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Elderly People and Discrimination: Prevention and Reaction

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ELDERLY DEFENDANTS IN CRIMINAL PROCEEDINGS

Human rights norms do not provide for age as an obstacle to criminal prosecution or detention of elderly persons, and criminal prosecution and punishment of the elderly have the same goal of general and special prevention. Elderly persons must be treated in a manner consistent with human rights even when accused or convicted of criminal offences. These rights include non-discrimination, access to justice, fair trial, respect for dignity, humane treatment etc. According to the general rules of criminal procedure, the prosecutor's office and the courts should take into account age in the context of the presence of the defendant's procedural capacity for legitimatio ad causam and capacity for legitimatio ad processum, regardless of the criminal offense and the consequences during the entire procedure. It is necessary to establish adequate solutions and eventual special measures of support where necessary for victims of criminal acts and for elderly defendants, in order to properly and legally conduct criminal proceedings. This also requires the obligation of the criminal procedure authorities to have the necessary knowledge in order to enable elderly defendants to actively participate in the age and capabilities of the elderly.

Keywords: *elderly persons in criminal proceedings, special knowledge of procedural authorities about the elderly, adaptation of procedural rules to age.*

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Initial consideration

The science of criminal procedural law, legislation and jurisprudence still do not treat the issue of older persons in criminal proceedings separately. Increased interest in older people in other scientific disciplines is the result of socio-demographic and other changes in the modern world. Declining child mortality, increasing average life expectancy, and more means that older people are increasingly a regular category of the population whose numbers are increasing. This is a sign that the possibility of their appearing in criminal proceedings as witnesses, defendants, etc. is also increasing.

Human aging is a process, and old age is only the result of that process (Smiljanić, 1987: 17). Aging becomes visible after reaching maturity at 21, 23 or 25 years of age, and it is very individual to determine when an individual begins to be old. And regardless of whether it is 60, 65 or 70 years of life, in any case it is a period when signs of stagnation and regression appear in the biological, psychological and social plan (Hrnjica, 2005:155). But, as old age is not a disease, but a condition, appreciating the differences between people, we find that it is necessary to appreciate the consequences of physiological and pathological aging in people. This is especially so, because it is indisputable that older people appear as parties in court proceedings just like all other adult citizens.

Numerically, the number of elderly people in Serbia is increasing, and that is why the issue of not their status, but their position in criminal proceedings really deserves increased attention (Solarević and Pavlović, 2019:54). According to the results of the last census in Serbia, the share of persons aged 65 and over of the 6647003 total population increased from 17.4% (2011) to 22.1% (2022).¹

The rights of the elderly are defined, but not explicitly, in international human rights conventions that relate to economic, social, civil, cultural and political rights. The rights of the elderly are certainly protected in a general sense (the right to equal protection before the law, the right to own real estate, the right to education, the right to work, the right to participate in government and other rights guaranteed by the Constitution of the RS). Although the protection of human rights has been established in the domestic legal system and is implemented through positive legislation, we also accept the law, the so-called soft law, which provides guidelines for the relationship with the elderly, such as the UN Principles for the Elderly (1991), the Madrid International Action Plan on Aging (MIPPA) (UN, 2002), Regional Strategy for the Implementation of the Madrid International Plan of Action (RIS) (UN, 2002) and others.² Although not legally binding, they

¹ <https://www.stat.gov.rs/sr-latn/vesti/20230525-starost-i-pol/?a=0&s=1904>

² <https://www.redcross.org.rs/media/1672/jacanje-prava-starijih-serbian.pdf>

are considered strong recommendations. In all these documents, there is a common thread that emphasizes the special attitude towards this category of residents. This leads to the conclusion that one could talk about the right to old age as a special human right. If they were to take such a position, it would mean the recognition of a special relationship in the criminal proceedings that the elderly should enjoy. The elderly are only mentioned in the criminal proceedings in the category of particularly sensitive witnesses, but unlike the rights of the child, the right to old age is still was not recognized in the criminal court proceedings. Nevertheless, the psychological processes that occur with aging affect a person's ability to perceive, remember, think and communicate (Aćimović, 1987:205), which must then affect the relationship of authorized state bodies in the judicial and prosecutorial treatment of the elderly. , taking into account all their characteristics and possibly a different relationship during the trial in the criminal procedure, and even after it.

In our legislation, there are no criminal offenses against the elderly, nor special procedural rules that would apply to the elderly, so we conclude that there is no criminal offense against the elderly. In order for such a conclusion to be scientifically discussed, it would be necessary to record every case where an elderly person appears as the perpetrator or victim, which has not been the case so far. This is the only way to determine the level of protection and the extent of the rights of the elderly in criminal proceedings, and in procedural terms determine their status in the proceedings.

Some general notes about the elderly

Contemporary criminal law theory and legislative solutions have implemented several categories of defendants in criminal law today, namely minors, younger adults, as a transitional solution from juvenile to general criminal law, and adults. Younger adults in the criminal justice system are recognized as persons who are formally of legal age, and are more than 18 and less than 21 or at most up to 25 years old, and the rules of general criminal law apply to them. We interpret the special group of younger adults in the criminal justice system as referring to persons who are formally of legal age, but due to the recognition of the fact that the processes of social, psychological and even physical maturation do not formally end with the age of 18 and adulthood, this should automatically open the possibility of partial application of certain special rules of juvenile criminal law. And if we would like to avoid a possible polemic due to the expression, we will label these persons here as persons in age transition. If they were to mark them as matriculation not/mature, that would make this topic much wider.

The age transition of the still under-recognized category of participants in criminal proceedings - older persons, requires us to ask whether the processes and consequences of social, psychological and physical aging in adults require the opening of a discussion on whether these elderly persons should, regardless of whether 60, 65 or an even higher age is taken as the limit (Pavlović, Sančanin - 2021:89), to enable action and decision-making in criminal proceedings according to the rules of general criminal law, but according to a procedure adapted to their age.

The legislator in the Republic of Serbia has, without any doubt, recognized the need for minors and younger adults that judges and public prosecutors, who act in cases where minors and younger adults appear as subjects of the proceedings, must also have special knowledge and skills in their work with this group of persons in the age transition. But, in the case of elderly people, nothing special is said about it.

Until the legislation specifically deals with the requests of accused and convicted persons who fall into the category of elderly persons, it is up to the court to supervise assessments of the physical and mental health needs of elderly accused persons and prisoners and the adequacy of institutions for receiving such convicts, but that is already the second, penological topic. Prosecutions of older defendants may not always comply with victims' demands for punishment, but they must send a message of condemnation of the conduct, regardless of the defendant's age.

An elderly person - the defendant is obliged to participate in the criminal proceedings according to the rules prescribed by law. The procedure for determining the existence of guilt in the case of older defendants does not and cannot jeopardize the respect for justice. Restrictions on the human rights of participants in criminal proceedings are always determined in accordance with the law, regardless of the age of the defendant, and he must participate in the proceedings in the manner prescribed by law, we emphasize regardless of age if he meets the general procedural requirements for participation in the proceedings.

Some questions are open regarding the criminal acts of older defendants: what are the implications of the trial and punishment on the human rights of these defendants, what can such actions mean for the realization of justice, and more.

By reviewing the relevant scientific literature and positive legal regulations in the country and in the comparative legislation of Spain, Greece, the Russian Federation, Germany, France, etc., we can assert without a doubt that there are no norms that would exclude the trial or detention of elderly persons, regardless of their age. which criminal acts are charged to the defendants.

At the same time, according to the general rules of criminal procedure, courts should take into account age in the context of the existence of the defendant's capacity

for *legitimatio ad causam* and capacity for *legitimatio ad processum*, regardless of the criminal offense and the consequences during the entire procedure. What may accompany old age - such as mental incompetence or serious illness - requires human rights obligations to correct the pace and structure of trials, sentencing decisions, and conditions in penal institutions, if the sentence were custodial. It is indisputable that during the entire duration of the criminal proceedings, it is necessary for the older person - the defendant, to understand what the subject of the proceedings is, and to actively participate in the proceedings alone or with the help of a professional (defense counsel).

Procedural protection of victims of crimes, including the elderly, is already quite well resolved in our country, but also in most other countries with similar criminal law traditions and cultures (such as Croatia, Hungary, Romania, Slovenia), through various measures of institutional and non-institutional support for victims. and witnesses of criminal acts, regardless of their age.

Are there such high-quality solutions for older defendants, and to the extent that is necessary for the proper and legal conduct of criminal proceedings! The explanation of the position of accused elderly persons, i.e. persons in the (upper) age transition, and the consideration of their procedural position should be seen as a whole in criminal law, through special measures whenever necessary, during the duration of the criminal procedure, the decision-making process and the decision on punishment. If we compare it with the treatment of minors, who are a special category in court proceedings, here the situation in relation to the achieved legal standards of human rights is complicated. We claim this because in the law itself, apart from the obligation to monitor the procedural abilities of the defendants, there are no other obligations of the procedural authorities!

As gerontology has struggled to gain its right to citizenship in medicine, it is also necessary to work on the education of judges, prosecutors, and lawyers so that they can accept the challenges brought by age in correlation with criminal proceedings. At the same time, newspaper coverage of such cases is full of discriminatory announcements, which can influence public opinion, as well as the attitudes of professionals. That's why let's start by looking at the position and procedural possibilities of the accused elderly person.

Two examples and a few questions about them

In the famous film story HBO - The Wizard of Lies from 2017, it is about Bernie Madoff and his Ponzi scheme, so even though it is the biggest financial fraud in the USA, we will not analyze the Madoff case from the aspect of the criminal offense of fraud or money laundering and whether is about 15, 20 or 65 billion USD of damage that he caused

to individuals and companies from many countries of the world.³ In the film version, part of the plot is shown about how a large number of natural persons, companies and non-governmental organizations were defrauded over the course of several decades.

After Madoff admitted to his sons in 2008 that it was a fraudulent company and fraudulent investments, they reported him to the authorities. On June 29, 2009, defendant Bernard L. Madoff was sentenced to a term of imprisonment of 150 years.

Madoff has served approximately 10 years of his sentence. On February 5, 2020, Madoff filed a motion with the Court for a sentencing reduction pursuant to 18 U.S.C. § 3582 and the First Step Act. In a court filing Madoff's lawyer said the 81-year-old uses a wheelchair, often requires oxygen, and suffers from cardiovascular disease, hypertension, insomnia and other chronic and serious medical conditions. He is too old for a transplant and has been moved to the Federal medical center prison in Butner, North Carolina.⁴

At Madoff's sentencing in 2009, Judge D. Chin called his crimes extraordinarily evil. At least four people connected to Madoff, including his son Mark, killed themselves. "Madoff does not dispute the severity of his crimes, nor does he seek to minimize the suffering of his victims," his lawyer wrote in the filing. "Madoff humbly asks this court for a modicum of compassion."

Madoff is perhaps the most prominent federal prisoner to seek compassionate release under the First Step Act, a bipartisan law signed by Donald Trump in 2018 that lets some older prisoners end their sentences early, often for health reasons. Judge Chin invited about 520 victims of Madoff's fraud to testify at his request, and about 500 of them said they were against his early release. Among the victims who opposed the early release were Nobel laureate Elie Wiesel, producer Steven Spielberg and others. The competent public prosecutor also opposed this request and explained that he has such a position because it is a case of criminal acts unprecedented in terms of scope and size in the USA.

The court rejected the request of the convicted Madoff and in the explanation of the decision pointed out that the convicted never fully accepted responsibility for his criminal acts, although he pleaded guilty to all 11 counts of the indictment at the trial. What was important in this particular case was that the impaired health of a convicted elderly person was extremely unfortunate, but that compassionate release was not justified in the Madoff case.⁵ At the age of 82, convicted Madoff died in federal prison in April 2021, and regardless of age, illness and the circumstances that some of the victims

³ <https://www.imdb.com/title/tt1933667/>

⁴ <https://apnews.com/article/bernie-madoff-dead-9d9bd8065708384e0bf0c840bd1ae711>

⁵ <https://www.justice.gov/usao-sdny/programs/victim-witness-services/united-states-v-bernard-l-madoff-and-related-cases>

received compensation, he still did not receive parole.⁶ The defendant's age was not taken into account either when sentencing, or when deciding upon the convict's request for parole.

Another example and a case whose consequences cannot be compared with criminal offenses in the field of economic and financial crime refers to a criminal offense against sexual freedom, committed by an accused over 80 years old in Novi Sad.⁷

The victim of this crime was an 8-year-old boy, so he was mentioned in the reporting as a child born in 2012, and the defendant as M.J., 82 years old. The indictment of the Higher Public Prosecutor's Office in Novi Sad charged the defendant that on May 7. In 2020, in Novi Sad, on the Šodroš beach, in order to satisfy his sexual urge, he forced the victim to sexually satisfy him by force and threat, with the threat to the boy that he would throw him into the Danube if he did not agree. The victim gave his statement from the screen room, fully in accordance with the rules of procedure and the Law on juvenile perpetrators and victims of criminal acts. This type of threats by elderly persons is otherwise very common in this type of criminal offense⁸ (Petković, Pavlović 2022: 344).

During the trial, the defendant was in custody and was brought to the court building in a wheelchair, in which he was also in the courtroom. By the first-instance verdict of the High Court in Novi Sad from October 20, 2022, he was sentenced to life imprisonment for the criminal offense of rape. Since the public was excluded, we do not know how the questions were asked to the defendant and how he was explained what was happening in procedure. Did he understand that! These are very delicate questions that open up a whole host of other dilemmas. The Appellate Court in Novi Sad, after the session of the panel held following the appeal of the defendant's counsel, on March 20, 2023, issued a verdict in which it overturned the verdict of the High Court in Novi Sad and sentenced the defendant (85 years old) to a prison sentence of 20 years, which includes time spent in detention.⁹ Looking only at the sentencing decision, the question arises as to whether courts should treat older offenders more leniently than younger criminals, because they have less time left to live and because their physical frailty might make it harder for them to survive prison time. punishment

⁶ <https://www.politika.rs/scc/clanak/477052/Ummo-Berni-Medof-mozak-jedne-od-najvecih-finansijskih-prevara-u-istoriji>

⁷ <https://time.rs/c/19389aad4d/bruka-i-sramota-sudija-mitric-osudio-silovatelja-decaka-na-dozivotnu-robiju-apelacioni-sud-to-oborio-i-castio-ga-malom-kaznom.html>

⁸ <https://www.blic.rs/vesti/hronika/starac-zbog-silovanja-osmogodisnjaka-umesto-dozivotno-provesce-20-godina-u-zatvoru/cyx0rmr>

⁹ <https://www.novosti.rs/hronika/sudjenja/1229696/umesto-dozivotne-20-godina-robije-silovanje-decaka-apelacioni-sud-preinacio-kaznu-novosadjaninu-84>

What connects both of these cases is the age of the defendants, because both are over 80 years old and in poor health at the time of the court decision on their rights and responsibilities. Whether age should have elements of mitigating circumstances for sentencing is not the subject of this paper, but the procedural position and treatment of the defendants could be taken into account, and whether it should be considered for all older defendants, or it must be determined on a case-by-case basis, that's a question we'll try to answer further. This answer also depends on how the human rights of the elderly are respected in court proceedings, considering the fact of their age, as well as all other rights that belong to them, regardless of the gravity and type of criminal offense they are accused of.

But, in answering this question, let's start in order.

Between old age and justice

Age does not protect anyone from accusations, but it does provide a unique context that must be carefully considered in the pursuit of justice. Defendants and witnesses who have entered the category of elderly persons have the obligation to participate in the criminal proceedings, like all other participants. This means that the court must enable them to participate in a fair and legal procedure, which implies that fairness and the humane dimension of old age (Solarević, Pavlović - 2018: 55) can only be achieved through fair conduct of the procedure, with all the peculiarities of this category of subjects who are there in certain process roles.

Criminal law with procedural rules of procedure has not yet systematically dealt with the connection between age and justice, in the context of the existence of a relationship that would call into question the prosecution, handling and punishment of older perpetrators of criminal acts. In the field of criminal law, there are very few scientific works devoted to the elderly, who can very often appear as accused of various criminal acts. There is no doubt that there is a need to clarify the human rights limitations inherent in the trial and punishment of older criminal defendants. At the same time, there is no international human rights norm that excludes the trial and even imprisonment of elderly defendants based solely on age, regardless of the criminal offense charged against them. The court is not forbidden to take into account the age of the defendant, the issue of the sentence and the conditions related to the execution of the sentence, regardless of what and what kind of criminal offense it is. Therefore, questions of procedural capacity are questions for the court, but they mean that the court constantly takes into account, *ex officio*, the possibilities of the defendant to participate in the proceedings. A certain analogy between the protection of the rights of elderly witnesses on the one hand, and the

protection of the rights of the elderly defendant on the other hand must exist. Additions of age that accompany us, such as serious illness or other incompetencies, imply the court's decisions starting from the pace of the trial, all the way to the suspension of the trial, the decision on the sentence and or something else. All this can lead to a deviation from the general rules in the criminal procedure, which has been resolved so far only in the case of witnesses of criminal acts and victims, if they fall into the category of especially sensitive witnesses. The question is whether this could, to a certain extent, also apply to the elderly in the status of defendants. Not in relation to privileges, but in relation to the way they are treated, with respect for legal rules and issues of fairness. Certain specialization is also necessary for such work. So far, this has proven to be very successful in the work for juvenile offenders and juvenile victims of criminal offenses, where prosecutors and judges for juveniles must undergo the necessary training in working with particularly sensitive participants in the proceedings, regardless of their role in the proceedings. It is time to find and foresee a different solution to this type of special knowledge in working with elderly persons in criminal proceedings compared to the current situation.

Peculiarities of procedural rules related to the testimony of elderly persons

Examining old persons as an evidentiary act, that is, testifying in criminal proceedings, can be very specific. Persons in the age transition certainly fall into the category of particularly sensitive witnesses. It is clear that for the realization of the evidentiary act of questioning elderly persons as witnesses, it is not enough only to know the legal provisions, nor criminal tactical skills, but also special knowledge in psychology and gerontology. This is possible only if the authority leading the procedure has adopted and acquired that special knowledge. Additional protection of the elderly implies a different way of questioning and a different relationship in general in criminal proceedings. The act of testifying cannot be successful unless this protection is achieved. We believe that it is possible to achieve the desired result even before changing the relevant parts of the procedural legislation, but the reform itself is urgent.

Elderly persons have individually different psychological functions that are related to the event from the past in relation to their interpretation at the time of conducting the procedure (Brkić, 2012:195). But this cannot exclude them from testifying, because there are great individual differences in old people. This means that they should be checked by the authority conducting the procedure to see how well their senses are pre-

served. This does not automatically mean their expert examination by psychological expertise, but only the assessment of the potential of the witness as an elderly person, how capable he is of credible testimony. This means that in the case of psychological expertise, it should only be determined whether the elderly person was capable of certain perception, but the assessment of whether the witness perceived something is up to the body conducting the criminal proceedings.

Elderly persons, as well as children, have the legal possibility to give their testimony in a privileged form, in relation to other witnesses. The elderly can be a particularly sensitive category for many reasons, starting with age greater than 60 or more, but also due to health status, gender, life experience, education and more. Sensitivity can also be the result of circumstances related to a specific criminal offense, where the consequences, regardless of the status in the proceedings, can affect the victim - the witness, as well as the perpetrator. Let us cite as an example the criminal offense of domestic violence, where both participants are elderly, there are close family relationships between all participants in the proceedings, etc. Such a solution from the Code of Criminal Procedure¹⁰ was previously recognized as such in practice, but now it is additionally envisaged as the possibility and designation of a representative (lawyer) for the victim of a criminal offense. With this kind of protection, the legislator wanted to reduce the secondary victimization of the elderly to the smallest possible extent (Pavlović 2019:175). Observing things through the rules of procedural formalism, the procedural authority determines the status of a particularly sensitive witness to the victim (it can be both the prosecutor and the court), and the relationship that the victim witness has with the defendant is determined. The witness, here an older person, must be explained the role and importance of the testimony, how to properly behave before the authority of the procedure, and what are the rights and obligations of the witness before the state authority conducting the proceedings in connection with the criminal offense. The witness, like all witnesses, is warned that he is obliged to tell the truth, what are the consequences in case of giving a false testimony - that it constitutes a criminal offense, that he is obliged to take an oath, and that he must inform the authority of the procedure about any change of address. Practically, all the lessons that are normally given, are also given to a particularly sensitive witness.

Although the witness can give his testimony before the main trial, but also after the start of the main trial, the witness statement he gives integrally can be checked by the other side, through cross-examination, or by asking one or more additional questions. The questions asked in this way should not be such as to mislead the witness, nor should they

¹⁰ Art 103 Code of Criminal Procedure, Official Gazette RS No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - Decision of Constitutional Court of Serba No 62/2021

be capricious. (confusing). The general rules on the prohibition of coercion apply to all witnesses, as well as all other rules.

The possibility that an elderly witness can be questioned outside the main trial when he is unable to attend the main trial due to illness or other justified reasons (Article 357 of the Criminal Code), refers to the stage of preparing the main trial. This rule also applies when it is known at the main trial that the witness cannot attend the main trial for the same reasons (Article 404/1 of the CPC), that is, when his arrival is significantly difficult (Article 404/1 of the CPC).

These general rules in the procedure are also linked to the rules on the testimony of particularly sensitive witnesses, in this case elderly persons (Article 98 paragraph 1, Article 400 paragraph 1 of the CPC). Even if they do not have visible indicators of fear or insecurity, if there is no external or real danger from the defendant or a third party, persons in age transition should have special treatment in the process of giving a statement. What is currently missing in the Criminal Procedure Code, apart from what has already been stated, is the existence of protection measures that would refer not only to the immediate duration of the criminal procedure, but also before and after this period.

The question is, in whose jurisdiction would it be according to positive legal regulations: in adversarial criminal proceedings, the only answer would be derived indirectly, that it is the obligation of the prosecutor in whose jurisdiction the proceedings are located. However, bearing in mind the fact that this is not directly stated in the Code of Criminal Procedure, the protection of elderly persons as victims and witnesses could be reduced to non-governmental organizations, which certainly does not have adequate importance in criminal proceedings. The danger to the elderly witness, be it of an objective or subjective nature and in connection with the giving of testimony, must be removed from the victim, and this must be the responsibility of the state authority. This refers to the exclusive competence of state authorities.

Assigning a proxy to an elderly witness is already a legal standard that must be respected, but the protection procedure must have its own schedule as long as special protection and treatment towards the witness or the victim is needed. In appointing a proxy, the procedural authority must cooperate with the competent bar association and that the proxy for such witnesses is determined in accordance with the rules provided by the acts of the Bar Association.

The consequences of the pandemic caused by the covid19 virus have led to the examination of witnesses “at a distance”, through technical means for image and sound transmission, but the current solutions are still not satisfactory. The question is, to what extent it is possible to apply them in situations where elderly persons appear as witnesses. Especially sensitive witnesses cannot be confronted with the defendant, except when the

defendant's defense insists, and the procedural authority must allow it, taking into account the sensitivity of the elderly person on the one hand, and on the other hand, the rights of the defense must be taken into account.

If we were to turn things around in relation to the status of an elderly person, and if we were to observe the procedural relationship of the authorities leading the proceedings towards the elderly defendant, we are of the opinion that most of these specificities in the criminal procedure should also be applied to elderly defendants. All this, of course, with the aim of fair treatment, but also to protect the right of defense. But that would be another topic now.

If they were to consider an elderly person as a defendant, and if he is in a special relationship with the witness-victim, then the authorities conducting the criminal proceedings should also, and in the interest of justice and fair proceedings, require different treatment. Here we are referring to older defendants who live with the victim in a marriage, common-law or other union, if they are relatives and the like. The question is *pro futuro* whether there are special factors that the court should take into account when conducting the proceedings. To be specific, this would primarily refer to criminal acts with elements of violence, and especially to the criminal act of domestic violence. Elderly people can be charged with this crime under different circumstances. It does not have to be just a misunderstanding, but also a false accusation, although real crimes also occur. Based on the reviewed annual reports of the Provincial Ombudsman of Vojvodina for the period 2016-2022,¹¹ it is obvious that there is a problem of domestic violence where older persons appear as victims as well as perpetrators.

Thus, when it comes to caring for an elderly family member, it can result in threats (endangering safety), arguments and conflicts, resulting in accusations of domestic violence. Likewise, problems with cognitive decline or dementia in the elderly can lead to aggressive behavior, which family members interpret as intentional abuse. We notice that in order to resolve property matters between spouses, there is often a hidden motive of a financial nature, which then results in the filing of a report for domestic violence.

The potential implications for elderly defendants from such and similar situations are numerous, so the court would have to have a balanced view on all of this when conducting criminal proceedings. This means that even by conducting such a procedure, the quality of the elderly person as a defendant could be adversely affected in advance because he is victimized as a defendant. In order to reduce this to the smallest possible extent, we believe that the rule of mandatory defense of elderly persons in cases of do-

¹¹ <https://www.ombudsmanapv.org/ombapv/sr/izvestaji.php>

mestic violence should be introduced, regardless of the severity of the threatened punishment. Navigating the legal maze for an elderly person as a defendant is not easy. When determining guilt or innocence, the court will take into account the position of the defendant in the age transition during the proceedings. This means that they will take care of the mental capacity and physical health of the accused elderly person.

This does not mean that the defendant's age and age provide protection from criminal prosecution and a possible conviction, but rather require a professional and careful attitude towards the elderly in the process of determining justice.

Instead of a conclusion

The increase in the average length of a person's life, and the processes of age transition and everything that it entails, regardless of whether we mark the beginning of old age with 60, 65 or some older year of life, bring an increasing possibility that older people will appear as subjects in criminal proceedings, either as defendants, or as witnesses or victims of a criminal act. The characteristics of the elderly should therefore be respected during the entire procedure, regardless of their status and position, if they meet the general procedural requirements to be able to participate in the procedure. That is why it is necessary for judges and prosecutors who act in criminal matters to study the basic psychophysical characteristics of the elderly. Although this subject has not been specifically written about in the professional literature so far, there is no doubt that in order to conduct a fair procedure and make a legal (Stanila L., 2018:138) and correct decision, rules must be established that would be applied when it comes to on older persons in criminal proceedings, similar to the special rules that apply to children and younger adults, as a specific category also of persons in age transition.

This problem from the aspect of criminal procedure norms is not completely solved by granting the status of particularly sensitive witnesses to elderly persons, because it is necessary to take into account the rights of elderly persons as defendants. Current problems at the moment with the aforementioned procedural solutions can be partially solved by appointing a representative or a defense attorney, but that is not enough. In each specific case, the court or the prosecutor's office must determine measures to ensure equal treatment of all subjects (elderly persons). This is especially so, as it is possible to find a considerable number of elderly people who are very active and productive even in their eighth or ninth decade of life, but also those who are inactive or unproductive even before their 65th year.

The legal invisibility of the described problem - the formal procedural position of older persons in criminal proceedings - does not mean that in the future it should not

be taken into account much more, all with the aim of realizing the principle of fairness and the ideal of justice.

Only by singling out older persons in criminal proceedings in relation to the way of proceeding will we be able to achieve the desired results with the necessary specializations. In this way, we will be more certain, in accordance with the principle of legality, what to do with an elderly convict who is in the terminal phase of the disease or with an elderly accused for whom it was not certain whether and to what extent the treatment procedure was adapted to his age. This does not mean amnesty or pardon or exculpation from guilt, but only the realization of the principle of legality in its entirety.

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