	14,95	1,44
4-6 y	M	67	20,61	4,03
	F	72	19,60	2,96

5.2 Food consumption data

Weighing a three-day method was used to determine the food intake data among the observed children. The quantity of food eaten by children at home, was collected by questionnaire, which was answered by parents. Consumed foods were classified into the food categories shown in Table 2, and calculated as the average intake of each food category. We performed anthropometric measurements of the observed children, and take into account body weight to calculate the intake of food per kilogram of body weight of each child.

Table 4 therefore shows the average daily intake of all consumed food in three days, expressed in grams per kg body weight (g/kg BW). In the first age group boys consumed significantly more food than girls. In the age group 4-6 years, the difference in the quantity of consumed food among girls and boys was not so relevant. Regarding the above results, it is an interesting fact that the intake per kilogram of body weight is higher among smaller and younger children. This is very important regarding of risk assessment and sets the acceptable daily intake of additives. In the case of the same amount of consumed food the exposure to food additives for lighter child was higher than exposure to equal quantities of additives for children with higher body weights.

Table 4: Average daily intake of all consumed food

Group	Gender	Average daily intake (g)	Standard deviation of average daily intake	Average intake (g/kg BW)
2-3,9 y	M	350,63	83,19	20,79
	F	318,51	65,05	21,30
4-6 y	M	336,82	61,79	16,34
	F	330,61	65,51	16,86

Figure 1 shows the average intake of food categories among observed the children. It is clear that children consume most bakery products and dairy products, which is understandable. Bakery products and milk products are basic foodstuffs included in a daily nutrition of preschool children that include bread, breakfast cereals, cereal grains, cereals, milk and yogurt.

Compared to other food it is obviously that quite large intakes of consumed food belongs to confectionery products, such as sweets, chocolate, chocolate-like products, lollipops, chewing gums and meat products such as salami, hot dogs and pate.

These products are very popular among children. Among older children we noticed increased consumption of fat spreads, bakery products, fruit products, confectionery, meat products and snacks and decreasing intakes of dairy products.

This is logical, because parents offer dairy products in the meals more often to younger children. Relatively high quantity soft drinks (1,79 ± 5,44 g/kg BW) were consumed by girls aged 2 to 3.9 years, which is clearly shown in Figure 1.

The categories of fat spreads and dairy products were excluded from further analysis because the observed preservatives and polyphosphates were not identified in official control in these food categories.

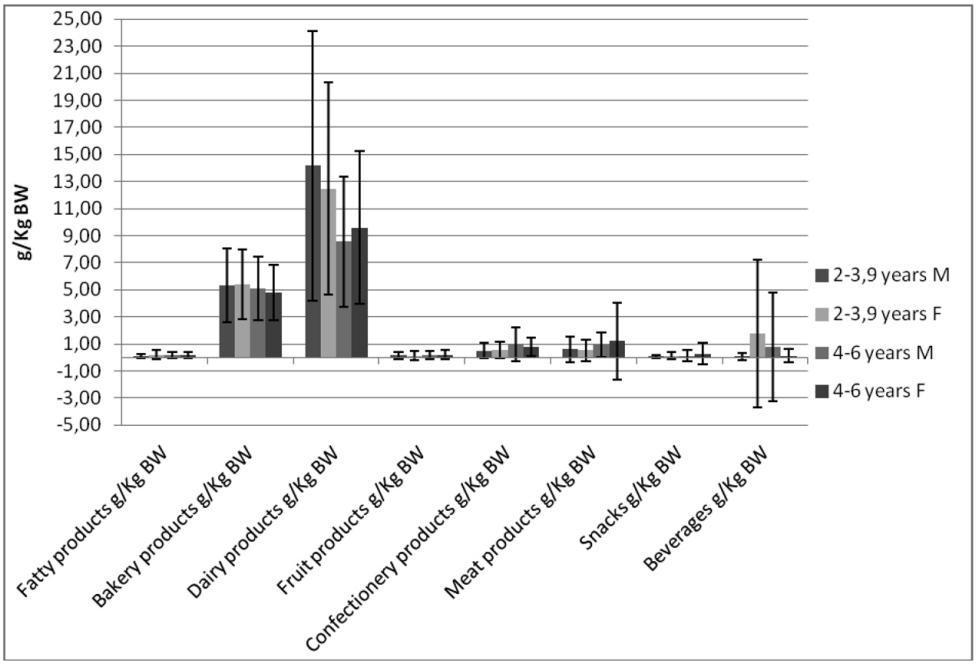

Figure 1: Average intake of food category among observed children

5.3 Estimated daily intake of food additives

Levels of preservatives and polyphosphates in different food products are known from official inspections and analysis reports on the content of food additives in different food products. Food products were placed in food categories shown in Chart 2 and Figure 1. The results show that preservatives are added into bakery products (sorbic acid and benzoic acid), non-alcoholic beverages (sorbic acid and benzoic acid), fruit products (sulphur dioxide) and meat products (nitrites, nitrates, and polyphosphates).

From the results of analysis reports we can calculate the exact quantity of preservatives and polyphosphates added in the consumed food.

As Table 5 shows the higher intake of preservatives and polyphosphates expressed in mg/kg body weight among older children, and 4-6 years old girls.

It is very interesting that the highest daily intake of preservatives and polyphosphates belongs to polyphosphates, commonly added to meat products. The average daily intake varied between 1,242 to 2,735 mg/kg BW. This fact is not so unusual given the high value of the ADI for polyphosphates (0-70mg/kg BW/ day).

It is obviously that this result is in line with the quantity of consumed meat products by girls 4-6 years old. In comparison the intakes of other preservatives is also fairly high in the daily intake of sorbic acid, which is on average from 0,945 to 1,130 mg/ kg BW/day.

Table 5: Average intake of preservatives and polyphosphates (mg/kg BW)

Group	Benzoic acid mg/kg BW	Sorbic acid mg/kg BW	SO2 mg/Kg BW	Polyphosphates mg/Kg/BW	Nitrites mg/Kg BW	Nitrates mg/Kg BW	TOTAL	SD
2-3,9 years old M	0,024	1,022	0,126	1,368	0,01	0,027	**2,577**	**0,60**
2-3,9 years old F	0,122	1,13	0,1	1,242	0,009	0,024	**2,627**	**0,58**
4-6 years old M	0,065	1,008	0,127	2,106	0,015	0,041	**3,362**	**0,85**
4-6 years old F	0,032	0,945	0,15	2,735	0,02	0,053	**3,935**	**1,08**
TOTAL	**0,243**	**4,105**	**0,503**	**7,451**	**0,054**	**0,145**		
SD	**0,04**	**0,08**	**0,02**	**0,70**	**0,01**	**0,01**		

Figures 2-7 show the average amount consumed each observed preservatives and polyphosphates among children included in the study. It is obviously that average intakes of each preservative do not exceed the ADI.

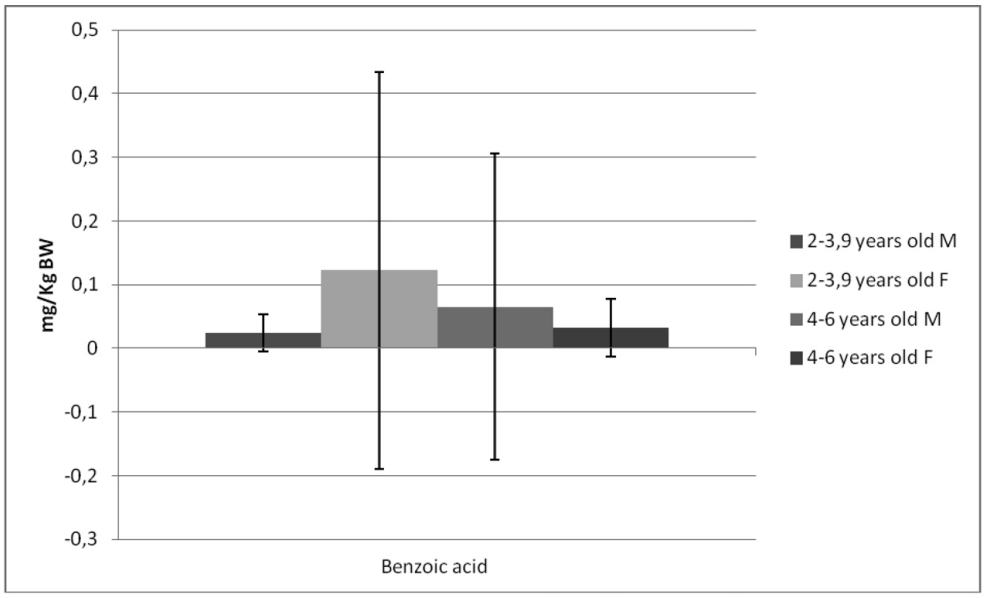

Figure 2: Average intake of benzoic acid

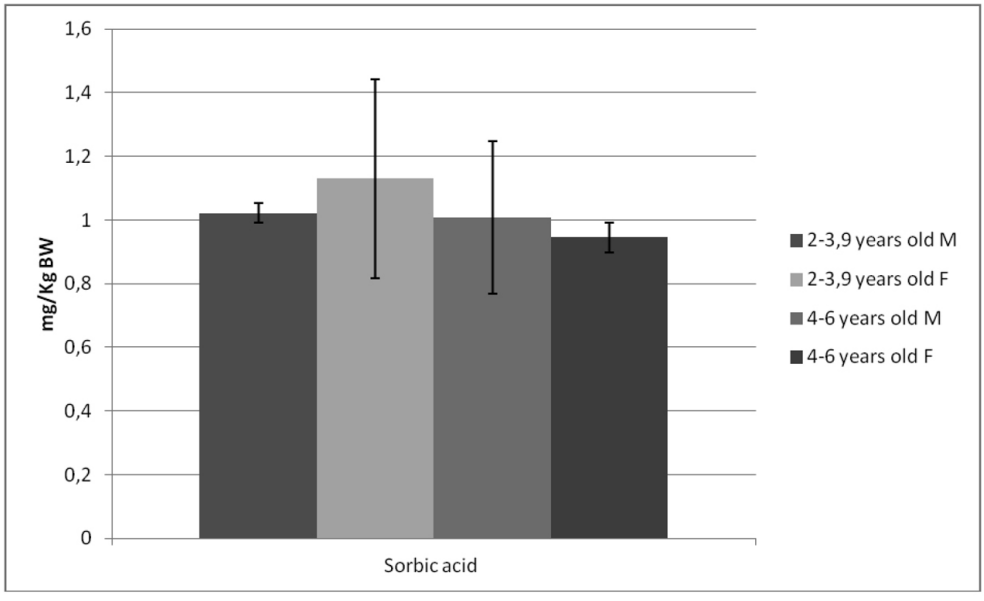

Figure 3: Average intake of sorbic acid

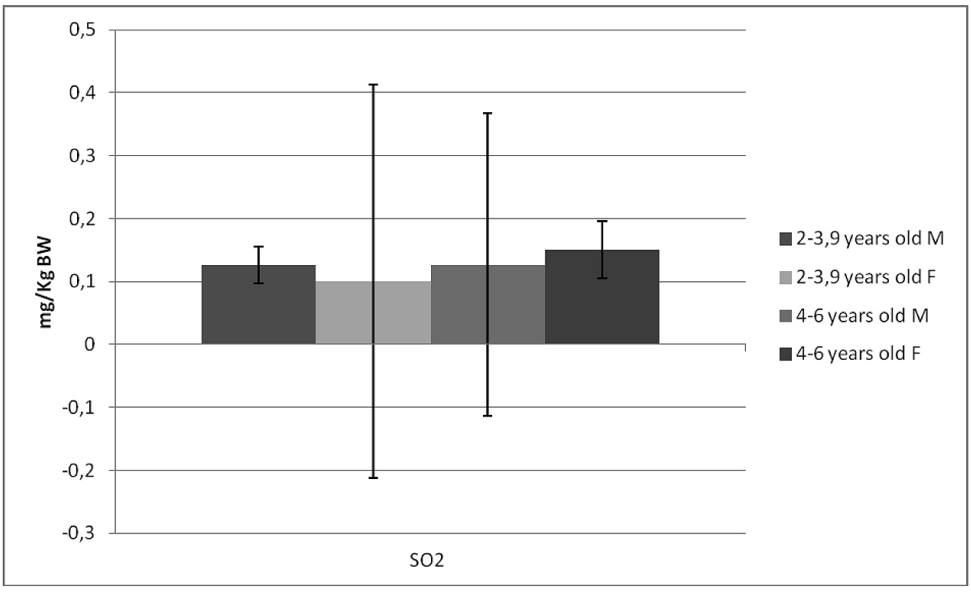

Figure 4: Average intake of sulphur dioxide

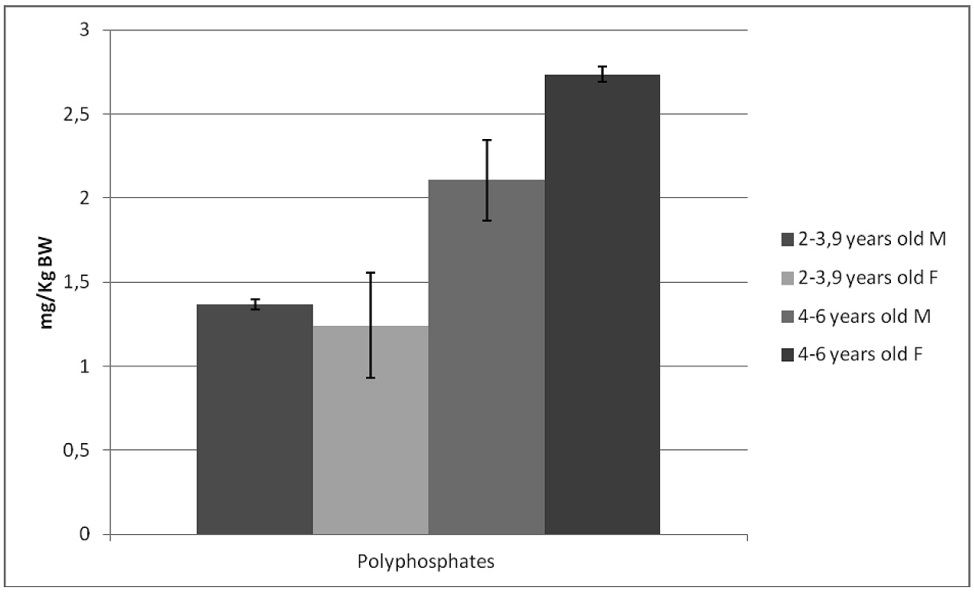

Figure 5: Average intake of polyphosphates

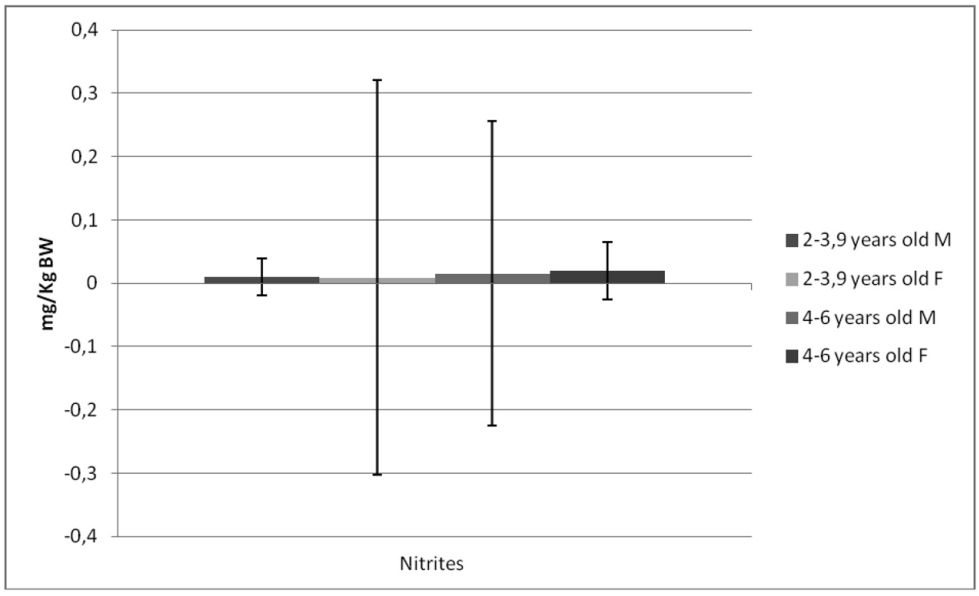

Figure 6: Average intake of nitrites

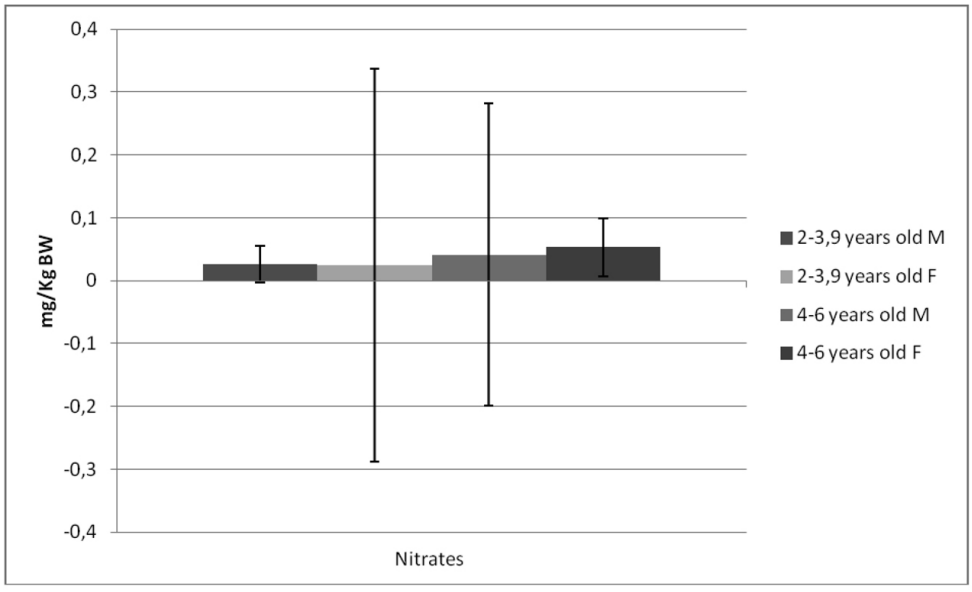

Figure 7: Average intake of nitrates

Although average intakes in the above additives did not exceed the ADI, we found eight children who have been exposed to higher levels of intake than ADI, namely exposure to sulphur dioxide, which is 1,048 to 1,930 mg/kg BW. The ADI

of sulphur dioxide is 0-0,7 mg/kg BW. Estimated daily intakes of other preservatives and polyphosphates among the individual children did not exceed the ADI.

5.4 Results of comparison between EDI and ADI of preservatives and polyphosphates

The results of safety assessments regarding the relationship between EDI and ADI in preservatives and polyphosphates show that the average intake of each additive is acceptable and safe. Figure 8 presents the EDI - ADI relationship of preservatives and polyphosphates.

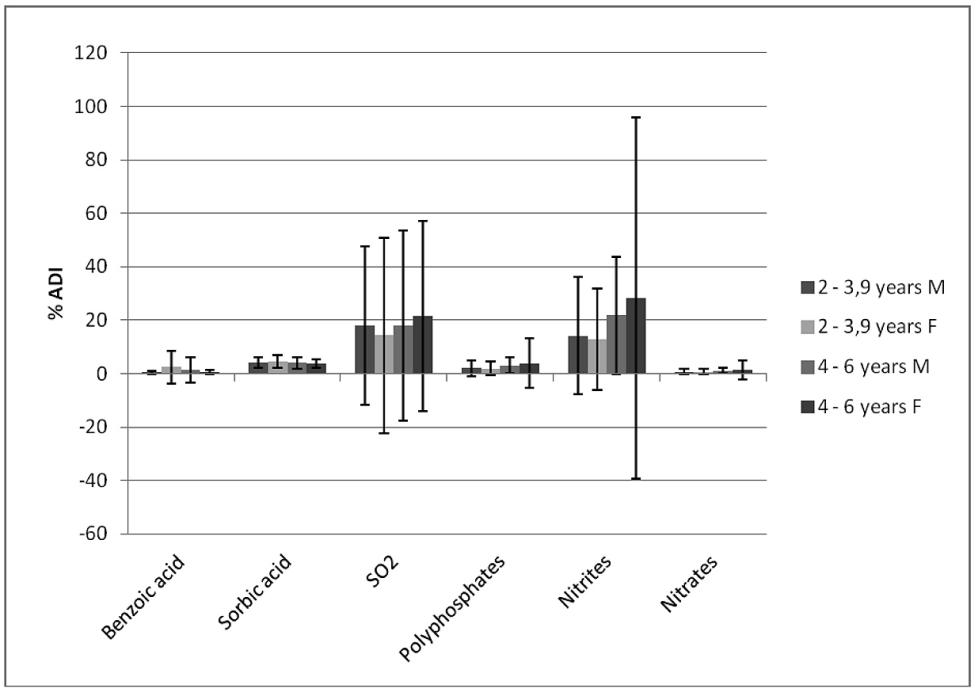

Figure 8: EDI–ADI relationship of preservatives and polyphosphates

It is evident that exposure to nitrite and sulphur dioxide is relatively high, the highest among older children. Intake of benzoic acid, sorbic acid, nitrates and polyphosphates is not so high.

It is interesting that the EDI to sulphur dioxide and nitrite is relatively high compared to other preservatives and polyphosphates, and is in range 14,3 to 21,4 % ADI for sulphur dioxide and 21,4 to 28,3 % ADI for nitrite. It could be concluded that basic food products that are consumed very often by children (few times a day) contain sulphur dioxide and nitrites. Such food products are fruit and meat products.

5.5 Results of total intake of preservatives and polyphosphates

Although the average intake of each preservative and polyphosphates did not exceed ADI and we can conclude that such exposure is acceptable and safe, we wonder about exposure of total intake - preservatives and polyphosphates together. We calculated the sum of intakes of all observed preservatives and polyphosphates and we expressed them for each group of children in Figure 9. The results show that the sum of the total intake of preservatives and polyphosphates for each group of children is in the range from 2,63 to 3,36 mg/kg BW. Total intake is higher among older children, especially among girls from 4-6 years old. Unfortunately we cannot compare these intakes with any ADI, because the ADI for mixtures of additives have not been sett. Nonetheless, the values in consideration of the average child's body weight tell us enough for themselves.

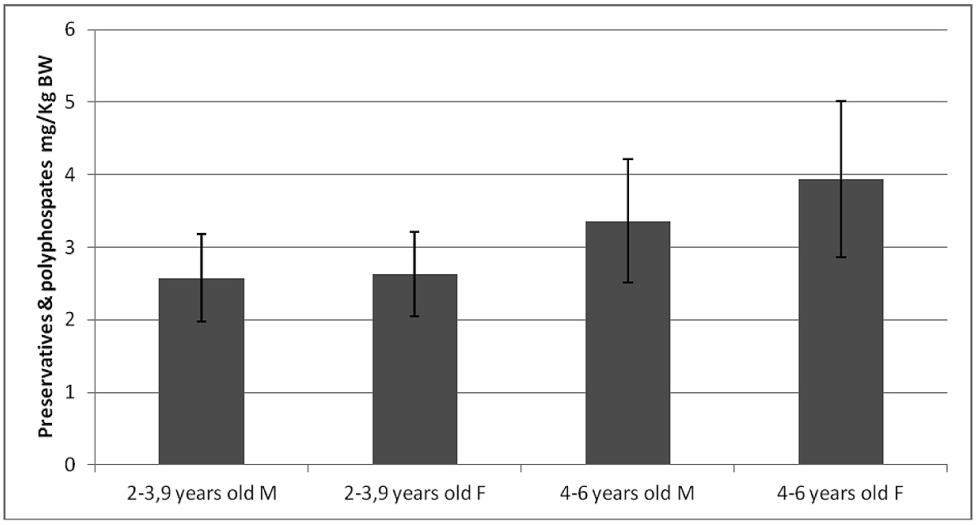

Figure 9: Average total intakes of preservatives and polyphosphates

6 CONCLUSION

The human health risk assessment of food constituents is an internationally agreed and well-established process, being an integral part of the risk analysis process, which also includes risk management and risk communication. These three elements are separate tasks, performed by different players, but each of them is very important. By exchanging knowledge and cooperation they are parts of an interactive process.

The risk assessment of chemicals in food is a scientific process that requires expertise in toxicology, nutrition and exposure assessment. Risk management includes the identification of the food safety problem, consideration of its magnitude, seriousness, and consequently the way of handling it. In this process the risk manager may include cost-benefit considerations before deciding how to manage the case (ban the compound, introduce limitations, provide specific dietary advice or accept the status quo). Finally, the risk analysis must include a clear and interactive risk communication with consumers, food industry and other stakeholders.

In this paper an example of risk assessment is presented with a focus on the special exposure assessment of preservatives and polyphosphates among preschool children in Slovenia. In this research 190 children were included, 92 girls and 98 boys, aged 2-6 years.

From the results of the quantity of food consumed by children in kindergarten we can conclude, that nutrition among Slovenian preschool children does not differ between regions in Slovenia. It is obvious that persons responsible for preparing meals in kindergartens follow the guidelines for healthy nutrition recommended by Ministry of Health of the Republic of Slovenia. Questionnaires answered by parents show us situations regarding nutrition among observed children at home. Regarding these results it is obvious that there is a big difference in consumed meals at home. In the observation of individual children included in the study we determined differences in patterns of consumption at home. Parents have very different levels of knowledge regarding ingredients included in food products, healthy nutrition and the possible effects of food additives on children's health. Some of them are aware of the importance of a healthy balanced diet and nutrition. They offer to their children food products without food additives, or they offer them food products with additives that are not so often and in small quantities. They also combine meals at home with food which has been eaten in kindergarten. On the contrary, some parents do not pay attention to food included into meals at home and the composition of meals in kindergarten. As our results show, their children were exposed to higher levels of preservatives and polyphosphates.

It is apparent that such exposure does not present any harm or threat to the observed children, in respect to the estimated daily intake (EDI) and acceptable daily intake (ADI) of each food additive.

Another question concerns the total intake of all food additives daily consumed by children: preservatives, polyphosphates, sweeteners and colours together. It is a fact that the ADI for the sum of food additives has not been set yet. As we can see from our results, exposure to preservatives and polyphosphates is relatively high among the observed children. We must not forget that children consume other food additives, such as colours and sweeteners as well.

We strongly believe that future study should lead to exposure assessments of the mixture of chemicals and interactive influences among them. We must not forget that children are vulnerable and the most sensitive population that could become victims of invisible threats.

As consumers parents and their children have a right to safety and a right to be informed before they choose food products. We should put more attention to in educating parents to be aware of the importance of possible effects in nutrition and on the health of their children. They should combine meals for their children ways to achieve a lower exposure to food additives.

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RISK COMMUNICATION AND RISK MANAGEMENT FOR ENSURING FOOD SAFETY – CASE OF E. COLI OUTBREAK

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ABSTRACT

Purpose:
The purpose of this paper is to emphasize the importance of risk communication as part of risk management for ensuring safe food. It is crucial that by means of pertinent risk communication activities the objectives of risk management for ensuring safe food are successfully met. Without effective coordination between the public health sector and the food safety sector, consumer protection and their rights are not ensured. The paper presents activities in the case of an E.coli outbreak in Germany last year, their weaknesses and lessons we have learned.

Design/Methodology/Approach:
Using empirical evaluation research is indispensable. Evaluation means the scientific assessment of the content, process and effects (consequences, outcomes, impacts) of an intervention and their assessment according to defined criteria (goals, objectives, values).

Findings:
Through the evaluation of different activities of risk management and risk communication processes, in the case of E.coli outbreaks at the EU and national levels, we determined some important facts. There were inabilities to recognize the source of the hazard in a timely manner, moreover there were weaknesses in providing traceability of food and ineffective risk communication which contributed to a reduction of consumers' trust in the authorities.

Research limitations:
Consideration only one case of a foodborne disease outbreak can not be a measure of system performance to ensure safe food.

Originality/Value:
This was a serious case of foodborne disease with serious consequences offering hard lessons to be learned.

Keywords: E.coli outbreak in Germany, food safety, risk communication, risk management, consumers' rights.

1 INTRODUCTION

The effective communication of information and opinion on risks associated with real or perceived hazards in food is an essential and integral component of a risk analysis process. Risk communication is generally accepted as one of the three components that constitute the process of food safety risk analysis. Risk assessment is a process that is used to quantitatively or qualitatively estimate and characterise risk. Risk management is weighing and selecting options and implementing controls to assure an appropriate level of protection. It is recognised that risk communication being an integral part of a risk analysis is a necessary and critical tool to appropriately define issues and to develop, understand and arrive at the best risk management decisions.

Safe food is food that is free not only from toxins, pesticides, chemicals and physical contaminants but also from microbiological pathogens such as bacteria and viruses that can cause illness (Golob & Jamnik, 2004). It is very important for consumers to be informed of all ingredients in food product because some of them could cause allergy and allergens could cause serious harms to consumer health. In food safety we use risk assessment process to find out if there is a possible risk in consuming food. It is important to understand differences between the acceptable risk, which causes no harm to consumers' health, and the unacceptable risk, which could cause harm to consumers' health such as illnesses, injuries or even death (Mičović, 2009). Studies show that consumers are most worried about food and drugs adulteration, swindles and food contamination (Croall, 2009; Miklavčič, 2002; Zver, 2007; Wilcock et al., 2004).

A series of food crisis (e.g. BSE, dioxins ...) in the past undermined consumer confidence in food chain safety and led to serious public and political concerns regarding the capacity of existing authorities to fully protect consumer interests. One of the most important consumer rights is the right to be properly informed. It is the fact that hazards are often invisible as consumers are unaware of any harm and cannot check the ingredients of processed food or other products. Consumers are subject to 'repeat victimisation' – in regards to consuming food: they have to eat throughout their lifetime. They are often unaware of any harm of possible invisible threats. They do not have knowledge to assess and check the quality of food product or moreover to check the honesty of the labelling of food product (Croall, 2009). It was therefore necessary to provide an *independent and objective source of advice on food safety issues (*Food and Agriculture Organization/ World Health Organization [FAO/WHO], 1997).

The fundamental goal of risk communication is to provide meaningful, relevant and accurate information, in clear and understandable terms, targeted to a specific audience, in particular to consumers. It may not resolve all differences between parties but may lead to a better understanding of those differences. It

may also lead to more widely understood and accepted risk management decisions. Effective risk communication should have goals that build and maintain trust and confidence. It should facilitate a higher degree of consensus and support by all interested parties for the risk management option(s) being proposed (European Food Safety Authority [EFSA], 2006).

An outbreak comprising 3.842 cases of human infections with enteroagregative hemorrhagic Escherichia coli (EAHEC) – E.coli occurred in Germany in May 2011. A high proportion of adults affected in this outbreak and an unusually high number of patients that developed hemolytic uremic syndrome made this outbreak the most dramatic since E.coli strains were first identified as agents of human disease (Beutin & Martin, 2012). Communication about risk in this case had a very important role. It should provide relevant information, guidelines for consumers and instructions for official control.

Risk communication may originate from official sources at the international, national or local levels. It may also be from other sources such as industry, trade, consumers and other interested parties. In the context of this report, interested parties may include government agencies, industry representatives, the media, scientists, professional societies, consumer organisations and other public interest groups and concerned individuals. In some cases, risk communication may be carried out in conjunction with public health and food safety education programmes. It is an interactive exchange of information and opinions concerning risk among risk assessors, risk managers, consumers and other interested parties (FAO/WHO(a), 1997).

2 RISK ANALYSIS

The main authority concerns regarding food safety are protecting the interests of public health, the interests of food producers (economic view) and the consumers' interests and their rights. It is not easy to make the right decision and achieve all the goals in practice at the same time. Recognising possible invisible threats could assure better consumer protection. Furthermore, knowing all the risks of invisible threats in food help us to undertake corrective measures in time. These measures could make a food safety system more effective and give consumers better protection (Mičović, 2010).

Risk is defined as a chance or a probability of an adverse health effect occurring and the severity of that effect. A risk analysis paradigm is a formal representation of a process that distinguishes the scientific bases from the risk management objectives and generally contains a component where the probability of harm is estimated. The overall risk analysis process includes risk assessment, risk management and risk communication and involves political, social economic and technical considerations.

Moreover, there is consensus among scientists that risk assessment should be an independent scientific process, distinct from measures taken to control and manage risk. Risk assessors are responsible for scientific evaluation whether a formal risk assessment is necessary or not (Benford, 2001). As a probability calculation risk assessment will include both a statement of the objective under consideration (harm) and the basis for the assertion that the harm may occur. Among the first objectives of risk assessment is the determination of the presence or absence of a cause-effect relationship (Benford, 2001; Larsen, 2006).

Risk management is a decision-making process involving the consideration of political, social, economic and technical factors with relevant risk assessment information relating to a hazard so as to develop, analyse, select and implement appropriate risk mitigation options. Risk management strategies may be regulatory, advisory or technological and take into account factors such as the size of the exposed population, required and available resources, costs of implementation and the scientific quality and certainty of the risk assessment. Risk managers are responsible for judgments concerning the acceptability of risk; they have to weigh risk against other factors including costs, benefit and social values, so called risk–benefit approach. Risk management is comprised of three elements: risk evaluation, emission and exposure control and risk monitoring (Benford, 2001; Carrasco at al., 2011).

Risk communication is an integral and ongoing part of a risk analysis process. Ideally all stakeholder groups should be involved in an interactive process among them (Sandman & Lanard, 2012).

3 RISK COMMUNICATION

Governments have a fundamental responsibility for risk communication when managing public health risks, regardless of the management methods used. With the responsibility for managing risks comes the responsibility to communicate information about risks to all interested parties to an acceptable level of understanding. Decision-makers within governments have the obligation to ensure effective communication with interested parties when developing scientific and technical analyses and to appropriately involve the public and other interested parties in the risk analysis process. Furthermore, risk managers have the obligation to understand and respond to the underlying bases of public concerns about health risks.

Risk communication is no longer one way messages from experts or regulators to the lay public. It is integrated processes and procedures:

a) that involves and ensures information to all interested parties within the risk analysis process;

b) that assists the development of transparent and credible decision-making processes; and
c) that can instil confidence in risk management decisions.

A wide variety of communication strategies can be used in the management of food-related risks, ranging from the development of international standards to management of acute outbreaks of foodborne disease and long-term programmes aimed at changing food production, food handling and dietary practices.

Risk communication should include interactive exchange of information and opinions among risk assessors, risk managers, consumers and all other interested parties, often called stakeholders. Risk communication is the exchange of information and opinions concerning risk and risk-related factors among them and other interested parties (FAO/WHO, 1998; EFSA, 2009; Leppin, 2012). There are some misunderstandings regarding risk:

- If we talk about risk, we will only cause unnecessary alarm;
- They will not understand anyway;
- We will tell them when we have appropriate solutions,
- We have more important things to do. We need to concentrate on assessing, monitoring and managing risks (Leppin, 2012).

Understanding and communicating risk has clearly been shown to be influenced by a host of additional factors such as whether the risk is voluntary or involuntary; whether the distribution of risk and benefit is equitable; the transparency of the process; the extent to which risk managers are trusted; the degree of personal control; the individual dread of the adverse effect; and the extent to which the risk is unknown (FAO/WHO, 1997).

3.1 Risk perception

Governments should work towards a consistent and transparent approach when communicating risk information. Communication strategies may differ for different issues and different target audiences. This is most apparent when dealing with issues where specific groups have differing views of risk. These differences in perception, which may be due to economic, social or cultural differences, should be recognised and respected (FAO/WHO, 1997).

It is very important to understand the difference between a hazard and risk. A hazard could be biological, chemical or physical agent, capable of causing unwilling effects on health – disease or injury. Risk is a probability of disease combined with the seriousness of outcome (Raspor, 2004; Organization for Economic Co-operation and Development [OECD], 2002).

Perceptions of risk play a prominent role in the decisions people make, in the sense that differences in risk perception lie at the heart of disagreements about the best course of action between technical experts and members of the general public, men – women and people from different cultures (Slovic, 1992; Sandman & Lanard, 2012; Leppin, 2012)

As we shall see, non-scientists have their own models, assumptions, and subjective assessment techniques (intuitive risk assessments), which are sometimes very different from the scientists' models.

Table 1: The acceptability of risk varies depending on features that affect our perception of risk (source: Trautman, 2001)

Acceptability of risk	
More if:	Less if:
Voluntary	Involuntary
Natural	Artificial
Familiar	Unfamiliar
Fair	Unfair
No dread	Dreaded
Trustworthy sources	Untrustworthy
Good process	Poor process

Not only are there differences in people, in the way they approach risks, but there are also dramatic differences in risks. Table 1 lists some perceptual features of risk that reflect a risk's acceptability. Risks are more likely to be accepted if they are voluntary or familiar. So driving a car or even smoking cigarettes are readily accepted risks. Increased controversy surrounds those risks that are involuntary and unknown, perhaps genetically modified food or hormones in beef. It is probable that a communication gap between scientists and the public is only accentuated when several of these right-side features are in play (Trautman, 2001; Carrasco et al., 2011; Leppin, 2012).

Preparation of risk messages for dissemination is an important part of the risk communication process. It is also a deliberate and specialised undertaking and should be treated as such. Good risk communication and proper risk messages will not always decrease conflict and mistrust. An inadequate risk communication and poorly developed messages, however, will almost certainly increase both (FAO/WHO, 1998).

3.2 The goals of risk communication

The ultimate goal of risk communication is to assist stakeholders in understanding the rationale behind a risk-based decision, so that they may arrive at a balanced judgement that reflects the factual evidence about the matter at hand, in relation to their own interests and values (OECD, 2002). What the risk communication should contain depends on what audience members intend to do with it. Sometimes recipients need to trustworthy expert to tell them what to do. Sometimes they want to make their own choices but need quantitative details regarding information in order to do so (Fischhoff & Downs, 1997). The most important challenge for risk communication is to bridge the gap between different perspectives on risk held by regulators/experts and the public – usually there are different ways of thinking about risk (Sandman & Lanard, 2012; Lepin, 2012).

The main goals of risk communication are to:

- promote awareness and understanding of the specific issues under consideration during the risk analysis process, by all participants;
- promote consistency and transparency in arriving at and implementing risk management decisions;
- provide a sound basis for understanding the risk management decisions proposed or implemented;
- improve the overall effectiveness and efficiency of the risk analysis process;
- contribute to the development and delivery of effective information and education programmes, when they are selected as risk management options;
- foster public trust and confidence in food supply safety;
- strengthen the working relationships and mutual respect among all participants;
- promote the appropriate involvement of all interested parties in the risk communication process; and
- exchange information on the knowledge, attitudes, values, practices and perceptions of interested parties concerning risks associated with food and related topics (FAO/WHO, 1998; Leppin, 2012).

For many years, those responsible for assessing and managing risks associated with hazards in food supply have communicated information and opinion about those hazards in the interests of protecting and promoting public health. These communications were expressed mainly in qualitative terms regarding hazards as there were often no clear quantitative data concerning the resultant risks. More recently, the formal development and application of risk-based approaches to food safety and the availability of quantitative information related to risks in human populations has provided the opportunity for improved implementation of risk-based management strategies (EFSA, 2009; Carrasco et al., 2011).

3.3 Roles and responsibilities for risk communication

In the process of risk communication there are different roles and responsibilities among all participants; food business operators, consumers, scientists, public, government officials.

Food business operators are responsible for quality and safety of food they produce. They also have a corporate responsibility to communicate information regarding risks to affected consumers. The routine information flow between industry and government usually involves communications necessary to set standards or gain approvals for new technologies, ingredients or labels (FAO/WHO, 1998; OECD, 2002).

Consumers and consumer organisations have a responsibility to present their concerns and opinions on health risks to risk managers. International and national consumer organisations play an important role in disseminating information on health risks directly to consumers. Consumer organisations often work with governments and industry to ensure that risk messages addressed to consumers are appropriately formulated and delivered.

Consumers have responsibility to be aware of risk communication information about products and to notify appropriate authorities of their concerns about possibly harmful effects, which they associate with product usage (Carrasco et al., 2011; Raspor, 2004; Mičović, 2010; Jevšnik et al., 2007).

Research institutions, experts and risk assessors play an important role in risk analysis by contributing scientific expertise on health and food safety matters and assisting in the identification of hazards and assessing level of risk. They may be asked by the media or other interested parties to comment on government decisions. They often have a high level of credibility with the public and the media and may serve as independent sources of information (FAO/WHO, 1998; OECD, 2002; Leppin, 2012).

The media clearly play a critical role in risk communication. Much of information that the public receives on food-related health risks comes to it through the media. The media may merely transmit a message or they may create or interpret a message. They are not limited to official sources of information and their messages often reflect concerns of the public and other sectors of the society. This can and does facilitate risk communication since risk managers may become aware of concerns of which they were not previously cognizant (FAO/WHO, 1998; OECD, 2002).

Governments have a fundamental responsibility for risk communication when managing public health risks, regardless of the management methods used. With the responsibility for managing risks comes the responsibility to commu-

nicate information about risks to all interested parties to an acceptable level of understanding. Decision-makers within governments have the obligation to ensure effective communication with interested parties when developing scientific and technical analyses and to appropriately involve the public and other interested parties in the risk analysis process. Risk managers also have the obligation to understand and respond to the underlying bases of public concerns about health risks (FAO/WHO, 1998; OECD, 2002; Mičović, 2010; Jevšnik et al., 2007).

3.4 Principles of risk communication

Before a formal risk assessment is initiated, appropriate information must be obtained from interested parties to prepare a "risk profile". This describes a food safety problem and its context, and identifies those elements of a hazard or risk which are relevant to various risk management decisions. Risk characterisation is a primary means by which food safety risk assessment findings are communicated to risk managers and other interested parties. Numerical estimates in the characterisation, therefore, should be supported by qualitative information about the nature of risk and about the weight of evidence that defines and supports it. There are inherent difficulties in communicating quantitative aspects of risk assessment. They include ensuring that the scientific uncertainties inherent in the risk characterisation are clearly explained and that scientific terminology and technical jargon do not render the presentation of risk less understandable to the target audience. Communications among risk assessors, risk managers and other interested parties should use language and concepts that are suitable for the intended audience (Carrasco et al., 2011; Sandman & Lanard, 2012). There are few principles of risk communication which we have to be considered for achieving effective risk communication, namely:

- know the audience;
- involve the scientific experts;
- establish expertise in communication;
- be a credible source of information;
- share responsibility;
- differentiate between science and value judgement; and
- put the risk in perspective (FAO/WHO, 1998; OECD, 2002; Carrasco et al., 2011, Slovic, 1992; EFSA, 2009; Leppin, 2012).

3.5 Strategies for risk communication during a food safety crisis

In determining a communication strategy regarding its scientific opinions and advice, a risk communicator should take into account considerations such as: the significance of the risk assessment results, the nature of the risk, potential public

health impacts, public perceptions and anticipated reactions, and legislative and market contexts, as appropriate. Depending on what is to be communicated and to whom risk communication messages may contain information on the nature of risk. Such information includes the characteristics and importance of the hazard, the magnitude and severity of the risk, the urgency of the situation, a probability and distribution of exposure to the hazard, the amount of exposure that constitutes a significant risk, and the nature and size of the population at risk, in particular the most vulnerable populations (Fischhoff & Downs, 1997; FAO/WHO, 1998; OECD, 2002; Covello, 2009; EFSA, 2009; Leppin, 2012).

A typical food safety crisis is the one in which disease-causing organisms are discovered in a food widely consumed. The strategies suggested, however, also will apply to other kinds of crisis situations involving, for instance, chemical contamination or physical adulteration of foods (EFSA, 2009; FAO/WHO, 1998). While general strategies for non-crisis situations referred to previously still apply, a crisis situation calls for special considerations. Communication strategies should be an integral part of the crisis management plan. Effective crisis management requires a comprehensive plan that can be updated through periodic evaluations. Having good channels of communication to the public during a crisis is extremely important; first, to prevent panic and second, to provide positive information on the situation to help decide what course of action should be undertaken (Fischhoff & Downs**,** 1997; EFSA, 2009; Leppin, 2012). This should include information on:

- the nature and extent of the crisis and the measures undertaken to control it;
- the sources of contaminated foods and what to do with any suspected foods held in households;
- the identified hazard and its characterisation, and when and how to seek medical attention or other assistance as warranted;
- how to prevent further spread and
- guidelines of safe food handling for the population during the crisis (FAO/WHO, 1998; EFSA, 2009)

To achieve these objectives a risk communicator may manage a series of media communications, establish appropriate mechanisms to deliver information (local visits, radio announcements, a toll-free telephone help line, etc), arrange for one-to-one advice on infection risk in a special clinic if a foodborne disease is involved, provide daily updates on the crisis and crisis management activities to all health care and other relevant professionals, and hold regular briefings for government officials and other official representatives as well as representatives of the public. It is very important to evaluate the effectiveness of the crisis communications and make adjustments as appropriate (Fischhoff & Downs, 1997; Leppin, 2012; FAO/WHO, 1998). Those responsible for managing a food safety crisis should establish a network for interactively sharing information. Central government public health institutions, local governments, hospitals and food

business operators should make information accessible to each other in an accurate, concise and usable form (Carasco et al., 2011; Fischhoff & Downs, 1997; OECD, 2002).

Establishing a dialogue with consumers is particularly important for a timely communication of all kinds of potential hazards: biological, chemical and physical, in particular in the case where the risk to health positions has not yet been fully assessed and clearly defined. To this end, the EU has also developed a Rapid Alert System for Food and Feed – RASFF which would provide a timely response and action from all involved (Kleter et al., 2009).

Early warning systems in countries or regions should be established to allow rapid communication of emerging crises. Once the cause of a foodborne disease outbreak has been established, action can be taken across international borders. International organisations can serve as neutral parties for risk assessment, the development of appropriate risk management strategies and risk communication messages for national or international dissemination (FAO/WHO, 1998; EFSA, 2009).

4 EXAMPLE OF RISK COMMUNICATION – CASE OF E.coli OUTBREAK

The outbreak in Germany was the country's biggest foodborne bacterial outbreak in the last 60 years. Initially the outbreak of *E. coli* O104:H4, a rare strain, was linked through epidemiological investigations to the consumption of fresh salad vegetables (EFSA, 2012).

The outbreak apparently started in the Northern Germany in early May 2011. The first death, an 83-year-old woman, happened on May 21 and was reported on May 24, by which time at least 140 people had fallen ill. Up to this point no specific *E. coli* serotype had been mentioned (EFSA, 2011; Sandman & Lanard, 2012).

Results of the first case study of May 25 showed that food could be involved, especially tomatoes, cucumbers and salad. Information given that day was not to eat raw tomatoes, cucumbers and salad from Northern Germany. The second case study conducted by the Robert Koch Institute confirmed the results of the first case study. Also on May 25 German officials first announced that a very rare E. coli strain, 0104, was found in five of the sick patients. The news focus changed radically one day later, when the Hamburg Institute for Hygiene and Environment – a German state-level agency, not a national agency – announced that a cucumber from Spain was clearly identified as a carrier of Enterohemorrhagic Escherichia coli (EHEC). On May 26 the release did not say whether the Hamburg Institute had identified the serotype of the EHEC strain on the Spanish

cucumbers nor did it say whether the Institute was in the process of identifying the serotype. It just said "positive for EHEC."

Five crucial days later, on May 31, the Hamburg Institute itself would announce that the EHEC serotype on Spanish cucumbers was not O104, i.e. not the serotype responsible for the outbreak.

But between May 26 and May 31, the release left the firm impression that the Hamburg Institute had found Spanish cucumbers contaminated with the rare, deadly EHEC strain that the Robert Koch Institute had identified in sick humans on May 25. That impression was dramatically passed along by the media. After addressing several other aspects of the outbreak, the news release did return to the chain-of-exposure issue, pointing out that food samples from victims' homes were still being analysed and other possible sources of the contamination could not be excluded. This somewhat buried acknowledgment of uncertainty didn't overcome the confident tone of the news release lead.

The Hamburg Institute started risk communication down a bad track by sounding far too certain that Spanish cucumbers were responsible for the German outbreak. For whatever reasons, federal officials in Germany and authorities elsewhere in Europe did nothing to correct the record for five critical days, allowing the media and the public (and even infectious disease experts) to get the impression that "officials" (not one local agency) had firmly concluded (not tentatively hypothesised) that the cucumbers were the culprit (Sandman & Lanard, 2012).

On June 24, the French authorities informed about an *E.coli* outbreak in the region of Bordeaux. Six of the cases reported having eaten sprouts at the event on June 8, a conclusion was that seeds could be seen as the common factor between the two outbreaks in France an Germany (EFSA, 2011).

This case of an outbreak of E. coli in Germany showed many disadvantages and weaknesses in communicating with the public regarding that risk. Information was incomplete and unclear. The fact is that the source of infection was not known for a long time – uncertainty was growing. It was unacceptable that the authorities did not explain the real situation and that all data and evidence were not available and known. This way of risk communication to inform the consumers raises doubt and distrust to the authorities (Sandman & Lanard, 2012).

5 CONCLUSION

A major challenge in food safety for consumers' health is recognition of possible invisible threats in time. This can help us to set up effective responses related to those threats and risk assessment. Identifying all potential hazards that have

to be assessed, and eliminating or reducing them to an acceptable levels are the most important activities for achieving consumer protection, in particular their basic right to safety (Mičović, 2010).

National governments need to be prepared to rapidly disseminate accurate information to the mass media and the public when a food safety crisis arises. Essential steps in preparing for such a crisis include: identifying reliable sources of information and expert advice; arranging an administrative organisation to handle communication during a crisis; and developing staff skills in dealing with the media and the public. It is of importance to achieve a common position regarding risk between different experts and risk assessors (Firschhoff & Dawn, 1997; Slovic, 1992; Leppin, 2012). When authorities are trying to decrease the audience's level of outrage, explaining uncertainty is at the very heart of risk communication. They should explain in addition that the risk is uncertain, a level of probabilities and a level of confidence in their opinion and what evidence they have to support their view. It is fair to admit that additional evidence is not available and when they might have more information (Sandman & Lanard, 2012).

Emerging foodborne pathogens provide a particular challenge to safety communications – and a particular need for evaluation. Their novelty and ability to produce outbreaks in diverse places in the world and the food chain encourage treating them as unique. If a communication strategy is improvised only when a crisis hits or as it evolves, chances for a misstep increase. Those chances are especially large if the outbreak is the first major risk problem for the health authorities involved (Fischhoff, 1995).

It is very important for governments to consider opening an information office regarding food safety, which can serve as a crisis centre if needed. Every country should have prepared standard operating procedure in the case of foodborne diseases. Such a document should contain a clear and brief instruction on the activities, responsible person for each activity, list of participants with their contact informations. Each stakeholder (authorities, inspectorates, scientists, food producers, consumer organisations and media) should be aware of their responsibilities, and which step in the procedure should be provided.

Such an approach could bring succefull risk communication, higher consumer confidence and trust into authorities responsible for ensuring food safety.

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