

ECONOMIC VICTIMISATION OF WOMEN IN THE LABOUR MARKET¹

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Abstract: The paper first emphasises the fact that the equality of all citizens is clearly declared as part of the value system of modern states. International organisations, such as the United Nations and Council of Europe, began to promote combating abuse of and violence against women as a goal-oriented behaviour during the last decade of the twentieth century. Relevant studies in the field have endeavoured to explain the concept of economic victimisation of women in the labor market by drawing attention to the fact that it can be seen as a result of persistent domestic violence. They have focused on poverty, homelessness and social assistance for women who are in the labor market. The results of these studies show that unemployment at the time of social crisis does not only initiate the commission of property and other crimes but also deviant behaviours. According to the economic theory, the economic model of crime makes individuals choose between crime and legal work, depending on the characteristics, rewards and the price of either of them. This is important in those periods when individuals can only get odd, rather insecure and poorly-paid jobs. The theory states that the higher the level of the economy deterioration in terms of reducing number of jobs or even lower payments, the higher the crime rate. Job loss, inability to find new employment in the profession, inadequate remuneration all contribute to creating a situation which defines a new quality of family relationships. A newly-built attitude, which has become part of the cultural milieu of the new generation, the wish to illegally reach wealth in an easier, faster and more effective way will be much harder to eradicate. The Strategy to combat violence against women, the importance of training of women and the range of options contribute to the improving of their status and enable access to material goods and resources. The authors of this paper refer to certain macro-economic mechanisms that countries can implement to reduce the victimisation of women in the labor market and improve their economic situation, such as measures of gender budgeting, developing social entrepreneurship, subsidies and social cooperatives.

Keywords: *women, labour market, economic theory.*

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INTRODUCTION

An entangled multitude of written or spoken ideas, attitudes and assumptions related to the concept of human rights requires a wider consideration and a particular focus on certain labels, such as “Understanding human rights” (Wolfgang, Nikolov, 2003: 18), because the content of such labels not only clarifies the concept, but also emphasises the necessity of renewing knowledge. The reason for this is to be found in Article 1 of the Universal Declaration of Human Rights proclaimed in 1948, which stipulates three basic tenets: freedom, equality and solidarity, or in other words “all human rights for all”, which simultaneously presupposes the interdependence of the content. Freedom should include freedom of thoughts, conscience, religion, expression. Therefore, human rights are to be regarded as an instrument of securing equality of all people and protecting them against all forms of discrimination while providing the full enjoyment of human rights. One of the achievements of this is certainly gender equality. Solidarity represents the combination of economic and social rights, such as social security, fair remuneration, adequate standard of living and health and access to education. Considering the stated principles and their scope of influence, human rights are divided into five categories: political, civil, economic, social and cultural human rights. These rights are standardised by the Universal Declaration of Human Rights, as well as in two Pacts, so that they together form the Charter of Human Rights (Wolfgang, Nikolov, 2003: 18).

However, the development of the idea of human rights standardisation and realisation did not end with the adoption of the Universal Declaration of Human Rights in 1948. In the eighties of the twentieth century, characterised by an economic growth in the countries of Europe, as well as in the United States, the idea of establishing special rights for victims of unauthorised behaviour or for the individuals affected by devastating consequences of natural disasters was founded. With the development of victimology and critical criminology in the sociological thought of the Western world, as well as national economies that could fund the recovery process from the consequences of victimogenesis among citizens in general and among vulnerable groups of individuals in particular, the following rights pertaining to the field of human rights were distinguished: the right to peace, development and healthy environment. The reference materials related to the sources of human rights consider these rights to be the solidarity rights.

The necessity to distinguish and protect particularly vulnerable groups of individuals in one community has thus become essential. Vulnerability is defined as an inadequate or marginalised position that individuals and groups of people have in one society in comparison to other members of that society. The World Health Organisation determines that vulnerability is the degree to which a population, individual or organization, is unable to anticipate, cope with, resist and recover from the impacts of disasters. Vulnerable groups of people are children, pregnant women, elderly people, malnourished people and people who are ill or immunocompromised and who are particularly vulnerable when a disaster strikes. Poverty, as well as its common consequences such as malnutrition, homelessness, poor housing and destitution, is a major contributor to vulnerability³. UNESCO particularly focuses on the following groups: women with no or low literacy skills, out-of-school youth and young people with low literacy and basic skills, prisoners, refugees, indigenous people⁴.

The most significant legally-binding documents on the suppression of all forms of violence against women were passed and adopted during the last two decades of the twentieth century.

3 World Health Organization. *Vulnerable groups*. http://www.who.int/environmental_health_emergencies/vulnerable_groups/en/, Accessed: 26.5.2018.

4 UNESCO Institute for Lifelong Learning. *Vulnerable Groups*. <http://uil.unesco.org/literacy/vulnerable-groups/>, Accessed on May 26, 2018.

One of them is the Convention on the Elimination of All Forms of Discrimination against Women⁵. This Convention, together with its Optional Protocol, states numerous measures to be taken with the purpose of eliminating discrimination against women. Furthermore, it states the commitment to the task of eradicating all discriminatory laws and providing an efficient protection of women against discrimination by establishing adequate legal institutions⁶. Moreover, the UN Declaration on the Elimination of All Forms of Violence against Women⁷ declares that states are required to improve their penal, civil, work and administrative sanctions in legislation in order to punish any violence against women and to compensate women for any damage done to them due to violence, as well as to adopt a series of other documents for the prevention of violent behaviour against women.

ECONOMIC VICTIMISATION AND POSITION OF WOMEN IN THE LABOUR MARKET (CAUSES AND CONSEQUENCES)

Work represents one of the most important aspects of the economic, cultural, political and personal prosperity of an individual which is interwoven into the process of development and advancement of one community. Work, understood as an overall human activity aimed at the creation of practical and useful benefits, results in the production of material and spiritual goods. Human existence and satisfaction of all human needs essential for their development as generic beings depend on work⁸.

Criminologists agree upon the statement that numerous subjective and objective factors influence nonworking. It is difficult to determine whether nonworking is objective and caused by unemployment or whether it is a habit of an individual. Objective reasons imply a lesser possibility of employment due to economic crises or economic restructuring, the factors that an individual cannot confront or explicitly change. On the other hand, an overt indifference on the part of an individual regarding the sustention and improvement of their existence caused by particular mental states or personality deviations determines that individual's social status as permanently unfavourable and the individual as possessing the traits of a social misfit⁹, i.e. the existence characterised by permanent domestic violence, vagrancy or homelessness.

Criminology studies, based on the methodological concept of gender equality, emphasise that various forms of social nonconformity exhibited by strikingly vulnerable groups of people, such as women, children or persons with disabilities, are frequently related to the experiences of domestic violence¹⁰. It is occasionally referred to as family violence, but the

⁵Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UN General Assembly in its resolution 34/180 on December 18, 1979. It was instituted on September 3, 1981 in accordance with Article 27 (1). Ninety-four states ratified or adopted the convention by March 1, 1988. In "Law on Ratification of the Convention on the Elimination of All Forms of Discrimination against Women", "Official Gazette of SFRY", International treaties, no. 11/1981. http://www.zenskavlada.org.rs/downloads/konvencija_diskriminacija.pdf, Accessed on May 21, 2018.

⁶Article 1 of the Convention defines "discrimination" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

⁷UN Declaration on the Elimination of All Forms of Violence against Women. A/Res/48/104, UN 1993. <http://www.prs.hr/index.php/medunarodni-dokumenti/un-dokumenti/270-un-deklaracija-ouklanjanju-nasilja-nad-zenama> Accessed on May 21, 2018.

⁸Konstantinović-Vilić, S., Kostić, M. (2006). *Penologija*. Niš: SVEN, p. 160.

⁹In Perović, K. (1998). *Kriminologija*. Podgorica, Nikšić: Univerzitet Crne Gore, p. 338.

¹⁰Domestic violence is discussed not only on the national level but also on the international level. The documents adopted by the UN and Council of Europe are among the most significant ones as regards the standards on domestic violence. They include the following: *Beijing Declaration and Platform for*

latter is a broader term. Domestic or family violence is defined as all acts of physical, sexual, psychological or economic violence that may be committed by a family member notwithstanding the fact whether this kind of violent behaviour is legally incriminated or whether the abuser has been already reported to the police. Domestic violence disrupts security and relationship of confidence among family members, being one form of control and exercise of power over family members.

Spouse abuse is regarded as one form of domestic violence. It is defined as all forms of physical and sexual abuse committed by intimate partners, regardless of the fact whether this kind of violence has been reported, detected or tried in court and penalised. Criminology reference materials prove that it is very difficult to make a clear distinction between economic exploitation, political domination, psychological obsession and physical violence since one form of violence breeds another¹¹.

Besides domestic violence, unemployment is one of the factors that may drive a woman to vagrancy or homelessness. It is worth noting that the Hammurabi Code, which contains only the fragmentary provisions of criminal law, states in paragraph 143 that if a woman “is not a good housewife but a tramp, if she spends recklessly and neglects her husband, then she will be thrown into water”¹². Vagrancy, within the scope of law, represents rather one form of a woman’s disobedience and laziness that would result in poor housekeeping than a structurally determined behaviour that requires to be penalised.

Homelessness represents one of the crucial social issues in Europe that needs to be resolved explicitly and without any political ambiguities. The FEANTSA (European Federation of National Organisations Working with the Homelessness) is the organisation that attempts to resolve the social and legal status of homeless persons in the most enthusiastic way. It has developed the typology of homelessness and housing exclusion known as ETHOS (European Typology of Homelessness and Housing Exclusion). ETHOS typology is based on the conceptual understanding of three domains that constitute the word “home” and of the fact that the lack of either of them leads to homelessness. Having a “home” may be comprehended as the following: realisation of adequate housing (living space) where an individual and their family have property right (physical domain), preservation of privacy and enjoyment of certain relationships with others (social domain) and possession of legal right to residence (legal domain).

The absence of any of these three determinants inevitably contributes to the development of four concepts of homelessness: rooflessness, houselessness, living in insecure housing and living in inadequate housing. ETHOS classifies homeless persons with respect to the quality of their life or the nature of the situation at “home”, i.e. living situation. These conceptual categories imply thirteen types of homeless persons, established with the purpose of running and applying various political procedures, such as: mapping of homeless issues, development, monitoring and evaluation policy to each of them. These categories are people living rough (living in the streets or public spaces, for example), people in emergency accommodation (living in overnight shelters or low threshold shelters), people in accommodation for the homeless, people in Women’s Shelter (accommodated due to experience of domestic violence),

Action adopted in 1995, *Declaration on the Policy of Combating Violence against Women in Democratic Europe* adopted in 1993, *Recommendation of the Council of Europe* from 1582, *Domestic Violence against Women* from 2002. The starting point for all these international acts is that “violence against women is a manifestation of historically unequal relationships of social power between men and women, which have led to the domination and discrimination against women by men and the prevention of the full progress of women”.

¹¹Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M. (2012). *Kriminologija*. Niš: Centar za publikacije Pravnog fakulteta u Nišu, p. 122.

¹²Jasić, S. (1968). *Zakoni starog i srednjeg vijeka*. Beograd, p. 37.

people in accommodation for immigrants, people due to be released from institutions, people receiving longer-term support, people living in insecure accommodation, people living under threat of eviction, people living under threat of violence, people living in temporary/non-conventional structures, people living in unfit housing, people living in extreme overcrowding¹³. Particularly targeted vulnerable groups are protected by issuing an explicit request for securing adequate housing in the form of various documents adopted by the UN or International Labour Organisation (ILO). They are: labourers (ILO, 1962), refugees (ILO, 1961), children (UN, 1959, 1989), women (UN, 1979), elderly labourers (ILO, 1980), immigrant labourers (ILO, 1990), minority groups (UN, 1991, indigenous people (UN, 1993).

LEARNING ABOUT ECONOMIC FACTORS OF POVERTY, HOMELESSNESS AND UNEMPLOYMENT OF WOMEN

A person is both a natural and social being and as such they endeavour to satisfy their needs which are prone to change depending on economic, social, cultural and technological prospects available in society. Social processes, such as urbanisation and industrialisation, have considerably augmented human needs but they have also inspired people to strive for a socially organised and institutionalised fulfillment of these increased needs, even in situations when individuals can hardly accomplish that.

Social and economic strata and classes determine human essential needs. Experience teaches us that essential human needs are those that are to be satisfied so as to convince members of one society or social class that their life is “normal” regarding the present division of labour¹⁴. This is related to the concept of the market basket or consumer basket, which represents a sample of goods and services offered at the consumer market and which are essential to the existence of individuals and families.

Judging by the living conditions all over the world and in our country as well, it is evident that not all categories of population can satisfy their fundamental needs essential to their survival – enough food, adequate apparel and footwear – so that sociological reference materials describe them as “living in poverty”¹⁵. The concept of absolute or extreme poverty is a condition of physical survival in which individuals can fulfill only basic human needs necessary for their existence. Therefore, the concept of absolute poverty is universally accepted. It includes standards of human survival that are generally alike for people of the similar age and built regardless of the place of origin. Any individual living below this universal standard is considered to be living in poverty.

However, since it is not possible to exactly determine all the elements that constitute this standard, sociologists have introduced the concept of relative poverty, which defines poverty “in relation to the overall social standard in one society”¹⁶. The proponents of this concept believe that poverty is a culturally conditioned phenomenon which cannot be determined on the basis of any universal standards. Human needs are not the same everywhere and they differ even within one social community.

Poverty may be also defined as a condition characterised by multidimensionality in which people are deprived of any options or alternatives needed for having one fulfilled life. The phenomenon of multidimensionality of poverty is characterised by a permanent or tempo-

13 ETHOS - European Typology of Homelessness and Housing Exclusion

<http://www.feantsa.org/files/freshstart/Toolkits/Ethos/Leaflet/EN.pdf>. Accessed on April 27, 2010.

14 Heler, A. (1981) *Vrednosti i potrebe*, Beograd: Nolit, p. 95-99.

15 Gidens, E. (2005). *Sociologija*. Beograd: Ekonomski fakultet, p. 317.

16 *Ibidem*.

rary deprivation of resources, abilities, options, security and other possibilities necessary for acquiring an adequate living standard and enjoyment of civil, economic, political, cultural and social rights. Poverty may be recognised variously: lack of income or other means essential to securing one's existence, starvation and malnutrition, poor health, limited or no access to education and other fundamental services, higher mortality rate including fatal diseases, homelessness and inadequate housing and accommodation, insecure environment, social discrimination and isolation. Life on social margins and "marginal citizens"¹⁷ are important characteristics of human rights negation when deciding on civil, social and cultural life of one community.

A large number of criminologists, promoting various theories in the field of criminology as an independent science, have examined the relationship and connection between economic (external) conditions and criminality.

Criminal psychology, for instance, defines criminal behaviour as related to psychological personal traits, whereas social factors and their impact are recognised only as side effects. Yet, the frustration theory poses the question of crime activities committed by lower, i.e. poor social classes. The frustration-aggression theory states that "frustration always precedes aggression and that aggression is the sure consequence of frustration"¹⁸. The inability to satisfy fundamental needs of one's family breeds dissatisfaction which further leads to frustrated and aggressive behaviour. This explains the criminality rate among people from lower social classes who react to their own feeling of dissatisfaction by committing property and other criminal acts¹⁹.

One of the pioneering sociological explanations of the connection of poor living conditions and criminality rate is provided by a Dutch criminologist, Bongers, in his book *Crime and Economic Conditions*, in which he emphasises bad living conditions and rejects hereditary attitudes of anthropologically and biologically-oriented criminologists. Bongers writes: "Deprived of the means of production, the worker sells his work only not to starve. Capitalists use this state of emergency for workers and exploit it. (...) First, we have seen that the current economic system and its consequences subdue social feelings. The basis of the current economic system being exchange of goods, the economic interests of people are inextricably opposed. (...) This state of affairs particularly suffocates human social instincts; in those with power, it develops the feelings of domination and insensitivity towards the misfortunes of others while at the same time arousing jealousy and servitude of those who depend on them" (Bongers, 1916: 128)²⁰. Therefore, Bongers concludes that "a large portion of economic crime (and prostitution to some extent) has originated in greediness caused by the present economic environment"²¹.

17 Milutinović, M. (1988). *Kriminologija*, Beograd: Savremena administracija, p. 380.

18 More on the frustration-aggression theory in: Dollard, J. (1939) *Frustration and Aggression*. In: Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M., op. cit., p. 279.

19 The acceptance of the concept of learned aggression (unlike the concept of inherent aggression) means that society can implement control of aggression by developing the mechanisms of learning, i.e. the mechanisms of conditioning of its citizens. Aggression control is fundamental to the survival of one social community. Additionally, the concept of inherent aggression results in the attitude that the right of a society to control aggression is limited to the extent at which this control jeopardises the biological existence of its citizens. Fatić, A. (1995). *Kazna kao metafora*. Beograd: NIU Službeni list SRJ, p. 37. The question arises whether this idea related to "the psychiatric theory of punishment and aggression problem" (Fatić) might be understood in a wider context, i.e. within the scope of property crimes caused by poverty and committed to satisfy essential human needs and their adequate punishment.

20 Ignjatović, Đ. (2002). *Kriminološko nasleđe*. Beograd: Policijska akademija, p. 128.

21 Ignjatović, Đ., op. cit., p. 131.

Certain criminologists, such as Hale, Hayward etc.²², determine a distinct trend in criminology, such as strain theory, social disorganisation (Chicago school), economic theory, theory of control and theory of opportunities and routine activities, which all describe the interconnectedness between poverty and crime, and which have been postulated and developed within the new trends of criminal sociology.

Emile Durkheim is one of the principal founders of the strain theory. His particular contribution to sociology and criminology was his concept of anomie postulated in the late nineteenth century by which he described the situation when all social rules are either destroyed or “blurred” and confusing to such an extent that people do not know what to expect from one another. This inevitably leads to the feeling of mutual isolation and meaninglessness of life.

Durkheim wrote his books in the nineteenth century, immediately after the industrial revolution boom that transformed rural agricultural communities into urban spaces dominated by manufacture and industrial production. According to Durkheim, anomie – a condition of normlessness – increases over the periods of accelerated social changes and leads to dissatisfaction, conflicts and deviations. These phenomena occur during periods of economic recession, but also during periods of enormous prosperity²³.

Merton also discusses the strain theory. Yet, unlike Durkheim, he does not regard crime and anomie as being caused by current social changes. He explains crime as a potential reaction to the strain created by unequally available prospects for success. The progress of achieving the “American Dream”, i.e. material success and striving to achieve it create an excessive anxiety, repulsion, neurosis and socially unacceptable behaviour, i.e. anger-based delinquency²⁴.

The Chicago school emerged at the University of Chicago in the period between the two world wars. It specialised in urban sociology and empirical research into the urban environment and ecology. Authors such as Trasher, Shaw and McKay created a concept according to which certain city boroughs and poor suburbs directly affect criminal behaviour of its citizens. An unsuccessful and barely accomplished adaptation of immigrants is a good breeding ground for deviant gangs that reject the existing social values. The representative authors of the Chicago school examined the deviations present in large cities and concluded that they were invariably triggered by certain behavioural patterns characteristic of local communities and social groups, poor ghettos and black ghettos known for a high rate of crime and other forms of deviant behaviour, such as prostitution and suicides. Their ideas have been criticised for extreme subjectivity²⁵.

The economic theory states that the economic model of crime presupposes individuals who have to choose between criminal activities and legal work depending on the offered possibilities, obtained rewards and the price of either of these options. Thus, individuals choose either to do a legal job or to commit crime as regards their job opportunities and wages in the labour market in comparison to the possibilities of illegal profit, crime hazards, types of punishment and its seriousness in case they decide to undertake criminal activities. This argument once revealed that the essence of this problem is in the choice of either legal or illegal job. Yet, it later expanded to include the situations in which one person could perform both legal and illegal activities simultaneously. This phenomenon is closely related to the periods when individuals are offered only low-paid and insecure jobs. This theory emphasises that any deterioration of economy, such as unemployment problems or poor and low wages, increases the rate of crime²⁶.

22 Hale C., Hayward K., Wahidin A., Wincup E. (2005). *Criminology*. Oxford University Press, p. 326.

23 Dirken, E. (1963). *Pravila sociološke metode*. Beograd: Savremena škola, p. 70-71.

24 Ignjatović, Đ., op. cit., p. 158.

25 Bošković, M. (2005). *Kriminologija*. Novi Sad: Pravni fakultet u Novom Sadu, p. 56-58.

26 Hale C., Hayward K., Wahidin A., Wincup E., op. cit., p. 328-329.

The control theory is frequently called the theory of social ties or the social bond theory. It was created by Trevor Hirschi. According to one of Hirschi's postulates stated in 1969, the emphasis is put on social bonding which includes attachment to families, commitment to school and work, involvement in daily activities and the belief that these things are important, the elements that inhibit us to commit crime. The first tenet of socialisation is loyalty expressed towards family and school, while the second one is commitment and is related to time, energy and efforts dedicated to education which bind all individuals by moral social values. The third tenet is involvement in the activities done in the conventional interests of the community. According to Hirschi, such an engagement leaves one little time for deviant behaviour. Hirschi defines the final social bond as faith, the bond which promotes the system of social values, i.e. the respect of laws and individuals and institutions that obey them²⁷.

Cohen and Felton developed the Crime Opportunity theory or the theory of Routine Activities which explains the connection between poverty and crime. These authors believe that criminals make rational choices based on the targeted victim and great rewards with little effort and risk. This theory is largely oriented towards the study of the life style or everyday, routine activities of people and how they influence criminal behaviour. Interpreting criminality as a mass phenomenon, Cohen and Felson emphasise three elements that contribute to the emergence of criminal behaviour: a motivated offender, a suitable victim and the absence of a capable guardian. Any change in routine activities of people (a higher rate of employment of spouses or partners, frequent trips, single-person households, etc.) means that numerous households and apartments are empty during the day and that people are thus deprived of any protection from crime²⁸. Cantor and Land state that the increasing level of unemployment leads to an increase in the number of both motivated offenders and capable guardians. It means that the increasing rate of unemployment certainly causes a rise in the number of motivated offenders but also in the number of capable guardians since more capable individuals stay at home due to their being unemployed. Therefore, these persons can secure and protect their own property but it will also mean a higher level of informal social control or neighbourhood watch. On the other hand, the very fact that unemployed individuals do not commute any more decreases the risk of their being victims of street crimes²⁹.

Hans Von Hentig explores the economic conditions of crime and emphasises that the majority of criminal activities are characterised by the attempts to fulfill everyday human needs in an illegal way (Hentig, 1959: 247). However, since there are various forms of human needs, their satisfaction does not imply only the fulfillment of an "existential minimum" but also of some other impulses and instincts. Thus, certain crimes are not exclusively property crimes. Hentig particularly points out the following economic conditions: unemployment, inflation, poverty, legal discrimination resulting from economic weakness, etc. According to Hentig, inflation is detrimental for members of the middle class, professionals with salary and retired persons. Wars, exiles and deportations, refugees, black market and smuggling give rise to all forms of deviant and socially inadequate behaviour³⁰.

The issue of unemployment³¹ in the periods of social crises does not only cause more property crimes or other forms of crime but also more instances of deviant behaviour in general. According to Dorothy Thomas, economic elements prevail in the suicide rate of men during

27 Marsh, I. (2006). *Theories of Crime*. London and New York: Routledge, p. 109.

28 Reid, S.T. (2003). *Crime and Criminology*. Boston: McGrawHill, p. 136.

29 Hale C., Hayward K., Wahidin A., Wincup E., op. cit., p. 330.

30 Hentig, H. (1959). *Zločin - uzroci i uslovi*. Sarajevo: Veselin Masleša, p. 247.

31 According to Booth, unemployed persons represent a distinct social class comprised of those who are incapable, misfit and poverty-stricken due to their being unemployed (Booth, C. (1892). *Life and the Labour of the People of London*, Vol. 1, p. 150. In: Hentig, H., op. cit., p. 247). This interpretation of one's personal characteristics is certainly not accorded with contemporary economic conditions in our country, for example.

economic crises. The periods of unemployment are characterised by fewer marriages, which is one of the reasons for the increasing suicide rate³² (Hentig, 1959: 256).

The loss of job, inability to find new employment, inadequate wages and salaries are the factors that determine a new quality of life and family relations. Elli Ginzberg thus terms an unemployed male “a retired husband” – a deposed patriarch of the family. His being unable to perform the prescribed duty of the family provider undermines his reputation, which according to this author, results in “their loss of authority regarding their wives, and sometimes elder children who can now compare their unemployed father to other, more successful fathers”³³.

CONCLUSION

Since the last decade of the twentieth century, characterised by drastic changes implemented in the state organisational structure in the territory of former Yugoslavia, evident social differences based on different social status of newly-formed and restructured classes of the rich and the poor have been created. Starting from the period of the latest national wars up to the beginning of the twenty-first century, the impoverished middle class of our country, which once could successfully and legally satisfy its various needs far above the existential border line, has lost their economic power and influence on different areas of social life. The principles postulated by traditional theories on poverty-conditioned emergence of various forms of delinquent and devious behaviour should be discussed in the contemporary context, respecting the fact that the members of the contemporary poor class in Serbia are now the groups of people not traditionally considered to belong to this class.

However, the regulations and principles adopted from the Convention on the Elimination of All Forms of Violence against Women (CEDAW) by former SFRY are still binding for the Republic of Serbia.

REFERENCES

1. Bošković, M. (2005). *Kriminologija*. Novi Sad: Pravni fakultet u Novom Sadu.
2. *Deklaracija UN o eliminaciji svih oblika nasilja prema ženama*. (UN Declaration on the Elimination of Violence against Women) A/Res/48/104, UN 1993
3. <http://www.prs.hr/index.php/medunarodni-dokumenti/un-dokumenti/270-un-deklaracija-o-uklanjanju-nasilja-nad-zenama> Accessed on May 21, 2018.
4. Dirkem, E. (1963). *Pravila sociološke metode*. Beograd: Savremena škola.
5. ETHOS - European Typology of Homelessness and housing exclusion
6. <http://www.feantsa.org/files/freshstart/Toolkits/Ethos/Leaflet/EN.pdf>, Accessed on April 27, 2010.
7. Fatić, A. (1995). *Kazna kao metafora*. Beograd: NIU Službeni list SRJ.
8. Gidens, E. (2005). *Sociologija*, Beograd: Ekonomski fakultet.
9. Hale C., Hayward K., Wahidin A., Wincup E. (2005). *Criminology*. Oxford University Press.
10. Heler, A. (1981). *Vrednosti i potrebe*, Beograd: Nolit.
11. Hentig, H. (1959). *Zločin – uzroci i uslovi*. Sarajevo: Veselin Masleša.

32 Hentig, H., op. cit., p. 256.

33 Ginzberg, E. (1943) *The Unemployed*, New York, Harper&Brothers, p. 77-78. U: Hentig, H. op. cit., str. 256-257.

12. Ignjatović, Đ. (2002). *Kriminološko nasleđe*. Beograd: Policijska akademija.
13. Jasić, S. (1968). *Zakoni starog i srednjeg vijeka*. Beograd.
14. Konstantinović-Vilić, S., Kostić, M. (2006). *Penologija*. Niš: SVEN.
15. Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M. (2012). *Kriminologija*. Niš: Centar za publikacije Pravnog fakulteta u Nišu.
16. *Konvencija o eliminisanju svih oblika diskriminacije žena*. (CEDAW Convention). http://www.zenskavlada.org.rs/downloads/konvencija_diskriminacija.pdf, Accessed on May 21, 2018.
17. Marsh, I. (2006). *Theories of Crime*. London and New York: Routledge.
18. Milutinović, M. (1988). *Kriminologija*, Beograd: Savremena administracija.
19. Perović, K. (1998). *Kriminologija*. Podgorica, Nikšić: Univerzitet Crne Gore.
20. *Razumevanje ljudskih prava, (Understanding of Human Rights)* (ur. Wolfgang Benedek i Minna Nikolova), Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore, Beogradski centar za ljudska prava, 2003., p. 18.
21. <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/razumevanje-ljudskih-prava.pdf>
22. Accessed on February 5, 2018.
23. Reid, S.T. (2003). *Crime and Criminology*. Boston: McGrawHill.
24. UNESCO Institut for Lifelong Learning. *Vulnerable Groups*. <http://uil.unesco.org/literacy/vulnerable-groups/>, Accessed on May 25, 2018.
25. World Health Organization. *Vulnerable groups*. http://www.who.int/environmental_health_emergencies/vulnerable_groups/en/,
26. Accessed on May 26, 2018.

DEPRIVATION OF LIFE CAUSED BY POLICE ACTS – DIFFERENTIATION BETWEEN LEGAL AND ILLEGAL ACTS¹

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Abstract: Within the deliberation on police acts, the special focus of scientific and expert public is on the cases where police acts caused death. In addition to the gravity of the suffered consequence, the fact that deprivation of life does not necessarily have to be the result of illegal police acts makes this phenomenon especially delicate. It is known that members of the police have at their disposal such coercion measures whose application in the extreme case can result in death. Having the exclusive right offers greater possibility to police officers than common citizens to violate the right to life of other persons. At the same time, each individual case of violating other person's life is justified by interests of achieving the police function. The key problem is that this legitimate right can mask illegal acts of the members of the police and circumstance in which they can commit murder under pretence of police authority. Therefore, it can be said that deprivation of life in the police acts is a very complex phenomenon whose understanding demands detailed legal and criminological analysis. The aspiration of the author in this paper is to explain this concrete phenomenon, at least partially, especially in the sense of distinguishing between legal and illegal deprivation of life, in order to offer some suggestions in the conclusion on how to minimise the violation of the right to life during the police act while not jeopardising the achievement of the police function.

Keywords: *police, coercion, deadly force, deprivation of life, murder.*

INTRODUCTION

Protection of the basic rights and freedoms of citizens is undoubtedly one of the main functions of the police. Paradoxically, the police acts at the same time can be the source of violation of these rights and freedoms. In this sense, the use of coercive measures is especially indicative. Coercion is undoubtedly the most explicit characteristic of the police profession,

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through which its purpose is often defined. It is also the most delicate segment of the police acts, given that its application seriously interferes with human rights and freedoms. Therefore, it is not surprising that most of researchers, in their attempt to understand the work of the police and the system of value of its members, are focused mostly on some of the aspects of coercion application.

It is indisputable that the nature of police work demands use of coercion and in this regard members of the police have the right to use different coercive measures. However, the problem is the fact that the existence of the police in a society is justified primarily by the need to solve problems where coercion is necessary, which often puts its application at the central place of the police work. In these circumstances, limiting coercion to a reasonable level and using it as the last resort of control is an exceptionally hard task, which simultaneously makes the occurrence of overstepping it more likely, along with the misuse of this police power.

Starting from the fact that police officers have the right to use these coercion means, the application of which can deprive a person of life, and that they can overstep or misuse this right, the correct interpretation of the true nature of their acts demands more detailed explanation. In this sense, it is necessary to make a clear distinction between legal and illegal deprivation of life. The important precondition for this is to understand the notion of 'deadly force' and legal frame for its use during police acts.

THE NOTION OF DEADLY FORCE AND LEGAL FRAMES FOR ITS USE

According to one of the common interpretations, deadly force means 'the force used with the intention to cause serious physical injuries or death' (Roberg, Crank, Kuykendall, 2004: 398). If we review the problem in the context of committing murder (each action that can cause death), it seems that there is no doubt in the interpretation of deadly force. It is obvious that this logic guided Skolnick and Fyfe (1993: 37) when they classified certain forms of using physical force into the deadly force of the police (e.g. limiting air flow by pressing jugular vein). It is true that physical force, especially if used by trained individuals, is a special skill that can be used with intention to deprive a person of life. In this sense, physical force can be treated as a personal 'deadly weapon'.

Despite this rational explanation, the use of physical force cannot be classified as deadly force, at least in its legal sense, because police officers are not authorised to use physical force in this way and intensity. Actually, each case in which the use of physical force resulted in death of a person to which this force was applied should be interpreted as overstepping or misuse of physical force. Thereby, when a member of the police uses physical force with the intention to deprive someone of life, he or she is actually misusing the right to apply physical force. If, on the other hand, he or she did not have the intention of depriving the concrete person of life by using physical force, but the death was caused by inflicted injuries, then this act can be interpreted as overstepping in the use of physical force.

It is noticeable that deadly force in literature is mostly confined to the use of firearms. It is, however, worth a reminder that the use of firearms does not include the situation when an authorised police officer fires in the air in order to call for help, give warning or signal. Furthermore, this 'preventive use of firearms' - taking a gun out of a holster and pointing it in a certain direction without firing the ammunition - should not be treated as its use. Actually, only the situations when a bullet is shot in a direction of a concrete person, regardless of the consequences this causes, are considered the use of firearms. Therefore, it is necessary to

differentiate three categories that can help in determining the manner and degree of use of deadly force - death, causing injury and non-injury.

Although death can also occur as a result of using other coercive means, the fact is that only firearms in their base represent deadly force, since it is the most suitable means for causing deadly consequences. In addition, in armed interventions of the police, the possibility and certainty of causing human casualties is the greatest, which thus creates the biggest burden of responsibility of the members of the police when using firearms. As Greenwood explains: 'In none other field is the price of professional incompetence so high as in armed operations. Nothing will so powerfully destroy the trust in the police from injuring or killing innocent citizens' (Punch, 2011:3).

By having the right to use deadly force, police officers undoubtedly have greater possibility than common citizens to violate the right to life of other persons. Simultaneously, the position provides them with possibilities to justify the cases of violating the said right with interests of achieving the police function. Moreover, this privilege can be easily misused, because as some authors warn, 'legitimate police right can actually be masked as illegal acts of the police, in the same way as the legitimate authorisation to use deadly force can mask the intent of a police officer to kill a suspect in order to satisfy the sense of justice' (Kappeler, Sluder, Alpert, 1998:60).

Based on this claim, it can be easily concluded that police officers, contrary to other citizens, have the exclusive right to deprive other person of life and by doing so not be criminally responsible for this act. This perception, however, is an oversimplified interpretation of a complex phenomenon. Everything becomes clearer when the concrete phenomenon is viewed in the context of the existing distinction between notions of 'homicide' and 'criminal homicide'.

According to the specific approach, which can be observed in the Anglo-Saxon legislation, the term homicide is used as the widest term - it includes the criminal act of homicide, i.e. criminal homicide, as well as other acts that despite meaning deprivation of life of another person are not criminal acts, but acts permitted by law (Kolarić, 2008: 47). Taking into account the legal grounds for their application, these cases of deprivation of life could, by analogy, be seen as 'legal homicides', or more accurately legal deprivations of life. As a typical example of this phenomenon there is an execution of the capital punishment. However, could this term also include deprivation of life that occurred during the execution of police acts?

In order to answer this questions we have to analyse legal conditions under which police officers can use firearms. In relation to this, it is important to point out to the following provision: 'In the performance of police duties a police officer may use firearms only if he cannot achieve a legitimate policing goal by using other means of coercion and when it is absolutely necessary to repel a simultaneous unlawful life-threatening attack against himself or another person.'

It can be noticed that the conditions for using firearms, in contrast to other coercive measures, are much stricter, which is expected having in mind that it is the last level of police coercion. In this sense, it is especially indicative that in order to use firearms, the necessity for its use is not enough (other coercive means do not guarantee result), but the use is actually absolutely necessary in order to protect lives of people or perform other legal tasks, and only in cases of immediate threat to life.

This interpretation implies the conclusion that for the use of deadly force it is necessary to meet two key conditions - absolute necessity and immediate threat to life, which is additionally explained by the following: 'In order to make the use of firearms in line with legal provisions, i.e. in order to make it absolutely necessary in order to remove immediate threat to life, it is necessary to cumulatively meet the following conditions: • the use of firearms must

be focused on repelling the attack; • the use of firearms must be necessary for repelling the attack; • firearms must be used only against the attacker, and • the use of firearms must be simultaneous with the attack' (Milidragović, Milić, 2011: 208-9).

Furthermore, it is important to stress that regulation of this issue exceeds the frames of national legislations, which is one more proof of the importance and delicacy of this segment of the police work. More concretely, Crawshaw mentions two international instruments - Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and Basic Principles on the Use of Force and Firearms by Law - which protect public against arbitrary deprivation of life, limiting the use of deadly force to a degree that is objectively reasonable and necessary in circumstances police officers face that demand the force that is proportional (Bowling, et al., 2004: 16).

Additionally, it is important to mention the European Convention for the Protection of Human Rights and Fundamental Freedoms, and especially the part that discusses the absolute necessity as a general condition for using firearms in the performance of police work. As stated in the Convention: 'Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

In this regard, it is interesting to observe the stance of the European Court of Human Rights expressed in the verdict *Andronicou and Constantinou v. Cyprus* (1998) EHRR 491, that deprivation of life, as an exception from inviolability of the right to life, must be necessary and strictly proportional. In this case, the Court concluded that Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was not violated when the Cyprian special police forces deprived a kidnaper and a hostage of life, because it was deemed that this solution was absolutely necessary (Risimović, 2009: 394).

The importance of this case lies predominantly in the fact that members of the police can find themselves in temptation to use deadly force even against an innocent person. This situation, which undoubtedly creates a great dilemma for police officers when they need to decide how to act, gives rise to a wider discussion, which exceeds the frames of this paper. Here, predominantly, the question is whether the deprivation of life of an innocent person can be treated as absolutely necessary and as such be classified as a justified use of deadly force. Starting from the principle of necessity and proportionality, deprivation of life of an innocent person could be seen as absolutely necessary only if this act would protect lives of a larger number of people.

Taking into consideration the consequences that can arise from using deadly force, police officers are rightfully demanded to cautiously use firearms, while simultaneously the competent authorities are obliged to research each case where human lives have been lost by the police acts with due seriousness and caution. Therefore, Petrović concludes: 'If we speak about standards that police officers must respect in the situation when the used force was absolutely necessary and resulted in taking a life, then we must see these standards not only as legal grounds for justifying the use of force and grounds permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms, but also as standards that mean later investigation of the entire event in an urgent, official, objective, independent, adequate and efficient manner' (Petrović, 2010: 82).

Although deprivation of life is in conflict with the basic principles of the police work, this does not exclude the possibility that it can happen. However, even if death is the result of police intervention, in most cases it is not an intentional act of a police officer to murder a concrete person, but is actually the case of inherent incident or as Klinger (2004: 35) states: 'Death

is a by-product of using firearms, and not its goal.' Despite this, delicacy of these incidents and gravity of inflicted consequences are reason enough to carry out detailed investigation, during which it is necessary to determine whether the deprivation of life in the given case was justified (grounded) and necessary.

Protection of other persons' lives, which is a key imperative and reason behind the existence of the police profession, is mostly mentioned as the first and basic condition for using firearms. However, this condition, by itself, is not enough. In order to meet it, there has to be an attack that directly threatens human life. Dempsey and Forst remind that after civil unrests during the 1960s, most American states developed the rule of 'the protection of life', which enabled members of the police to use firearms against persons that used deadly force against police officers, as well as in certain situations of committing violent crimes. However, these authors add that during the 1990s, the first members of the FBI (Federal Bureau of Investigations) and then other police departments started using the standard of 'immediate danger', which comes down to application of deadly force only in situations where lives of police officers and other people are in direct danger (Dempsey and Forst, 2005: 393).

The principle of immediate danger was, as we could see, adopted by the Serbian legislation and made more precise by the following provision: 'An unlawful life-threatening attack against a police officer or another person within the meaning of paragraph 1 of this Article means an attack with firearms, imitation firearms, dangerous tool or an attack with another object, or attack in another way which may threaten the life of a police officer or another person.'

In order to meet the necessary conditions for using firearms the attack must exist realistically (actually) in the outside world. Thereby, this condition should be assessed in both subjective and objective sense. In the subjective sense, the attack is real then an attacker is aware that he or she is engaging in activity that can directly endanger human life, and in the objective sense if this attack can actually cause direct threat to human life. Otherwise, as explained by Jovašević (2007: 123) 'if a police officer wrongfully assesses that an attack exists, i.e. that it still lasts, and as a result uses firearms, then this constitutes exceeding of power, i.e. unlawful use of firearms'.

Additionally, in order for the use of firearms to be legal the attack cannot be caused by illegal or unofficial acts of a police officer. In this regard, Šantek (2005: 184) warns that 'a police officer cannot provoke with evil intent other person to attack with a cold weapon in order to shoot this person, but he or she is obliged to protect life and body even of those persons against whom he or she must apply coercive means in a way to cause as light harmful effects as possible'.

Based on the previously mentioned, it can be concluded that authorisation to use deadly force, although it is an exclusive right of police officers, is not absolute or unlimited, but it is actually clearly bounded by legal norms, violation of which turns a police act into an illegal one. Based on this, we can conclude that lack of fulfilment or existence of legal grounds for using deadly force automatically makes deprivation of life illegal. Thus, this act of a police officer actually becomes criminal act, for which the literature uses mostly the term 'police homicide'.

FORMS OF ILLEGAL DEPRIVATION OF LIFE

From the discussion so far, it can be concluded that deprivation of life in police acts is not a straightforward phenomenon, but that it actually has numerous manifestations and variations. Additionally, all these individual forms and ways of deprivation of life by police

officers have numerous characteristics, which cannot be recognised within a single review of this phenomenon, which is why they need to be analysed independently. In terms of illegal deprivation of life, i.e. 'police homicides', the special characteristics of this act are provided predominantly by the characteristic of a perpetrator (police officer) and circumstances in which deadly consequences occur (during performance of police duties and tasks). It is certain, however, that this phenomenon shares numerous common characteristics with other 'general' types of homicide. Thus, the important factors in the analysis of 'police homicides' are some of the usual criminological and criminal justice categorisations and classifications of homicide.

In this regard, one of the most important classifications is the one advocated by Carolyn and Richard Block who classify all homicides into two groups: • instrumental - homicide is a mean to achieve a certain act; and • expressive - the intention of a perpetrator is exclusively to deprive a certain person of life (Ignjatović, 2015: 112). By assessing the essential characteristics of police homicides in the context of this classification, we can conclude that most of these cases actually have the character of instrumental homicides. Namely, the fact is that police officers in performance of their official duties resort to using deadly force (as well as to violence in general) mostly to achieve another goal (e.g. to protect other persons' lives or to repel an attack that directly threatens their safety), and not with an exclusive intention to deprive another person of life. More accurately, in police homicides, deprivation of other person's life in most cases is not a reason by itself, although this possibility should not be easily and completely dismissed. Therefore, in the case of so-called 'police executions', the primary motive of a perpetrator is seen in the very act of violence and causing deadly injuries to another person.

The interesting approach to this phenomenon is offered by Wolfgang and Ferracuti (2012:111) by classifying separately the so-called normal homicides, differentiating between their two basic groups: 1) contemplated, intentional, planned and rational homicides; and 2) crime of passion or with intention of causing injuries, but not depriving of life. It is noticeable that these authors put the notion of normal in a wider context, viewing normal homicides predominantly as anticipation of pathological homicides. This approach offers possibility to identify completely different types of deprivation of life. Thus, for example, in judicial psychiatry we can find different classifications of homicide, that by analysing perpetrator's mind-set make difference between killer in the heat of passion, instinctive killer and rational killer (Kolarić, 2008: 261).

Earlier we mentioned that firearms are personification of deadly force, which makes them the most suitable, and at the same time, most common means that police officers use to inflict deadly injuries to other persons. Thus, the deprivation of life caused by using firearms is the most indicative expression of police homicides. Therefore, it seems logical that the analysis of this phenomenon should be focused on the cases of illegal deprivation of life caused by using firearms. However, although justified, this approach is still limited because it disregards the fact that death can be caused by using other coercive means (e.g. chemical weapons).

Obviously aware of the complex nature and diversity of police homicides, Brinks bases the research of this phenomenon on the following categories: • routine policing - shooting during routine policing (without an armed conflict); • execution - killing suspects during arrest or after they have been taken to official premises, wounded or otherwise incapacitated; • torture - cases of torture that cause death of a victim; • death while in custody - cases of staging suicide of inmates by their wardens, contribution of wardens to suicide of inmates by encouraging this act or procuring means to perform suicide and death caused by not providing or preventing provision of health protection and medical help; • bystander - death of an individual who was not the target of police action, but was accidentally killed during an intervention (Brinks, 2008: 42).

In light of this categorisation, it is possible to identify numerous manifestations of police homicides, reviewing them against different criteria (place of execution, used means, form of guild, etc.). The last criterion is considered especially important in reviewing the nature of a studied phenomenon. It can be used to classify all means of illegal deprivation of life in police acts as contemplated or negligence. Having in mind that these forms of deprivation of life were the topic of earlier works (Kesić, 2013), here we will briefly discuss some of their key characteristics.

When we speak of contemplated deprivation of life we would like to focus on the fact that killing people was never an explicit goal and official part of the policies of the democratic work of the police. This, however, does not exclude the possibility of situations in which members of the police use deadly force with a clear intention to deprive a concrete person of life. This liberal approach is certainly contrary to very rigid policy of using deadly force in the police work. Therefore, such decisions mostly do not stem from written rules, but are implementation of informal policy, created under strong influence of values of the police subculture and specific circumstances. In addition to this, such an act can be the result of informal instructions and orders of the police authorities or even the result of personal judgement and beliefs of a police officer.

In this sense Bayley points to a characteristic practice of Indian police. As explained by this author 'in central India, it is customary to issue an order to members of intervention-al police to shoot without asking questions while searching for provincial dacoits (bandits) through woody areas of Madhya Pradesh and Odisha' (Bayley, 1996: 275). Such practice is usually justified by the interest of protecting safety of police officers when capturing dangerous criminals, for whom it is confirmed that they will put up armed resistance during the arrest. However, as much as this 'preventive' approach to using deadly force seem necessary, the fact is that this tactic can easily result in death of an innocent person that is 'in the wrong place at the wrong time'. Although the logic 'shoot to kill' may seem justified and necessary in solving certain problematic situations, there is the fact that this approach to deadly force in policing is delicate and controversial.

The fact is that deprivation of life due to negligence has a completely different character and nature when compared to cases in which this result is contemplated. Therefore it is natural to analyse these cases in a completely different light. One such explanation states: 'Homicide due to negligence is a special type of homicide, predominantly because this behaviour is not classified as violence, based on which it can be assumed that the delicts done out of negligence, in comparison to all other murders' are defined by a different hierarchy of factors' (Simeunović-Patić, 2003:9).

Having in mind the meaning and purpose of police coercion, as well as conditions and circumstances when it is used the most, we could freely state that most of the cases in which police acts resulted in deprivation of life are due to negligence. There are numerous circumstances where policing can lead to deprivation of life out of negligence, but out of all of them the specific ones are death cases caused by transferred intent (lat. aberration ictus). This outcome can be caused by various circumstances. For example, after missing its target, a bullet can directly hit an innocent citizens, or it can ricochet and become a deadly threat to all who find themselves on its unpredictable path. Additionally, as a result of ricocheting, a bullet can be distorted, becoming capable to cause more damage (similar to those caused by the so-called dum-dum bullets).

The proof that deprivation of life by policing should not be analysed exclusively in the context of using firearms is best confirmed by the cases where a person suffered serious injuries resulting in death due to police acts. As Sherman (1986: 203) warns 'in discussions about

police homicides, not including media reports, less attention is given to cases where death was caused by “beating”, which is much more cruel than shooting.

There are different circumstances where police officers, in performing official duties, can inflict injuries of such intensity that they result in death of an injured person. In the police practice, there are such cases where police officers inflict serious pain and suffering to a person in order to seriously hurt this person. This behaviour is usually linked with police brutality or with application of different torture methods of suspects. The fact is, however, that police officers should not see coercion means as a form of punishment of person to which coercion means are applied. As the word itself states, they should be used as ‘means’ to achieve lawful goal and appointed role (Bikarević, 2016: 199).

In media reports, and increasingly in scientific and expert literature, there are warnings that arrested persons die under suspicious circumstances, either during detention in official facilities or soon after being released to freedom. It is also suspected that death occurs due to injuries caused during arrest or as a result of torture. Although in these cases police officers usually do not intend to cause death of a concrete person, this possibility cannot be excluded. In this sense, the following statement is important: ‘Intentionally caused death, by itself, in many cases is not seen as a form of physical torture, but it still exists in cases when death is preceded or caused by actions that include unjustified suffering or pain’ (Scott, 2005: 17).

CONCLUSION

The fact is that in solving certain problematic situations deadly force still does not have an adequate alternative, which is why its existence is still considered necessary in the police work. This circumstance makes the issue of defining policy of using deadly force and control of its application especially important. It is important to point out that an increasing number of studies show that implementation of restrictive policies on use of deadly force and enhanced measures of internal control can have a positive effect on the frequency of using firearms (Smith, 2004). This draws the conclusion that a clear policy within the police organisation in terms of using firearms and consistent control of its use can efficiently lower the total number of deaths caused by policing.

As one of the proposals for more efficient control of the use of deadly force that is often mentioned is establishment of independent commissions, whose only responsibility would be to monitor this segment of police work. Punch concretely believes that this commission could be in charge of the following activities: •deliberation on the level of armament and type of arms suitable for police work; •survey of public opinion and opinion of other stakeholders (Ministry of Interior, police syndicates and associations) on the policy of using firearms; •raising the issue of armament to a higher generic, principled and foreseeable attitude in terms of arms in society, reaction of the police on the possession of weapons and crimes committed by using firearms, as well as application of deadly force by the police in general (Punch, 2011: 196-7).

However, in order for this form of control to function in practice, it is necessary to meet numerous conditions, notably to raise awareness within the police themselves on the importance and necessity of independent control of their work. Furthermore, accepting responsibilities for actions taken must become one of the basic institutional values of the police, instead of the existing practice of denying responsibility and transferring guilt to others. In doing so, we do not only refer to mechanisms of blaming a victim, but also on a specific practice of bringing down responsibility to a level of direct perpetrators. Namely, if during a certain police operation things go wrong or if there are unforeseen consequences, in addition to di-

rect perpetrators in the field, the responsibility should also be borne by operative managers, who coordinate implementation of a concrete action from headquarters, as well as strategic managers, without whom a concrete action cannot be approved. In this sense, they bear even greater responsibility.

When we discuss the use of firearms in general, and especially in performing police function, we cannot lose track of the fact that it is potentially deadly force, the use of which will always be accompanied by certain number of unconscious oversights and mistakes. To put it simply, more shooting means more mistakes, more misses, more stray bullets, more accidents and consequently more death cases. These circumstances should be a strong signal to police officers to be exceptionally alert when using firearms, as well as incentive for reforms in the police work, which should predominantly be focused on limiting the use of deadly force and reviewing tactics for acting in interventions where the use of firearms does not have an alternative.

Accordingly, it is necessary to strongly support the principle of using deadly force as the last resort, of which police officers must be aware, choosing to use it only when it is absolutely necessary. In this sense, abstention should be considered a key principle. A good example of such an approach is traditional policy of using firearms by the British police, which is based on the following recommendations: • the focus is on risk assessment, negotiation and de-escalation that leads to surrender - a police officer is directed to 'play it long'; • use of the force as the last resort; • justified use of minimal and proportionate force; • necessity to justify each bullet fired; • personal liability of each individual police officer both in operational and judicial sense; • police officers cannot be directly ordered to shoot; and • avoid using deadly force on someone if it is possible (Punch, 2011: 63).

Abstention of police officers from using firearms is certainly reinforcing ethos of 'civil work of the police', which leads to policies and practices based on principles of lawfulness, minimal force, individual responsibility and, if possible, preserving life. Guided by this logic, we can expect that the scope of using firearms in policing would be quite small, and in comparison with using other coercive means almost non-existent. This is also confirmed by the results of research, as well as official data. In order to illustrate, Crank (2004: 92) determined that members of the NYPD use firearms in average five times in 1.762 conflicts.

Limiting the use of firearms is also possible to implement through revisions of certain legal conditions for application of deadly force. For example, legitimacy and legality of using firearms, according to the fleeing felon doctrine, which enabled police officers to use deadly force to stop a suspect from fleeing and deprive him or her of liberty, was called in question due to the legal concept of presumption of innocence, and it was declared unconstitutional in 1985 by the Supreme Court of the USA, acting upon the case *Tennessee v. Garner* (Zimring, 2017: 19-20).

By doing this, in contrast to the initial fleeing felon doctrine, the conditions were made more strict by criteria of 'protecting life' and 'immediate threat', according to which a police officer must follow a clear rule - in order to use firearms it is necessary that a perpetrator of the crime, who is fleeing after committing a criminal act, causes immediate threat to life of a police officer or another person, which cannot be removed by any other coercive means.

In order to lower possible death consequence to the least possible degree, and still secure the success rate in performing official tasks, it is necessary to provide police officers with a wide range of alternatives to deadly force. In this sense, it is necessary to raise the capacities of the police coercion by introducing non-deadly coercive means, as well as by introducing new technical means, whose characteristics could rightfully classify them as non-deadly weapons. In this regard, Bailey (1996: 536) states that non-deadly weapon can be especially efficient in the following situations: • overcoming resistance and arresting suspects for serious crimes; • conflicts with individuals armed with cold weapons; and • resolving situations with hostages.

In this regard, Taser is especially indicative – ‘it works on the principle of overwhelming human body with electrical impulses that cause uncontrollable muscle spasms’ (Stinson, Reyns, Liederbach, 2012). Weapons with this working principle are especially suitable for police interventions where lawful use of firearms is unavoidable, which makes it a key alternative to deadly force. Thereby, in contrast to firearms, by using this type of weapon, the damage caused and seriousness of injuries is brought down to a minimum. Thus, it is certain that this practice can lead to a decrease in criminal charges against police officers, and in payments of compensations for damages and invalidity allowances. It can also lead to the improvement of the police image in public, where it is otherwise recognised mostly as the symbol of force and repression.

REFERENCES

1. Bailey, W.C. (1996): Less-than-lethal weapons and police-citizen killings in US urban areas, *Crime and Delinquency* 42 (4), pp. 535-552.
2. Bayley, D. (1996): Police Brutality Abroad - in: *Police Violence: Understanding and Controlling Police Abuse of Force* (eds. Geller, W.A. and Toch, H.), New Haven, pp.273-291.
3. Bikarević, D. (2016): Diskreciona ocena policije kroz prizmu upotrebe sredstava prinude, Scientific-expert seminar with international participation ‘European integration: justice, freedom and safety’, volume 3, Collection of papers, Academy of Criminalistic and Police Studies and Hanns Seidel Foundation, Belgrade, pp. 194-210.
4. Bowling, B., et al.,(2004): *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and Abuse of Power from Police Work*. UN Research Institute for Social Development, New York, 2004.
5. [http://eprints.lse.ac.uk/28367/1/Policing_and_Human_Rights_/author/.pdf_download\[23.3.2011\]](http://eprints.lse.ac.uk/28367/1/Policing_and_Human_Rights_/author/.pdf_download[23.3.2011])
6. Brinks, D. (2008): *The Judicial Response to Police Killings in Latin America: Inequality and the Rule of Law*, Cambridge.
7. Crank, J. (2004): *Understanding Police Culture*, Cincinnati.
8. Dempsey, S., Forst, S. (2005): *An Introduction to Policing – third edition*, Belmont.
9. Ignjatović, Đ. (2015): *Kriminologija – 12th and revised edition*, Belgrade.
10. Jovašević, D. (2007): *Nužna odbrana i krajnja nužda*, Belgrade.
11. Kappeler, V., Sluder, R., Alpert, G. (1998): *Forces of deviance, Understanding the dark side of policing - second edition*, Illinois.
12. Kesić, Z. (2013): Razmatranje policijskih ubistava sa aspekta krivice, *Pravni život God. 62*, book 563, no. 9, pp. 235-246.
13. Klinger, D. (2004): *Into the Kill Zone – A Cop’s Eye View of Deadly Force*, San Francisco.
14. Kolarić, D. (2008): *Krivično delo ubistva*, Belgrade.
15. Milidragović D., Milić, N. (2011): Neposredna opasnost po život kao poseban uslov upotrebe vatrenog oružja, *Bezbednost* 53(2), pp. 197-218.
16. Petrović, M. (2010): Obaveza poštovanja standarda postavljenih Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda prilikom primene policijskih ovlašćenja – in: *Pravo i forenzika u kriminalistici*, Belgrade, pp. 77-88.
17. Punch, M. (2011): *Shoot to Kill – Police accountability, firearms and fatal force*, London.

18. Roberg, R., Crank, J., Kuykendall, J. (2004): *Policija i društvo* (orig.: *Police and Society* – second edition, New York, 2000, translation: Dalibegović M.), Sarajevo.
19. Sherman, L. (1986): *Execution without trial: Police Homicide and the constitution* –in: *Police Deviance*, (Barker T. and Carter D., eds.), Cincinnati, pp. 188-221.
20. Simeunović-Patić, B. (2003): *Ubistva u Beogradu*, Beograd.
21. Skolnick, J., Fyfe, J. (1993): *Above the law*, New York.
22. Scott, G. (2005): *Istorija torture kroz vekove* (orig. G. Scott: *History of Torture through the Ages*, London 1939, translation: Marinović V.), Belgrade.
23. Smith, B. (2004): *Structural and organizational predictors of homicide by police*, *Policing: An International Journal of Police Strategies and Management* 27(4), pp.539-557.
24. Stinson, P.M., Reyns, B.W., Liederbach, J. (2012): *Police crime and less-than-lethal coercive force: a description of the criminal misuse of TASERS*, *International Journal of Police Science and Management* 14(1), pp. 1-19.
25. Šantek, M. (2005): *O uvjetima za uporabu vatrenog oružja*, *Policija i sigurnost* 1-6, pp. 159-190.
26. Wilkes, Jr. D. (2006): *The Militarization of Law Enforcement Causes Police Brutality* –in: *Police Brutality: Opposing viewpoints* (ed. S. Fitzgerald), Farmington Hills, pp.70-80.
27. Wolfgang, M., Ferracuti, F. (2012): *Potkultura nasilja – Ka jednoj integrisanoj kriminološkoj teoriji* (orig. *The Subculture of Violence – Towards an Integrated Theory in Criminology*, London, 1967 – translation: Dragica Ljubičić), Belgrade.
28. Zimring, F.E. (2017): *When Police Kill*, London.

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1. European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Rome.
2. Law on Police, Official Gazette of the RS, number: 101/2