

VIOLENCE AGAINST PERSONS WITH DISABILITIES: THE “DARK NUMBER” OF CRIME

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Abstract. *People with disabilities are a particularly vulnerable to victimization by violence. This risk increases due to their dependence on other family members. This negative phenomenon has to be observed not only from the criminological perspective but also from the sociological perspective because violence does not happen outside the society. In this paper, the authors will indicate the “dark number” of crime of violence against people with disabilities, with specific reference to violence against people with mental disabilities in residential institutions. The aim of this paper is to point out to possible social responses to violence against people with disabilities.*

Key words: *violence, people with disabilities, victimization, prevention*

1. INTRODUCTION

Violence is an integral part of almost every society. It is a phenomenon which has been present since the first societies and civilizations. Hobbes considered that the natural state of affairs was marked by constant conflicts, subordination and imposing the will of the stronger (Milosavljević, 2013: 72). Many eminent thinkers endeavoured to address the question how to establish a society and relevant mechanisms to restore order and ensure protection and stability of all its members (Rousseau, 1993; Machiavelli, 1983). In the historical perspective, various attempts have been made to create effective mechanisms for combating insecurity and violence against the most vulnerable members of the social community.

Contemporary societies strive to combat violence through their criminal justice systems. Notably, in many criminal legislations, the crime of violence is not incriminated as a separate criminal offense, but there are criminal offenses in which violence is envisaged as an essential

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element of the criminal offense (*corpus delicti*) or as a *modus operandi* (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2012: 106). Although anyone can become a victim of a crime with elements of violence, there are categories of people who are more susceptible to victimization by this type of crime due to their personal characteristics or health condition. The vulnerable groups falling into these risk categories are elderly people, internally displaced persons, minors, and people with disabilities. When it comes to physical and sexual violence, the very nature of disability makes it impossible to offer active resistance to the abuser and, sometimes, to recognize violence (e.g. economic violence).

There are numerous international legal documents that provide protection to persons with disabilities from exploitation, violence and abuse. The most important one is the UN Convention on the Rights of Persons with Disabilities (CRPD, 2006), which promotes and protects the human rights, freedoms and inherent dignity of people with disabilities. In particular, Article 16 CRPD regulates in detail the measures for the protection of persons with disabilities from violence, abuse and exploitation (Tatić, 2006: 14). Despite the solid legal framework for the protection of the rights of persons with disabilities, their reality is often different. Thus, it is necessary to investigate the phenomenon of violence against persons with disabilities.

In search of an adequate social response to this negative and undesirable social phenomenon, the authors of this paper point out to the emerging forms of violence against persons with disabilities, with specific reference to the role of disability itself in the victimogenesis of the crime of violence against persons with disabilities.

2. FORMS OF VIOLENCE AGAINST PEOPLE WITH DISABILITIES

Forms of violence against persons with disabilities do not differ from the forms of violence that other social groups are exposed to. They include physical, psychological, sexual, and economic violence, violence in the workplace (mobbing), and multiple violence (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009: 111). Each of these types of violence will be briefly presented further on in this part of the paper.

Physical violence against persons with disabilities is any form of threat to their physical integrity. This is the most obvious form of violence because it leaves visible consequences in the form of bodily injuries of varying degrees. In the past, especially during World War II, people with disabilities were deprived of their lives because of their disability. The most notorious example is the Nazi “*Aktion T4*” Program in Nazi Germany, where 70,273 institutionalized people with physical or mental disabilities were killed from October 1939 to August 1942 (Mirić, 2015a: 117). In addition to the aforesaid systemic violent actions against persons with disabilities, another dangerous phenomenon are individual cases of violence within institutions. In such cases, the perpetrators are largely the employees of those institutions whose professional obligation is to take care of the persons with disabilities and ensure their well-being and safety. We often learn about cases of physical violence and abuse involving vulnerable categories of citizens from media reports. Women with disabilities residing in residential institutions are particularly exposed to this type of violence. Marijana Čanak states that “*In Serbia, 18,250 people live in some form of collective accommodation, and over 11,000 people report having some form of disability. Half of these people are girls and women. Life in the institution and guardianship additionally puts them at risk of various forced interventions, such as physical restraint, isolation, excessive use of drugs, taking contraceptives without*

consent, sterilization, forced abortions and separation from the child "(Čanak, 2017)¹. Therefore, we can conclude that the problem of violence against persons with disabilities is extremely complex and multidimensional, for which reason all social actors must be actively involved in solving it. Victimization of persons with disabilities is much more than a mere social problem. Although physical violence is most visible because it leaves manifest marks on the victim's body, psychological violence can have far-reaching consequences for the psychological/mental well-being of individuals because it leaves traces on the soul and in the psychic life of the victims.

Psychological (emotional) violence against persons with disabilities includes dehumanization and humiliation of these persons who are subjected to verbal or nonverbal treatment that undermines their self-esteem: lying, mockery, criticism, derogatory remarks, threats, social isolation, visit bans, humiliation, etc. (Milić Babić, 2009: 599). This type of violence is especially devastating because it is aimed at the victim's psyche, in terms of shaping one's self-perception ("*me in the mirror*"). In particular, psychological violence is more difficult to prove because it does not leave visible consequences on the victim's body, while its effects are multiple. The power of words is clearly depicted in the proverb: "A word is mightier than a sword"; it reflects the destructive effect of psychological violence, whose consequences are deeper and much more severe than physical injuries. Why is this type of violence so dangerous? Our psychological domain consists of our temperament, character, emotions, desires, hopes (etc.); at the same time, every individual "copes" with problems differently and has different dispositions for reaction to external stimuli. When our personality (internal integrity) is violated, trauma and other psychopathological conditions often occur, which can lead to a depressive state, including psychosis. When it comes to psychological violence, people with disabilities are more vulnerable than the general population. One of the most important reasons is the manifestation of the disability itself, which makes them more susceptible and "accessible" in the eyes of the perpetrators. Certainly, it is not always the case. Combating psychological violence against persons with disabilities is part of a broader and continuous social process of combating violence in society. *Inter alia*, criminal law has responded to psychological violence by enacting numerous legislative acts and incriminating unlawful or harmful conduct, with the aim of protecting one's "peace of mind". Medical research has long recorded and scientifically proven the connection between the injured psyche and the sick body by indicating to psychosomatic diseases. However, combating psychological violence in society is much more than that; it is a question of consciousness and conscientiousness) of every single individual (Mirić, 2021).²

Sexual violence against persons with disabilities includes unwanted touching and all types of sexual assault, such as: rape, sodomy, nudity and photography (Milić Babić, 2009: 600). Some studies on this issue show that this type of violence is widespread. A study on sexual violence against women with intellectual disabilities conducted by Elman (2005) showed that the rate of sexual victimization in this group of women was 4 to 10 times higher than in women without intellectual disabilities. Elman emphasizes that, in 70% of cases, women with disabilities were victims of sexual violence at some point in their lives (Milić Babić, 2009: 601). To our knowledge, no empirical research has been conducted in

¹ Source: <http://portaloinvalidnosti.net/2017/07/sprecavanje-nasilja-nad-zenama-sa-invaliditetom-u-rezidencijalnim-ustanovama>

² Source: <https://uklonimobarijere.rs/psihicko-nasilje-nad-osobama-sa-invaliditetom/>,

Serbia on the prevalence of this form of violence against persons with disabilities, and it can be assumed that the "dark number" of this form of crime is large, primarily due to the victims' fear to report the perpetrators. In Serbia, the problem of legal qualification of sexual violence against persons with disabilities often arises in court practice. Namely, sexual violence against persons with disabilities can be qualified as "intercourse with a helpless person" (Article 179 CC).³ This crime is committed by a person who commits sexual intercourse with another by taking advantage of one's mental illness, mental retardation, other mental disorder, disability or any other condition due to which the person is incapable of resistance. The prescribed punishment for the commission of this criminal offence is a term of imprisonment ranging from 5 to 12 years; thus, the legislator equates the range of punishment for the basic form of this criminal offense with the basic form of the criminal offense of rape (Article 178 CC). Such a legislative solution can be assessed as positive because it prevents the negative practice of awarding lenient punishment to the perpetrators of sexual intercourse against helpless persons in relation to rapists; it also serves as a deterrent to the perpetrators of such offences.

Economic violence against persons with disabilities is a special form of violence which implies the lack of opportunity for persons with disabilities to use their income. In most cases, it refers to their earnings or compensation for the care and assistance of another person. The perpetrators of this form of violence are most frequently family members and people who take care of people with disabilities. Apart from people with disabilities, frequent victims of economic violence are the elderly as well. Elderly people have a number of difficulties in terms of integration into the society, primarily due to inactivity, retirement, complicated family relationships, and lack of social support (Kostić, 2010: 48). Another significant problem related to people with disabilities is their dependence on other persons in order to meet their daily needs, which can result in violence against this risk group.

Workplace violence (mobbing) against persons with disabilities is a specific form of violence which is reflected not only in the unavailability of adequate jobs for persons with disabilities but also in creating an environment that has a disincentive effect on their further advancement. This form of violence is the least frequently reported one because very few people with disabilities are employed. The results of the 2011 census in the Republic of Serbia show that only 12.4% of the total number of persons with disabilities (71,107 people) were economically active, while only 9.0% of all persons with disabilities had a job at the time (Marković, 2014: 72). In particular, it is important to point out to the very low percentage of the working population among persons with disabilities in relation to the general population. If we consider the most economically active age category (aged 30 to 49), which includes people who have finished their education, entered economic activity and got integrated into economic flows and business, we notice that the percentage of economically active persons in the general population is over 80%, while the percentage of economically active persons with disabilities (who are employed, have been employed, or are looking for their first job) is only 40%. This means that the share of economically active people with disabilities is half as low as the share of economically active persons in the total population. Therefore, not even half of people with disabilities aged 30 to 49 are economically active, i.e. they do not work, have never worked, and are not looking for their first job (Marković, 2014: 76). Taking into account these unfavorable data on the economic

³ The Criminal Code of the Republic of Serbia (CC), *Official Gazette of RS*, 85/2005, 88/2005-corr., 107/2005-corr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019

activity of persons with disabilities and their aggravated employability in comparison to the general population, it can be reasonably assumed that persons with disabilities often do not report cases of mobbing in the workplace for fear of losing their jobs, even though there is a satisfactory legislative framework for prosecuting and punishing workplace mobster within the Act on Prevention of Harassment at Work (2010).⁴

Multiple (mixed) violence against people with disabilities entails cases when a person is subject to multiple forms of violence (physical, sexual, psychological/emotional, economic). This form of violence is very difficult to detect because it often remains within the domain of "family privacy", and people with disabilities are not always able to recognize it and react adequately. Therefore, disability can be a factor in victimization of persons with disabilities, which will be discussed in more detail in the next part of paper.

3. DISABILITY AS A FACTOR OF VICTIMIZATION OF PEOPLE WITH DISABILITIES IN VIOLENCE CRIMES

Disability can be a significant factor in victimization of persons with disabilities in criminal offences involving elements of violence. How are disability and violence correlated? According to our understanding of this problem, it is not easy to give a concise and precise answer to this question because the correlation can be multiple. The most prominent factors that may influence the occurrence of victimization of persons with disabilities are as follows:

1. increased dependence on the help of others;
2. type of disability;
3. gender and age of the victim;
4. denial of human rights (in terms of inconsistent application of the law and lengthy court proceedings),
5. suppression of violence due to the victim's fear to report the violence (which remains in the domain of "family privacy");
6. difficulties in proving acts of violence;
7. social and societal isolation of persons with disabilities is conducive to violence;
8. prejudices about disability;
9. lack of information on effective ways to combat specific forms of violence;
10. economic and any other dependence of the victim on the perpetrator;
11. lower level of education;
12. increased risk of institutional care (Milić Babić, 2009: 603-604).

The simultaneous impact of all these factors increases the risk of victimization of persons with disabilities. The negative social position of persons with disabilities is a consequence of "prejudice, stereotypes, underestimation of abilities, misunderstanding of human rights and equality issues" (Vasiljević-Prodanović, Stojković, 2012: 281). A protective factor that can contribute to reducing the risk of victimization is the social inclusion of persons with disabilities, which essentially implies the acceptance of diversity. It can contribute to overcoming prejudices, annulling insufficient or bad communication between people, and promoting equal opportunities as the society strives for prosperity (Vasiljević-Prodanović, Markov, Kojić, 2010: 67). Creating a truly inclusive society is a civilizational obligation of every democratic society.

⁴ The Act on Prevention of Harassment at Work, *Official Gazette of RS*, 36/2010.

This ongoing process implies raising the (already) attained level of respect for human rights, which is the best indicator of justice within each community (Mirić, 2015b: 124).

At this point, it seems appropriate to point out to the problem of the "dark number" of crime, which implies the number of committed but undetected criminal offences (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2012: 64). Taking into account the aforesaid victimogenic factors, we can assume that there is a large number of cases of unreported cases of violence against persons with disabilities in Serbia. Based on the previous short presentation on disability as a factor of victimization of persons with disabilities, one can understand the importance of equal treatment for all. It means that persons with disabilities shall not be discriminated and excluded from established legal mechanisms, nor subjected to undemocratic practices (Beker, Milošević, 2017: 120-121; Mirić, Vasiljević-Prodanović, 2018: 55; Nikolajević, 2019: 23), which is the basis for their prosperity.

4. VIOLENCE AGAINST PEOPLE WITH DISABILITIES IN RESIDENTIAL INSTITUTIONS

Violence against people with mental disabilities has been present throughout history, but it is only in recent years that society has begun to tackle this important problem by instituting the first targeted research on this issue. Although the number of studies is still very small, they can map some causes of the problem concerning violence against people with disabilities, especially those who are exposed to violence in residential institutions.

History shows that the abuse of people who are accommodated in residential institutions is a common phenomenon, and that the risk of abuse for people with mental disabilities increases from the moment of being placed in an institution. It is estimated that 82% of all cases of violence and neglect occur in residential institutions (Beker, Milošević, 2017: 644). The most alarming fact is that violence in institutions is often considered acceptable, which reinforces the "culture of institutional violence" that is becoming commonplace. Each residential institution creates its own specific culture of violence by isolating and intimidating the users, and exercising very poor control over the employees' conduct. It contributes to creating an environment where institutional violence and abuser are accepted as a common pattern of behaviour, which new employees in residential institutions are encouraged to practice. Therefore, the causes of violence in residential institutions should be sought in insufficient control of the employees' work which legitimizes various illegal behaviors, particularly taking into account the nature and manner of functioning of residential institutions, but also the employees' personal attitudes. Most residential institutions were created for the purpose of providing care and support to persons with disabilities. This approach is a consequence of the medical model (approach) to disability, which is treated as a disease that needs to be cured. In this process, persons with disabilities have the status of passive subjects whose status and rights are decided by the medical staff, rather than the service-users themselves.⁵ It should be emphasized that the very act of placing persons with disabilities in institutions against their will is an act of violence. It is also known that residential institutions provide the same services to all users. without due attention to individual user needs; thus, every detail of the users' life is subject to control, including the

⁵ Although this model has been replaced by the social model, where disability is treated as a consequence of the impact of social factors preventing persons with disabilities from participation in social life, the remnants of the medical model are still visible in residential institutions.

control and arrangements of their daily activities, as well as decision that users should make independently (e.g. the scope of control includes decisions about what users will eat, when they will eat, and how they will eat). As the lives of dependent service users are completely subject to scrutiny, they are deprived of the basic human rights. Thus, it is very easy for potential abusers to perform acts of violence in situations where a person does not have the right to privacy and emotional support, where employees have a legitimate right to violate one's privacy and enter his/her bedroom at any time, and where they have unrestricted access to their body. Another aspect of this problem has been highlighted by research showing that users of residential institutions feel that employees in institutions are much more important than them, and have a greater range of rights than they actually have. Instead of emphasizing the users' needs and insisting on the quality of provided services, the focus is primarily on ensuring employment in residential institutions. Thus, the institution exists for its own sake, rather than for the sake of its users, which largely affects the employees' perception in terms of neglecting the primary purpose of these institutions and their own role in the institutions. If employees in residential institution completely dehumanize people with mental disabilities and perceive them as objects incapable of understanding what is happening to them, it is clear why employees see their own conduct as wrong and completely unacceptable to people without disabilities living outside residential institutions (Beker, Milošević, 2017: 644-651). Preventing violence against persons with disabilities in institutions is a very complex task. In addition to detecting, prosecuting and punishing the perpetrators, prevention is a key factor in combating this form of crime.

5. INTEGRATIVE APPROACH TO VIOLENCE AGAINST PEOPLE WITH DISABILITIES

Violence is manifested in a specific social context, which also has its historical aspect. Some anthropological studies have shown that, in the period preceding the emergence of the state, the position of persons with disabilities was directly related to the interpretation of disability as a consequence of "being marked by supernatural powers". As such, people with disabilities enjoyed certain benefits stemming from common belief in magic cults. Due to their ability to communicate with the supernatural, they enjoyed certain reputation in society, regardless of their incapacity to participate in economic activities. In ancient times, the position of persons with disabilities deteriorated because disability was incompatible with the ancient ideal of beauty. The position of people with disabilities in the Middle Ages did not improve because disability was perceived as "a sin"; thus, contrary to the true essence of Christianity, "Christian charity" bypassed people with disabilities (Petrović, 2012: 866). The modern age has led to significant changes in the normative framework for the protection of persons with disabilities. Nowadays, anti-discrimination laws are in force in most countries worldwide. It implies that all categories of the population, regardless of their personal characteristics, deserve equal treatment before public authorities, both in public and private life. But, have these changes led to significant improvement in the position of people with disabilities and contributed to their protection from violence? Unfortunately, the answer to this question is negative. Although no extensive research has been conducted in Serbia on the phenomenological and etiological characteristics of violence against persons with disabilities, we can assume that the "dark number" of crime is substantial, and that detecting such cases and prosecuting perpetrators is a great challenge for all social actors. We believe that the best method for researching

violence against people with disabilities is the case study method.⁶ The study of this criminological phenomenon is an important task for all criminologists and victimologists in Serbia. The application of case analysis methods in Serbia will be possible when people with disabilities, who have experienced some form of violence, are empowered to seek help and protection in appropriate court and out-of-court proceedings. Keeping records on victims of crime may also enable state institutions to help them in a timely manner. The introduction of mandatory court records on all victims of crime would contribute to improving the position of victims and reducing the risk of secondary victimization.

What can be done to prevent violence against people with disabilities? Raising awareness of the entire society about the real and positive capacities of this category of people to contribute to the development of the community in which they live can be singled out as a measure of primary prevention. This should be a permanent task of the whole society, rather than an incidental project activity of an association of persons with disabilities. In cases where violence has already occurred, the response of the judicial system must be swift and timely. This is the only way to ensure legal security, not merely as a legal principle but also as the cornerstone for the application of legal norms.

6. CONCLUSION:

RECOMMENDATIONS FOR IMPROVING THE POSITION OF CRIME VICTIMS WITH DISABILITIES

Instead of concluding and summarizing the views expressed in the paper, we may offer some recommendations for protecting people with disabilities from violence and improving the position of crime victims with disabilities. In that context, we consider that it would be very useful to attend to in the following activities:

- 1) amend Article 54a of the Criminal Code by envisaging a special aggravating circumstance if the criminal offense has been committed out of hatred towards persons with disabilities;
- 2) improve court records on final judgments in terminated criminal proceedings, including relevant data on the victim (his/her social status and medical records); it would diminish the harmful consequences of the non-existence of a special state body that would be in charge of keeping a single record of all victims of crime, including those with disabilities;
- 3) provide continuous education for employees in residential institutions to recognize and adequately respond to institutional violence, and ensure adequate staff selection based on expertise; as an important measure against violence, these activities are aimed at providing protection to people with disabilities in residential institutions and ensuring relevant professional support to the beneficiaries which is incompatible with any act of violence;
- 4) encourage empirical research on violence against persons with disabilities, in order to reduce the "dark number" of this form of crime (the number of undetected cases);
- 5) empower persons with disabilities to recognize and report various forms of violence which they are exposed to (by organizing various forums, workshops, educational programs, providing free legal and psycho-social assistance and support).

⁶ Thus, special attention would be paid to each case of violence (i.e. each victim), and in-depth interviews would lead to identifying factors that enabled such acts of violence. A specific reason for choosing this approach is the sensitivity and vulnerability of people with disability, particularly considering the treatment they are exposed to in residential institutions.

These are some possible solutions for combating violence against people with disabilities, which is a separate criminal-law, criminological and sociological phenomenon. Cases of violence against persons with disabilities are most often part of domestic violence, but such cases also occur in residential (social protection) institutions. Violence leaves serious psychosocial consequences on every victim, but people with disabilities are particularly vulnerable because violence can deteriorate their health in some cases. Therefore, we urge for a more systematic scientific research on violence against persons with disabilities. The scientific research in this area and expertise of different professionals who work with persons with disabilities on a daily basis and for their benefit is essential for promoting the rights of persons with disabilities (Mirić, Vasiljević-Prodanović, 2018: 56). A comprehensive multidisciplinary approach to this problem can contribute to creating a supportive climate for combating violence against people with disabilities and empowering the vulnerable categories. The presented recommendations may motivate all social actors to actively contribute to the creation of a fair and desirable living environment for persons with disabilities. On the other hand, the recommended activities may empower people with disabilities and free them from fear of reporting violence. Therefore, the study of violence against persons with disabilities should be approached holistically. The criminological approach to violence against persons with disabilities enables to observe this phenomenon through the prism of causes and manifestations, whereas the sociological approach enables to observe this phenomenon in a broader social context. We believe that the criminological-sociological approach to violence against persons with disabilities is eclectic enough to ensure a comprehensive examination of all aspects of this problem and provide a solid basis for further research in this area.

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NASILJE NAD OSOBAMA SA INVALIDITETOM: KRIMINALITET “TAMNE BROJKE”

Osobe sa invaliditetom predstavljaju posebno vulnerabilnu grupu za viktimizaciju nasiljem. Ovaj rizik se povećava zbog prisutne zavisnosti od drugih članova porodice. Da bi se ova negativna pojava sagledala, pored kriminološkog, neophodan je i sociološki pristup problemu jer se nasilje ne dešava van društva i njegovih okvira. U radu će autori ukazati na „tamnu brojku“ kriminaliteta nasilja nad osobama sa invaliditetom (broj neprijavljenih slučajeva), dok će posebna pažnja biti posvećena nasilju nad osobama sa invaliditetom u rezidencijalnim ustanovama. Cilj rada jeste ukazivanje na moguće društvene odgovore na nasilje nad osobama sa invaliditetom i preporuke za njihovu prevenciju.

Ključne reči: *nasilje, osobe sa invaliditetom, viktimizacija, prevencija*