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ASSOCIATION OF  
CRIMINALISTICAL  
INSTITUTES OF THE  
INTERNATIONAL  
CRIMINAL JUSTICE  
ASSOCIATION

KRIMINALISTIČKA  
TEORIJA

I

PRAKSA

CRIMINALISTIC  
THEORY  
AND  
PRACTICE

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INVESTIGATION OF  
CUSTOMS CRIMES**

Poštovani čitaoci,

Objavlivanjem ovog broja ulazimo u petu godinu postojanja, što je svojevrsan jubilej vredan pomena. Tim povodom želeo bih da se u ime članova Uređivačkog odbora našeg Časopisa, kao i svoje lično ime zahvalim autorima i recenzentima, kao i našim vernim čitaocima. Zahvalnost dugujemo i Međunarodnom kriminalističkom udruženju, pod čijim okriljem je ovaj projekat i nastao, a naročito prof. dr sc. Josipu Pavličeku, čiji su ideje, entuzijazam, volja i upornost bili ključni za nastanak Udruženja i Časopisa.

U ovom broju objavljujemo drugi deo radova saopštenih na prošlogodišnjoj konferenciji Međunarodnog kriminalističkog udruženja, vezane za polnu i obrazovnu strukturu kriminalističke policije, pitanja prevoza novca, obezbeđenje dokaza kod kompjuterskih krivičnih dela, kriminalističke aspekte povreda na radu i carinu i njenu ulogu u suzbijanju carinskih krivičnih dela.

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## Polna i obrazovna struktura kriminalističke policije u Srbiji<sup>1</sup>

### **Sažetak:**

*U radu je u formi prethodnog saopštenja prikazan deo rezultata koji se odnosi na polnu i obrazovnu strukturu, a u okviru šireg istraživanja sociodemografskog statusa kriminalističke policije u Srbiji. Naime, istraživanje je metodom snow ball obuhvatilo 200 ispitanika, zaposlenih na različitim pozicijama u kriminalističkoj policiji, iz ukupno 55 gradova i opština u Srbiji. Pored polne i obrazovne strukture istraživane su varijable vezane za bračni i porodični status, prihode, strukturu potrošnje i stambene prilike. Ipak, po mišljenju autora, kao dva bitna pitanja u okviru korpusa istraživanja nametnula su se pitanja iz naslova, koja su detaljnije obrađena u tekstu. Bilo je interesantno saznati da li je i u kolikoj meri u kriminalističkoj policiji ostvaren evropski standard od 30% zastupljenosti žena. Osim toga, u neformalnim razgovorima, ali i u izjavama zvaničnika, vrlo često se može čuti kako kvalitet obrazovanja u Srbiji opada, dok su oči kritičara uglavnom uprte u privatne univerzitete i fakultete.*

<sup>1</sup> Rad je rezultat rada na projektu "Razvoj institucionalnih kapaciteta, standarda i procedura za suprotstavljanje organizovanom kriminalu i terorizmu u uslovima međunarodnih integracija", kojeg, pod pokroviteljstvom Ministarstva prosvete, nauke i tehnološkog razvoja Republike Srbije (br. 179045), realizuje Kriminalističko-policijska akademija u Beogradu (2011–2017), kao i rada na projektu "Kriminalitet u Srbiji i instrumenti državne reakcije", koji finansira i realizuje Kriminalističko-policijska akademija u Beogradu, ciklus naučnih istraživanja 2015-2019. godina.

*Prekora nisu pošteđeni ni rukovodioci u okviru MUP-a koji navodno omogućuju da se pojedina radna mesta formalno "pokrivaju" diplomama neadekvatnog profila i(li) sumnjivog kvaliteta. Zbog toga je bilo zanimljivo istražiti i aktuelnu obrazovnu strukturu pripadnika kriminalističke policije. Preliminarni rezultati pokazuju da je zastupljenost žena u kriminalističkoj policiji na nivou od oko 15%, dok su u uzorku u skoro 2/3 slučajeva zastupljene visoke policijske škole, tj. bivša Viša škola unutrašnjih poslova i Policijska akademija, odnosno aktuelna Kriminalističko-policijska akademija.*

**Ključne reči:** *kriminalistička policija, polna struktura, obrazovna struktura.*

## 1. Uvod

Policije je složen aparat, u teoriji definisan kao složen sistem profesionalnog tipa, koji je ustanovljen radi održavanja javnog reda i poretka u društvu i koji je, u te svrhe, snabdeven zakonskim ovlašćenjima i potrebnim sredstvima, uključujući i sredstva prinude (Milosavljević, 1997: 17). Kao sastavni deo tog aparata vremenom se izdiferencirala kriminalistička policija, kao njen organizacioni deo specijalizovan i najuže usmeren ka sprečavanju i suzbijanju različitih vidova kriminala, počev od klasičnog (krvni i seksualni delikti, imovinski kriminal i sl.), preko privrednog, do najnovijih formi, poput organizovanog ili visokotehnološkog kriminala, pa i terorizma.

Za razliku od inostrane literature, u teorijskim i stručnim tekstovima na prostorima bivše Jugoslavije, obično su veću pažnju privlačili fenomeni koji se tiču pojavnih oblika kriminala iz delokruga rada kriminalističke policije, odnosno strateški i/ili individualni pristupi u otkrivanju takvih dela, njihovom rasvetljavanju i obezbeđenju dokaza neophodnih za kriminalističku istragu, odnosno krivičnu istragu i kasniji krivični postupak, dok je sama kriminalistička policija (odnosno njene specifičnosti kao kolektiviteta) u manjem obimu bila u fokusu istraživanja. Nešto veća pažnja ovim pitanjima posvećena je početkom novog milenijuma, u sklopu društvenih tranzicionih procesa, i to uglavnom pod uticajem različitih međunarodnih organizacija ili inostranih partnera. Na tom tragu nalazi se i ovaj tekst, u kojem su autori nastojali da u formi prethodnog saopštenja preliminarno prikažu dva segmenta iz šireg istraživanja sociodemografskog statusa pripadnika kriminalističke policije u Srbiji, koje su sprovedli tokom 2016. godine. Naime, kao naročito relevantna izdvojila su se dva pitanja – zastupljenost žena u okvirima kriminalističke policije i obrazovna struktura njenih pripadnika.

Osnov na kome se zasniva očekivana ravnopravnost u zastupljenosti žena u policijskoj službi pronalazi se pre svega u međunarodnim dokumentima,

Univerzalnoj deklaraciji UN o pravim čoveka i građanina<sup>2</sup>, Konvenciji UN o eliminaciji svih oblika diskriminacije žena (CEDAW)<sup>3</sup> i drugim međunarodnim dokumentima. Međutim, glavnu prepreku većoj brojnosti žena u policiji predstavljalo je tradicionalno shvatanje policijske profesije kao muške, uz kult muškosti, mačizam, svest o opasnostima, snazi, autoritetu i slične vrednosti kao njenim glavnim obeležjima (Milosavljević, 1997: 525). Istina je da se stanje u toj oblasti polako menja, međutim, postavlja se pitanje u kolikoj meri je dinamika promena zadovoljavajuća. Spasić navodi da je prijem i stepen integracije žena u policiju obično dolazio kao posredni rezultat donošenja nekog važnog međunarodnog dokumenta o ljudskim pravima ili rodnoj ravnopravnosti (Spasić, 2008: 43) ili je bio podstaknut aktivnostima ženskog pokreta tokom osamdesetih i devedesetih godina prošlog veka, koji je zahtevao da se polna struktura zaposlenih u policiji usaglasi sa strukturom stanovništva, odnosno da žene učestvuju u strukturi policijskog osoblja sa 50% (Milosavljević, 1997: 526). Novije istraživanje koje je u Srbiji u vezi zastupljenosti žena u policiji sprovedla Tomić govori o perzistirajućem prisustvu rodni nejednakosti i izvesne doze rodni stereotipa kod žena, kao i njihovom utisku da nisu potpuno profesionalno prihvaćene od strane kolega. Takođe, pominje se i strukturalna rodna segregacija i marginalizacija koja se ogleda u zatvaranju žena u uski krug administrativnih i pomoćnih policijskih poslova (Tomić, 2016: VI).

Kada se govori o obrazovanju, čini se da Bolonjski proces na prostoru Jugoistočne Evrope, suprotno očekivanjima, doneo više muka kreatorima politike obrazovanja i naučnog i tehnološkog razvoja, nego što je doneo koristi naučnoj i društvenoj zajednici, istraživačima i studentima. Kritike na račun visokog obrazovanja uglavnom su usmerene u pravcu kriterijuma studiranja koji su doveli do olakšane prohodnosti i naglog povećanja broja svršenih studenata osnovnih studija bez usvajanja zadovoljavajućeg nivoa znanja, ali i onih s doktorskim diplomama, sa čim su bile skopčane i izvesne afere vezane za ličnosti iz sveta politike i nosilaca javnih funkcija. Prisutna je i neadekvatnost obrazovnih profila vremenu u kome živimo, a svi navedeni problemi bi, uz konstantan odliv visokokvalifikovanog kadra u inostranstvo, predstavljali nenadoknativ gubitak i za mnogo bogatija društva od srpskog. Ugledni srpski akademik i predsednik Srpske akademije nauka i umetnosti (SANU) navodi da u Srbiji postoji ekspanzija visokoškolskog obrazovanja niskog kvaliteta (Kostić, 2016), a čini se da je stanje u tom pogledu slično i u ostalim zemljama regiona.

U vezi s visokim obrazovanjem za potrebe policije potencijalni problemi se samo jednim delom pronalaze u kvalitetu obrazovanja, ali, čini se, većim delom u izboru budućeg kadra. Naime, u Srbiji visoko policijsko obrazovanje sprovodi Kriminalističko-policijska akademija (KPA), ali se na radna mesta u kriminalističkoj policiji sistematizovana sa visokom stručnom spremom

<sup>2</sup> Usvojena rezolucijom Generalne skupštine UN 217a, od 10. decembra 1948.

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women (G.A.res. 34/180, 34 U.N.GAOR Supp. (No.46) at 193, U.N.Doc. A/34/46

zapošljavaju i svršeni studenti drugih fakulteta, uglavnom društvenog smera. Kritike koje se uobičajeno mogu čuti u neformalnim razgovorima u policijskim krugovima idu u pravcu navodnog neopravdanog zapošljavanja studenata drugih fakulteta na radna mesta u kriminalističkoj policiji, dok nije sistemski uređen status svršenih studenata KPA. Takođe, zaposleni u policiji koji rade na radnim mestima sa srednjom stručnom spremom, navodno, vrlo često završavaju privatne fakultete, prvenstveno zbog lakše prohodnosti, pri tome i obrazovne profile koji nemaju dodirne tačke s policijskim poslovima, pa je ključna stvar, zapravo, da li će takva diploma biti i "priznata" u MUP-u, u vezi čega ne postoji jedinstven stav, tj. praksa je različita od slučaja do slučaja. Na sve pomenuto nadovezuje se i pohađanje specijalističkih studija na KPA od strane prethodno pomenute kategorije svršenih studenata privatnih fakulteta, čime nastoje da prebrode svojevrstan obrazovni deficit i formalno postižu da "kruna" njihovog obrazovanja ima policijski karakter. U žargonu se za ovaj postupak već ustalio naziv "pranje diplome".

Izneti problemi možda nisu najznačajniji iz perspektive svakodnevnog funkcionisanja kriminalističke policije, ali sigurno jesu prisutni u dužem vremenskom periodu i sasvim izvesno utiču na dugoročnu perspektivu kriminalističke policije, pa i policije uopšte. To je bio jedan od razloga zašto su se autori opredelili da ih dodatno osvetle i daju barem skroman doprinos u sagledavanju i analizi pomenutih problema i na taj način, eventualno, pomognu kreatorima politika u izgradnji sistemskih rešenja kojima će se prebroditi uočeni problemi.

## 2. Materijal i metod rada

Istraživanje koje se nalazi pred čitaocem, sprovedeno je 2016. godine i obuhvatilo je ukupno 200 pripadnika kriminalističke policije, zaposlenih na različitim pozicijama u ovoj policijskoj formaciji, iz ukupno 55 gradova i opština u Srbiji. Pored polne i obrazovne strukture, koja je predmet rada, istraživane su varijable vezane za bračni i porodični status, prihode, strukturu potrošnje i stambene prilike. Istraživanje je sprovedeno tehnikom *snow ball*, tako što je 50 studenata strukovnih studija Kriminalističko-policijske akademije u Beogradu, u sklopu prikupljanja bodova iz predispitnih obaveza iz predmeta Kriminalistička metodika, anketiralo po pet pripadnika kriminalističke policije, u mestu svog prebivališta, a po prethodno pribavljenom odobrenju Direkcije policije MUP-a. Na ovaj način postignuta je slučajnost izbora, a studenti su instruisani da anketiraju nekoga od pripadnika kriminalističke policije kojeg od ranije poznaju ili su ga upoznali tokom sprovođenja stručne prakse u područnoj policijskoj upravi, a ne kriminalističke policajce koji bi kao "poželjan" uzorak bili određeni za anketiranje od strane rukovodioca unutar kriminalističke policije.

Takođe, važno je napomenuti da studenti nisu dobili nikakve instrukcije

u pogledu pola budućih ispitanika. Što se tiče odnosa polova među studentima koji su sprovodili terenski deo istraživanja, on je iznosio 68% : 32% u korist muškaraca, što je, ujedno, jedan od značajnih pokazatelja vezanih za buduću strukturu pripadnika kriminalističke policije. Naime, u vezi polne strukture studenata KPA, treba napomenuti da je u konkretnom slučaju, prilikom upisa generacije studenata koja je učestvovala u istraživanju bila određena kvota pri upisu studenata koji su na budžetskom finansiranju 37,5% za kandidate ženskog pola (15 od 40), dok je veći broj samofinansirajućih studenata (163) upisan po redosledu formiranom na osnovu liste ostvarenih bodova. Ako se pođe od pretpostavke da je polna struktura na ovaj način manjim delom kreirana, a većim delom slučajna, i da je tokom njihovog školovanja došlo do prirodne selekcije, kao i da je odnos polova na trećoj godini studija 68% prema 32% u korist muškaraca, onda se odnos od približno 30% žena naspram 70% muškaraca nameće kao odnos koji se prirodnim putem uspostavlja u ovoj ciljnoj grupi. Ovakav stav dobija dodatnu potvrdu u činjenici da je, po napuštanju upisne politike bazirane na određivanju kvota za studentkinje, prošle godine na KPA upisana 31 devojka od ukupno 100 primljenih kandidata, dakle 31%, i to isključivo na osnovu rezultata ostvarenih na prijemnom testu.

Istraživanje je sprovedeno u formi strukturirane ankete, sa višestrukim izborom i otvorenim pitanjima. Osim podataka o polu, starosti, završenoj školi i daljem stručnom usavršavanju, ispitanici su odgovarali na pitanja u vezi ukupnog staža u MUP-u i staža provedenog u kriminalističkoj policiji, bračnog statusa, zanimanja supružnika, broja članova domaćinstva, uslova stanovanja, kao i visine prihoda i strukture potrošnje. Tokom analize podataka korišćen je deskriptivni statistički metod.

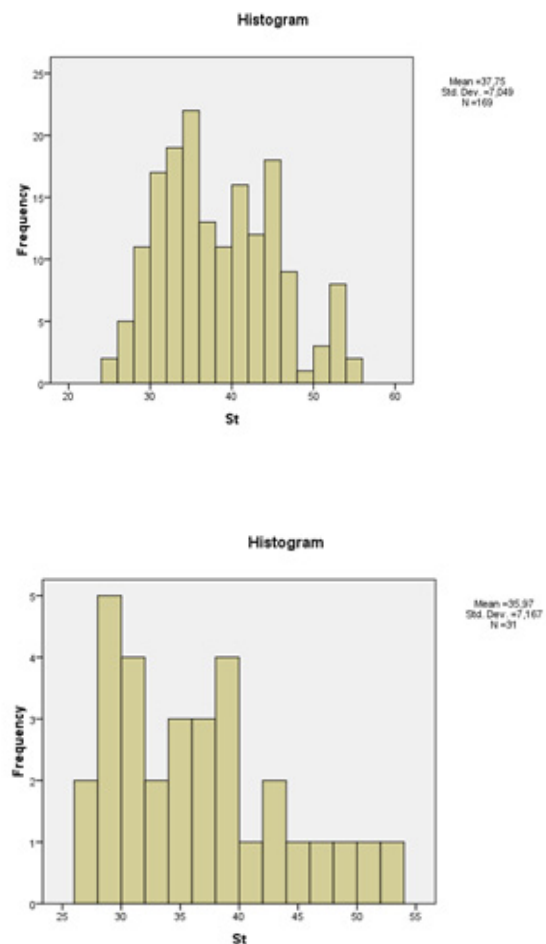
## 3. Rezultati istraživanja i diskusija

Prilikom oblikovanja istraživanja, istraživači su projektovali veličinu uzorka  $N=200$ . S obzirom na činjenicu da je svaki od 50 studenata koji je prihvatio učesće u istraživanju trebao da anketira po pet policajca, očekivao se za 25% veći broj anketiranih od projektovanog, te je formiranje uzorka okončano u trenutku kada su studenti predali pravilno popunjene anketne listove za ukupno 200 ispitanika. Naknadno pristigli anketni listovi nisu uzeti u razmatranje. Kao što je prethodno rečeno, teritorijalno gledano, zahvaljujući činjenici da studenti KPA dolaze iz skoro svih opština u Srbiji, uzorak je obuhvatio 55 gradova i opština, pri čemu su najzastupljeniji bili Beograd (10%), Niš (9,5%), Šabac (9%), Čačak (6%) i Novi Sad (5,5%).

U vezi jednog od dva ključna pitanja, pitanja pola, treba reći da je uzorak obuhvatio 169 muškaraca (84,5%) i 31 ženu (15,5%). Najmlađi ispitanici imali su 25 godine (27 za žene), a najstariji 54 (52 za žene). Prosečna starost ispitanika iznosila je oko 37 godina, pri čemu je starost 54,5% ispitanika bila u rasponu od



30 do 40 godina (54,8 žena i 54,4% muškaraca). Kada se detaljnije pogleda distribucija uzorka po pitanju starosti u dve posebne grupe u okviru uzorka (muške i ženske), može se videti da je najviše žena u starosnoj dobi između 27 i 31 godine (35,5%), odnosno između 35 i 38 godina (29%). S druge strane, kod muškaraca preovlađuju ispitanici od 30 do 35 godina (34,3%) i 40 do 45 godina starosti (27,2%).<sup>4</sup>



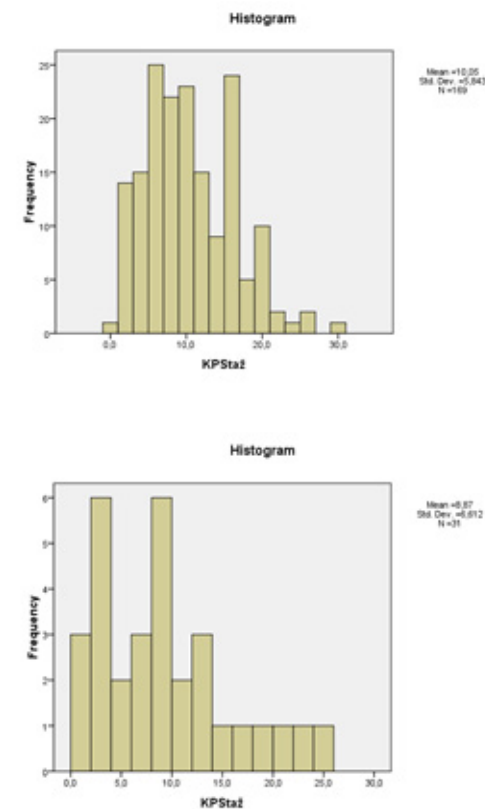
Grafikon 1. i 2. – Usporedna starosna struktura muškaraca (levo) i žena (desno) u kriminalističkoj policiji u Srbiji

Ukoliko se razmatra teritorijalna zastupljenost žena u okvirima kriminalističke policije, u pojedinim policijskim upravama, može se videti da distribucija uzorka kod žena ukazuje na odstupanje od opšteg uzorka. Naime, veći broj žena ispitanika zabeležen je samo u nekoliko policijskih uprava, tačnije u PU

<sup>4</sup> U iznetim statistikama posebno je posmatran deo uzorka koji čine muškarci i deo uzorka koji čine žene.

za Grad Beograd i PU Niš, Novi Pazar i Leskovac, pri čemu su najzastupljenije policijske uprave, prethodno već pomenute na početku ovog poglavlja, samo jednim delom (dve prvoavedene) u isto vreme i policijske uprave sa najvećim brojem žena u kriminalističkoj policiji.

Posmatrajući staž muškaraca i žena u kriminalističkoj policiji, možemo videti da su kod muškaraca najbrojniji pripadnici koji imaju između dve i dvadeset godina staža (96,8%), dok se više od dve petine muških ispitanika (41,4%) svrstava u kategoriju ispitanika koja ima od 5 do 10 godina staža. Distribucija uzorka kod žena drugačije je prirode. Naime, u ovom slučaju nešto veći broj ispitanica zabeležen je u kategoriji do 15 godina staža. Ovaj podatak je vrlo interesantan, s obzirom na to da posredno govori o vremenu kada je počeo intenzivniji prijem žena u policiju, posle 2000. godine, što se kao statistički relevantna promena odrazilo i u ovom istraživanju. Ohrabrujući je podatak da više od trećine ispitanica pripada u kategoriju do 5 godina staža, pri čemu ispitanice do 3 godine staža čine 29% uzorka u okviru ženske populacije ispitanika.



Grafikon 3. i 4. – Usporedna struktura radnog iskustva muškaraca (levo) i žena (desno) u kriminalističkoj policiji u Srbiji

Kada uporedno posmatramo obrazovanje koje prethodilo visokom, možemo videti da je više od trećine muškaraca završila srednje tehničke škole (36,1%), potom gimnazije (21,3%), dok je šestina (16,6%) završila Srednju školu unutrašnjih poslova (u daljem tekstu SŠUP). Sve ostale škole čine preostalih 32%. Što se tiče žena, situacija je znatno drugačije, s obzirom na činjenicu da je nešto manje od polovine (45,2%) završilo gimnazije. Ekonomske i medicinske škole zastupljene su s jednom šestinom (16,1%), dok sve ostale čine ukupno 22,6%.

Pitanjima o obrazovanju policijskih službenika dolazimo do drugog bitnog segmenta ovog rada, koji se odnosi na selekciju kadra koji će raditi u kriminalističkoj policiji. Kao što je pomenuto u prethodnom pasusu, samo jedna šestina ispitanika muškog pola prethodno je završila SŠUP, te je kasniji dolazak u kriminalističku policiju bio deo kretanja u policijskoj karijeri. Ipak, većina kadra koji radi u kriminalističkoj policiji došla je izvan struktura MUP-a, pri čemu je 49% ispitanika provelo celokupan staž u MUP upravo u kriminalističkoj policiji, odnosno oni nisu imali prethodno iskustvo rada u nekoj drugoj organizacionoj jedinici ovog Ministarstva. Zanimljivo je primetiti da je polna struktura u ovoj podgrupi ispitanika gotovo identična strukturi u celokupnom uzorku, 85,7% naprema 14,3% u korist muškaraca.

Sledeći set pitanja odnosio se na završene fakultete zaposlenih u kriminalističkoj policiji. Skoro dve trećine ispitanika (62%) završilo je fakultete, dok je preostali broj (38%) završio više škole. Struktura završenih fakulteta odnosno viših škola je jedno do najznačajnijih pitanja u ovom istraživanju. Na prvom mestu po zastupljenosti nalazi se bivša Viša škola unutrašnjih poslova,<sup>5</sup> sa udelom od 23,5% i Kriminalističko-policijska akademija, s udelom od 23%. Na trećem mestu je bivša Policijska akademija, u kojoj je visoko policijsko obrazovanje steklo 18,5% ispitanika. Slede državni pravni fakulteti (11,5%), fakulteti bezbednosti (5,5%), Fakultet za menadžment (2%) i Visoka ekonomska škola (3%). Sve ostale više ili visoke škole, odnosno fakulteti zastupljeni su s 1% ili manje.<sup>6</sup> Suprotno ranije iznetim podzrenjima, zasnovanim na pogovaranju u policijskim redovima o velikom broju pripadnika kriminalističke policije koji su obrazovanjem stekli zvanja neadekvatna za rad u kriminalističkoj policiji, rezultati istraživanja govore da je 65% pripadnika kriminalističke policije steklo visoko obrazovanje upravo u ustanovama specijalizovanim za obrazovanje policijskog kadra. Ukoliko se ovom korpusu uzorka dodaju i svršeni studenti fakulteta bezbednosti i državnih pravnih fakulteta, taj udeo dostiže 82%.

<sup>5</sup> Viša škola unutrašnjih poslova i Policijska akademija integrisane su 2006. godine u jedinstvenu visokoškolsku ustanovu pod nazivom Kriminalističko-policijska akademija.

<sup>6</sup> U pitanju su privatni pravni fakulteti, učiteljski fakultet, više i visoke ekonomske škole, više i visoke tehničke škole, visoke škole za menadžment i poslovnu ekonomiju, visoke pedagoške škole itd.

Fakultet/viša škola	N	%
Viša škola unutrašnjih poslova	47	23,5%
Kriminalističko-policijska akademija	46	23%
Policijska akademija	37	18,5%
Pravni fakultet	23	11,5%
Fakultet bezbednosti	11	5,5%
Ostali	36	18%

Tabela 1. – Prikaz obrazovne strukture zaposlenih u kriminalističkoj policiji u Srbiji

S obzirom da, kako je prethodno pomenuto, oko trećine kadra došlo u kriminalističku policiju s uslovno rečeno "nepolicijskih fakulteta", istraživače je zanimalo koji procenat ovog kadra je pohađao tzv. "operativni kurs". Radi se o kursu u trajanju od 10 do 20 nedelja, koji je periodično organizovala Uprava kriminalističke policije MUP-a, u saradnji s visokoškolskom ustanovom za policijsko obrazovanje, za zaposlene primljene iz građanstva, a na kom su polaznici usvajali krivično-pravna i kriminalistička znanja i veštine neophodne za rad u ovoj organizacionoj jedinici policije. Rezultati istraživanja govore da je ovaj kurs pohađalo 7% ispitanika iz ukupnog uzorka, odnosno svega 20% od podgrupe ispitanika koji nisu završili policijske škole ili fakultete. Među njima najveći je broj sa završenim pravnim i fakultetom bezbednosti, odnosno visokom ekonomskom školom.

Samo 4% ispitanika odlučilo se za specijalističke ili poslediplomske studije i uspešno ih okončalo. Specijalističke studije završilo je 1,5% ispitanika. Suprotno očekivanjima iznetim u uvodnom delu, ovi ispitanici prethodno su stekli policijsko visoko obrazovanje, a specijalističke studije su pohađali na Kriminalističko-policijskoj akademiji. Master studije završilo je 2,5% ispitanika, od čega dvoje s policijskim visokim obrazovanjem.

	N	%
Specijalista	3	1,5%
Master	5	2,5%
Doktor nauka	0	0%
Bez specijalističkog/postdiplomskog obrazovanja	192	96%

Tabela 2. – Prikaz strukture zaposlenih u kriminalističkoj policiji u Srbiji sa specijalističkim, odnosno poslediplomskim obrazovanjem

Zanimljivo je da su ispitanici s visokim policijskim obrazovanjem stekli zvanje mastera na Kriminalističko-policijskoj akademiji, dok su ispitanici s drugih, nepolicijskih fakulteta ostali "verni" fakultetima na kojima su prethodno



stekli visoko obrazovanje, čime je u potpunosti pobijena hipoteza o navodnom naknadnom završavanju policijskih specijalističkih ili master studija u cilju formalnog neutralisanja obrazovnog deficita. U uzorku nije bilo ispitanika koji su stekli zvanje doktora nauka.

#### 4. Zaključak

Mada se kroz prizmu tokova savremenog društva sva, pa i pitanja obrazovanja i polne strukture kadra kriminalističke policije mogu učiniti drugorazrednim, radi se o pitanjima od suštinskog su značaja za budućnost ove organizacione jedinice policije. Posmatrano u širem kontekstu prava na slobodu i bezbednost, ova pitanja ne tiču se samo pripadnika policije, nego i društva u celini.

Rezultati istraživanja govore da evropski standard o zastupljenosti 30% žena u policijskim jedinicama, kada se govori o kriminalističkoj policiji u Srbiji, nije ispunjen. Podaci o starosti ispitanica, poređeni sa podacima o njihovom stažu unutar MUP-a i kriminalističke policije ukazuju da je masovnije zapošljavanje žena u ovoj organizacionoj jedinici počelo posle 2000. godine, kao i da više od trećine ispitanica pripada u kategoriju do 5 godina staža, pri čemu ispitanice do 3 godine staža čine 29% uzorka u okviru ženske populacije ispitanika. Ukoliko se trend masovnijeg zapošljavanja žena nastavi i u budućnosti, može se očekivati povoljnija struktura koja bi u krajnjoj instanci doprinela približavanju željenom standardu. Zanimljivo je da je bez propisivanja posebnih kvota u korist ženskih kandidata prilikom upisa na KPA školske 2016./2017. godine postignut udeo od 31% kandidatkinja, što slikovito ilustruje poželjan odnos polova u policijskoj profesiji.

Skoro dve trećine ispitanika u kriminalističkoj policiji završilo je fakultete, dok su ostali završili više škole. Polovina ispitanika provelo je celokupan staž u MUP upravo u kriminalističkoj policiji, odnosno to im je bilo prvo i jedino zaposlenje. Suprotno u uvodu iznetim pretpostavkama, zasnovanim na pogovaranju u policijskim redovima o velikom broju pripadnika kriminalističke policije koji su obrazovanjem stekli zvanja neadekvatna za rad u kriminalističkoj policiji, rezultati istraživanja govore da je 65% pripadnika kriminalističke policije steklo visoko obrazovanje upravo u ustanovama specijalizovanim za obrazovanje policijskog kadra. Ukoliko se ovom broju dodaju i svršeni studenti državnih pravnih fakulteta i fakulteta bezbednosti, taj udeo dostiže 82%, što se može oceniti povoljnim. Ipak, među preostalim zaposlenim svega 20% je završilo kriminalističko-operativni kurs, kako bi delom eliminisali stručno-obrazovni deficit, što je podatak koji ne deluje ohrabrujuće.

Samo 4% ispitanika nastavilo je poslediplomsko obrazovanje, pri čemu su svršeni studenti visokih policijskih škola nastavili studije na KPA ili

njenim pravnim prethodnicima, dok su studenti nepolicijskih fakulteta nastavili obrazovanje na matičnim fakultetima. Time je, ujedno, pobijena hipoteza o naknadnom završavanju poslediplomskih studija u cilju formalnog neutralisanja obrazovnog deficita.

#### SUMMARY

*The paper presents the part of the results related to the gender and educational structure, in the form of the previous communication, within the scope of a wider research of the sociodemographic status of the CID police officers in Serbia. Namely, the research included 200 respondents by 'snowball method', employed in different positions in the CID, out of 55 cities and municipalities in Serbia. In addition to the gender and educational structure, variables related to marital and family status, incomes, consumption structure and housing conditions have been studied. However, in the opinion of the author, the questions about the gender and education are two the most important questions within the research corpus, which are elaborated in more detail in the text. It was interesting to explore whether and to what extent the standard of 30% of the presence of women was achieved. In addition, in informal conversations, as well as in officials' statements, it can often be heard that the quality of education in Serbia is decreasing, while the eyes of critics are mainly focused on private universities and faculties. It was therefore interesting to research the current educational structure of the members of the CID. Preliminary results show that the representation of women in the CID is at the level of about 15%, while the sample in almost 2/3 cases represents education acquired in a police colleges, i.e. the former College of Internal Affairs and the Police Academy, or the current Academy of Criminalistics and Police Studies.*

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IZVORNI ZNANSTVENI ČLANAK (ORIGINAL SCIENTIFIC PAPER)

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### **Criminalistics and operative aspects of the attacks on the cash in transit vehicles in the Republic of Macedonia**

#### ***Abstract:***

*Cash in transit is a term used to describe the banknotes in the process of transfer from one location to another. During this process, a whole array of risks, threats, dangers and vulnerabilities arise. As much as the value of the assets is greater, the more the transport is the tempting target of attack by criminal, primarily, bandit groups. Cash in transit vehicles attacks are criminal activities that are carried out for the purpose of acquiring illegal property and they contain elements of violence, brutality and aggression. From a criminal and legal point of view, cash in transit vehicles attacks are classified as crimes against property, or rather as criminal offenses of robbery. Studying the circumstances of the crime through the chronological and logical connection of the discovered facts provides an opportunity for understanding the crime, i.e. to create a criminalistics version of the events, on the basis of which the further operational procedures of criminal prosecution authorities will be based. The general goal of this paper is a criminal and operational analysis of the cash in transit vehicles attacks, which should contribute to recognizing the shortcomings, deficiencies and weaknesses in the manner of securing, as well as the ways of their detection, clarification and proving by the criminal prosecution authorities.*

*The paper will present the results of the researched criminological, victimological and criminal-operational aspects of the cash in transit vehicles attacks in the Republic of Macedonia in the period from 2005 to 2016. In this regard, in order to review the criminal-operational acting after detection of the committed attack on a cash in transit vehicle, an analysis of a specific individual case will be made by describing the situation that had previously passed, the criminal situation, the measures and activities undertaken for its clarification and the consequences that arose from it. Through the security analysis applied in the paper, the basis for improvement and the creation of more efficient and effective ways of planning and performing of the cash in transit and other valuable goods should be created.*

**Key words:** *cash in transit, vehicles, attacks, criminalistics aspects, Republic of Macedonia*

## Introduction

The provision of transport and transfer of money and other valuable goods<sup>1</sup> is, in fact, physical security of the transport and transfer of money, gold, precious stones, works of art, securities and other valuable parcels with private security workers and special vehicles. This is applied when moving along a certain path and it has a task to protect and secure the transport and transfer along the whole route from the starting moment or from the starting point to the end destination. But, if the value of the money or the consignment is high then their transport becomes attractive for attack by the criminal groups or the terroristic organizations.<sup>2</sup> This confirms the claim that the money are especially sensitive for transport. As any kind of security, the security of the cash in transit has many risks, threats and dangers that the participants of this process are facing with. The managing with the risks<sup>3</sup> is an important process in securing the transfer of money and other valuable items, since it enables the necessary degree of protection to be determined. If this process is well managed, the set goal can be successfully performed, which is a safe transfer of money and other values, without any harmful consequences of transport and the entities that implement it.

<sup>1</sup> Art. 7, Par. 9, Law on Private Security (Official Gazette of the Republic of Macedonia No. 166/2012, 164/2013, 55/2016)

<sup>2</sup> Chamber of the Republic of Macedonia for the security of persons and property: A Manual for Setting Up and Passing an Expert Examination for Performing the Issues of Security of Persons and Property, Skopje, 2008, p. 21

<sup>3</sup> Roper, A., C.: Risk Management for Security Professionals, Butterworth-Heinemann, Elsevier Inc, 1999, стр. 4

The transport and the transfer of money and other valuable items cannot be excluded or avoided because they are necessary social need in the functioning of the modern living. It is logical to assume that it is easier to carry out an attack and assign the goods or other valuable items during their transportation, than when they are stored in an object with an organized security system.

The attacks on the cash in transit, criminally and legally determined as robberies<sup>4</sup>, are essentially brutal acts of violence of self-interest. The robbers decide to attack at a time when the presence of the citizens at the intended attack site is the lowest and at the same time endeavor to make the most of the surprise factor. In many cases, the attack is preceded by a prolonged planning process and detailed preparations, as robbers do not want to leave the course of a coincidence event. This is especially characteristic of professional, specialized and quite experienced robbers and banditry groups.<sup>5</sup> Very often robbers use masking to remove the ability to be recognized by attackers. When carrying out the robbery attacks on money transport, the perpetrators mostly use guns and automatic rifles in order to intimidate persons involved in transportation and to easily seize spoils. As a rule, the attacked persons - employees in the transportation company or the security agency report the attack to the Police. At the time of the robbery, the victims are exposed to severe stress or direct physical attack, and they can also get injuries, so they are not always able to provide all the necessary answers to the questions about the exact time, place and method on which the attack was carried out, the appearance of the attackers, the damage done, etc. It is therefore particularly important for such persons to relax and reconcile before taking a statement from them. Once information about the robbery is obtained, it is necessary to quickly react by the internal affairs authorities in order to secure the scene of the criminal event and to fix the authentic factual situation during the inspection. If the police receive information that contains sufficient information about the executor and the direction in which it was directed, it would be right to simultaneously take chase after it, blockade and traffic control in order to find, capture and lead to a criminal sanction.

The research of the phenomenological characteristics of attacks on cash in transit enables the description of such criminal phenomena through their scope, dynamics, appearance forms, structure and structural modes, spatial and temporal distribution, etc.

<sup>4</sup> The robbery is a criminal offence incriminated in Article 237, under Chapter XXIII entitled Criminal offences against property in the Criminal Code of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 37/1996, 80/1999, 04/2002, 43 / 2003, 19/2004, 81/2005, 60/2006, 73/2006, 07/2008, 139/2008, 114/2009, 51/2011 - two amendments, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, and Decisions of the CCRM No. 220/2000, 210/2001, 206/2003, 228/2005)

<sup>5</sup> Gill, M.: The Craft of Robbers of Cash-in-transit Vans: Crime Facilitators and the Entrepreneurial Approach. International Journal of the Sociology of Law, Volume 29, Issue 3, September 2001, 277-291



The phenomenological characteristics of such attacks, in addition to identifying as a phenomenon and their movement in the space of a particular state, will allow them to develop as deep as possible in the phenomena and to perceive certain relations and states that move in the direction to explain their etiology. The criminal-criminological analysis enables the initiation of the application of more appropriate criminal measures (operational-tactical and technical measures and activities and investigative actions) for successful detection of criminal activities on money transportation, providing evidence and finding perpetrators, as well as appropriate preventive measures for prevention of future such harmful events.<sup>6</sup> This would mean that the prosecution authorities – in particular the Police – must act in accordance with the principle of speed and surprise, and implement them as soon as possible after hearing about an assault on cash in transit vehicles, all the necessary operational-tactical measures and investigative actions.

### **Criminalistics-criminological features of the attacks on the cash in transit vehicles in the Republic of Macedonia**

The attacks on the cash in transit can be differentiated in two forms: attacks on the cash in transit vehicles and attacks on the people who are transferring the money from the vehicle to the end destination. About the attacks on the cash in transit in the Republic of Macedonia in the period from 2005 to 2016<sup>7</sup> the number of attacks is relatively small – 11 attacks. By years the scope of the attacks is from 1 to 6 which is relatively small number according the total number of robberies in this period. Given the harmfulness, danger, seriousness, complexity and consequences that these attacks on the process of money transportation leave, they merit scientific attention, as well as special research and analysis.

The attacks on the cash in transit vehicles are specific, unusual, characteristic, leaving more serious consequences compared to the other ways of committing the criminal act of robbery. In general, the way of their implementation asks more organized approach, special planning, involving more people, association, reconnaissance, over-sight, gathering of information, etc. Such attacks have advantages and disadvantages compared to other types of robberies.

<sup>6</sup> Murgoski, B., Babanoski, K.: Preventive measures of the security of cash in transit, Yearbook, Faculty of Security, Skopje, 2011, pp. 246-257

<sup>7</sup> Some of the data are listed according to the research conducted for the needs of the MA thesis entitled Security of the cash in transit in the Republic of Macedonia – preventive-operational aspects by Kire Babanoski, defended at the Faculty of Security - Skopje on 03.06.2011. It examines the criminal-legal, criminological-victimial and criminal-operational characteristics of the attacks on the cash in transit vehicles in the Republic of Macedonia in the period from 2005 to 2010. The characteristics examined for each of the attacks are individually: date, day, time, place, number of perpetrators, detected perpetrators and helpers, used firearms, damage (in millions of euros), insurance of funds, the owner of the means, the transport operator, the number of persons who were conducting the transport, the victims (injured, killed) and the phase of the procedure in which the cases were at the moment of the researching.

On the one hand, they are attractive because robbers can acquire huge amounts of money without complying with the threat of being trapped inside the bank or another commercial company. On the other hand, they are caused because the robbers have to face directly the armed guards or overtake a strong bulletproof vehicle<sup>8</sup>. Having examined these challenges, it follows that the attacks on the cash in transit vehicles are attractive to criminals with greater experience and skills.

Also, a tempting target for the robbers may be the situations of providing money supply to ATMs by the private security personnel and bank employees. Given their fixed location, which is often in open and public places, the risk of being attacked is greater.

In the past period, in the Republic of Macedonia, were detected several attacks on the cash in transit vehicles of private security agencies, banks, post offices, etc. For illustration, brief descriptions of the criminal situation of some of them follow:

- 16.12.2005 – by four robbers armed with automatic weapons was robbed a vehicle of the Public Enterprise Macedonian Posts that was transferring € 600.000 to the Post Office in Shuto Orizari in Skopje;
- 18.04.2006 – a vehicle of the Public Enterprise Macedonian Posts secured by police vehicle with two police officers in Mala Recica, Tetovo, was blocked by two cars. Several robbers entered the vehicle and took away seven bags with € 160.000;
- 18.08.2007 – near the Mall Mavrovka in Skopje was caused a planned car crash with the vehicle of Commercial Bank – Skopje by a car full of masked and armed people. By threat to life were taken the bags with money which value was € 140.000;
- 16.11.2007 – at 7 o'clock in the morning toward the people securing the transfer of money while waiting at the traffic lights was started a fire. One person was killed and his two colleagues were injured. The robbers knew that in the vehicle were € 200.000;
- 13.03.2008 – a gang of robbers armed with automatic weapons on the street in Chair in Skopje, greeted the vehicle of the Public Enterprise Macedonian Post which was transporting € 650.000. There were wounded persons who carried out the transport, and the robbers have escaped with the money;
- 07.05.2008 – five armed people at the first pay toll at the highway Kumanovo-Skopje have robbed a vehicle of Macedonian Post and stole € 100.000;
- 01.07.2009 – at the highway Veles-Skopje near Kadino three bags with money ended up in the car of several masked robbers armed with guns who have forcefully stopped the vehicle of Ohrid Bank.

<sup>8</sup> Murgoski, B., Babanoski, K.: Special transport vehicles as a preventive measure for the security of cash in transit, Horizons II, year VII, number 7, University “St. Clement of Ohrid” – Bitola, Bitola, December 2011, pp. 497-507

The Bank didn't say publically how much money was stolen;

- 08.01.2010 – by armed robbers the vehicle of Stopanska Banka – Bitola was greeted at the exit from Prilep to Bitola and left without € 450.000. One of the persons who carried out the transportation of money was injured;
- 07.05.2010 – a masked bandit with a pointed pistol and pepper spray took away a bag of money from one of the employees of the Public Enterprise Macedonian Post, and then expelled the two others from the vehicle. He stole the money that was intended for pensions;
- 25.05.2010 – two armed robbers failed to seize the money from the toll ramps of the Public Enterprise Macedonian Roads. The event ended with one killed and one seriously injured person who was transporting, car robbery and a cannon from bullets along Veles-Skopje highway;
- 08.02.2016 – two armed robbers at a pedestrian crossing in front of the Pensioners' Association in Veles attacked a vehicle of a private security agency carrying cash boxes for ATMs. In a short time, the police found the perpetrators and boxes of money in the vehicle of the robbers that left the crime scene.

Of the eleven cases shown, it can be ascertained that as many as ten were concentrated in the first six years of the analysis, ie in the period from 2005 to 2010. In the next five years, that is, the period from 2011 to 2015, no attack on a cash in transit vehicle occurred, which means that a peaceful period has occurred for the employees who perform this type of security job. The latest attack is registered in 2016. What are the reasons for this situation? It cannot be said with certainty, but there are a number of factors that contribute to the disappearance of the cash in transit attacks. The managers of the private security agencies have become aware of the danger that the transport and transfer of money and other valuable goods carry with them, and have undertaken a series of preventive measures for its successful performing. The introduction of the new precise legal regulation through the Law on Private Security<sup>9</sup> and the detailed elaborated practical solutions in the Rulebook on the manner of performing the transport and transfer of money and other valuable goods<sup>10</sup> largely influence the modernization and professionalization of this activity and its professional implementation. For these reasons, criminals gradually lost their desire and willingness to attack a well-relieved money transfer knowing that the chances of being discovered and captured are tremendous. So, at that time, they reoriented to commit classical robberies to banks, post offices and other financial corporations. However, the last attack in 2016, recalls that despite raising the level of performing of money transportation, however, there are criminals who decide to commit an attack and to seize the money that is being transferred.

<sup>9</sup>Law on Private Security (Official Gazette of the Republic of Macedonia No. 166/2012, 164/2013, 55/2016)

<sup>10</sup> Rulebook on the manner of performing transport and transfer of money and other valuable goods (Official Gazette of the Republic of Macedonia No. 89/2013)

They choose a target and only wait for the right moment when a security procedure is omitted or when security workers will make a mistake or omission in one of the steps within the security process. Therefore, if all the safety rules are not respected in securing the transportation of money and other valuable goods<sup>11</sup>, it is very likely that in the future there would be such other attacks.

In the Republic of Macedonia, in the research period, the treasuries of the post offices and the banks remained without more than € 2 millions. In addition, nine persons suffered with injuries, and two people lost their lives. The police record the black statistics, and so far a significant part of the money has not yet been found, nor was found out how the robbers knew about the transfer values, which means that the logistic of the robbers, the way of planning and carrying out the attacks on the cash in transit vehicles remain mystery.

In the Republic of Macedonia, the armed attacks on cash in transit vehicles are always carried out by blocking the vehicle while in motion or by attack while the vehicle is waiting for a traffic light. So far no attacks have been noticed on the transportation of money when the vehicle is parked and money is delivered or taken. The robbers in the Republic of Macedonia do not recognize the advantages in this way, given the increased frequency of people, the higher degree of secured facilities, and the difficulties of moving away from the scene and so on.

In addition to the manner of carrying out the robbery attacks on the cash in transit vehicles, it is important to study the means by which such attacks are carried out in the Republic of Macedonia. With this it can be seen some personal characteristics of the perpetrators. Although at first the means of execution are directly related to the manner of execution, it is, however, more closely related to the personal attributes of the transaction. In the Republic of Macedonia the robbers of the cash in transit vehicles use firearms – pistols and automatic rifles to fulfill the threat and cars for faster escape from the crime scene.

The profitability of the load in cash in transit vehicles makes them an attractive target for attack. Certainly, in this case, the robbers are at high risk: the vehicles are mobile, there is a direct confrontation with the security personnel, because the guards must be obstructed directly and in the vehicles there is a higher level of security than in other potential targets. Consequently, in troubled attacks on cash in transit vehicles, people who are capable, committed and trained to cope with that risk are usually engaged.

If the robbery is successful that at least means obtaining the expected prey, escape from the crime scene and escape arrest and prosecution. This also means that the various types of risks have been carefully and well managed throughout the event by the robbers.

<sup>11</sup> For the safety rules and procedures for providing this type of transport in more detail at: Babanoski, K., Ilijevski, I., Dimovski, Z.: Handbook for security of the transportation and transfer of money and other valuable goods, Chamber of the Republic of Macedonia for private security, Skopje, 2016



As victims or damaged in the belligerent attacks on cash in transit vehicles, the legal entities for which the money is transferred are the primary ones. This is primarily meant for banks, post offices, exchange offices, betting houses and other financial institutions, organizations and companies that need cash transportation. Also, immediate victims of such attacks are the persons who perform the cash transportation. Most often, they are employed in private security agencies, but also the police officers in cases when the cash in transit is done by the Police.

The owners of the funds that were subject of transport, when the attacks on the cash in transit vehicles in the Republic of Macedonia were carried out, were in six cases public enterprises, most often the Public Enterprise Macedonian Post, but also the Public Enterprise Macedonian Roads in one case and in the remaining five cases were banks. The robbers, most often, choose to attack the vehicles of the Public Enterprise Macedonian Post, in the period when the money intended for paying pensions is transferred. Each month, at the same time, these funds are transferred to the units in the postal network, so the robbers do not have to work hard to reach such information (they should not recruit or bribe a person to tell them when the money will be transferred so they have one trouble less, so they focus on other details when planning the attack).

As subjects that carried out the transport, when the attacks on the cash in transit vehicles in the Republic of Macedonia were committed, in most cases, even seven, were the employees who carried out the transport, without any associated (escort) security. In three of these cases, they were private security agencies that provided transportation of money for banks with special bulletproof vehicles, and only in one case the transport was carried out by the Police.

Nearly always, in the analyzed period, two or three persons were hired for securing and conducting the cash in transit. The number of persons involved in transport should depend on the amount of the value of the funds being transferred. But even in cases when money shipments worth € 450.000 and € 600.000 were transferred, they were carried by only two people. In the case in which five employees of the Public Enterprise Macedonian Post were attacked, financial assets worth € 650.000 were transferred.

The most common, and the only way of finding out about the committed criminal act of robbery on a cash in transit vehicle is the report by the attacked persons who performed the transfer, who can be employed in the entity for which the money is transferred, in a private security agency or, in the Ministry of Interior, the Police, if transport is provided by the police officers and they are attacked. The success of the police authorities in the discovery of the perpetrator depends on the speed of reporting by the victims in the particular case. In cases when the attacks are carried out in an urban area, a citizen (witness) who happened to be in the place and saw the event can be the one who reports.

When it comes to the sources of information about the preparation of a criminal act of robbery, or rather, a robbery attack on the cash in transit vehicles, it should be especially pointed out that in the process, it is very difficult to obtain initial information, actions with a high degree of conspiracy and discretion in their preparation. To this end, the law enforcement agencies should direct their activity to obtain information about various activities by which the robbers prepare their execution, such as supply of weapons, vehicles, organizing and dividing tasks and so on. The knowledge obtained from various sources is therefore necessary to undergo an in-depth control and analysis, based on a more organized approach, for the purpose of fully determining the truthfulness and accuracy of their claims. An important source for obtaining knowledge about the preparation of a certain robbery on the cash in transit vehicles is the operational activity of the authorized officials. Bodies of criminal prosecution by operational route can come up with original information about preparatory actions for this type of attacks. As a special way of getting information of the preparation is the informative activity of the police. The informer and the contributor can provide meaningful information if they are treated correctly and tactfully.

#### **Criminal-operational activity after finding out about an attack on a cash in transit vehicle – case study**

In order to better understand the circumstances, the manner of execution and the manner of detecting the attacks on the cash in transit vehicles, it is important to analyze the characteristic individual case, which has undergone all stages of detection and proofing. An interesting case for analysis is the attack on a vehicle of Stopanska Banka AD Bitola, at the exit from Prilep to Bitola, dated 08.01.2010, which was committed by a total of seven perpetrators and helpers, with large damage and international elements in it, and the money has not yet been found. Because of these specificities, for the needs of the research undertaking in this paper, that's why this case will be subject to analysis.

The data on the case were obtained from the verdict<sup>12</sup> issued by the actual and locally competent Basic Court in Prilep. The event occurred on 08.01.2010, and the convicted court verdict was passed on 01.10.2010. Information on the course of events after the court verdict was obtained from internet sources. For a comprehensive and full consideration of the particular case, it is necessary to consider the situation that preceded the case, the chronology of the case – the criminal situation (time, place, manner and means of execution), the participants in the case – the perpetrators and the victims, the criminal-operative acting to clarify the case and the consequences arising from it.

<sup>12</sup> Court verdict K. No. 91/10, Basic Court - Prilep, passed on 01.10.2010

### Situation that preceded the case

On the basis of previously obtained information from a person from Bitola, the two executors realized that for the needs of Stopanska Banka AD – Bitola, the money is taken from the treasury of the National Bank of the Republic of Macedonia in Prilep and transported to the bank in Bitola with a vehicle owned by the bank. Then they agreed and made a plan to steal the money from the vehicle.

On 08.01.2010, around 10:00 am, the two perpetrators walked out of the home of one of them with their vehicle and rushed to the branch office of Stopanska Banka AD – Bitola in Prilep, where they got together with the vehicle that carried the money and which the perpetrators recognized. Then they rushed to the exit of the city after the gas station and the hotel Salida, near the interchange in front of the exit from Prilep for Bitola. Here they agreed on what to do when the vehicle came from the bank. They decided to put a big stone on the road and with their vehicle to hinder the way of the transport vehicle. Here they waited for the vehicle from the bank about 40 minutes. At about 12 o'clock when the vehicle of the bank approached the scene, the perpetrators opened the hood of their vehicle and one of them stood in front of it pretending to repair it and the other on the driver's seat. At the moment when the bank vehicle approached the parked vehicle, the perpetrators moved their vehicle by placing it in a sloped position on the road and completely blocked the road so that it could not pass and was forced to stand still.

### Chronology

The criminal event occurred with the use of a gas pistol and by using force and threat by the two persons that they would directly attack the life and body of the two officers from the security department of Stopanska Banka AD – Bitola and managed to seize four boxes with cash in amount of 27 million denars. The manner of execution was by obstructing the road of the bank vehicle – Volkswagen Golf 5 which transferred the money from the NBRM Treasury to Prilep for Stopanska Banka AD – Bitola with the help of the vehicle Renault 5 Campus. Due to the disruption of the road, the officers were forced to stand and one of the perpetrators holding a gas pistol in his hand fired one shot in the air and with a pointed gun to the officers came to the driver, summoned him to come out, hit him with the gun in his head and pulled him out the vehicle. Then he entered the vehicle and threatened with the gun of the other officer sitting on the co-driver's seat, driven him out of the vehicle. By driving the Golf 5 he has left the scene following the Renault 5 Campus driven by his partner.

They headed along the main road to Skopje and entered Prilep on one of the side streets, stopped in front of a house, took the four boxes with money from the seized vehicle, put them in their vehicle and parked it in a garage owned by one of the executors.

After the crime was committed in order not to be discovered, a third person helped with cover-up of the objects – two bags containing 27 million denars, which he again handed to a fourth person to hide them. He placed two travel bags with money in his cellar on the ground floor of the building. After that he took these money and took them to an unknown place. On 14.01.2010, he traveled to Skopje with a taxi and informed his parents that he was planning to leave for Switzerland. On 15.01.2010, from a railway station in Skopje, he left in an unknown direction and since then his trace has been lost.

The perpetrators, however, were sheltered by three of their friends who helped them not to be discovered after committing the act by hiding the traces.

With all these previously stated actions, several criminal acts were committed:

- Crime Robbery from Art. 237 Par. 3 in relation to Par. 1 and Art. 22 from the Criminal Code of the Republic of Macedonia;
- Crime Coverage from Art. 261 Par. 3 in relation to Par. 1 of the Criminal Code of the Republic of Macedonia; and
- Crime Assisting the perpetrator after committed crime from Art. 365 Par. 2 in relation to Par. 1 and Art. 45 of the Criminal Code of the Republic of Macedonia.

### Perpetrators

A total of seven people participated in the preparation, execution, assistance and concealment of the criminal work. Two people are direct perpetrators. They met each other for a long time after jointly serving prison sentences in the KPU – Idrizovo, Skopje. After serving the sentences they continued to contact.

The third and fourth persons were involved in concealing the crime by concealing the stolen money – illegally acquired property benefit. Other three people, however, helped the perpetrators not to be discovered, by sheltering them and hiding traces.

### Criminal-operative treatment

For the purpose of clarifying and detecting the entire event, the police took the following operational and tactical measures and investigative actions:

- Crime scene investigation;
- By undertaking this investigation, all traces at the scene of the attack were fixed and picked up for the purpose of further investigation and determination of the source of their origin. In addition, a photo documentation was made and an on-site inspection report was compiled.
- Search of a home;

A search of the houses of the perpetrators was conducted.

- Temporary seizure of objects;

A certain amount of money (68.000 denars) was seized from the home of one of the perpetrators, mobile phones and many used telephone cards.

- Face recognition;

Recognition of the persons who took part in the event was performed.

- Identification of objects;

Recognition of the vehicle carrying the perpetrators was carried out.

- Announcing an international arrest warrant;

An international arrest warrant was issued for one of the perpetrators who left the country.

- Apprehension;

Six persons were arrested from a total of seven perpetrators. One person left the country and was unavailable to the prosecution authorities.

- Detention;

To all six suspects, a certain measure of detention was ordered.

- Taking statements from witnesses;

During the main hearing a statements of several witnesses were taken in order to provide arguments that would better determine the factual situation.

- Taking statements from defendants;

During the main hearing a statements were also taken from the defendants in order to provide arguments that would better determine the actual situation.

- Expertise;

Many different types of expertises were carried out by the Ministry of Interior – Department of Criminalistics Technique of soil trails on vehicle floor mats, vehicle color, cigarette smoke and biological material for DNA analysis, as well as investigation and expert analysis of gas pistols.

### **Consequences**

With the robbery on the cash in transit vehicle, two bags containing 27 million denars were seized. From a criminal-legal point of view, it is a matter of great value or damage. The two people, who carried out the transport, received minor injuries, fear and stress, because of the threats they were referred to.

As previously pointed out, one of the persons who helped the perpetrators and hid the money, soon after the event left the country, more precisely he went in Rijeka, Croatia. The Basic Court in Prilep had issued a warrant after him. There, with part of the stolen money from Macedonia, he bought an apartment and a BMW car. He was not found by the police, but by members of the criminal underworld. Three people from Prilep managed to locate him, left to Zagreb, where they first rented an apartment and where they traveled several times to Rijeka following his movement.

Soon they decided to snatch him to told them where he hid the money. So one evening at about 10 o'clock in the evening, in a small street near the Railway Station in Rijeka, as he drove his new BMW was blocked by their vehicle Volkswagen Golf 5. They pulled him out of his vehicle and sat in their car. However, at that moment police special forces appeared, and in a lightning action lasting fifteen minutes, they surrounded the two cars, broke the glasses and defeated the group.

### **Dismissing the case**

From a criminal-legal point of view, the event is qualified as a crime robbery. The crime of robbery, according to art. 237, par. 3 in relation to par. 1 of the Criminal Code of the Republic of Macedonia, appears that, by using force or threatening to directly attack the life or body of another, it will take away another movable object with the intention of unlawfully appropriating it and if during the commission of the offense of a person with intent a serious bodily injury has been inflicted or if the act has been committed as part of a group of gangs or if a firearm or a dangerous weapon has been used. For the perpetrator of this crime, a prison sentence of at least 10 years is provided. An act of execution of this crime is the use of force or the threat of immediate attack by the person in whose possession the object is for the purpose of confiscation of it, with the intention of its unlawful appropriation. In terms of guilt, an intent is required in the consciousness that force or threat is used for theft and that a foreign movable object is taken away with the intention of its unlawful appropriation. In coexistence, the co-perpetrator needs to have a common intent with regard to the use of force and the purpose for which it is applied.

During the criminal procedure it was established that in the critical time and in the critical place, the two perpetrators using force and threatening to attack the life and body of the victims – the officers of the bank, using a gas pistol from the vehicle of the bank, took away the money assets, owned by the bank. In the course of the criminal procedure, through the evidence procedure, the court found that in the actions of two of the involved persons (the first and the second one) are contained the elements of the crime robbery referred to in art. 237 par. 3 in relation to par. 1 of the Criminal Code of the Republic of Macedonia, which they made as co-perpetrators, upon previous agreement and joint participation in the commission of the crime.

It was also established that four of the perpetrators during the critical time period helped the two main perpetrators after the executed crime not to be discovered, hiding and covering up the traces and objects from the committed crime, knowing all the time that they are helping the perpetrators who committed robbery.

In the actions of all the other defendants (third, fifth, sixth and seventh person), the elements of the crime assisting the perpetrator after committed crime from art. 365 par. 2 in relation to par. 1 of the Criminal Code of the Republic of Macedonia. That crime is committed by the one who will hide a perpetrator of crime for whom a prison sentence of five years or more is prescribed, or by hiding the guns, traces, objects or otherwise helping him not to be detected, or if someone hides convicted person. For the perpetrator of this crime, a prison sentence of three months to five years is envisaged. Regarding the blame, an intent is required and it consists in the awareness that through certain specific actions he is hiding and helps the perpetrator not to be discovered. There is no need to know what the prescribed penalty is in the law for that crime or its legal qualification, but it is necessary for the enforcement agent to have awareness of the real marks of the committed crime by the person assisting him.

It was further established that one of the defendants, covering the cases, specifically the seized money during the robbery, as well as the clothes that were carried on by the perpetrators during the execution of the crime, as well as the gas pistols, helped them not to be detected after the execution of the act. In its actions, the elements of the crime coverage from art. 261 par. 3 in relation to par. 1 of the Criminal Code of the Republic of Macedonia. This crime costs the one who buys, accepts, or in some other way acquires, hides or explodes an object that he knows has been acquired by a crime or what has been obtained for him by selling or replacing, and the value of the object is substantial or the subject is good under temporary protection or cultural heritage. For the perpetrator of this crime, a prison sentence of three months to five years is envisaged. Regarding the subjective element of the existence of a crime coverage, it requires the existence of a direct intent, which consists in the awareness that the perpetrator hides an object for which he should know that it has been acquired with the crime, which should exist at the moment when he takes action, and in relation to the nature of the matter there may be negligence.

## **Conclusion**

The violent attacks on money transport and other valuable goods in recent times in the Republic of Macedonia were frequent occurrences. By their consequences suffered several entities: the directly involved entities in the provision of transport (MOI and agencies for securing property and persons and their members), the legal entities for which the transfer is to be made (banks, post offices, exchange offices, etc.) and the insurance companies, which should compensate the damage.

The attack is the result of some violent, aggressive and brutal behavior of the individual. Earlier well-planned, aided by certain factors, reasons, conditions and instances, the attack is a dangerous act whose consequences (material damage, bodily harm, human loss) are particularly harmful and serious. Bearing this in mind, the attacks on cash in transit (like robberies) are placed within violent criminality (given the element of violence they contain in their actions, even though the intention is to gain financial assets).

The robbers consider the robbery to be successful if the financial gains meet or exceed their expectations, if they successfully escape the scene and feel satisfied with the work done and are sure that they have not left any evidence that could lead to their identification and prosecution. Success depends on their ability to take control of the situation at the scene, ie to deal effectively with all the risks that can (and do not) occur during the robbery. The robbers of the cash in transit vehicles pay more attention to it than the robbers of other types of objects.

The response of the security workers to an attack on the cash in transit vehicles should be the most severe and with all available means.

In case of an attack, the responsible person should immediately be informed of the implementation of the plan directly or through the workers in the security and surveillance center and the police in order to ask for assistance. If the person responsible for the immediate implementation of the security is temporarily or permanently disabled, it should be done by some of the remaining members of the team.

In the case of attacks on cash in transit, in addition to the fact that the security of the shipment and the vehicle is endangered, the lives of the members of the security personnel performing the security, the lives of the people responsible for the shipment by the user of the service, as well as the lives of people who accidentally found themselves at the site of the attack. Members of the security staff in such situations, in accordance with laws and by-laws, can use weapons in self-defense and protect the objects they are responsible for, but they must always be careful not to shoot at random passers-by. Therefore, attackers in such situations are in the lead because they want to achieve their goal, regardless of everything.

If any of the members of the team is injured, immediate help should be given to him, and this applies to all citizens who have found themselves in the place, as well as to the attackers.



Successful transportation of money and other values may exist if it is carried out fully professional, in a planned and organized manner and if the following rules are observed:

- Developing a plan for the cash in transit (which includes the security assessment) that contains all aspects of transport from the starting point (departure point) to the end point (delivery point);
- Money and valuable goods should be transported with specially protected vehicles, with a precisely determined place where the bag will be placed. Vehicles must be fully technically sound, with a built-in alarm and a radio link for communication with the monitoring center for the monitoring of the transport;
- The vehicle must be driven at a constant speed and it should be 50-70 km/h in a populated area and 80-120 km/h on an open road, which is considered optimal and safe speed for this purpose;
- If more vehicles participate in the money transfer, they should be driven without allowing the entry of other vehicles between them. Vehicles should move in synchronized, at the same speed, and when stopped, they always be one behind the other;
- During the ride, the driver should be careful about some suspicious road activities and to check if someone is following the vehicle with the money, whether a vehicle or person is behind them for a long time, especially to look at intersections, bridges, tunnels, who are working on the road, etc., to which it is possible to come to some endangering;
- When taking or handing money and other valuables from and into the vehicle or from and in the facility, the security procedures must be respected depending on the number of persons involved, the formation that is applied, accessibility to the facility, etc.;
- In case of incidents and when the use of firearms is necessary, care should always be taken not to endanger the lives of other persons, especially if the attackers are fleeing to a crowd of people, and the weapon must not be used.

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PREGLEDNI ZNANSTVENI RAD (REVIEW ARTICLE)

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## OD ELEKTRONSKIH ZAPISA, KAO TRAGOVA, DO ELEKTRONSKIH DOKAZA

### *Apstrakt:*

*Polazeći od toga da se priroda računarskih podataka, koji bi mogli imati značaj dokaza u krivičnom postupku za dela visokotehnološkog kriminala, i potreban forenzički rad u prikupljanju i obradi tih podataka u znatnoj meri razlikuju u odnosu na uobičajene tragove i dokaze (s obzirom na brzinu kojom se radnja može preduzeti a tragovi u elektronskom obliku izmeniti, sakriti ili uništiti), posebna pažnja je posvećena pravilima digitalne forenzike prilagođenim specifičnostima podataka u računarima, računarskim sistemima i računarskim mrežama. Stoga je u radu prikazan put od elektronskih zapisa, kao tragova, do elektronskih dokaza.*

**Ključne reči:** *krivični postupak, digitalna forenzika, elektronski dokazi.*

### 1. POJAM DIGITALNE FORENZIKE

Postoji više definicija digitalne forenzike, a u literaturi je najčešće citirana (uz neznatne modifikacije) definicija koju je 2001. godine stvorila Radna grupa za istraživanje digitalne forenzike (The Digital Forensics Research Workshop: DFRWS, <http://www.dfrws.org/>), po kojoj „digitalna forenzika“ podrazumeva „upotrebu naučnoizvedenih i potvrđenih metoda radi očuvanja, prikupljanja, validacije, identifikovanja, analize, tumačenja, dokumentovanja i predstavljanja digitalnih dokaza izvedenih iz digitalnih izvora za potrebe omogućavanja ili poboljšanja rekonstrukcije krivičnog događaja“ (DFRWS technical report: A Road Map for Digital Forensic Research, New York 2001, <http://www.dfrws.org/2001/dfrws-rm-final.pdf>, 15).

Osim termina digitalna forenzika, pojedini autori koriste termin „forenzičko računarstvo“, kojim označavaju iste one aktivnosti koje su obuhvaćene prethodno pomenutom definicijom digitalne forenzike, ali sa dodatnom funkcijom analize bezbednosnih napada na informacione sisteme (D. Barrett, G. Kipper, *Virtualization and Forensics: A Digital Forensic Investigator's Guide to Virtual Environments*, Elsevier Science & Technology, Heidelberg 2010, 22).

Uprkos minornim razlikama u postojećim definicijama, za sve njih se kao zajednički imenitelj može uočiti cilj, a koji se ogleda u potrebi da se obezbedi dokazana snaga rezultata digitalne forenzike. Taj element se označava kao: „pravna prihvatljivost“ (R. McKemmish, „What is forensic computing?“, *Trends and Issues in Crime and Criminal Justice* 118/2002, [www.aic.gov.au/publications/tandi/ti118.pdf](http://www.aic.gov.au/publications/tandi/ti118.pdf)), „usklađenost sa pravilima o dokazivanju“ i „kvalitet naučnog dokaza“. Iz ovoga se može izvesti zaključak da je smisao digitalne forenzike iznalaženje procedura, metoda i tehnika koje rezultiraju digitalnim dokazom koji treba da ima snagu naučnog dokaza. Prema tome, cilj ove forenzičke discipline je iznalaženje naučnoizvedenih i potvrđenih metoda identifikovanja, očuvanja, prikupljanja i analize računarskih podataka i predstavljanja rezultata te analize za potrebe krivičnog postupka.

## 2. DIGITALNA FORENZIKA KAO NAUČNA DISCIPLINA

Cilj i svrha forenzičkih disciplina je da se kroz primenu naučno proverenih i objašnjenih metoda prirodnih i tehničkih nauka obezbedi razumevanje činjenica koje su predmet dokazivanja u krivičnom postupku. Danas se dokazi koji nastaju kao rezultat DNK analize uzimaju kao nesporni i nepobitni u krivičnom postupku. Ipak, tako nije bilo na samom početku. Prvi put se ovaj dokaz pojavio u krivičnom postupku u SAD svega dva godine nakon što je 1987. Džefris otkrio da se pomoću DNK izuzetnog iz krvi može izvršiti nesporna identifikacija lica, a što je usledilo 32 godine nakon što su Votson i Krik ukazali na postojanje ove supstance. Kao što se može uočiti iz ovog podataka, proces od faktičkog otkrića metoda do upotrebe u dokazne svrhe u krivičnom postupku je vremenski dugo trajao. Naime, nakon otkrića je bilo potrebno da se proveru validnost upotrebljenog metoda od strane drugih naučnika, odnosno da primenom iste metodologije dođe do istih rezultata i time dokaže tačnost naučnog otkrića. Bez tog procesa, sud nije bio spreman da se osloni i pokloni veru određenom naučnom rezultatu i upotrebi ga kao dokaz u postupku. Posmatrajući razvoj forenzičkih nauka koje su danas prihvaćene kao posebne naučne discipline, nedvosmisleno se dolazi do zaključka da za uspostavljanje i validaciju jednog naučnog metoda potrebno vreme, a da bi rezultat primene tog metoda bio prihvaćen kao dokaz u krivičnom postupku, isti treba da se zasniva na proverenim naučnim saznanjima, a svi alati i procedure koji su korišćeni da bi se do dokaza došlo, trebalo bi da budu predmet nezavisnog testiranja. Međutim, šta se dešava u situaciji kada se materijal na kom se određeni

metod primenjivao menja tokom određenog vremena potrebnog za validaciju tog metoda? Od kada su utvrđeni jedinstveni markeri u DNK, metodi za analizu DNK su se menjali: razvijali su se a pojedini su bili odbacivani kao nedovoljno precizni, ali je DNK kao materijal ostao isti. Isto tako, metodi za analizu boje su se tokom godina menjali, ali su retke nove tehnologije za izradu boje koje se ne mogu analizirati nekom od postojećih i prihvaćenih metoda za analizu, što nikako nije slučaj sa informacionim tehnologijama (P. Sommer, „Forensic science standards in fast-changing environments“, *Science and Justice* 1/2010, 12).

Da bi se digitalna forenzika mogla smatrati naučnom disciplinom, potrebno je da zadovoljava nekoliko kriterijuma: da postoji razvijena teorija (sistem izjava i principa kojima se nastoje objasniti kako stvari funkcionišu) i u okviru teorije određene apstrakcije i modeli (razmatranja povrh očiglednog, faktičkog i uočenog); da teorije polazi od određenih praktičnih elemenata (povezane tehnologije, alati i metodi); da postoji korpus literature i profesionalne prakse kao i poverenje u teorijom potvrđene rezultate u praksi (korisnost i svrsishodnost). U vezi sa navedenim, može se postaviti pitanje, da li je digitalna forenzika naučna disciplina?

Trenutno bi se moglo reći da digitalna forenzika zadovoljava samo neke od ovih kriterijuma, da je još u povoju i da postoji potreba za daljim usmeravanjem njenog razvoja. Naime, ne postoji saglasnost u pogledu sadržaja i značenja pojedinih pojmova - pojedine definicije su neadekvatne a brojni pojmovi nisu ni definisani. Praktični elementi se ogledaju u uobičajenoj upotrebi određenog broja alata i tehnika kojima se ukazuje određen stepen poverenja, iako nisu razvijeni u skladu sa specifičnim naučnim standardima niti su testirani u dovoljnoj meri.

Takođe, ne postoje standardna pravila koja bi omogućila jednoobrazno postupanje, niti su određene specifične oblasti znanja i veština u pravcu kojih je potrebno obučiti lice da bi se ono moglo smatrati stručnjakom za digitalnu forenziku.

Digitalna forenzika je izvorno nastala kako bi se primenom određenih tehnika i metoda prikupili računarski podaci koji se mogu upotrebiti dokazi potrebni u krivičnom postupku protiv učinilaca krivičnih dela kod kojih je računar bio sredstvo izvršenja ili objekt napada. Nadležni organi postupka već nekoliko desetina godina oduzimaju računare i sa njima povezane uređaje prvenstveno zbog toga što mogu da posluže kao izvor dokaza u krivičnom postupku, a veći deo istraživanja u okviru digitalne forenzike je bio fokusiran na ekstrakciju računarskih podataka radi prezentovanja pred sudovima. Iako se do skoro oblast digitalne forenzike stihijski razvijala (B. Lathoud, „Formalization of the Processing of Electronic traces“, *International Journal of Law, Computers and Technology* 2/2004,188), uloženi su veliki naponi u pravcu formalizacije postupanja sa elektronskim dokazima kroz izdavanje određenih vodiča<sup>1</sup>, a

<sup>1</sup> Association of Chief Police Officers: Good Practice Guide for Computer-Based electronic

digitalna forenzika postala je priznata akademska disciplina koja se izučava na visokoškolskim ustanovama<sup>2</sup>.

Međutim, danas se digitalna forenzika suočava sa brojnim izazovima. Jedan od najvećih izazova jeste kompleksnost problema prikupljanja i analize podataka usled sve veće raznolikosti digitalnih uređaja koji su izvori elektronskih dokaza i obima materijala (računarskih podataka/digitalnih dokaza). Svaki novi hardver i softver nameće razne izazove stručnjacima koji nastoje da ekstrahuju dokaze: nepoznate aplikacije, novi formati datoteka, karakteristike operativnog sistema, do tada nepoznate probleme u funkcionisanju hardvera i slično (A. Geschonneck, Computer Forensik: Computerstraftaten erkennen, ermitteln, aufklaren, Springer, Heidelberg 2012, 53). Osim toga, pojedine konfiguracije ili uređaji sa sobom nose neke nespecifične probleme, pa ranije utvrđeno rešenje za sličan problem, a koje je u prethodnim slučajevima bilo efikasno, u konkretnoj situaciji ne funkcioniše i potrebno je pronaći novo rešenje, za šta je potrebno vreme (nekada dani i nedelje).

Kako se raznovrsnost predmeta forenzičke istrage povećava, forenzičkim stručnjacima su potrebni alati koji vrše više funkcija od proste pretrage i prezentovanja datoteka, primera radi funkcije rekonstrukcije, analize, ekstrahovanja i grupisanja podataka, te autonomnog donošenja odluka o daljim koracima. Problem predstavlja i to što se olako prihvataju kao validni rezultati analize do kojih se došlo primenom komercijalnih alata za digitalnu istragu, a ti alati nisu provereni u skladu sa zahtevima koji su postavljeni pred metodima i tehnikama jedne naučne discipline. Da bi se obezbedila ponovljivost i proverljivost rezultata, a time i validnost određenog alata, potrebno je da bude prihvaćen od strane šire naučne zajednice, ali to nije moguće pošto proizvođači komercijalnih alata ne čine izvorni kod dostupan javnosti (S. Garfinkel et al., „Bringing science to digital forensics with standardized forensic corpora“, Digital Investigation 6/2009, 4). Obezbediti ponovljivost rezultata jednog metoda je mnogo komplikovanije nego omogućiti proverljivost rezultata digitalne istrage u konkretnom slučaju u krivičnom postupku. Osim toga, s obzirom na rapidan tempo razvoja informacionih tehnologija, veoma je teško verifikovati metode koji se koriste u obradi računarskih podataka za potrebe krivičnog postupka. Može se postaviti pitanje: da li je otuda opravdano pokloniti veru digitalnom dokazu koji je nastao kao rezultat primene neprihvaćenog metoda i neproverenih tehnika?

Kako bi se potvrdila „naučnost“ digitalne forenzike, koja crpi instrumentarijum iz praktičnih disciplina, i ispratila pomenute tendencije, potrebno je prilagođavanje postojećih okvira za postupanje forenzičara, ali i stvaranje novih metoda i tehnika, naročito iz razloga: a) ne postoje standardizovane procedure i protokole postupanja, niti je terminologija standardizovana; b) upotrebljavaju se

Evidence, 2012, <http://www.acpo.police.uk/documents/crime/2011/201110-cba-digital-evidence-v5.pdf>.

<sup>2</sup> Tako npr. University of Glamorgan ima akreditovane studentske programe svih nivoa za forenzičare računarske forenzike, <http://courses.southwales.ac.uk/courses>.

analitički alati koji nisu u dovoljnoj meri ispitani od strane lica u pogledu kojih postoji nedostatak iskustva i obuke; v) prikupljanje i analiza računarskih podataka za potrebe krivičnog postupka može biti u sukobu sa privatnošću pojedinca usled nesigurnosti u pogledu tačnosti i efikasnosti tehnika, dužine čuvanja podataka itd, pa najnaprednija računarska tehnologija za potrebe digitalne forenzike može biti beskorisna ako nije upotrebljena u skladu sa zahtevima pravnog sistema. U vezi sa pomenutim izazovima, potrebno je dati odgovor na nekoliko bitnih pitanja:

- Nisu svi računarski podaci tragovi, a još manje su digitalni dokazi, pa se postavlja pitanje za čim forenzičar traga?

- Polazeći od karakteristika računarskih podataka, kako se obezbeđuje integritet elektronskih dokaza?

- Ako se integritet dokaza obezbeđuje standardizovanim postupanjem, u skladu sa pravilima, ko utvrđuje, na koji način i u kom obliku te standarde i pravila postupanja?

- Ko utvrđuje standarde kvaliteta (pouzdanost, preciznost, tačnost, bezbednost, fleksibilnost, ekonomičnost) za tehnike i alate koji se koriste u forenzičkoj obradi?

- Koja znanja i veštine treba da poseduju lica koja koriste tehnike i metode, da li ih je potrebno sertifikovati i ko donosi odluku o tome?

Iako na prvi pogled može izgledati da su ova pitanja samo od praktičnog značaja, odgovor na njih zahteva naučno istraživanje i potvrdu. U tome treba da se ogleda smisao digitalne forenzike kao naučne discipline jer je njen cilj prevazilaženje apstraktne i lako izmenjive prirode računarskih podataka radi obezbeđenja integriteta i pouzdanosti elektronskih dokaza na način da se obezbedi kvalitet naučnog dokaza (forenzički ispravnog dokaza), odnosno drugim rečima, iznalaženje metoda i tehnika čijom primenom se može obezbediti da struktura računarskog podatka ostane neizmenjena od trenutka kada je isti uočen i prikupljen do predstavljanja na sudu.

Integritet elektronskog dokaza se može dovesti u pitanje iz više razloga: a) podatke u digitalnom obliku je jednostavnije izmeniti i falsifikovati neko podatke u fizičkom obliku; b) tokom analize se na određeni način menja oblik digitalnog podatka, (ono što se prezentuje kao elektronski dokaz bilo u elektronskom bilo u fizičkom (hardcopy) obliku prolazi kroz nekoliko slojeva transformacije i prebacivanja iz jednog oblika u drugi) pri čemu ne postoje korektni mehanizmi transformacije i prevođenja iz jednog oblika (koji se obrađuje) u drugi (koji se prezentuje); v) većina analiza se obavlja na digitalnoj kopiji ili klonu uređaja; g) objašnjenja analitičkih metoda mogu biti konfuzna i pogrešno se razumeti; d) nedostaju standardi postupanja sa digitalnim podacima, pa stoga postoji problem analitičke subjektivnosti; đ) pri tome postoji veliki broj alata i metoda pomoću kojih bilo ko bez previše znanja i veština može izmeniti skoro sve atribute dodeljenje podatku u digitalnom obliku. I pored pomenutih teškoća, integritet je potrebno obezbediti i očuvati, kako se ne bi ostavilo prostora za sumnju u



pouzdanost i poverenje u dokaz koji je nastao kao rezultat analize primenom određenih metoda i tehnika, jer ako je očuvan integritet a time i pouzdanost dokaza, obezbeđena je i dokazna vrednost.

Da bi se obezbedio integritet i pouzdanost digitalnog dokaza, procedura obrade dokaze mora da zadovolji dva osnovna cilja: 1. Prikupljanje i analiza elektronskih zapisa se vrši tako što se prethodno preduzmu svi koraci kako bi se obezbedilo da podaci ostanu u stanju u kom su otkriveni, i 2. Forenzički proces ne sme ni na koji način da umanjí dokaznu vrednost elektronskih zapisa kroz tehničke, proceduralne ili interpretativne greške. Da bi digitalni dokaz bio „forenzički ispravan“, odnosno imao karakter „naučnog“ dokaza, potrebno je predvideti i pratiti korake u postupanju od otkrića elektronskih zapisa (digitalnih tragova) do njihove interpretacije kao digitalnih dokaza na sudu. Svakako da je ovaj koncept logičan i svrsishodan, ali da bi ostvario punu vrednost, potrebno je postići uniformnost u postupanju sa elektronskim zapisima. Međutim, mišljenja koje korake treba preduzeti na putu od elektronskih zapisa do digitalnih dokaza, odnosno šta čini proces digitalne istrage razlikuje se od autora do autora. Stoga nije dovoljno samo razmatrati tehničke metode i alate koje je najbolje koristiti, nego je, kako bi se garantovao integritet i pouzdanost elektronskih dokaza i umanjila analitička subjektivnost u digitalnoj forenzici, od ključnog značaja pažnju posvetiti standardizaciji.

Sud jeste taj koji ocenjuje dokaze, ali sud u oceni digitalnog dokaza opravdano očekuje pomoć lica koje poseduje stručna znanja potrebna za utvrđivanje činjenica i koje primenjuje proverene tehnike u okviru standardizovanih pravila postupanja zasnovanih na naučnom metodu, i time pruža garanciju da su rezultati njegovog rada pouzdani.

### 3. STANDARDIZACIJA DIGITALNE FORENZIKE

U oblasti forenzičkih nauka aktuelna je rasprava o korišćenju standarda kvaliteta kao sredstva za demonstraciju podobnosti naučnih metoda čijom primenom se dolazi do materijala koji se može koristiti kao dokaz u okviru sistema krivičnog pravosuđa, jer je „uspostavljanje validnosti novih naučnih tehnika ili teorija i osnova za njihovo tumačenje neophodno, pre nego što se dokazi do koji se dođe njihovom primenom mogu koristiti na sudu“, a „...odsustvo dogovorenog protokola za validaciju naučnih tehnika da pre njihovog korišćenja na sudu je potpuno neprihvatljivo“<sup>3</sup>.

Digitalna forenzika je toliko široka oblast da je moguće govoriti o specijalizacijama digitalnih forenzicara. Iako su utvrđene definicije određenih pojmova, principi i standardi, iste je potrebno prilagoditi postojećem stanju tehnološkog okruženja. Međutim, i pored toga, kao najveći izazovi koji stoje

<sup>3</sup> Forensic Science on Trial, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmsctech/96/96i.pdf>, 75.

forenzičkim naukama, ističe se da postoje slučajevi u kojima je dokaz do koga se došlo neproverenom forenzičkom analizom doveo do pogrešnih osuđujućih presuda<sup>4</sup>; „da ne postoji uniformnost u izdavanju sertifikata forenzicarima kao ni u akreditaciji forenzičkih laboratorija“ („Strengthening Forensic Science in the United States: A Path Forward“, 6); „da se neretko primenjuju neujednačena pravila postupanja“ („Strengthening Forensic Science in the United States: A Path Forward“, 133), odnosno da ne postoji konsenzus o osnovnim aspektima digitalne forenzike.

Tokom godina je formirano više udruženja i organizacija koje za cilj imaju profesionalizaciju i standardizaciju digitalne forenzike, što se nastoji postići razvijanjem standarda za postupanje, predviđanjem osnovnih kompetencije za forenzicare i povećanjem „naučne zasnovanosti“ metoda digitalne forenzike. Međutim, problem je što sve ove grupe rade nezavisno jedna od druge na ostvarenju istog cilja, što može biti kontraproduktivno. Stoga, i pored napora pomenutih aktera, postoji potreba da se u okviru naučne zajednice postigne dogovor o određenim fundamentalnim principima digitalne forenzike, kao i o tome koja osnovna znanja, veštine i sposobnosti bi trebalo da poseduje digitalni forenzicar i na koji način se potvrđuje posedovanje tih kompetencija.

Iz svega navedenog proizlazi da je, kako bi se digitalna forenzika smatrala validnom forenzičkom naukom, čije tehnike i metode rezultiraju digitalnim dokazom, veoma važno da se sertifikuju forenzicari, akredituju forenzičke laboratorije, verifikuju metodi i tehnike i standardizuju pravila postupanja.

#### 3.1. Sertifikovanje forenzicara i akreditacija laboratorija

Ovi procesi imaju za cilj da obezbede kvalitet usluga koje pojedinci, odnosno ustanove pružaju, pri čemu se sertifikuju pojedinci a ustanove se akredituju. Sertifikovanje pojedinaca u slučaju stručnjaka digitalne forenzike treba da garantuje da je lice kompetentno za određenu oblast digitalne forenzike, dok je akreditovanje mehanizam koji treba da pruži garanciju da forenzička laboratorija ima sistem za obezbeđenje kvaliteta i da primenjuje naučne metode čiji rezultati primene su tehnički validni<sup>5</sup>. S tim u vezi se postavlja pitanje, koja to znanja i veštine kvalifikuju lice da bude stručnjak digitalne forenzike, odnosno koji kapaciteti laboratorije čine čine rezultate istraživanja u njoj naučno validnim?

Tehnološki aspekt je taj koji određuje oblast obrazovanja (nastavni plan i program studijskih programa čiji obrazovni profil jeste digitalni forenzicar određenog stepena zvanja), specijalizaciju (postdiplomski i stručni kursevi, te

<sup>4</sup> Committee on Identifying the Needs of the Forensic Sciences Community, National Research Council, „Strengthening Forensic Science in the United States: A Path Forward“, 2009, <http://www.nap.edu/catalog/12589.html>, 4.

<sup>5</sup> Više o akreditaciji forenzičkih laboratorija, D. Watson, A. Jones, Digital Forensics Processing and Procedures: Meeting the Requirements of ISO 17020, ISO 17025, ISO 27001 and Best Practice Requirements, Syngress, Waltham 2013, 795-825.

od dodatno obrazovanje i obuka u određenim užim oblastima) i sertifikovanje (od strane ovlašćenih institucija i izdavanje dozvole za rad/ upis u registar sudskih veštaka). Dakle, osim akademskog obrazovanja, potrebno je da lica steknu i dodatnu obuku i da to bude potvrđeno od strane određene nacionalne, odnosno međunarodne organizacije za sertifikovanje forenzičara. Trenutno postoji više međunarodnih udruženja osnovnih sa ciljem sertifikovanja digitalnih forenzičara<sup>6</sup>. Međutim, usled postojanja velikog broja operativnih sistema, hardverskih uređaja i koncepata u računarstvu, ne može se očekivati da jedno lice bude stručnjak za sve, odnosno da poseduje znanja i veštine potrebna za različite okolnosti slučaja (D. Kahvedzic, T. Kechadi, „Dialog: A framework for modeling, analysis and reuse of digital forensic knowledge“, *Digital Investigation* 6/2009, 23-25).

Iako ovakav mehanizam nije garancija da se greške u obradi dokaza neće pojaviti, primena sistema za obezbeđenje kvaliteta digitalne forenzike obezbeđuje validnost krajnjih rezultata, odnosno digitalnih dokaza kao naučnog dokaza. Države na različite načine pristupaju prevazilaženju ovog problema, jer su prepoznale prednosti sertifikovanja forenzičara i akreditacije laboratorija u kojima se vrše forenzička obrada digitalnih dokaza za potrebe krivičnog postupka. Oba procesa je potrebno urediti nacionalnim propisima u skladu sa međunarodno ustanovljenim standardima i prihvaćnim kriterijumima. U tom smislu su vredna pomena uputstva koje je Međunarodno udruženje za akreditaciju laboratorija<sup>7</sup> utvrdilo u „Smernicama za laboratorije forenzičkih nauka“ (ILAC-G19)<sup>8</sup>. Ove smernice su relevantne za primenu standarda Međunarodne organizacije za standardizaciju postavljenih u okviru „Opštih uslova za kompetentnost laboratorija za testiranje i kalibraciju“ (ISO/IEC 17025<sup>9</sup>), kojim su utvrđeni opšti uslovi koje treba da ispuni laboratorija da bi dobila odobrenje da vrši ispitivanja u oblasti forenzičkih nauka. Pomenuti standardi bi ostvarili pun smisao ukoliko bi države u odgovarajućim propisima utvrdile kao obavezne uslove koje bi laboratorija kao i pojedini forenzičari trebalo da ispune da bi dobili odobrenje za praktikovanje digitalne forenzike. Tako u Velikoj Britaniji postoji dokument „Pravila prakse i postupanja“<sup>10</sup> koja je 2011. godine, polazeći od pomenutih međunarodnih

<sup>6</sup> CSFA (<http://www.cybersecurityforensicanalyst.com/>), SANS Institute GIAC Certified Forensics Analyst (<http://www.giac.org/certification/certified-forensic-analyst-gcfa>); International Society of Forensic Examiners Certified Computer Examiner (<https://www.isfce.com/certification.htm>); Computer Hacking Forensic Investigator (<http://www.eccouncil.org/certification/computer-hacking-forensics-investigator>).

<sup>7</sup> International Laboratory Accreditation Cooperation (ILAC), <http://ilac.org/>.

<sup>8</sup> ILAC-G19 “Guidelines for Forensic Science Laboratories”, <http://ilac.org/news/ilac-g19082014-published/>.

<sup>9</sup> ISO/IEC 17025 :2005, <https://www.iso.org/obp/ui/#iso:std:39883:en>.

<sup>10</sup> Codes of Practice and Conduct for forensic science providers and practitioners in the Criminal Justice System, 2011, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118949/codes-practice-conduct.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118949/codes-practice-conduct.pdf). Ovim dokumentom se uređuje postupanje forenzičara da bi rezultat obrade mogao da bude dokaz prihvatljiv u sistemu krivičnog pravosuđa, te postavljaju uslovi koje forenzičari i forenzičke laboratorije moraju da zadovolje da bi dobili odobrenje, odnosno da bi bili akreditivani da obavljaju sledeće aktivnosti: inicijalnu forenzičku aktivnost na

standarda, usvojilo pomoćno telo Home Office-a radi regulisanja forenzičkih nauka, kroz utvrđivanje pravila za primenu naučnih tehnika kako bi rezultat njihove primene mogao da bude dokaz prihvatljiv na sudu u krivičnom postupku. Sve sertifikovane laboratorije bile su dužne da usklade svoje postupanje sa Pravilima do 2013. godine i samo one laboratorije i forenzičari koji su ispunili propisane uslove dobili su dozvolu za rad od strane nadležnog tela<sup>11</sup>, sa izuzetkom laboratorija u kojima se praktičuje digitalna forenzika kojima je ostavljen rok do oktobra 2015. da ispune uslove predviđene ILAC-G19, ISO/IEC 17025 kao i sa Pravilima prakse i postupanja (Codes of Practice and Conduct for forensic science providers and practitioners in the Criminal Justice System, 5).

### 3.2. Validacija i verifikacija forenzičkih alata

Stručnjak digitalne forenzike u procesu od digitalnih tragova do digitalnih dokaza koristi razne softverske i hardverske alate. Što se tiče softverskih alata, mogu se klasifikovati na sledeći način: alati za pregled (za stvaranje izveštaja o stanju sistema datoteka i tipovima datoteka na svim diskovima računarskog sistema); alati za stvaranje forenzičke slike diska (što se razlikuje od običnog kopiranja datoteka jer se stvara potpuni klon diska sa svim skrivenim datotekama i prostorima u memoriji); alati za potpuno brisanje sadržaja diska (svega što ostane nakon uobičajenog brisanja datoteka u memoriji diska); te alati za detaljnu pretragu diska.

Alati mogu biti namenjeni za detaljan dugotrajan pregled (u kontrolisanom tehničkom okruženju), za brzi pregled na licu mesta (npr. za trijažu podataka), za pregled uređaja priključenih na napajanje i spojenih sa mrežom kao i uređaja koji su ugašeni i nisu spojeni sa mrežom (P. Hunton, „The stages of cybercrime investigations: Bridging the gap between technology examination and law enforcement investigation“, *Computer Law and security Review* 27/2011, 65). Veliki broj alata se koristi u forenzičke svrhe, od kojih su neki kreirani neposredno za tu namenu, a drugi imaju izvorno drugu namenu<sup>12</sup>. Postoji više softverskih alata koji se slobodno, odnosno besplatno mogu preuzimati sa Interneta (tzv. free/open source), a postoje i komercijalni proizvodi koje su napravili i prodaju pojedini proizvođači. Iako su većina forenzičkih alata posebno kreirani softveri, postoje i alati zasnovani na upotrebi hardvera. Hardverski uređaji su najčešće u obliku prenosivih radnih stanica, a odabir uređaja zavisi od okolnosti konkretnog slučaja i okruženja u kom se napad desio. Postoje uređaji posebno konstruisani za ovu svrhu u komercijalnoj ponudi, a forenzičar može i sam kreirati svoj.

licu mesta; stvaranje strategije za pregled lica mesta; oporavak, obezbeđenje, prevoz i skladištenje tragova i predmeta izuzetih sa lica mesta; procena, odabir, pregled, stvaranje uzoraka i analizu tragova i predmeta; testiranje upotrebom laboratorijski potvrđenih metoda; registrovanje svih preduzetih aktivnosti; procenu rezultata pregleda i testiranja; pisanje izveštaja i prezentovanje rezultata, sa prataćim tumačenjem i mišljenjem.

<sup>11</sup> United Kingdom Accreditation Service (UKAS), <http://www.ukas.com/>.

<sup>12</sup> Npr. JkDefrag за дефрагментизацију диска за Windows 2000/2003/XP/Vista/2008/X64.



Komercijalni alati ne dozvoljavaju korisniku uvid u način funkcionisanja (ne stvaraju se detaljni zapisi o izvršenim naredbama a time ni kako se došlo do rezultata) pa je na taj način ograničena pouzdanost i tačnost tih rezultata. Naime, radi se o tzv. closed source alatima jer prodavac alata ne daje uvid u izvorni kod softvera, za raličku od open-source alata kod kojih je kod dostupan i na osnovu njega se mogu pratiti sve aktivnosti kojima se došlo do rezultata. Da bi se obezbedila proverljivost i ponovljivost rezultata, neophodno je da alat ima mogućnost da stvara detaljan zapis o svim aktivnostima koje su preduzete da bi se do prikazanih rezultata došlo a time i da bi se obezbedio integritet elektronskih dokaza. Upravo ovo poslednje, bez obzira na tehnička poboljšanja alata, predstavlja problem. Naime, da bi se alati mogli koristiti, potrebno je, osim efikasnosti obrade i čuvanja podataka, obezbediti pouzdanost i mogućnost ponovljenog dobijanja istih rezultata, jer se u suprotnom može istaknuti prigovor ispitivosti funkcionisanja alata i poverenja u rezultate njihove primene!

Pouzdanost softverskih alata i njihova pravilna upotreba je od ključnog značaja za obezbeđenje integriteta elektronskih dokaza, a da bi alat osigurao integritet elektronskih dokaza, potrebno je da bude validan i verifikovan. Naime, metode i tehnike koje imaju za cilj da obezbede pouzdanost softvera nazivaju se validacija i verifikacija softvera, pri čemu postoje dva pristupa: inspekcija softvera (koja se odvija u svim fazama ciklusa razvoja jednog softvera) i testiranje softvera (proverava se da li funkcioniše u skladu sa namenom). U pogledu forenzičkih softverskih alata, a u skladu sa standardom ISO 17025, validacija podrazumeva potvrdu da alat, tehnika ili procedura funkcioniše ispravno i kako je predviđeno, a verifikacija je potvrda validacije u laboratorijski kontrolisanim uslovima<sup>13</sup>. Stoga smatramo da primena alata treba da bude u skladu sa prihvaćenom metodologijom, a da alat bude testiran da bi se rezultati dobijeni njegovom primenom mogli tretirati kao tačni i pouzdani<sup>14</sup>. Pri tome, nije dovoljna validacija i verifikacija koju vrše prodavci komercijalnih softverskih alata<sup>15</sup>, jer nije u dovoljnoj meri dokumentovana i ne polazi od njihove funkcionalnosti, nego je prioritet na komercijalnim interesima. Stoga smatramo da je potrebno da to vrši telo za standardizaciju, kao što je učinjeno za metode koje se koriste u balistici ili za veštačenje DNK, kroz preispitivanje usklađenosti sa odgovarajućim ISO standardima kvaliteta (J. Beckett, J. Slay „Digital forensics: validation and verification in a dynamic work environment“, 40th Annual Hawaii International Conference on 2007. System Sciences, 2007, 266). Kako se sve više za prikupljanje i analizu računarskih podataka koriste automatizovani alati, da bi se obezbedila pouzdanost rezultata primene tih alata, potrebno je izabrati i koristiti one koji su validni, ispravni i odgovarajući u konkretnom slučaju. Iako postoji tendencija za automatizacijom digitalne istrage (automatskim izvršavanjem zadataka

<sup>13</sup> Više o tome, Y. Guo, J. Slay, J. Beckett, „Validation and verification of computer forensic software tool - searching Function“, Digital investigation 6/2009, 12–13.

<sup>14</sup> O potrebi stvaranja okvira za testiranje forenzičkih softverskih alata, Li, op.cit, 258.

<sup>15</sup> Kao što je Guidance Software za Encase alat ili Access data za FTK alat.

primenom određenih računarskih tehnika<sup>16</sup>) što je svakako dobro, jer se time umanjuje mogućnost manipulacije i greške načinjene ljudskom aktivnošću, pod uslovom da prethodni parametri za merenje efikasnosti alata budu zadovoljeni (J. Nogueira, „Ontology for Complex Mission Scenarios in Forensic Computing“, The International Journal of Forensic Computer Science 1/2008, 44.), alat je, to što i treba da bude, samo pomoćno sredstvo u rukama obučenog i iskusnog stručnog lica da se forenzičar ne bi trebao oslanjati prosto na automatizovane funkcije alata, nego je nužno da razume informacione tehnologije i osnove kriminalistike uvek da insistira na dvostrukoj validaciji tehnika (da koristi više od jedne tehnike za proveru rezultata).

### 3.3. Standardizacija pravila postupanja

Što se tiče standardizacije pravila postupanja, brojni teoretičari i praktičari iz oblasti digitalne forenzike nastojali su da osmisle najpogodnije modele za postupanje sa računarskim podacima (modele digitalne istrage). Takođe, pojedine organizacije i udruženja, kao i nadležni organi pojedinih država posvetili su pažnju stvaranju najadekvatnijih smernica u vidu standarda postupanja koji rezultira prihvatljivim dokazima za sistem krivičnog pravosuđa, a naročito su značajna nastojanja u okviru Međunarodne organizacije za standardizaciju. Osim pomenutog opšteg standarda koji se odnosi na uslove za rad forenzičara i laboratorija, formirana je radna grupa za izradu standarda koji su relevantni za digitalnu forenziku a kao rezultat rada ovog tela nastalo je nekoliko relevantnih standarda Prilikom formulisanja ovih standarda cilj nije bio stvaranje homogenizovanih, standardizovanih postupaka koji su u skladu sa nacionalnim propisima, s obzirom da je tako nešto uz pomoć ovih instrumenata nemoguće, nego isticanje osnovnih principa u vidu smernicama za postupanje u uobičajenim scenarijima. Smatramo da je prilikom regulisanja digitalne istrage ove standarde korisno uzeti u obzir, jer iako nisu pravno obavezujući za pojedine nacionalne države, isti mogu doprineti ujednačavanju postupanja sa digitalnim dokazima<sup>17</sup>, s obzirom na to da su i nastali polazeći od metoda koji su prepoznati kao primeri dobre prakse.

<sup>16</sup> Primera radi, primenom tzv. data mining tehnika za pregled i pretragu određenih datoteka i direktorijuma. O primeru automatizacije alata u pretrazi i prikupljanju računarskih podataka ( B.Carrier, E. Spafford, „Automated Digital Evidence Target Definition Using Outlier Analysis and Existing Evidence“, Digital Forensic Research Workshop, 2005, 7).

<sup>17</sup> Tako je u Velikoj Britaniji, Britanska institucija za standarde 2008. godine usvojila standard „Dokazna snaga i prihvatljivost informacija u elektronskom obliku“ kojim se utvrđuju formalni zahtevi za sisteme upravljanja elektronskim dokumentima a sa ciljem da se striktnim pridržavanjem propisanih tehničkih uslova obezbedi autentičnost podataka u elektronskom obliku koji se u okviru određene organizacije skladište, obrađuju i prenose. BS 10008:2008 “ Evidential weight & legal admissibility of electronic information“, <http://shop.bsigroup.com/Browse-By-Subject/ICT/Legal-Admissibility>. Poslednje izmene standarda su objavljene 2014.godine.

Postojanje standarda postupanja ima istovremeno i dobru i lošu stranu. Određujući minimalni nivo prihvatljivog načina za preduzimanje neke radnje, standardi imaju za cilj osiguranje kvaliteta, jer pružaju garanciju da su rezultati radnje preduzete u skladu sa standardima pouzdani. Iz tog razloga, logično je da sudovi više vere poklanjaju dokazima za koje postoje standardi postupanja utvrđeni od strane naučne zajednice. Sa druge strane, postojanje standarda može usporiti progres i ograničiti kreativnost. S pojavom novih tehničkih alata i problema, potrebno je prilagoditi postojeće i stvarati nove metode za rad sa elektronskim dokazima. Za razliku od fundamentalnih prirodnih nauka, kod kojih su temeljni postulati trajni i nepromenljivi, ne bi se moglo reći da je to karakteristika računarskih nauka. Štaviše, promenljivost i fleksibilnost su okosnice savremenog tehnološkog razvoja. Iz tog razloga pravila postupanja sa elektronskim dokazima koja nisu prilagodljiva promenama nisu dobro rešenje, pa je standardne operativine procedure potrebno kreirati tako da budu tehnički neutralne, a korisno ih je periodično procenjivati, te po potrebi inovirati u skladu sa tehnološkim razvojem (ACPO Good Practice and Advice Guide for Managers of e-Crime Investigation, 2011, <http://www.acpo.police.uk/documents/crime/2011/201103CRIECI14.pdf>, 30).

Kada se govori o standardizaciji postupanja, standard treba posmatrati kao troslojnu strukturu, u kojoj su slojevi hijerarhijski ustorojeni spram različitog stepena opštosti i obaveznosti. Tako, standard podrazumeva postojanje određenih:

1. Principa (najvišeg nivoa opštosti, obavezno primenljivi u svim slučajevima);
2. Modela (koji konkretizuju principe, a konkretno su kroz procedure), i
3. Procedura (najmanjeg stepena opštosti, prilagođene konkretnim slučajevima).

#### 4. ZAKLJUČAK

Države treba da u svojim opštim aktima predvide operacionalizaciju ovih principa u svim fazama suočavanja sa potencijalnim izvorima elektronskih dokaza. Ove principi treba da univerzalno važe kao načela bez obzira na promene u hardveru i softveru. Osim toga, potrebno je da budu utvrđena određena pravila primene određenih radnji i mera koja se preduzimaju u vezi sa elektronskim dokazima. Ta pravila bi trebalo da budu „omeđena“ opštevažećim principima. Pri tome, iako je primena odgovarajućih alata i tehnika prilagođena okolnostima konkretnog slučaja, pravila u pogledu faza u okviru kojih se preduzimaju pojedine radnje treba da su u dovoljnoj meri generalizovana u vidu modela postupanja sa elektronskim dokazima, odnosno modela digitalne istrage. Osim što je nužno da postoje opštevažeći principi i što je potrebno da se stvori model za postupanje sa elektronskim dokazima, korisno bi bilo i da se kreiraju procedure koje bi uvažavale principe a bile u skladu i sa postavljenim modelom postupanja. Te procedure bi zapravo korak po korak predviđale taktiku postupanja, odnosno kako se pojedini alati i tehnike koriste spram okolnosti konkretnog slučaja. Zapravo, procedure

bi predstavljale konkretizacije modela na različite slučajeve. Iz toga razloga bilo bi kontraproduktivno standardizovati procedure, već ih opravdano tretirati kao prilagodljive forme postupanja.

Značaj ovakvog raslojavanja se naročito ogleda u normiranju pravila postupanja. Naime, smatramo da principe treba kao obavezujuća pravila uneti u krivično procesno zakonodavstvo koja se moraju poštovati u svakom slučaju kada se postupa sa elektronskim dokazima, bez obzira na krivično delo povodom kog se radnje preduzimaju, a nepoštovanje principa imalo bi za posledicu nezakonitost elektronskog dokaza. Opređenje za određeni model digitalne istrage je od značaja za opređenje kako regulisati pojedine radnje koje se preduzimaju a time ima implikacije na odredbe krivičnog procesnog zakonodavstva. Nepostupanje po tako uređenim odredbama bi moglo rezultirati pravnom nevaljanošću dokaza. Same procedure postupanja ne bi trebalo zbog njihove konkretne i individualističke prirode propisivati u okviru krivičnog procesnog zakonodavstva, nego u pravilnicima, kao podzakonskim aktima, ili instrukcijama u okviru nadležnih organa. Ipak, znatnije odstupanje od utvrđene procedure moglo bi u konkretnim slučajevima da dovede do nezakonitosti dokaza.

#### ***FROM ELECTRONIC TRACES TO ELECTRONIC EVIDENCE***

*Starting from the fact that the nature of computer data, which could have the significance of evidence in criminal proceedings for high-tech crime, and the necessary forensic work in the collection and processing of these data, differ significantly in relation to the usual traces and evidence (given the speed at which the action can be taken and the traces in electronic form are modified, hidden or destroyed), special attention has been paid to the rules of digital forensics adapted to the specifics of data in computers, computer systems and computer networks. Therefore, the paper presents the path from electronic records, as traces, to electronic evidence.*

**Keywords:** *criminal procedure, digital forensics, electronic evidence.*

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## PRAKTIČNI VIDIKI KRIMINALISTIČNEGA PREISKOVANJA DELOVNIH NEZGOD

### *Povzetek:*

*Kriminalistično preiskovanje delovnih nezgod je pomembno področje dela tako policistov kot kriminalistov, in njihov odnos do tega področja dela mora vsebovati dovolj spoštovanja in zavedanja o pomembnosti ugotavljanja vzrokov za delovne nezgode predvsem zaradi njihovih posledic, ki so v najhujših primerih tudi izguba življenja ljudi. To področje dela ni samo v pristojnosti inšpektorjev za delo kot prvih zaščitnikov varnosti in zdravja pri delu, temveč tudi pomembna pristojnost preiskovanja kaznivih dejanj kot ena izmed temeljnih aktivnosti policije. Področje preiskovanja delovnih nezgod ima glede na sistem in metode dela pomembno razliko od temeljnega področja preiskovanja kaznivih dejanj. Za kriminalistično preiskovanje delovnih nezgod je še posebej značilno, da so osnovni elementi kaznivega dejanja pogojeni s kršitvijo nekih drugih predpisov s področja varnosti pri delu ali drugega posameznega področja dela, ter je potrebno najprej ugotoviti to kršitev za utemeljevanje suma oziroma dokazovanje kaznivega dejanja iz Kazenskega zakonika. Uspešna preiskava delovnih nezgod je pogojena z dobrim poznavanjem tako kazensko pravnih predpisov kot predpisov s temeljnega področja varstva pri delu in tudi drugih številnih (konkretnih oziroma specifičnih) predpisov, ravno tako je naša preiskava velikokrat pogojena s sodelovanjem strokovnjakov in izvedencev z različnih področij dela.*



*Iz tega tudi izhaja velika odgovornost preiskovalca delovne nezgode, saj mora v nekem vsakdanjem dogodku, nesreči ali nezgodi na delovnem mestu, prepoznati znake kaznivega dejanja kot posledico kršitve nekega drugega splošnega ali posebnega predpisa ter delovno nezgodo s svojimi ugotovitvami tudi strokovno in uspešno preiskati.*

**Ključne besede:** delovna nezgoda, kriminalistično preiskovanje, varnost in zdravje pri delu, kaznivo dejanje, ogrožanje varnosti pri delu, delovni proces.

## 1 UVOD

Kriminalistično preiskovanje delovnih nezgod je pomembno področje dela tako policistov kot kriminalistov, in njihov odnos do tega mora vsebovati dovolj spoštovanja in zavedanja o pomembnosti ugotavljanja vzrokov za delovne nezgode predvsem zaradi njihovih posledic, ki so v najhujših primerih tudi izguba življenja ljudi. To področje dela ni samo v pristojnosti inšpektorjev za delo kot prvih zaščitnikov varnosti in zdravja pri delu, temveč tudi pomembna pristojnost preiskovanja kaznivih dejanj kot ena izmed temeljnih aktivnosti policije.

Pri preiskovanju delovnih nezgod je potrebno upoštevati temeljno načelo področja varnosti in zdravja pri delu, da je delodajalec dolžan zagotoviti varnost in zdravje delavcev v zvezi z delom. V ta namen mora delodajalec izvajati ukrepe, potrebne za zagotovitev varnosti in zdravja delavcev, vključno s preprečevanjem nevarnosti pri delu, obveščanjem in usposabljanjem delavcev, z ustrežno organizacijo izvajanja strokovnih nalog ter zagotavljanjem potrebnih sredstev (Resolucija, 2003).

Področje preiskovanja delovnih nezgod ima glede na sistem in metode dela pomembno razliko od temeljnega področja preiskovanja kaznivih dejanj. Za kriminalistično preiskovanje delovnih nezgod je še posebej značilno, da so osnovni elementi kaznivega dejanja pogojeni s kršitvijo nekega drugega predpisa s področja varnosti pri delu ali drugega področja dela, ter je potrebno najprej ugotoviti to kršitev za utemeljevanje suma oziroma dokazovanje kaznivega dejanja iz Kazenskega zakonika. Uspešna preiskava delovnih nezgod je pogojena z dobrim poznavanjem tako kazensko pravnih predpisov kot predpisov s temeljnega področja varstva pri delu in tudi drugih številnih (konkretnih oziroma specifičnih) predpisov, ravno tako je pogojena s sodelovanjem strokovnjakov z različnih področij dela v naši preiskavi. Iz tega tudi izhaja velika odgovornost preiskovalca delovne nezgode, saj mora v nekem vsakdanjem dogodku, nesreči ali nezgodi, prepoznati kaznivo dejanje kot posledico kršitve nekega drugega splošnega ali posebnega predpisa.

Eden izmed osnovnih ciljev preiskovanja delovne nezgode je predvsem ugotavljanje odgovornosti za napačen potek delovnega procesa. Potrebno je ugotoviti ali je za nezgodo kriv delavec sam, njegov neposredni nadrejeni ali druga oseba, odgovorna za varnost pri delu v podjetju.

## 2 OPREDELITEV DELOVNE NEZGODE IN NESREČE PRI DELU

Po Zakonu o varnosti in zdravju pri delu (ZVZD-1, 2011) je nezgoda pri delu nepredviden oziroma nepričakovan dogodek na delovnem mestu ali v delovnem okolju, ki se zgodi v času opravljanja dela ali izvira iz dela, in ki povzroči poškodbo delavca.

Nezgodo pri delu po ZVZD-1 oziroma delovno nezgodo opredeljujejo trije elementi:

- da se je zgodila v delovnem okolju (prostor v katerem se izvaja delo in vključuje delovna mesta, delovne razmere, delovne postopke, socialne odnose in druge vplive zunanjega okolja)
- da je v vzročni zvezi z opravljanjem dela ali dejavnosti
- da je posledica nezgode smrt ali telesna poškodba delavca (66. člen ZPIZ-2) ali je nastala materialna škoda.

Po 1. odstavku 66. člena Zakona o pokojninskem in invalidskem zavarovanju (ZPIZ-2) se za poškodbo pri delu šteje poškodba, ki je posledica neposrednega in kratkotrajnega mehaničnega, fizikalnega ali kemičnega učinka, ter poškodba, ki je posledica hitre spremembe položaja telesa, nenadne obremenitve telesa ali drugih sprememb fiziološkega stanja organizma, če je takšna poškodba v vzročni zvezi z opravljanjem dela ali dejavnosti, na podlagi katere je poškodovanec zavarovan.

Elementi nezgode pri delu po ZVZD-1 sicer zadostujejo opisu nastanka delovne nezgode, vendar je potrebno v kriminalističnem preiskovanju oziroma pri obravnavi kaznivega dejanja upoštevati posledice, ki jih kot zakonski znak kaznivega dejanja navaja posamezen člen Kazenskega zakonika.

Za potrebe kriminalističnega preiskovanja suma kaznivega dejanja po Kazenskem zakoniku je torej nujno potrebno razlikovati »nesreče pri delu« (gre za domača opravila kot so sekanje drv, spravila lesa v gozdu za domače potrebe, popravilo streh, zidanje nadstreškov, postavljanje ograje) in »delovne nezgode« (ki se zgodijo v povezavi z delovnim razmerjem in v delovnem okolju oziroma na delovnem mestu in v delovnem času).

Pri obravnavi delovne nezgode kot sum kaznivega dejanja je potrebno ugotavljati tako povzročeno nevarnost ali že posledico izvršenega dejanja kot tudi odgovornost posameznikov ali pravne osebe za nastanek okoliščin, ki so omogočile protipravno posledico delovne nezgode.



Pravilnost in objektivnost ugotovljenega dejanskega vzroka in okoliščin, v katerih se je delovna nezgoda pripetila, je nujna tako zaradi upravičenosti do odškodnine, kot delovno-pravnih in socialno-zdravstvenih pravic, ki gredo oškodovancu.

Seveda ne smemo pozabiti, da tudi pri obravnavi nesreč pri delu preiskujemo sume kaznivih dejanj, največkrat kaznivih dejanj Povzročitve splošne nevarnosti po 314. členu Kazenskega zakonika ali Povzročitve smrti iz malomarnosti po 118. členu Kazenskega zakonika, nikakor pa ne smemo zanemariti tudi možnosti prirejenega kaznivega dejana Uboja po 115. členu.

### **3 OPRAVLJANJE NADZORA IN NUĐENJE STROKOVNE POMOČI**

Po določitih 41. členu Zakona o varnosti in zdravju pri delu (ZVZD, 2011) mora delodajalec inšpekciji dela takoj prijaviti vsako nezgodo s smrtnim izidom oziroma nezgodo pri delu, zaradi katere je delavec nezmožen za delo več kot tri delovne dni, kolektivno nezgodo, nevarni pojav in ugotovljeno poklicno bolezen, kar je podrobneje opredeljeno v Pravilniku o prijavah na področju varnosti in zdravja pri delu (2013).

Prijavna dolžnost tako delodajalca kot predvsem inšpekcijskih nadzornih organov izhaja tako iz 145. členu Zakona o kazenskem postopku (ZKP, 2012), po katerem so vsi državni organi in organizacije z javnimi pooblastili dolžni naznaniti kazniva dejanja, za katera se storilec preganja po uradni dolžnosti, kot iz 146. členu (ZKP, 2012), po katerem vsakdo lahko naznani kaznivo dejanje, za katero se storilec preganja po uradni dolžnosti.

Po Zakonu o inšpekcijskem nadzoru (ZIN-UPB1, 2007) je inšpektor posebej odgovoren, če ne poda prijave oziroma ne obvesti pristojnih organov o kršitvah zakonov ali drugih predpisov, ki jih je ugotovil pri izvrševanju svojih nalog. Inšpektor ima v skladu z 32. členom Zakona o inšpekcijskem nadzoru pravico in dolžnost naznaniti kaznivo dejanje ali podati kazensko ovadbo za kaznivo dejanje, ki se preganja po uradni dolžnosti.

Po določitih Zakona o varnosti in zdravju pri delu (ZVZD, 2011) nadzorstva nad izvajanjem posameznih predpisov s področja varnosti in zdravja pri delu izvršujejo:

Nadzor inšpekcije dela izvršuje Inšpektorat Republike Slovenije za delo, katerega pristojnost ureja Zakon o inšpekciji dela (ZID-1, 2014) in opravlja naloge inšpekcijskega nadzora nad izvajanjem zakonov, drugih predpisov, kolektivnih pogodb in splošnih aktov z dveh velikih in strokovno zaokroženih področij dela: varnosti in zdravja pri delu ter delovnih razmerij.

Inšpektorat RS za delo izvršuje nadzorstvo nad izvajanjem Zakona o varnosti in zdravju pri delu in predpisov, izdanih na njegovi podlagi, in drugih predpisov o varnosti in zdravju pri delu, ter nad varnostnimi ukrepi, določenimi s splošnimi akti delodajalca in kolektivnimi pogodbami.

Inšpektorji delujejo v okviru inšpekcij, ki so organizirane za posamezno upravno področje; inšpekcija nadzora varnosti in zdravja pri delu, inšpekcija nadzora delovnih razmerij in socialna inšpekcija, ki izvaja nadzor nad delom organov po Zakonu o socialnem varstvu (ZSV, 2007).

Nadzor rudarske inšpekcije izvršuje Inšpekcija za energetiko in rudarstvo in sicer nadzorstvo pri izvajanju rudarskih del ter podzemnih gradbenih del, ki se izvajajo z rudarskimi metodami dela in v skladu z zakonom, ki ureja rudarstvo in na njegovi podlagi izdanimi predpisi.

Nadzor inšpekcije, pristojne za varstvo pred naravnimi in drugimi nesrečami izvršuje Inšpektorat RS za varstvo pred naravnimi in drugimi nesrečami (nadzor nad izvajanjem ukrepov varstva pred požarom, reševanje in evakuacije) ter pokriva področja varstva pred požarom, zaščite in reševanja ter varstva pred utopitvami.

Poleg navedenih inšpekcijskih organov lahko pri posameznih vrstah delovnih nezgod, glede na specifičnosti posamezne nezgode, nudijo strokovno pomoč oziroma tudi izvedejo inšpekcijski ali drug nadzor naslednje inšpekcije in službe v posameznih pristojnih ministrstvih, kot je Inšpekcija za gozdarstvo, Inšpekcija za kmetijstvo, Inšpekcija za ceste, železniški promet, žičniške naprave in smučišča, Pomorska inšpekcija, Inšpekcija za kemikalije, in drugi.

Zakon o varnosti in zdravju pri delu (ZVZD-1, 2011) v svojem 2. členu določa, da se določbe tega zakona uporabljajo v vseh dejavnostih za vse osebe, ki so navzoče v delovnem procesu. Zakon tudi določa izjeme, v katerih se ne uporabljajo njegove določbe, to je v delih vojaških dejavnosti Slovenske vojske, policijskega dela oziroma zaščite, reševanja in pomoči ob naravnih in drugih nesrečah, ki jo izvajajo Civilna zaščita in druge reševalne službe ter v rudarstvu, v katerih so posamezna vprašanja varnosti in zdravja pri delu urejena s posebnimi predpisi.

Kadar so podani razlogi za sum kaznivega dejanja, opravlja potrebna dejanja v predkazenskem postopku Policija. Inšpektor za delo oziroma drug inšpektor ali drug strokovnjak (strojnik, kemik, fizik, električar, gradbenik) pa lahko sodeluje pri opravljanju ogleda kraja dejanja kot strokovnjak v smislu 247. členu ZKP (2012). V skladu z 142. členom ZKP morajo vsi državni organi dajati potrebno pomoč sodiščem in drugim organom, ki sodelujejo v kazenskem postopku, zlasti če gre za odkrivanje kaznivih dejanj ali za izsleditev storilcev.

Po opravljenem ogledu, seveda v doglednem času, od inšpektorja za delo zahtevamo poročilo oziroma zahtevamo strokovno mnenje od drugih strokovnjakov ali pa napišemo uradni zaznamek o razgovoru z njimi.

Iz zapisnika o inšpekcijskem pregledu lahko največkrat razberemo konkretno navedbo predpisov, ki so bili kršeni in tudi odgovornost nosilcev varstva pri delu ter odgovornih oseb.

Inšpektor za delo nam je lahko v veliko pomoč in je z njim nujno potrebno sodelovati, saj zaradi narave svojega dela pozna zakonodajo za posamezne delovne procese, ter nam tako lahko konkretno opredeli, kateri predpis je bil kršen, oziroma nam pomaga pri ugotavljanju vzročne povezave med neko kršitvijo in nastalo delovno nezgodo oziroma njeno posledico. Poleg tega imajo inšpektorji na podlagi Zakona o inšpekcijskem nadzoru (ZIN, 2007) različna pooblastila in lahko odredijo različne ukrepe, kar omogoča učinkovitejšo preiskavo kaznivega dejanja.

#### **4 NAJBOLJ POGOSTA KAZNIVA DEJANJA PRI OBRAVNAVI DELOVNIH NEZGOD**

Delovno nezgodo opredeljujejo trije elementi: da se je zgodila v delovnem okolju, da je v vzročni zvezi z opravljanjem dela ali dejavnosti in da je nastala posledica smrt ali telesna poškodba ali materialna škoda. Vendar je potrebno v kriminalističnem preiskovanju delovno nezgodo razčlenjevati v smislu ugotavljanja suma kaznivega dejanja po Kazenskem zakoniku (KZ-1b, 2012). Za utemeljevanje suma kaznivega dejanja morajo imeti posledice delovne nezgode značilnosti predpisanih posledic v posameznem členu Kazenskega zakonika, tako glede ogroženosti za življenje ljudi in premoženje, kot tudi vrste nastanka poškodbe, sodnomoedicinske ocene telesne poškodbe, vzročne zveze med prepovedanim ravnanjem in nastalo poškodbo oziroma smrtjo, ali predpisane označbe premoženjske škode.

Najbolj pogosta kazniva dejanja pri obravnavi delovnih nezgod so:

- kaznivo dejanje Ogrožanje varnosti pri delu po členu 201. Kazenskega zakonika - izvršitveno dejanje se kaže v kršitvi predpisov o varnosti in varstvu pri delu na delovnem kraju.
- kaznivo dejanje Povzročitev splošne nevarnosti po členu 314. Kazenskega zakonika - če ni bilo moč ugotoviti kršitve predpisov iz področja varnosti in zdravja pri delu ali če je na primer za nezgodo kriv sodelavec, ki pa ni odgovorna oseba v delovnem procesu.
- kaznivo dejanje Povzročitev nevarnosti pri gradbeni dejavnosti po členu 315. Kazenskega zakonika - izvršitveno dejanje se kaže kot kršitev ustreznih predpisov v gradbeništvu ali kršitev splošno priznanih tehničnih pravil.

Pri obravnavi specifičnih delovnih nezgod je potrebno ugotavljati tudi morebitne elemente drugih kaznivih dejanj, ki se lahko prekrivajo z delovno nezgodo, kot na primer Ogrožanje posebnih vrst javnega prometa po členu 325. Kazenskega zakonika, ko gre za kršitve predpisov o varnosti železniškega, ladijskega, zračnega prometa ali prometa na žičnicah ali javnem prevozu potnikov v cestnem prometu, ali Oškodovanje ali uničenje javnih naprav po 318. členu Kazenskega zakonika, ko gre za ogrožanje ali uničenje električnih vodov, plinovodov, vodovodov, toplovodov, naftovodov, telekomunikacijskih naprav, podmorskih kablov, kanalizacijskih naprav in naprav za varstvo okolja ali drugih podobnih javnih naprav, lahko pa tudi druga kazniva dejanja.

Seveda je potrebno pri obravnavi delovnih nezgod naštetih kazniva dejanja umestiti v delovno okolje in delovni proces, kar pa ne pomeni, da ne morejo biti izvršena izven delovnega procesa in okolja oziroma lahko ta kazniva dejanja izvrši vsakdo in kjerkoli.

#### **5 POSEBNOSTI PRI OPRAVLJANJU OGLEDA KRAJA DELOVNE NEZGODE**

Po prejetem klicu na Operativno komunikacijski center – 113, je potrebno čim prej oditi na kraj in ga zavarovati, saj se s tem zmanjša možnost, da bo kaj spremenjeno (na primer da bodo naknadno namestili varnostne naprave ali kaj podobnega). S hitrim prihodom na kraj se tudi lahko hitreje prične z ukrepi za zagotavljanje varnosti ljudi in preprečevanja nastanka večje škode. Obveščati je potrebno tudi druge službe kot so gasilci, reševalci oziroma Upravo Republike Slovenije za zaščito in reševanje in podobno, kot sta državna laboratorija MEEL - Mobilna enota ekološkega laboratorija ali ELME – Ekološki laboratorij z mobilno enoto pri Inštitutu Jožef Štefan. Potrebno je temeljito preveriti ali smo na kraju dejanja tudi sami varni, še posebej če obstaja nevarnost plinov, eksplozije, zrušitve objekta, električnega toka ali drugo.

Ogled kraja delovne nezgode ali nesreče pri delu se opravi na podlagi drugega odstavka 164. člena Zakona o kazenskem postopku, oziroma je potrebno nuditi strokovno pomoč preiskovalnemu sodniku, v kolikor pride na kraj in sam opravlja ogled. Ogled kraja delovne nezgode ali nesreče pri delu se opravlja v skladu z zakonskimi določili ter pravili in temeljnimi načeli kriminalistične stroke. Pri opravljanju ogleda kraja dejanja lahko policija na podlagi 247. člena Zakona o kazenskem postopku angažira tudi strokovnjake drugih strok in drugih organov.

Policija sme kot nujno preiskovalno dejanje na podlagi drugega odstavka 164. člena ZKP (1994) tudi določiti izvedenstvo, kadar je potrebno, da s svojo neposredno udeležbo in neposrednim opazovanjem ter seveda s svojim strokovnim znanjem in izkušnjami, izvedenec pomaga razjasniti posamezna vprašanja, ki se pojavljajo tako pri trenutnem opravljanju ogleda oziroma se lahko pojavijo tudi v kasnejšem predkazenskem in kazenskem postopku (Miklič, 2016).

Izvedenstvo je lahko pomemben del kriminalističnega preiskovanja, pri čemer bi bilo kriminalistom težko, brez ekspertnih znanj iz področij številnih znanstvenih disciplin in stroke, v popolnosti razjasniti vse okoliščine dejanja in pridobivati dokaze. Ravno tako bi lahko bilo težko brez strokovne pomoči interpretirati posamezne najdene sledi ali predmete kaznivega dejanja (Pavliček, 2015).

Pri opravljanju ogledov krajev kaznivih dejanj ne gre zanemariti dejstva, da so policisti, kriminalisti in kriminalistični tehniki nedvomno najbolj usposobljeni in imajo največ izkušenj s tem opravilom. Imajo tudi ustrežnejša tako teoretična kot praktična spoznanja ter kriminalistično-tehnične metode in sredstva pri odkrivanju in zavarovanju sledov ter drugih dokazov na ogledu kraja dejanja (Miklič, 2016).

Tudi Maver v svoji Kriminalistiki navaja, da se ugotovitve preiskovalcev kažejo kot ogledalo njihovega dejavno miselnega dela. Kriminalist pri opravljanju ogleda nastopa v drugačni vlogi kot preiskovalni sodnik, čeprav bi morala biti oba tako preiskovalca kot iskalca dokazov. Kljub vsemu je potrebno upoštevati njune različne vloge, dolžnosti in usposobljenosti, da ne bi prihajalo do nesporazumov (Maver, 2004).

Pri opravljanju ogleda ali zadrževanju na kraju delovne nezgode morajo tudi preiskovalci in druge osebe, ki sodelujejo pri ogledu ali so pri ogledu samo prisotne oziroma navzoče, paziti na osebno varnost in uporabljati zaščitno opremo (ustrezno obutev, oblačila, varnostna čelada, rokavice, dihalne aparate in podobno).

Na kraju dejanja moramo zavarovati vse sledi tako, da kraj dejanja najprej fotografiramo in posnamemo ter tudi skiciramo, pri čemer je zelo pomembna tudi natančnost merjenja. V nadaljevanju se po kriminalističnih in kriminalistično tehničnih metodah iščejo in zavarujejo sledi in predmeti kaznivega dejanja. Tudi pri delovnih nezgodah so pomembne sledi na truplu, na njegovih oblačilih, delovni opremi in osebni varovalni opremi, kar bo pomagalo pri ugotavljanju poteka delovne nezgode. Potrebno je natančno opisati podatke o delovni opremi (na strojih ali napravah) kot so znamka, model, tip, serijska številka in opisati stanje delovne opreme, torej vse, kar je lahko pomembno v kasnejšem kazenskem postopku. Na primer proizvajalec mora sestaviti »Izjavo ES« o skladnosti, in v njem navesti, da proizvod izpolnjuje zahteve iz zakona in predpisov, izdanih na njegovi podlagi - v skladu z A točko prvega poglavja Priloge 2 Pravilnika o varnosti strojev (2008).

Na stroju mora biti pritrjena »Oznaka CE«, s katero proizvajalec izjavlja, da je proizvod skladen z veljavnimi zahtevami iz usklajevalne zakonodaje Evropske unije, ki določa njeno namestitev, skladno s 17. členom Pravilnika o varnosti strojev in Prilogo 3 tega pravilnika.

Dokumentiramo simbole, oznake, piktograme in dokumentiramo tudi, če so opozorilni znaki slabo vidni ali slabo berljivi. Pomembni so opisi položajev delovne opreme in predmetov, v kakšnem stanju so, kakšna je njihova velikost oz. dimenzija, teža in oblika. Preveriti je potrebno brezhibnost delovne opreme, način njenega delovanja in potrebno je rekonstruirati potek delovne nezgode. Ta rekonstrukcija služi kot pomoč pri razjasnjevanju posameznih dejstev in okoliščin kaznivega dejanja ali drugega dogodka, in taka rekonstrukcija ne more biti dokaz v kazenskem postopku, saj ne gre za preiskovalno dejanje po 246. členu Zakona o kazenskem postopku (2012).

Rekonstrukcija se izvaja z namenom, da se preveri že zbrane dokaze in ugotovi morebitna nova dejstva. Pri rekonstrukciji gre za umetno ustvarjanje oziroma ponavljanje dejanja ali situacij, medtem kot gre pri ogledu za iskanje dokazov in ugotavljanje dejstev v izvorni in nespremenjeni obliki (Maver, 2004).

Pri opravljanju ogleda se opravi preizkus delovne naprave, na kateri je prišlo do nesreče, na primer preizkus zavor, preizkus delovanja motorja, preizkus senzorjev, delovanja varnostnih naprav in varoval, kontrolnih instrumentov in signalnih naprav. Če je mogoče, se izvede rekonstrukcija oziroma postavitve naprav v stanje pred nesrečo in se to dokumentira. Ob kakšni porušitvi konstrukcije je potrebno sodelovati tudi pri odstranjevanju in dviganju le te in sprotno fotografirati stanje, ki je bilo pred in med nesrečo.

Pogosto se zgodi, da se pri odstranjevanju predmetov, opreme ali strojev, lahko pa tudi poškodovanega delavca, najde predmet, ki lahko pojasni ravnanja pred nezgodo. Na primer pri odstranitvi prevrnjenega tovora z viličarja se najde na tleh orodje, katerega je hotel pobrati poškodovani delavec tik pred prihodom viličarja na kraj, kjer ga je potem zasul tovor.

Ravno tako se pri opravljanju ogleda čim bolj natančno poskuša ugotoviti, kaj je poškodovani oziroma lahko tudi pokojni delal pred nezgodo, med samo nezgodo in tudi po nezgodi, ter na kakšen način je lahko zadobil poškodbe. Ugotavlja se tudi, kako je potekal običajno njegov delovni proces ter ali so bile že pred nezgodo pomanjkljivosti v delovnem procesu.

Pri opravljanju ogledov krajev delovnih nezgod se, poleg strokovnjakov iz posameznega področja dela npr. strojništva, elektrike, gradbeništva, prometa, medicine in podobno, v največji meri poslužujemo tudi strokovnjakov iz Nacionalnega forenzičnega laboratorija Generalne policijske uprave s področja kemije, fizike, biologije in tudi drugih področij dela.

Pri obravnavi delovnih nezgod je potrebno v primeru poškodovanja delavca ali druge osebe izdati obvestilo o telesni poškodbi oziroma pridobiti podatke o vrsti, mehanizmu nastanka in teži poškodbe, ravno tako je potrebno, zaradi ugotavljanja dejstev pomembnih za kazenski postopek, določiti odvzem krvi za alkoholometrične, toksikološke in druge potrebne analize.

Pri uživanju alkohola na delovnem mestu je potrebno upoštevati, da so lahko bolj nevarne že majhne količine zaužitega alkohola, saj te ne dajo čutiti, da so okvarjene sposobnosti posameznika. Manjše količine alkohola lahko vlivajo občutke sposobnosti ter zanesljivosti in občutke večje zmožnosti (Milčinski, 1956).

V primeru smrti je potrebno pridobiti ugotovitve sanitarne obdukcije ali odrejene sodne obdukcije ter pridobiti tudi rezultate alkoholometričnih, toksikoloških in drugih potrebnih analiz. Tudi Milčinski (1956) navaja, da je ugotovitev vzroka smrti v kazenskem postopku še posebej važna zaradi dokazovanja vzročne zveze med kaznivim dejanjem in njegovo posledico smrtjo, pri čemer se določa tako glavni kot neposredni vzrok smrti.

## 6 UGOTAVLJANJE DEJSTEV IN OKOLIŠČIN PRI OBRAVNAVI DELOVNIH NEZGOD

Posebnost obravnave delovnih nezgod je ugotavljanje odgovornosti ne samo konkretnega izvajalca, udeleženca v nekem delovnem postopku ali opraviu temveč tudi odgovornost njegovih neposredno nadrejenih in iskanje odgovornih za varnost in zdravje pri delu za posamezno delovno mesto ali na splošno v podjetju. Potrebno je ugotavljati posebnosti delovnega postopka oziroma metode dela, okoliščine ki so privedle do nezgode in tudi kakšna je bila predvidena ter dejanska organizacija dela.

Pri preiskovanju delovne nezgode je potrebno ugotavljati, seveda priporočljivo v sodelovanju z inšpektorjem za delo oziroma drugim primernim strokovnjakom, naslednje posamezne in konkretne okoliščine oziroma dejstva, ter jih je nato potrebno vzročno povezati s posledico delovne nezgode oziroma posledico obravnavanega kaznivega dejanja:

- točen čas in točen kraj delovne nezgode (predvsem zaradi ugotavljanja konkretnih predpisov, ki urejajo varstvo pri delu na konkretnem delovnem kraju).
- izpolnjevanje pogojev poškodovanega: je bil strokovno usposobljen, je imel ustrezne delovne izkušnje, je bil ustrezno usposobljen za varno izvajanje dela, je bil ustrezno seznanjen z nevarnostmi in škodljivostmi pri njegovem delu, je bil zdravstveno spodoben za delo, ki ga je opravljal v času nezgode, je uporabljal osebno varovalno opremo (ugotoviti je potrebno morebitno ignoranco varnostnih pravil, utrujenosti, nerivoze, neprespanosti, morebitno alkoholiziranost, uživanje drog, močnih zdravil).

- usposobljenost delavca (ko sklone delovno razmerje, ko je premeščen na drugo delo, ko se uvaja nova tehnologija ali ko se spremeni delovni proces).
- organiziranost in nadzor (pomembno je načrtovanje delovnega procesa in njegov nadzor »ali so delavci prepuščeni sami sebi«, neuskklajenost delovnih operacij, čakanje in nato hitenje, improvizacija).
- vzdrževanje in čiščenje (morebiten vzrok slabo vzdrževani stroji, prostori, pomožno orodje, osvetljenost, založenost).
- značilnosti in urejenost delovnega mesta; v zaprtem prostoru, na prostem ali gradbišče (kot prezračevanje, temperatura, tla, okna, gibalne površine, izhodi, primerna velikost).
- oblika materialov (ostri robovi, nepravilna oblika, je lomljiv, strupen ali eksploziven).
- stanje delovne opreme - je mogoče bila v okvari ali imela motnje pri obratovanju, so delovale varnostne in blokirne naprave, (mora biti ustrezna z dvoročnim vklopom, omejevalniki gibanja, okrovi, zasloni, ustrezno namazana, je priložena izjava o skladnosti, zapisnik o pregledu, obdobjni pregled, tehnična navodila, navodila za varno delo, protokoli in drugo).
- navodila za varno delo (ali so bile identificirane in ustrezno obravnavane vse nevarnosti in škodljivosti, ki so poškodovanemu pretile pri delu, sploh obstajajo navodila za varno delo za konkreten primer, ali so navodila za delo na vidnem mestu, ali je bil usposobljen za delo po teh navodilih, varnostni načrt, drugi dokumenti za varno delo).
- vremenske razmere pri delu na gradbiščih kot vlaga, vročina, mraz, veter, močna svetloba.
- morebitne druge okoliščine (morebitni spori z vodjem, nesporazumi, pretepi, napadi, ugrizi živali, vmešavanje drugih oseb v delo, nenadni zastoji, zatajitve računalniških programov pri CNC strojih in drugo).

Pri ugotavljanju morebitnih kršitev predpisov, ki urejajo varstvo pri delu, oziroma ugotavljanju, kateri predpis je bil kršen, je potrebno ugotavljati tudi odgovornost neposredno nadrejenega in odgovornost osebe, ki je odgovorna za varnost in zdravje pri delu v podjetju. V največ primerih je to kar sam direktor podjetja oziroma od njega pooblaščen delavec. V večjih podjetjih pa je za to področje dela zadolžen inženir za varnost pri delu, kot pooblaščen oseba v podjetju ali ustanovi, kjer opravlja strokovne naloge iz varstva pri delu, požarnega varstva in varovanja okolja, ali imajo celo organizirano službo za varnost in zdravje pri delu. Potrebno je preverjati njegovo tako strokovno usposobljenost za delo kot tudi usposobljenost za vodenje.

Delavec je oseba, ki pri delodajalcu opravlja delo na podlagi pogodbe o zaposlitvi ali na drugi pravni podlagi in se je dolžan usposabljaati za varno delo. Njegova dolžnost je, da se seznanja z varnostnimi ukrepi in ukrepi zdravstvenega varstva in jih dosledno uresničuje.



Delavec sme tudi brez posledic odkloniti delo, če niso bili izvedeni vsi predpisani ukrepi in mu zato grozi neposredna nevarnost za življenje in zdravje (Resolucija, 2003).

## 7 DOKUMENTACIJA PRI OBRAVNAVI DELOVNIH NEZGOD

Po Zakonu o varnosti in zdravju pri delu (ZVZD-1, člen 61) ter podzakonskih aktih mora delodajalec trajno hraniti vso dokumentacijo varnosti in zdravja pri delu, zlasti pa dokumentacijo, ki se nanaša na (Sotlar, 2015):

- obdobje preiskave škodljivosti v delovnem okolju,
- obdobje pregledov in preizkuse delovne opreme,
- pregledov in preizkuse osebne varovalne opreme,
- opravljeno usposabljanje za varno delo in preizkuse usposobljenosti,
- zdravstvene preglede delavcev,
- nezgode pri delu, kolektivne nezgode, nevarne pojave, ugotovljene poklicne bolezni in bolezni, povezane z delom ter njihove vzroke,
- nevarne snovi, ki jih uporablja, če tako določajo posebni predpisi.

Pri raziskavi delovne nezgode oziroma v preiskavi kaznivega dejanja je potrebno pridobiti dokumentacijo, katero lahko zasežemo na podlagi Zakona o kazenskem postopku (220. člen) ali pa jo pridobimo od inšpekcije za delo oziroma drugega pristojnega organa. Inšpektorji za delo imajo pravico pridobiti dokumentacijo na podlagi 11. člena Zakona o inšpekciji dela (ZID-1), pri čemer je potrebno upoštevati, da inšpektor ne sme zaseči dokumentacije državnega organa, ki je označena kot tajna. V 19. členu Zakona o inšpekcijskem nadzoru (2007) je med pooblastili inšpektorjev tudi določeno, da lahko pri opravljanju nalog inšpekcijskega nadzora za največ 15 dni odvzame dokumentacijo, ki jo potrebuje za obravnavanje dejanskega stanja v obravnavani zadevi, če meni, da obstaja utemeljen sum kršitev zakonov ali drugih predpisov.

Najbolj pogosto se v preiskovanju delovne nezgode pridobiva naslednja dokumentacija:

- izjava o varnosti z oceno tveganja s prilogami, izdelana skladno z 19. členom Zakona o varnosti in zdravju pri delu (ZVZD-1).
- izjave o skladnosti in tehnično dokumentacijo (po predpisih za proizvode), tako za delovno opremo (stroj, aparat, orodje, naprava ali oprema) kot za osebno varovalno opremo in druge pripomočke pri delu.
- navodilo za delo proizvajalca, dokumentacija o vzdrževanju, servisni intervali, posegi - popravila, zamenjava delov opreme, dnevnik in rok pregledov in preizkusov delovne opreme ter potrdila o pregledu delovne opreme, upoštevajoč tudi vse zahteve iz Pravilnika o varnosti in zdravju pri uporabi delovne opreme (2004).
- poročila in zapisniki o periodičnih preiskavah kemijskih, fizikalnih in bioloških škodljivosti v delovnem okolju.

- dokazila o zdravstveni sposobnosti za delo; npr. delo na višini, v globini, nočno delo, delo zunaj, nadure/nočno delo, ali so podane omejitve, ali je bil zdravstveni pregled izveden v roku (delodajalec mora na podlagi 36. člena ZVZD-1 zagotoviti zdravstvene preglede delavcev, ki ustrezajo tveganjem za varnost in zdravje pri delu).
- dokazila o usposabljanju za delo; navodila za varno delo, pisna obvestila, način in program teoretičnega in praktičnega usposabljanja delavcev za varno delo, vprašalniki za delo, ustreznost delovnih izkušenj, podatki o seznanjenosti z nevarnostmi in škodljivostmi, ki pretijo pri delu (delodajalec mora po 37. členu ZVZD-1 delavce obveščati o varnem in zdravem delu).
- dokazila, da je bila izvedena usposobljenost v povezavi (z ustreznim) navodilom za varno delo in da je vsebina primerna postopku dela na delovnem mestu (delodajalec mora delavca usposobiti za varno opravljanje dela - 38. člen ZVZD-1).
- pogodba o zaposlitvi, zaposlitev na delovnem mestu, opis del in nalog na delovnem mestu.
- pri delu na skupnih deloviščih, kjer hkrati opravlja delo dvoje ali več delodajalcev in samozaposlenih delavcev, morajo ti skladno z 39. členom ZVZD-1 s pisnim sporazumom določiti skupne ukrepe za zagotavljanje varnosti in zdravja pri delu.
- druga potrebna dokumentacija.

Poleg splošne dokumentacije je pri obravnavanju posamezne delovne nezgode oziroma posamezne vrste delovne nezgode potrebno pridobivati še specifično dokumentacijo, ki natančneje ureja posamezno področje dela oziroma dejavnost, na primer v kmetijstvu, gradbeništvu, kemijski industriji, zdravstvu, gozdarstvu.

Za primer Uredba o zagotavljanju varnosti in zdravja pri delu na začasnih in premičnih gradbiščih (2005), ureja ukrepe za zagotavljanje varnosti in zdravja pri delu na gradbiščih, kakor tudi v obratih ali pomožnih delavnicah na gradbiščih. Že v sami Uredbi sta v prilogah navedena Okvirni seznam gradbenih del in Okvirni seznam posebno nevarnih del, ter poleg obrazca za prijavo gradbišča tudi Zahteve za varnost in zdravje na gradbiščih, tako splošne zahteve kot posebne zahteve za delovna mesta na gradbiščih in še posebej dodatne zahteve za zagotovitev varnosti in zdravja pri gradbenem delu. Skladno z uredbo mora pred začetkom dela na gradbišču naročnik ali nadzornik projekta zagotoviti izdelavo varnostnega načrta, ki tudi priloga Uredbe. Vsaka sprememba, ki lahko vpliva na varnost in zdravje delavcev pri delu na gradbišču, mora biti vnesena v varnostni načrt. Ker pa vseh nevarnosti, dogodkov ali okoliščin ni mogoče predvideti v varnostnem načrtu, mora biti na gradbišču še Knjiga ukrepov za varno delo, kamor se vpisujejo vsi dodatni ukrepi, ki so potrebni za varno in zdravo delo, in roki, v katerih je potrebno ukrepe izvesti.

Knjiga za varno delo vsebuje kopijo prijave gradbišča, Odločbo o odgovornih vodjih del, Pisni sporazum za zagotavljanje varnosti in zdravja pri delu, dokumentacijo izvajalcev, delovno opremo, programi ukrepov ali navodila za varno delo, zapisnike meritev, kontrolni list odra in Zapisnike nadzora in dogovorov varnega izvajanja del.

Zakon o graditvi objektov (ZGO-1, 2004) v 82. členu določa obveznost, da je potrebno sestaviti dnevnik o izvajanju del, katerega sestavljata gradbeni dnevnik (pri vseh gradnjah, za katere je bilo izdano gradbeno dovoljenje, razen pri gradnjah v lastni režiji in pri gradnji nezahtevnih objektov) in knjigo obračunskih izmer. Pravilnik o gradbiščih (2008) določa vsebino in način vodenja dnevnika o izvajanju del in izvajane sprotne kontrole gradnje, ter v svojem 10. členu tudi obveznost vodenja gradbenega dnevnika in knjige obračunskih izmer. Iz gradbenega dnevnika so lahko razvidne ugotovitve odgovornega nadzornika ali odgovornega vodje projekta, če se med gradnjo ugotovijo neskladja s projektom za izvedbo in gradbenimi predpisi, ali pa, da kakovost vgrajenih gradbenih in drugih proizvodov, inštalacij, tehnoloških naprav in opreme ter uporabljenih postopkov ni dokazana z ustreznimi dokumenti.

## 8 ZAKLJUČEK

Kriminalistično preiskovanje delovnih nezgod zahteva od preiskovalcev najprej poznavanje razlikovanja med delovnimi nezgodami in nesrečami pri delu, na podlagi česar se v nadaljevanju preiskovalci odločajo o kriminalistični taktiki preiskovanja, metodah preiskovanja ter tudi o sodelovanju s pristojnimi drugimi državnimi organi kot na primer z inšpekcijskimi službami ter o sodelovanju drugih strokovnjakov ali izvedencev s posameznega strokovnega področja dela.

Reklo »tuja krivda je izključena« že ob prihodu preiskovalca na kraj dejanja ali dogodka, je za pravega preiskovalca prehitro uporabljeno in površno. Gre za ponesrečen in nestrokoven izraz, ki ne bi smel biti v strokovni uporabi. V kriminalistični preiskavi je potrebno natančno ugotoviti vzrok za delovno nezgodo in enako tudi za nesrečo pri delu.

Potrebno je iskati in ugotavljati morebitno odgovornost tako poškodovane ali pokojne osebe kot tudi njegovih neposredno nadrejenih in odgovornih za varnost pri delu oziroma tudi morebitno odgovornost neposrednih sodelavcev.

Značilnost kriminalističnega preiskovanja delovnih nezgod je, da so osnovni elementi kaznivega dejanja pogojeni s kršitvijo nekega drugega predpisa s področja varnosti pri delu ali drugega področja dela, ter je potrebno najprej ugotoviti to kršitev za utemeljevanje suma oziroma dokazovanje kaznivega dejanja. Uspešna preiskava delovnih nezgod je pogojena z dobrim poznavanjem tako kazensko pravnih predpisov kot predpisov s temeljnega področja varstva pri delu in tudi poznavanjem drugih predpisov, ter je pogojena tudi s sodelovanjem strokovnjakov z različnih področij dela v kriminalistični preiskavi.

Od preiskovalcev delovnih nezgod se pričakuje veliko odgovornost, saj morajo v nekem sicer vsakdanjem dogodku, nesreči ali nezgodi na delovnem mestu prepoznati znake kaznivega dejanja in jih, s poznavanjem drugih predpisov predvsem s področja varstva pri delu, uspešno preiskati ter svoje ugotovitve tudi strokovno in zakonito utemeljiti.

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#### **SUMMARY:**

#### **INVESTIGATION OF WORK INCIDENTS**

*Criminal investigation of work incidents is an important field of work for both police officers and criminal investigators, and their attitude to it should reflect sufficient respect and awareness on the importance of determining the causes of work incidents, mainly due to their consequences, which in worst cases end in loss of people's lives. This area of work is not only the responsibility of labour inspectors as first protectors of occupational health and safety, but also an important competence to investigate criminal offences as one of basic activities of the police. Criminal investigation of work incidents first of all requires from investigators to understand the distinction between work incidents and accidents at work, based on which the investigators consequently decide on criminal investigative tactics, investigation methods, as well as on cooperation with other competent state authorities, such as inspection services, and the participation of other professionals and experts from a specific professional field of work.*

*According to the system and methods of work, the area of investigating work incidents is significantly different from the basic field of investigation of criminal offences. Criminal investigation of work incidents particularly characterizes with the fact that the basic elements of a criminal offence are conditioned by a violation of another regulation from the field of occupational safety or other field of work, and that is first of all necessary to establish this violation in order to justify the suspicion or prove the criminal offence of the Criminal Code. Successful investigation of work incidents requires good knowledge of criminal law regulations, regulations from the basic field of occupational safety and other regulations, as well as the cooperation of experts from various fields of work in criminal investigation.*

*This also imposes great responsibility on the part of the investigator of a work incident since, in course of an ordinary daily event, he has to identify the elements of a criminal offence as a result of violation of another general or special regulation.*

**Key words:** *Criminal investigation, work incidents, accidents at work, occupational health and safety.*

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**THE AUTHORITIES AND THE ROLE OF THE CUSTOMS OFFICE OF  
THE REPUBLIC OF MACEDONIA IN THE PROCESS OF CRIMINAL  
INVESTIGATION OF CUSTOMS CRIMES**

***ABSTRACT***

*The problem with crime is undoubtedly one of the biggest and most prominent ones at present. Nowadays the world is faced with many contemporary forms of criminal offences. Crime is assessed as a negative social conduct and represents a serious obstacle to the social and economic progress of countries.*

*Customs crimes, as a part of economic and financial crimes, have for a while now been the interest of criminologists and criminal law, both at a local and international level. The crimes that are classified as customs crimes are: smuggling, customs fraud and covering goods that are part of smuggling and customs fraud. Committing any of the above crimes means transporting goods over the customs line in the attempt to avoid paying customs charges and other tariffs determined by law. This directly affects the functioning of the system and causes great economic, political and similar consequences.*

*Customs crimes are a highly profitable endeavor and are always international in their nature. This study will give an overview of the crimes that fall under the category of customs crimes, i.e. smuggling and customs fraud, as one of the indicators and causes of economic and financial crime that are even related to certain forms of organized crime. These types of crimes directly affect the economic progress of the country. The consequences of these crimes are great and the damages are hard to recover from.*



*Considering that customs crimes are a serious threat and one of the most serious violations of customs regulations, it is clear that there is a need to investigate them further for the purpose of providing data to contribute to advancing the measures against crime and improving the effectiveness of the Customs Office in curbing it.*

**Key words:** *Customs crime, smuggling, customs fraud, concealing goods, customs line, customs charges.*

## INTRODUCTION

Smuggling and fraud are socially negative phenomena that have been known to humankind since time immemorial. Crime is as old as humanity. Only its forms and methods of operation have changed throughout history. Nowadays smuggling and fraud are characterized by their contemporary forms and ways of perpetration. This is primarily a result of the rapid industrial and technological development, especially in IT terms, which enables easy and fast communication and exchange of information. The emergence of organized crime, as one of the most modern forms of crime in which the aforementioned criminal deeds belong, too, is within this context.

Today the world is facing difficulties in tackling crime despite all the knowledge, techniques, skills and methods used.

These crimes pose a serious problem in many countries. They involve a number of substantial smuggling activities during which importers evade the payment of taxes by circumventing customs procedures, as well as cases when importers commit customs frauds in cooperation with corrupt customs officers.<sup>1</sup>

Customs crimes are a special form of criminal offence that refer to acts that violate the customs system. The broadest definition of the term customs crimes is the following: "Customs crime is a complex security phenomenon that covers criminal offences committed by natural and legal persons that use customs services or persons who skillfully dodge the customs lines and services, as well as criminal behavior with elements of abuse of office from the customs officers."<sup>2</sup>

The key feature of customs crime is that it implies carrying goods over the customs line while avoiding customs inspection for the purpose of evading customs control and thereby the payment of the customs charges.

<sup>1</sup> Determinations of Customs Fraud and Corruption: Evidence From Two African Countries, Research Programme on Political Economy and Development in Africa. OECD Development Center. p. 12.

<sup>2</sup> Nikoloska S., Methods of Researching Economic-Financial Crimes. Van Gogh. Skopje, 2013. p. 378.

Hence, given the nature and manner of perpetration, these crimes can be either individual or part of organized crime and belong to the framework of international crime. The transition process that the Republic of Macedonia is facing has provided excellent breeding ground for the appearance of numerous illegal and detrimental criminal activities, especially in terms of economic-financial crimes, in which customs crimes belong, too. In practice, these are often violations of the regulations for the import, export and transit of goods, evasion of the payment of customs charges, unlawful import, export and transit of goods, avoiding of customs inspection and control, transfer of cash across the border, having two sets of financial accounts to conceal illegally imported goods and acquired profit and the like. Smuggling and illicit trade of different goods is a frequent trans-border phenomenon and is therefore one of the mainstays of transnational organized crime. The consequences, on the one hand, are the vast damage inflicted on the society and, on the other, the perpetrators and masterminds gaining huge unlawful property-related and financial advantage.

It is essential to underline the relevance of the research and analyses of customs crimes. In this context, it is the Customs Office of the Republic of Macedonia that has a crucial role and vital importance. Therefore, it is important to heed the reforms that the Customs Office has enacted over the past years, as well as consider its progress in the process of criminal investigation of customs crimes.

## DEFINITION OF CUSTOMS CRIMES

According to their nature and method of perpetration, customs crimes imply and involve people from two or more countries and has an international dimension.

The perpetrators of customs crimes may be natural or legal persons. As for the subjective side of these crimes, there is the fault, which is necessary when committing a crime. The criminal intent lies in the fact of the perpetrator being aware of his/her deed and wanting to commit it - specific intent, or was aware that (s)he could cause harm because of doing or refusing to do something - possible intent. The crime of smuggling can be committed with both kinds of intent: both specific and possible. Smuggling cannot be a crime of opportunity. A smuggling attempt is punishable under the law.<sup>3</sup>

Customs fraud is also a premeditated customs crime that involves a number of activities including falsification of business documents to enable partial or complete evasion of payment of customs charges that is accompanied by numerous abuses of power on the customs officers' part.<sup>4</sup>

<sup>3</sup> Krstanoski M., Administrative Customs Procedure Including Customs Crimes Procedure. Ohrid, 2007. pp. 220 -221.

<sup>4</sup> Nikoloska S., Study of Customs Crimes - Lectures

The customs crimes are quite frequent violations of the legal norms. They are perpetrated by natural or legal persons that take part in the customs procedure. The key characteristic of the system of customs crimes in the Republic of Macedonia is that, until 1991, when Macedonia was part of the SFRY, and then as an independent country until 1996, when the Criminal Code was adopted, charges were pressed only for one case of smuggling and a few variations of the same as envisioned under the Customs Code.<sup>5</sup>

We may freely say that the year of 2004 (when the new extensive amendments and addenda to the Criminal Code of the Republic of Macedonia were adopted) was of great importance for Macedonia in terms of revising, modernizing and harmonizing the regulations that punish the serious violations of the customs system.<sup>6</sup>

The amendments to the relevant criminal law have created efficient prevention and punishment mechanisms through the inclusion of new forms of crimes and harshening the punishment policies. The new Criminal Procedure Law has incorporated solutions that increase the efficiency of the public prosecutor as one of the participants in this procedure and enhance his/her role throughout the criminal procedure, especially in the process of detection and pre-investigation, particularly in terms of the authorities and obligations entrusted to the Customs Office (CORM) and the Financial Police under the Criminal Procedure Law.<sup>7</sup>

The 2004 novelty in the Criminal Code redefined the title and the legal description of Article 278 (on smuggling) and introduced two new members, thereby making a step toward harmonizing Macedonian law with the modern European criminal law.

Under these amendments, Chapter XXV - Crimes Against Public Finances, Payment Operations and Commerce, customs crimes have been incorporated as a separate segment in the following way:

- Smuggling - Article 278
- Customs fraud - Article 278a
- Concealing goods that have been smuggled and are part of a customs fraud – Article 278b

The purpose of the inclusion of these crimes is to protect individuals, institutions and the society, which is why the Criminal Code of the Republic of Macedonia envisions appropriate penalty for these. The perpetrators of customs crimes want and try to prevent their identification, so very often their moves are arranged with the customs officers, during which they harmonize their joint activities.

<sup>5</sup>Tupancheski N. Customs Crimes - Comparative Aspects. MRKPK, vol. 1. Skopje, 2006, p.38.  
<sup>6</sup> Ibidem, p. 39.

<sup>7</sup> Spasoska L., Number of Criminal Charges Filed From CORM to Public Prosecutor's Office in Area Falling Under Jurisdiction of Higher Public Prosecutor's Office. Skopje. MRKPK vol.1, 2006. p. 108

Furthermore, with this kind of joint activities they create a so-called ring in the chain of an organized criminal group and commit crimes with the assistance of authorized officials. This type of association of the perpetrators of customs crimes with the customs officers or other officers is an organized activity that poses a major impediment to the eventual detection and capturing of the same. The perpetrators of customs crimes have a premeditated aim and intention: to avoid paying the legal customs charges or other taxes for the import or export of goods and products whereby they gain illegal profit contrary to the existing regulations, thereby depleting the budget revenues by not paying customs charges and contributing to unlawful competition because the market price of the imported goods for which no customs charges have been paid will be lower than that for the goods that have been legally imported into the Republic of Macedonia.<sup>8</sup>

The crucial elements that qualify these crimes as customs is their manner of perpetration, motive and final aim. The method in which these crimes are committed, or the "modus operandi", as well as the techniques and means used to perpetrate them can vary. However, regardless of how different they are, their motive is always the same: material gain.

The crime of **smuggling**<sup>9</sup> means transporting goods from one side of the border to another by violating the customs regime. This offence has an international dimension and "is aimed at avoiding the payment of the mandatory customs charges, obtaining financial or commercial gain by evading customs, tax, police, and other kind of control, while circumventing the restrictions related to the import and export of goods."<sup>10</sup>

Unlike smuggling, the criminal offence of **customs fraud**<sup>11</sup> incorporates specific acts aimed at committing fraud during customs procedure. This deed implies full or partial evasion of the payment of export/import customs charges. Partial customs fraud is committed in several ways: making false claims to the customs officer about the goods and other data that impact the amount of customs charges or tax refund, failure to meet the liabilities envisioned under the law, which would influence the import/export customs charges, any other means used to confuse the customs bodies regarding the amount of the import/export customs charges when it comes to a higher amount.

<sup>8</sup> Kambovski V., Comments on Criminal Code of the Republic of Macedonia. Skopje 2011. pp. 924–960.

<sup>9</sup> Article 278 of the Criminal Code of the Republic of Macedonia, The Official Gazette of the Republic of Macedonia no. 37/96; 19/04 and 114/09.

<sup>10</sup> Group of authors, Corruption and Contraband: Monitoring and Preventing. Democracy Research Center. Sofia, 2000, p. 8.

<sup>11</sup> Article 278 - a of Criminal Code of the Republic of Macedonia, The Official Gazette of the Republic of Macedonia. no. 19/04 and 114/09.

The crime of **concealing goods that have been smuggled and are part of a customs fraud** covers the following acts: buying, selling, distributing, receiving as a gift, concealing, taking care of, using or storing goods of a higher amount for which the perpetrator knows or was obliged to know that they are a subject of smuggling or customs fraud. Because of the popularity of the customs crimes, the consequences that they entail, and their constant updating, they have been included in the Criminal Code with the 2004 amendments.<sup>12</sup>

This criminal offence actually involves usually smuggled goods, forbidden goods or goods that are under a certain import/export regime, that is, whose import/export demands licenses or certificates, then goods of high value and therefore high customs charges and the like. The goods that are smuggled or are part of a customs fraud are brought into the country illegally for the purpose of evading the payment of customs charges and other taxes.

#### **AUTHORITIES OF CUSTOMS OFFICE IN COMBATING CUSTOMS CRIMES AT NATIONAL AND INTERNATIONAL LEVEL**

The Customs Office of the Republic of Macedonia is a state institution that falls under the jurisdiction of the Finance Ministry and plays a decisive part in protecting the society and the public with its authorities. When it comes to protecting the security and safety of the citizens, protecting the fiscal interests of the country, defending the society from illicit trade, protecting the market from unlawful competition while supporting the legal business activities, increasing the competitiveness of the national economy, creating an electronic environment and combating fraud, organized crime and terrorism, the cooperation with the relevant institutions at a national and international level is of vital importance.

International cooperation that is based on joint standards and mutual recognition of the results of the enacted controls is an instrument for the efficient reduction of the burdens on the legal trade and a deterrent to illicit trade and customs irregularities.

The fight against this type of crime doubtless requires a global approach because of the increased tendency of organized criminal groups to smuggle drugs and arms, as well as deal in human trafficking and economic and financial crime.<sup>13</sup>

One of the strategic priorities and goals, as well as one of the basic authorities of the Customs Office of the Republic of Macedonia as a segment of the executive government, is to fight, discover and prevent crime.

<sup>12</sup> Kambovski V. and Krstanoski M., Customs Penalty Code, Ohrid 2007, pp. 227-232.

<sup>13</sup> Spasoska L., Number of Criminal Charges Filed From Customs Office of Republic of Macedonia to Public Prosecutor's Office in Area Falling Under Jurisdiction of Higher Public Prosecutor's Office. Skopje. MRKPK vol.1, 2006. p. 107

The organization, scope of work and authorities of the Customs Office are regulated by the Customs Office Law.<sup>14</sup>

The authorities of the Customs Office are regulated by Article 10 of the Customs Office Law<sup>15</sup>, and these include: customs inspection and control, imposing customs duties on goods, enacting investigative and intelligence measures aimed at preventing, discovering and investigating customs violations and customs crimes, taking measures and activities to discover and investigate customs crimes, preventing the future consequences of these acts, capturing and reporting on the perpetrators, providing evidence, taking other measures and activities to lead the criminal procedure, controlling the import, export and transit of goods, cooperating with the other state bodies, foreign customs offices and international organizations and so on.

The customs control, as one of the key authorities of the Customs Office, envisions "specific moves from the customs officers, such as examination of the goods, control of the authenticity and correctness of the required documents, review of the financial records and other registers, examination and search of transport vehicles, examination and search of personal luggage and other personal possessions, launching official inquiries and similar activities in terms of guaranteeing the implementation of the customs rules and, whenever necessary, the other regulations applicable to the goods that undergo customs inspection."<sup>16</sup>

Under the 2004 amendments to the Criminal Procedure Law, the Customs Office acquired special powers, whereby it became a significant body in the fight against crime. These amendments and the authorities granted to the Customs Office had arisen from the need to curb, detect and investigate criminal offences and customs violations. These powers have enabled customs officers to conduct investigations and take intelligence measures as envisioned under the Criminal Procedure Law.

On the other hand, they imply certain responsibilities for the Customs Office and bind it to stringent procedures for the purpose of the lawful use of these authorizations without any arbitration or discrimination on any ground.<sup>17</sup>

These authorities are restrictive and related to the existence of a reasonable doubt of a committed crime and that traces or objects that may serve as evidence will be found with persons or transport or carrier vehicles or in given premises.

<sup>14</sup> Customs Office Law, The Official Gazette of the Republic of Macedonia no. 46/04, 81/05, 107/07, 103/08, 64/09, 105/09, 48/10, 158/10, 53/11, 113/12, 43/14, 167/14, 33/2015, 61/2015, 129/2015 and 23/2016.

<sup>15</sup> Article 10 of the Customs Office Law. The Official Gazette of the Republic of Macedonia no. 46/04, 107/07, 103/08, 105/09, 53/11.

<sup>16</sup> Article 2, paragraph 1, item 8 of the Customs Office Law. The Official Gazette of the Republic of Macedonia no. 46/04, 107/07, 103/08, 105/09, 43/14 and Article 4 paragraph 1 item 13 of the Customs Office Law. The Official Gazette of the Republic of Macedonia no. 39/05, 04/08, 171/12, 187/13.

<sup>17</sup> Krstanoski M., Customs Law. Ohrid, 2007. pp.97-111.



Thus, under the Criminal Procedure Law, similar to the Ministry of Internal Affairs, the powers of stopping, examining and searching people and transport vehicles are more strictly defined than in the respective laws that occasionally allow similar measures during a given routine control related to the activities of these bodies or based on risk assessment that must not necessarily be related to a committed crime.<sup>18</sup>

These special authorities are of particular importance for the Control and Investigations Sector (hereinafter CIS), which comprises the Intelligence Department, the Investigations Department and the Operational Matters Department. Apart from these department, other department that have a significant role in fighting crime is the Risk Management Department and the Trade Associations Department, which also fall under the jurisdiction of the CIS.

With its special authorizations, the Customs Office has obtained a vital role in combating crime, especially organized crime, which also include customs crimes.

In compliance with Article 41 of the Criminal Procedure Law, the public prosecutor runs the pre-investigation with the help of the prosecution police. The prosecution police consist of authorized Customs Office employees, police officers from the Interior Ministry and members of the Financial Police Administration.

The pre-investigation is conducted so that material can be provided to the public prosecutor on the basis of which (s)he will assess whether the initial doubt may become a reasonable doubt, as a higher degree of doubt, based on the evidence provided that would point to the conclusion that a respective person has committed a crime, so that the prosecutor could ask the court to launch an inquiry.<sup>19</sup>

Article 47 of the new Criminal Procedure Law grants the same powers that the prosecution police have to the Customs Office. The Criminal Procedure Law regulates the authorities of the prosecution police that also apply to the Customs Office when it comes to customs crimes. In compliance with Article 276 of this law, authorized customs officers can stop, ask for documents, examine and search people, vehicles, and luggage, redirect or restrict the movement of people in certain areas for the required amount of time, take the necessary measures to determine the identity of people and objects, examine or search certain premises and provides customs officers with other authorizations that allow them to take measures and activities to detect and prevent crime, capture and report on the perpetrators, provide evidence and take other activities required for the unhampered running of the criminal procedure.

<sup>18</sup> Kalajdziev G., "What Kinds of Police Powers Should Be Granted to Customs Office?" Macedonian Revision of Criminal Code and Criminology, vol. 1. Skopje, 2006, pp.51-84.

<sup>19</sup> Kalajdziev G. in book of PhD Svetlana N., Methodology in Research of Economic-Financial Crimes, p. 97.

The customs legislation in compliance with which the Customs Office acts is within the framework and in accordance with the international legislation both in terms of enacting the customs procedure and in fighting crime.

When it comes to fighting crime, apart from its international corroboration, the Customs Office cooperates with the national law enforcement agencies, too. These are state institutions, or so-called law enforcement agencies, that are entrusted with detecting, investigating and proving the crimes committed, such as the Public Prosecution, as the relevant body that prosecutes the perpetrators, the Ministry of Internal Affairs, the Financial Police Administration, the Intelligence Agency and the National Anti-Corruption Commission. The Customs Administration has signed memorandums and protocols of understanding with some of these institutions to define their cooperation in combating crime and carrying out the criminal procedure. Apart from these institutions, the Customs Office also cooperate with the National Border Management Coordination Center, which includes all the respective border management institutions.

The cooperation of the Customs Office with the remaining law enforcement agencies is of great importance when it comes to detecting, preventing, proving and clarifying customs crimes.

The role of the Customs Office in the criminal investigation of the customs crimes is of particular relevance.

Criminal investigation is an operational activity of the respective state bodies that have police powers, during which the police deal with all sorts of crimes, while the Financial Police and the Customs Office with crimes that fall under their jurisdiction.<sup>20</sup>

It may start off with the potential or known culprit, the criminal hotspots and factors, the criminal or pathogenic environment and the criminal offence committed by an unknown perpetrator. Special disciplines, that is, different kinds of criminal investigations, are developed for particular inquiries into a special group of crimes that share the same or similar criminal features.<sup>21</sup>

Criminal investigation is related to receiving answers to the nine golden criminalistic questions of what, who, when, where, how, with what, with whom, who or with what and why. The answers to these questions do not only lead to the solution of the crime, but also generate more questions regarding the perpetrator's motive, the accomplices in planning, organizing and committing the crime, additional information regarding the crime and the like.

When it comes to customs crimes, criminal investigation implies the operational activities in the pre-investigative procedure in which the operating customs officer has at his/her disposal a sufficient number of criminalistic information that (s)he has to process and systematize appropriately. Only in this way can (s) he acquire additional information that will help clarify the case.

<sup>20</sup> Nikoloska S., Methods of Researching Economic-Financial Crimes. Van Gogh. Skopje, 2013, p.187

<sup>21</sup> Boba R., Criminal Investigations, Skopje, 2010, p. 62



Criminal investigation is an operationalization and investigation of a criminal problem of a complex nature, whereas its clarification is a complicated process that uses a number of legal measures, activities and criminalistic methods, as well as includes a number of state bodies that are authorized under the law to investigate particular crimes.<sup>22</sup>

During the criminal investigation of customs crimes, the tactical criminal inquiries and operational investigation that entail “the application of criminalistic analysis of the data and information related to the perpetrators, the manner and the place of the crime and the information that point to the perpetrators’ criminal connection with the specific crimes”<sup>23</sup> are just as important.

Customs crimes are the most serious violation of customs regulations, while smuggling and contraband are the most often used terms for customs crimes.<sup>24</sup> Hence, it is important to underline the importance of the Customs Office in detecting, proving and clarifying such criminal offences. For this purpose, as well as to find information about committed crimes, including the crimes of smuggling, customs fraud and concealing goods that are smuggling or part of a customs fraud, detect them and identify the perpetrators, the operating customs officers take a great number of measures and activities. During these operations, they take operational-tactical measures, while, during the investigative procedure, they take investigative steps. In particular cases, when evidence cannot be gathered in any other way, they use special investigative measures.

The system of operational-tactical measures includes two types or operations: crime control (gathering and processing operational information for cases for which there is a general indicator of a possible dubious conduct, that is an undefined and potentially criminal behavior of a specific person at a criminal point or in a criminal environment) and crime processing (taking actions to detect and determine a certain crime and its perpetrator and launch criminal prosecution).

Crime processing differs from crime control in its objective and methodology. Namely, investigation is launched only for the purposes of crime processing, while operational-tactical measures are taken for both of these actions.

When it comes to crime processing, the selected target is individual, while, in crime control, it is a massive phenomenon. This is why the key difference between crime control and crime processing lies in the form and the content of the doubt.<sup>25</sup>

<sup>22</sup> Nikoloska S., *Methods of Researching Economic-Financial Crimes*. p. 170.

<sup>23</sup> *Ibidem*, p. 188.

<sup>24</sup> Tupanchevski N., *Customs Crimes - Comparative Aspects*. p. 37.

<sup>25</sup> Dzukleski G., *Introduction to Criminology*. Skopje, 2006. pp 83-84

Given the importance of the customs system for the national economic system, it is quite obvious that customs violations, that is, customs crimes, imperil the overall state system because income is lost, unlawful competition is created, grey economy is stimulated, and the public’s safety and health is jeopardized with the export of goods with unchecked quality.

In order to prevent such consequences, the Customs Office works persistently on adjusting its regulations and institutional layout. The greater powers during the enactment of the customs procedure, which were granted to the Customs Office under the 2005 amendments to the Criminal Procedure Law and which refer to the possibility of using certain pre-investigative measures and actions during the customs control of goods, vehicles and luggage for the purpose of detecting and preventing crime and customs violations, are to this effect.

One of the powers of the Customs Office of the Republic of Macedonia is the process of taking investigative measures to detect, prevent, clarify and prove customs crimes.

After sufficient information and evidence is gathered through a conducted control or certain checks that there is reasonable doubt that a given person has committed a crime for which it should be officially persecuted, a formal inquiry can be launched against that person, during which measures that encroach on his/her interests, rights and freedoms can be applied (detention, search, special investigative measures, confiscation of assets).<sup>26</sup>

The basic condition to launch a criminal procedure is the detection of a crime and its perpetrator. In this aspect, the detection of customs crimes falls within the jurisdiction of the customs officers, while the Investigation Department of the Control and Investigation Sector is in charge of the pre-investigative procedure. The customs inspectors follow the public prosecutor’s orders in the pre-investigation for the purpose of gathering the required reports that are later submitted to the public prosecutor. If a customs crime is detected, the CIS files criminal charges to the respective public prosecutor, thus providing the basis to launch a criminal procedure against the perpetrators. The customs officers are obliged to provide traces and evidence to clarify and prove the crime, gather all the reports that may be useful for the criminal procedure, take the appropriate measures to preserve the traces of the crime and the objects used to commit the crime and to identify the perpetrator. The criminal charges should enumerate all the evidence that the CIS has at its disposal.

The customs inspectors are obliged to submit all the additionally provided evidence, traces and reports regarding the crime on which a criminal procedure has been initiated to the public prosecutor.

<sup>26</sup> *Investigative Procedures: Guidebook for Practitioners* [authors Gordana Buzharovska, David Re, Michael G. Karnavas]. Skopje. OSCE, p. 24.

When it comes to customs crimes and crime in general, as well as to the authorities of the Customs Office in this respect, it is necessary to emphasize the fact that the customs crimes are closely related to corruption and abuse of power.

For the purpose of curbing and reducing corruption within its ranks and the abuse of office among customs officers, the Customs Office has taken a number of steps. Namely, it has introduced an SOS line 197 to report on smuggling and corruption among customs officers; it has identified the reasons and the possible consequences of corruption; it has established the Professional Responsibility Sector whose key aim is to establish professional standards, and it has prepared the Integrity and Anti-Corruption Strategy that primarily focuses on prevention, while punishment is a corrective against the different forms of corruption and abuse of office.

## CONCLUSION

The customs crimes of smuggling, customs fraud and concealing goods that have been smuggled or are part of a customs fraud are punishable acts that begin with the mere act of committing this offence and last until their detection. This process is actually rather complex because the perpetration of these crimes is usually well organized and planned, while the organizers or the perpetrators use different and often sophisticated methods and means for their perpetration.

The Customs Office of the Republic of Macedonia has taken a number of measures and activities to deal efficiently with customs crimes within the framework of its powers and jurisdictions.

In this respect, the Customs Office works persistently on introducing new system to facilitate the customs procedure and customs control, as well as modernize this service. The signing of the Convention on a Joint Transit Procedure and the introduction of the new computerized transit system - NCTS for the processing of the transit declarations, which allows easier and cheaper movement of goods and simpler and faster customs procedure, are of special importance. This system provides the ground for the enactment of the transit procedure through the exchange of electronic messages between the participants in the customs procedure and serves as a tool to manage and control the transit operations, while enabling modern and efficient management.

A number of tools have been introduced to facilitate data processing in order to enable appropriate profiling and risk analysis.

Internal procedures have also been adopted and they describe in detail the steps that need to be taken to enable efficient performance, detention and prevention of as many illegal activities as possible.

Within the framework of its authorizations, the Customs Office has excellent international and interinstitutional cooperation, which is also significant for the effective fight against customs crimes and crime in general.

The Customs Office of the Republic of Macedonia cooperates with all the state institutions, the customs offices in the region, the EU and beyond, as well as with many international organizations that combat crime. Its cooperation is based on a number of documents (memorandums of cooperation, protocols, agreement, and the like) that the Customs Office has signed with the relevant national, foreign and international institutions that combat crime.

When it comes to the accomplishments of the Customs Office of the Republic of Macedonia in combating crime, its experiences and cooperation at a national and international level are positive in terms of the fight against the smuggling of drugs and other psychotropic substances, migrant smuggling, the smuggling of contraband that poses a potential hazard to human health and the environment, customs fraud, protection of intellectual property rights and so forth.

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