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“Towards a Better Future:  
Human rights, Organized crime and Digital society”

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## PREFACE

*As Dean of the Faculty of Law at “St. Kliment Ohridski” University in Bitola, I must emphasize that it is a special honor and pleasure that finally came to the realization of the third international scientific conference organized by our faculty, as an opportunity for our affirmation in the international arena, for establishing contacts with our colleagues from home and abroad, contacts with various higher education and research institutions, as well as making a serious contribution to the scientific thought both in the Republic of North Macedonia and in wider context, especially in the time of coronavirus pandemic. This is also reflected by the high interest shown both by home and foreign authors and participants, who applied for participation in our conference, as evidenced by the submitted articles. The choice of the main topic for our third international scientific conference was made carefully, thereby taking into account all internal and international developments in the legal and socio - political processes, by precisely locating the basic postulates of the organized crime in the contemporary democratic political systems constituted upon the human rights and freedoms in the new era of artificial intelligence.*

*In the year when the European convention on human rights celebrates 70 years since its signing, unfortunately despite the development and modern evolution in every aspect of social life, we have to be constantly reminded of equality and the connection of human rights with all human beings, regardless of their collective or individual characteristics. Or as the famous Europeanist and author Alexandre Marc emphasized: “Human rights are the very crux of what we are doing. They are neither the dessert nor the starter, but the basis, the foundation and the keystone of everything that we want to do”.*

*At the same time, organized crime is one of the hotspots of human development, primarily of the technical and technological evolution. The positive effects of the changes on daily life through open borders, the free flow of people and goods, organized crime groups have skillfully turned into relief for their illicit activities. On the other hand, some criminal groups use the inclusion of public office holders in their ranks; have embedded themselves in the social structure which prevents radical change for the better.*

*The modern society is associated with the constant flow and acceptance of information and communication technologies at home, in the workplace, in the process of education, even in recreational activities. The development of digital technologies has not only challenged the protection of individuals’ fundamental rights such as freedom of expression and data protection. Even more importantly, this new technological framework has also empowered transnational corporations operating in the digital environment as hosting providers to perform quasi-public functions in the transnational context.*

*Finally, I must express my deep gratitude to the Organizational Committee members who worked tirelessly in the direction of successful realization of our third international scientific conference, and all those well-wishers who understood the significance of this project both as an advantage for our faculty and as an investment in the global scientific thought.*



*Let this conference be the continuing of the path that we started to trace together with a single purpose – **Towards a better future!***

*Dean of the Faculty of Law – Kicevo  
Assoc. Prof. Dr.sc. **Goran Ilik**  
Bitola, 2020*

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## CORRUPTION IN ADMINISTRATION

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### Abstract

Corruption is a threat to the basic rights and freedoms of citizens guaranteed by the Constitution and international documents, but above all by the Universal Declaration of Rights and Freedoms of Citizens. Corruption occurs in a sophisticated way that leads to difficult detection. Corruption is therefore a very complicated problem that requires countries to build better and more efficient instruments to prevent it. The main purpose of the paper is to detect the corruption phenomenon in the Macedonian public administration. At the same time, this research was conducted in order to obtain data about the level of information of citizens, officials and lawyers about corruption in the administration. It should be noted that this paper also conducted its own research on the citizens' perception of corruption in the Republic of Macedonia. The main methods which will be used in this research are induction and deduction method, descriptive method, comparative method and content analysis method. The conclusions which will be drawn from the research analysis will be pointed not only to the detection of the perception and attitudes towards corruption in Macedonian public administration, but also to giving some opinions and suggestions for improvement.

**Keywords:** corruption, administration, citizens, criminal, law, offenses, code

### INTRODUCTION

Corruption is often portrayed in the international community as a vulnerable area in EU countries, but even more worrying is the situation in countries outside the Union. There is neither a social group that is resistant to bribery nor a social group that is excluded from being a victim of corruption.

Corruption means the exercise of office, public authority, official position and position for the benefit of any self or other.<sup>1</sup> Corruption remains a problem for all countries around the world. Corruption is an evil that no country can exclude, but of course the level of corruption is different in every country as the measures and the fight against corruption are different. In essence, corruption is perceived as a

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<sup>1</sup> LAW ON PREVENTION OF CORRUPTION - WARNING TEXT "Official Gazette of the Republic of Macedonia" no. 28/02, 46/04, 126/06, Constitutional Court Decision of 10.01.2007, 10/08, and 161/08) - Article 1a p.2

problem facing every country after poverty, unemployment and a low standard of living.

Corruption has many detrimental effects on society. It endangers the quality of life, and can also cause serious crime and threats to the safety of the entire social community. Every fight against corruption is not a simple process, but rather complex and complex, which requires a great deal of engagement of the whole society and initiative at all levels. Every individual has a legal and moral obligation to fight corruption. This means reporting corruption cases as well as recognizing them, but also refraining from corrupt practices.

In a broad sense, corruption is defined as the abuse of office for private purposes. When there is corruption, the exercise of public authority assumes the character of providing certain services only to those citizens who can pay for it or perform other services for the benefit of the service provider. An individual who is corruptly abuses his or her position and obtains material or immaterial benefits, which may be intended for him or for others, thereby making them illegally gain, while making others difficult to attain the right that follows. There can be no corrupt behavior if there is no violation of the public interest, regardless of the fact that such conduct is contrary to the law.<sup>2</sup>

The UN Convention against Corruption emphasizes citizens' participation in the decision-making process and also requires countries to promote the active participation of individuals or groups outside the public sector such as the civil sector.

Only the responsible government can guarantee the rule of law. Public officials are required to exercise their powers legally, professionally, impartially, responsibly and transparently. This will require them to account for their work and the purposeful and rational spending of public funds.

The UN Convention against Corruption emphasizes citizens' participation in the decision-making process and also requires countries to promote the active participation of individuals or groups outside the public sector such as the civil sector. Only the responsible government can guarantee the rule of law. Public officials are required to exercise their powers legally, professionally, impartially, responsibly and transparently. That will require them to account for their work and the purposeful and rational spending of public funds.

Public servants are also obliged to avoid conflicts of interest, but when such a situation arises, officials should report it to their superiors, and at the same time request an exemption from participation when making a decision.

They may not even receive gifts, services, etc., which may influence their decision on certain matters. Corruption is essentially a threat to the basic rights and freedoms of citizens guaranteed by the Constitution and by international documents, primarily the Universal Declaration of Citizens' Rights and Freedoms and the European Declaration of Citizens' Rights and Fundamental Freedoms. Corruption is a complicated problem that requires countries and the international community to build better and more efficient methods of combating it.

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<sup>2</sup> Gardiner J., *Defining Corruption*, 1993.

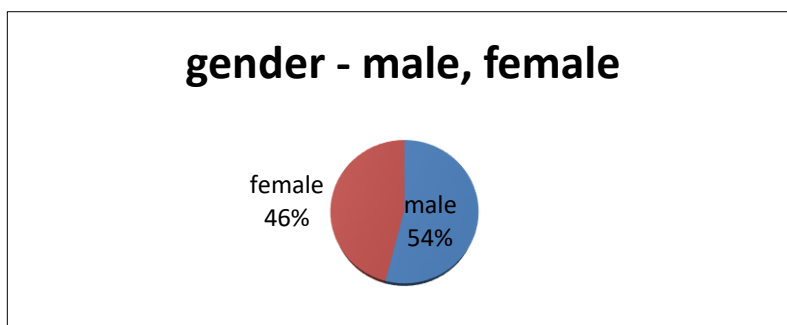
## **ADMINISTRATIVE AFFAIRS AND ADMINISTRATIVE STAFF**

Administrative matters are professional-administrative, normative-legal, executive, statistical, administrative-supervisory, planning, information, personnel, material, financial, accounting, informational and other administrative matters.<sup>3</sup> Those officials who perform executive and administrative duties or duties shall enjoy the status of administrative officers.

An administrative officer is a person who has been employed for the purpose of performing administrative duties in any of the following institutions: - state and local government bodies and other state bodies established in accordance with the Constitution and by law; and - institutions carrying out activities in the field of education, science, health, culture, labor, social and child protection, sports, and other public interest activities established by law, organized as agencies, funds, public institutions and public enterprises established by The Republic of Macedonia or the municipalities, the City of Skopje, as well as the municipalities in the City of Skopje.<sup>4</sup>

## **SETTING THE PROBLEM**

In the Republic of Macedonia there is a large number of papers that treat corruption as a negative phenomenon in the country itself. In this regard, a survey was conducted on the territory of the Pelagonija region, namely the municipalities of Demir Hisar, Bitola, Prilep, Krusevo, Resen and Novaci, where 50 citizens were selected randomly and of different age and status. To get information about whether there is corruption in the administration, how much the citizens are aware of it, whether they are taking any measures to suppress it and the like.

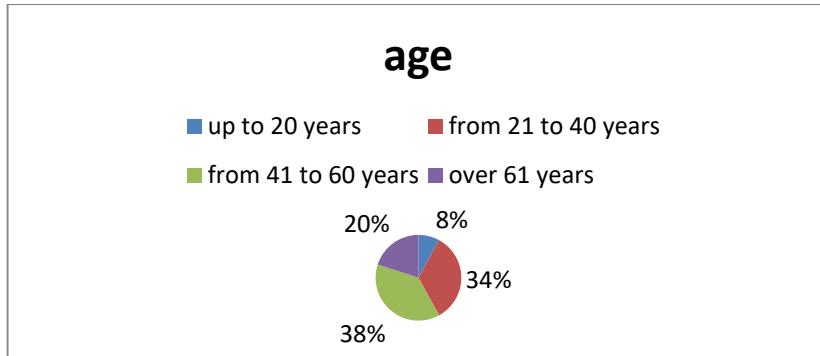


From the article presented in the pie, we can see that out of the total number of respondents in the survey, 54% of the respondents were male and 46% were female.

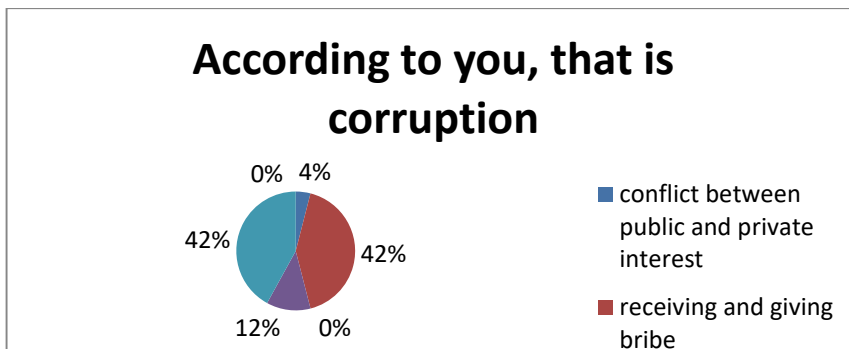
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<sup>3</sup> LAW ON ADMINISTRATIVE OFFICERS Article 2

<sup>4</sup> LAW ON ADMINISTRATIVE OFFICERS Article 3



Respondents were surveyed and according to their age, represented and converted in percentage, the majority of respondents were aged 41 to 60 years, and 38% responded, 21% to 40%, and 34%, respectively. 61% 20%, and the smallest number of respondents were up to 20 years old, that is 8%. All this followed in Graph – pie.



When asked what is corruption, most of the respondents answered that corruption is acceptance and bribery, 42% of the surveyed respondents, 12% of the respondents answered that corruption is abuse of power, 4% of the respondents believed that corruption is a conflict between the public and the public. and the private interest, and 42% of respondents responded that corruption consists of a conflict between the public and private interest, accepting and giving bribe, nepotism, abuse of office. It can be concluded that the citizens actually have a perception of all the questions offered, but still the majority of surveyed citizens think that corruption means accepting and giving a bribe. But also a large proportion of respondents believe that corruption involves abuse of power, which is certainly a worrisome phenomenon in a democratic society.

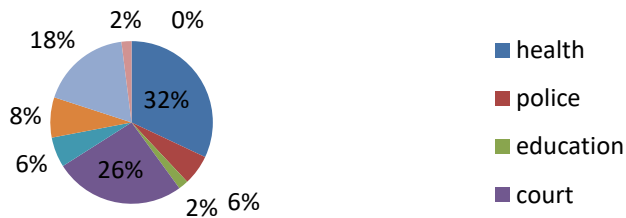
Have you ever been at risk of corruption? Two answers were offered and respondents were able to answer yes or no, and 56% of the surveyed said that they were not in a corruption situation and the remaining 44% responded that they were in a situation of being exposed to corruption.

## According to you, what is the level of corruption in Macedonia?



From the result obtained on the question What is the level of corruption in R. Macedonia? Macedonia can conclude that there is a large percentage of respondents ie citizens who believe that the level of corruption is very high, which is certainly a worrying fact that in the future the entire society, especially the people in charge of suppressing corruption, will increase their awareness. of course, through appropriate programs and activities, so that the system can successfully cope with the large-scale undesirable phenomenon in order to endanger the vital and strategic values of society.

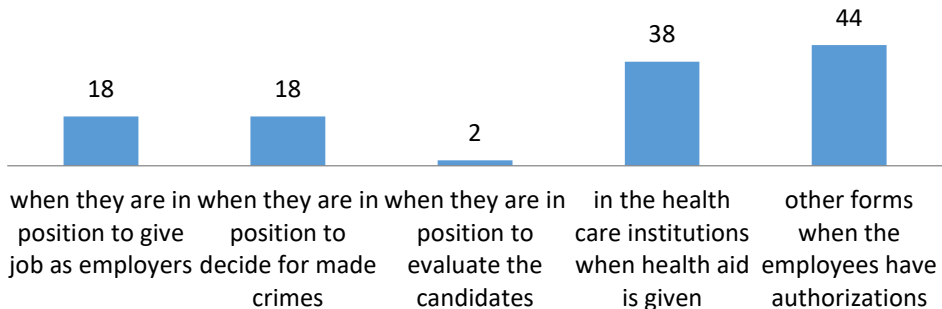
## According to you, in what parts of society is corruption most likely?



The high percentage of citizens' perception that corruption is most prevalent in healthcare would certainly make sense to ask whether corruption is most embedded in the areas where people are most concerned, most frightened, and of course, health problems. But also the judicial system with a high percentage of corruption among the citizens surveyed is worrying because justice as a need of society is more than necessary.



## According to you, when public sector employees are subject to corruption



Analyzing the question of when public sector employees are susceptible to corruption, the result found that as many as 44% of respondents who believe that most public sector employees are vulnerable to corruption show that the power expressed in an individual's competencies through powers is conferred as greatest opportunity for corrupt activities.

When asked whether proving corruption is a difficult process 84% of the respondents gave a positive answer i.e. they thought that proving corruption is a difficult process, and 16% gave a negative answer and thought it was easy to prove corruption.

### CONCLUSION

According to the findings of this research, it can be concluded that corruption poses a serious threat to every society and even to ours due to the long duration of transition, slow socio-economic changes and obstacles to international integration, whether they are economic or political, the social situation in a society in which a smaller group is differentiated as wealthy as opposed to the majority of citizens who are unemployed, socially insufficient and the overall situation in society with disruptions democratic processes contribute to numerous forms of corruption. A large number of indicators indicate that the code of conduct is also disrupted for reasons that appear to be acceptable and normal in society to receive worship for the gratitude for work done and other attention given to citizens without caring for the code. of behavior. Overcrowding in public administration The crises that our society has and the stability of public sector work lead to a longing for public administration jobs, whereby people in this situation rely on their knowledge and relationships outside the prescribed procedures. According to the above we consider that there is a major problem for which we make the following recommendations: Valuation of work experience, certified activities, education, greater transparency in the publication of job advertisements, reform of the employment procedure, appropriate complaints procedures being made public and easily accessible to all , communication with candidates applying for a job announcement, etc. The overall analysis points to a problem that our society faces, and for that we give the

recommendations that we believe would be raised if implemented and at least to some extent solved by partisanship and politicization in the procedures implemented employment, as well as the abuse of power that is exercised for personal needs that certainly affect the administration as well as the overall situation in society. And as a conclusion of this paper, we believe that it is necessary, for the start, to increase transparency in the employment processes first at the local level by involving all relevant stakeholders.

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## **CORRELATION BETWEEN UNEMPLOYMENT RATE AND PROPERTY CRIME RATE IN THE REPUBLIC OF NORTH MACEDONIA FROM 2014–2018**

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### **Abstract**

Property crimes are the most often committed crimes in the Republic of North Macedonia. The reasons of committing these crimes are mostly to gain some benefit, avoid paying something, illegally earn money etc. Having this in mind, it is reasonable to consider that some people may be encouraged to break the law by finding illegal ways of making money, if they cannot find another source of income. In no way that can be justified, but it can be examined as a possibility of having a correlation. The purpose of this study was to find if there is a significant correlation between the unemployment rate in the Republic of North Macedonia and property crimes rate in the period of five continuous years starting from 2014 until 2018. The results of the study are gotten using a comparison method and by calculating and analyzing statistical data for unemployment rate and property crimes rate. Having these results is not only of great value for understanding the possible reasons of property crimes offenders, but may also contribute to many other researches in this subject either as an idea or as a source to professionals and researchers in the fields of criminology, law and economics.

**Keywords:** property crimes rate, unemployment rate, poverty.

## **INTRODUCTION**

Crimes against property are in fact breaking of constitutional ownership rights and other property rights and they are one of the most often committed crimes in the Republic of North Macedonia. These types of crimes are theft, burglary, unauthorized connection to electric energy source, heat energy or natural gas, evasion, damaging of other people's rights or property, unlawful building, fraud, computer fraud, damaging and unauthorized braking into computer system, embezzlement, extortion, blackmail, usury, concealment etc. Almost all have one thing in common and that is the benefit of it which is usually financial. These types of crimes are mostly made so the offenders can gain financial benefit illegally. Having this in mind, a question pops up: "Why would anyone risk by breaking the law to make money?" There are certainly more answers to this question, but one of the possible answers may lay down in the effect of the poverty of the people and inability to find a legal job, a certain way of monthly income. Unemployment is a serious problem of many countries in the world. An unemployment rate and crimes rate may be linked tightly because it is reasonable to think that when people have a legal way of income it is less probably that they will become a crime offenders. The focus of this research is exactly on that. Researching through the rates for committed crimes against property in the continuous five years of period starting from 2014 to 2018 on the territory of the Republic of North Macedonia and the unemployment rate for the same period on the same territory, it is gotten to results which can bring one of the answers to the above question and that answer is confirmed by statistical calculations.

## **CRIMES AGAINST PROPERTY IN THE REPUBLIC OF NORTH MACEDONIA**

Property right is a constitutionally guaranteed right of every individual in the entire world. On international level, in order to establish a protection of the right to property on the 20<sup>th</sup> of March 1952 in Paris, by the signatory governments-members of the Council of Europe, was signed the Additional Protocol to the Convention for Protection of the human rights and fundamental freedoms. In Article 1 in this Protocol a general rule is established for everyone to peacefully enjoy its own possessions. A term possession here covers the rights of belongings, welfare benefits, patents, shares, leases, licenses etc.

In the Constitution of The Republic of North Macedonia (RNM) with Article 8 are set the fundamental values of the constitutional order and among them the legal protection of property is listed. This right is guaranteed with the Article 30 of the Constitution of RNM where it stands that the property rights and the rights which derives from the property cannot be taken or limited to no one, unless if it is about public interest determined by law. With Article 26 of the Constitution it is guaranteed the inviolability of the home. Article 31 of the Constitution guarantees that a foreign person can have a property right in RNM by conditions set by law.

In RNM, acts against property are incriminated in the Criminal Code under the Chapter 23 starting with theft, unauthorized connection to electric energy source, heat energy or natural gas, robbery, banditry, evasion, self service, taking other people's items, motor vehicles, damaging of other people's rights or property,

unlawful building, damaging residential or office buildings, unlawful moving in, fraud, deceiving customers, deceiving for credit approval or other convenience, deceiving to the detriment of the European Community assets, insurance fraud, damaging and unauthorized braking into computer system, making and putting computer viruses, computer fraud, abuse of trust, unauthorized receiving gifts, unauthorized giving gifts, intentionally causing bankruptcy, causing bankruptcy by reckless work, abuse of the bankruptcy procedure, damaging creditors, extortion, blackmail, usury and concealment.

### **STATISTICAL DATA FOR CRIMES AGAINST PROPERTY AND UNEMPLOYMENT IN THE REPUBLIC OF NORTH MACEDONIA**

In order to make comparison between the number of committed crimes against property and the number of unemployment in RNM, a data was collected for the period of 2014, 2015, 2016, 2017 and 2018. These data was collected from the National Statistics Department of RNM using their internet web site: makstat.stat.gov.mk. About crimes against property data, collected data was about reported cases for these types of crimes in all forms predicted in the Criminal Code as crimes against property (theft, burglary, unauthorized connection to electric energy source, heat energy or natural gas, evasion, damaging of other people's rights or property etc). Same source was used for data about total population number, number of unemployed population and data for population that is able to work.

Data analyses were performed using MedCalc Statistical Software version 19.1.3 (MedCalc Software bv, Ostend, Belgium; <https://www.medcalc.org>; 2019). The results were presented as mean and percentages (%). The Pearson product-moment correlation coefficient ( $r$ ) and coefficients of determination  $R^2$  were used to measure the linear correlation between two variables ( $x$  and  $y$ ). The null hypotheses for the relationship between two variables were set by the Chi-Square test.

### **STATISTICAL DATA FOR CRIMES AGAINST PROPERTY IN THE REPUBLIC OF NORTH MACEDONIA FROM 2014 TO 2018**

In 2014 the number of reported cases of crimes against property, according to the National Statistics Department of RNM's base was 25745. In 2015 this number was lower and it was 15856. In 2016 it continued to drop and it was 12262. In 2017 was a little higher than the previous year, but still under the number of the other mentioned years before, and it was 12816. And in 2018 the number dropped to 11491. In order to be able to calculate the crimes against property rate, it was necessary to compare this numbers to total population number in RNM.

According to the statistical base of the National Statistics Department of the RNM, the population number in the RNM in 2014 was 2 067 471. In 2015 was 2 070 226, in 2016 was 2 072 490, in 2017 was 2 074 502 and in 2018 was 2 076 217.

All of the above mentioned data are presented in Table 1.

Table 1. Population number and reported crimes against property cases in RNM from 2014-2018

Year	2014	2015	2016	2017	2018
Population in NRM	2 067 471	2 070 226	2 072 490	2 074 502	2 076 217
Reported property crimes	25 745	15 856	12 262	12 816	11 491

Viewing the results in Table 1 it is clear that in 2014, 2015, 2016 and 2018 the number of reported property crimes was decreasing each year, except in 2017 when the number of reported property crimes was increased for 554 reported property crime cases. It must be mentioned that at all time it is important to keep in mind that the total population number in each year is increasing. This means that even with decreased number of total population from year to year, the number of reported property crimes is mostly decreasing.

#### **STATISTICAL DATA FOR NUMBER OF UNEMPLOYED PEOPLE IN THE REPUBLIC OF NORTH MACEDONIA FROM 2014 TO 2018**

In 2014 the number of unemployed population was 267 428, in 2015 this number was a bit lower 243 230, in 2016 it dropped to 221 959, in 2017 it continued to drop to 213 564 and in 2018 it was 198 569.

In order to be able to calculate the unemployment rate, it was necessary to compare these numbers not to the total population number in the RNM, but to the population that has the ability to work. This means that in Table 2 are presented numbers of population that it is considered to be able for working and of unemployed population. All people below 15 years of age are excluded in this number and also people above the age of 79 are also excluded. Population able to work consists of all persons aged from 15 to 79 years old.<sup>1</sup>

Table 2. Population with ability to work number and unemployed population number in RNM from 2014-2018

Year	2014	2015	2016	2017	2018
Population able to work	1 673 056	1 677 037	1 679 052	1 679 935	1 682 702
Unemployed	267 428	243 230	221 959	213 564	198 569

From Table 2 it is visible that the number of population able to work is increasing in each year, except in 2017 when this number is in slight decrease, and the number of unemployed population is decreasing from year to year.

<sup>1</sup> National Statistics Department of RNM, “Methodological explanations”, March 11, 2020 <http://www.stat.gov.mk/MethodoloskiObjasSoop.aspx?id=98&rbrObl=14>

## ***RESULTS FROM THE RESEARCH***

As it is explained above, initial data was taken from the National Statistics Department of RNM data base, and they include data about total population of RNM, total population with working ability, unemployed population and number of reported crimes against property, all for the period from 2014 to 2018. Next step was to calculate the percentage of all the data. Percentages of the reported property crimes and from unemployment in RNM for each year from 2014 to 2018 are presented in Table 3.

Table 3. Property crime rate and unemployment rate in RNM from 2014-2018

Year	2014	2015	2016	2017	2018
Property crime rate	1.24%	0.76%	0.59%	0.61%	0.55%
Unemployed rate	15.98%	14.50%	13.21%	12.71%	11.80%

The unemployment rate was calculated using online percentage calculator<sup>2</sup>, in a way that the number of total population able to work and a number of unemployed population in each year separately was calculated and expressed in percents. Looking at Table 3 it is obvious that through 2014, 2015, 2016, 2017 and 2018 (this research was for the mentioned period only) property crimes rate was mostly decreasing each year as well as the unemployment rate. With what rate it decreased, it is presented in Table 4.

Table 4. Increase/decrease rate of reported property crime and unemployment expressed in % in RNM from 2014-2018

Year to year	2014-2015	2015-2016	2016-2017	2017-2018
Property crimes rate	0.48% ↓	0.17% ↓	0.02% ↑	0.06% ↓
Unemployed rate	1.48% ↓	1.29% ↓	0.50% ↓	0.91% ↓

Table 4 shows that from 2014-2015, from 2015-2016 and from 2017-2018 the property crimes rate decreased, and from 2016-2017 it had a minor increase of 0.02%. The unemployment rate in other hand is showing decrease from each year to year.

In order to find if these results have some statistical value, a chi square test was performed. The Chi Square statistic is commonly used for testing relationships between categorical variables. The null hypothesis of the Chi-Square test is that no relationship exists on the categorical variables in the population, they are independent, in this case the null hypothesis is that there is no relationship between property crimes and unemployment in the period from 2014 to 2018 in RNM.

### ***Statistic results from the research***

The values from year to year, starting from 2014-2015 and ending with 2017-2018, for reported property crimes numbers and for unemployment numbers

<sup>2</sup> <https://percentagecalculator.net/>

were calculated with chi square test. The Chi-square test gives an answer to how likely it is that an observed group results are by random chance and the chi-square value serves as input of getting a p-value. P-value shows whether there is dependence between the variables which in this case means between reported property crimes numbers and unemployment numbers. P-value is the probability the variables are independent.

The p-value shows significance at  $p < .05$ . If p-value is greater than 0.05, it means that the variables are independent (they are not linked together) and if p-value is smaller than 0.05 it means that the variables are dependant (linked together).

In this study, the results gotten from the chi-square test, showed that the mutual dependence of reported property crime numbers and unemployment numbers are having a statistical value. For the period of 2014-2015 the results showed that chi-square statistic ( $\chi^2$ ) is 179.14 and the p-value (p) is 0.00001. For the period of 2015-2016 the results showed that  $\chi^2=179.14$  and  $p=0.00001$ . For the period of 2016-2017 the results showed that  $\chi^2=40.58$  and  $p=0.00001$ . And for the period of 2017-2018 the results showed that  $\chi^2=7.55$  and  $p=.005$ .

These results are showing that from 2014 to 2018 there were statistically significant correlation between reported property crimes number and unemployment number. From 2017 to 2018 the results showed that this correlation is smaller, but it is still in the limits of significant correlation.

To have a better visualization of these results, they are presented as chart in Figure 1.

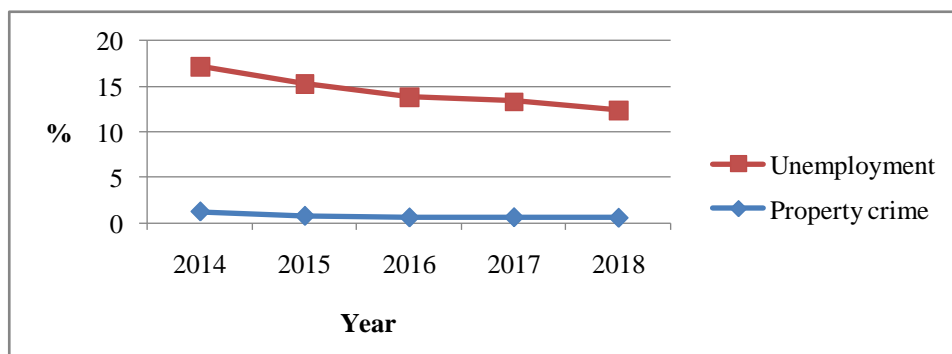


Figure 1. Reported property crime rate and unemployment rate chart from 2014-2018 presented in percents

The red line represents the unemployment rate and the blue line represents reported property crimes rate. On the vertical axis are marked percentages and on the horizontal axis are marked years starting from 2014 to 2018. It is visible that the way the red axis is curved is also the way that the blue axis is curved. They both are starting at highest point from 2014 and they are both lowering down each year, reaching the lowest point in 2018.

With above mentioned chi-square test statistical method, the results showed that there is statistically significant correlation between property crimes and



unemployment, but it is still unclear how much are property crimes connected to or dependent from the unemployment. Using a statistical method called Pearson correlation test the results about the percentage of the dependence of the property crimes and unemployment from 2014 to 2018 were gotten, or in other words this statistical method was used to get answer to the question: By what exact percent were property crimes dependant from unemployment from 2014 to 2018?

A measure of the strength of a linear association between two variables is Pearson correlation coefficient and it is marked by r. The Pearson correlation coefficient - r, can take a range of values from +1 to -1, where value of 0 indicates that there is no association between the two variables and value greater than 0 indicates a positive association; that is, as the value of one variable increases, so does the value of the other variable. A value less than 0 indicates a negative association; that is, as the value of one variable increases, the value of the other variable decreases (D-r Lund, A. Lund, M. 2020).

In the Table 5 are presented the results from Pearson correlation test for reported property crimes as dependent variable and unemployment as independent variable.

Table 5. Results from Pearson correlation test for property crime and unemployment in RNM from 2014-2018

Variable Y	Property crimes %
Variable X	Unemployment %
Sample size	5
Correlation coefficient r	0.9251
Significance level	P=0.0243
95% Confidence interval for r	0.2330 to 0.9951

In the top of the Table 5 are presented the two variables: Property crimes rate as variable Y which is dependent variable and unemployment rate as variable X which is independent variable. Next is sample size, which is 5 (for 2014, 2015, 2016, 2017 and 2018). Correlation coefficient is marked with “r” and by this statistical method it is calculated that is with value of 0.9251, which states as it was mentioned above that it shows positive correlation between property crimes and unemployment. Significance level is marked with P and it shows value of 0.0243. Coefficient of determination  $R^2 = r^2 = (0.925)^2 = 0.855625$  or 85.581%, ( $P = 0.0243$ ), 95% Confidence interval for  $r = 0.2330$  to  $0.9951$  for relationship between two variables: Unemployment (%) and Property crimes (%). The coefficient of determination  $R^2$  (0.855625) showed that 85.58% of the total variability was explained with the linear relation between unemployment and property crimes. That means that 85.58% from property crimes was dependent of unemployment as a predictor and 14.42% (100% - 85.58%) from the other accompanied determinants, that are not subject of the research in this study, but certainly have their own impact. According positive values of r,  $R^2$  and P value, with this statistical method it was

found a positive correlation between unemployment and property crimes. This way the above mentioned question is answered.

## **DISCUSSION**

Property crimes are most common form of crimes in RNM and there are many indicators for that conclusion: quantitatively speaking the percent of participation in property crimes into total crime is having the biggest participation by police, prosecutors and court's statistic (Nastov, D. p.18).

The null hypothesis in this study was that the property crimes are not correlated to the unemployment rate. There are many factors that can affect criminals to property related crimes. As example the Gross National Income, punitive measures, education, social status, poverty etc, they may all affect property crimes rate, but this study was focused to unemployment rate as one of many potential correlate to property crimes.

In the study "The Puzzling Relationship between Crime and the Economy", John Roman wrote:

*Criminologists tend to say tough economic times make more people willing to commit crimes. Bad economies lead to more property crimes and robberies as criminals steal coveted items they cannot afford. Economists tend to argue the opposite, that better economic times increase crime. More people are out and about flashing their shiny new smartphones and tablets, more new cars sit unattended in parking lots, and there are more big-screen TVs in homes to steal. Better economic times also mean more demand for drugs and alcohol, and the attendant violence that often accompanies their consumption (Roman, J. 2013, p.1).*

In this same study Roman commented that throughout 1960-ties and 1970-ties there were no correlation in crimes and economics in different states of USA. Many authors are suggesting that with the increase of unemployment rate is proportional decrease in the supply of the victims meaning that people have less to steal. Sociologists are looking at unemployment rate as an indicator of the "supply of suitable victims" and the traditional economic perspective also (Britt, 1994, p.99-100, Cantor and Land, 1985, p. 317-318). Economists on the other hand are mostly using unemployment rate as an indicator of the number of employment opportunities available to population - high unemployment rate indicates that there are less opportunities for employment available and so the opportunity of choosing crime over legitimate work is low (Becker, 1968, p.169-170, Cornwell and Trumbull, 1994, p.360-361, Ehrlich, 1996, p.43-44, Myers, 1983, p.157-158 and Witte, 1980, p.57-58). In another study by author Matthew D. Melick named „The Relationship between Crime and Unemployment“, he wrote that insignificance of unemployment rate and change in the unemployment rate in the aggregate national level model compared with their high significance in the cross-sectional level models suggests that as the unit of observation decreases, the relationship between unemployment and crime becomes more obvious (Melick, M.D. 2003, p.30-31).

In this particular study, which covers the period from 2014 to 2018 in the territory of the RNM, using a statistical method of Chi-square test and Pierson correlation test it was proven that property crimes rate are strongly correlated with

unemployment rate. The property crimes are correlated to unemployment by 85.58% which means that by 85.58% unemployment plays role in property crimes as a factor. Other 14.42 % are deriving from other accompanied determinants that were not subject of this research, but certainly have their own impact (Gross Domestic Income, poverty, social status, education, penalties in the Criminal Code etc).

It must be mentioned that these results does not exclude other factors as correlative to property crimes, they are just pointing out that the unemployment plays big role in property criminal. Other factors may be also in big correlation but this study only focused on unemployment.

## **CONCLUSION**

This study was born with hope to bring a small contribution to crime prevention in a way that it will show whether property crimes rate has correlation to one of many potential factors – unemployment. Considering that in the RNM property crimes are most commonly committed crimes, this research was meant to scientifically contribute with its results for the possible link between unemployment and property crimes rate. The research brought extraordinary results about the property crimes rate dependence from unemployment rate. Using raw data from the National Department of Statistics in RNM about the number of reported property crimes, total population, population able to work and unemployed population in RNM for the period of 2014 to 2018 it was possible to come to the needed results with statistical method of Chi-square test and Pierson correlation test and to pronounce great results with which it can be affirmed that this mission was success.

The null hypothesis in this study was that the property crimes rate was not correlated to the unemployment rate. Due to the results that the study brought this hypothesis is rejected - property crimes rate is strongly correlated to the unemployment rate. The percent of correlation was 85.58% which shows strong dependence of property crimes rate to unemployment rate.

This conclusion is supported by all data in this research, but mostly with Chi-square test results and Pierson correlation test results which showed that property crimes rate is correlated to unemployment and that correlation is expressed as 85.58% from 100%.

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# THE POLITICAL AND IDEOLOGICAL COLORING OF ISLAMOPHOBIA IN WESTERN AND SOUTHEAST EUROPE

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## **Abstract**

The following paper analyzes an issue that is one of the elemental and underlying causes of the bitter problem of hate speech that is raging across Europe. Islamophobia, as one of the most prevalent causes of hate speech and hate crimes, necessitates the essential study of its ideological coloring. Hence, the author's intention, through methods of induction, deduction and comparison, is to present precisely its political narrative from an ideological perspective, while emphasizing its general determinants that reflect the common denominator that is related and adaptable in all European countries. On the other hand, the author will show how generic ideology through the political narrative of Islamophobia may be different in the countries of Western and Southeastern Europe, namely its roots, motives, socio-political conditions and political and ideological orientations. Such components, complemented by an elaboration of the political ambience of Islamophobia, that is, the general stereotypes about Muslims and hate crimes against Muslims in Europe constitute an integral content of this paper.

**Key words:** *Islamophobia, Hate Speech, Hate Crimes, Ideology, Europe*

## **INTRODUCTION**

Hate speech and its causality Islamophobia gained an increased dimension and impact as the new millennium and socio-political changes shaped the new political map in Europe and the world. It is a response to the challenges associated with economic migration, the 11<sup>th</sup> September 2001 terrorist attacks on the United States, and the London 2004 and Madrid 2005 terrorist attacks, and have paved the way for a new form of chauvinistic platform and ideology based on hatred, hostility, under the cloak of "war on terror", represented in party pamphlets and the political narrative of the far-right across Europe, equivalent in its eastern and western

hemispheres. On the other hand, the region of Southeast Europe where the indigenous Muslim population has lived about five centuries, has not remained immune to these waves, although the political discourse has a somewhat different ideological dimension.

Therefore, the following paper aims to address some of the key segments related to the previous paragraph. First, what is Islamophobia and how is it defined by political discourse in the scientific circles? Second, what is the political climate of Islamophobia, or how is it manifested in the political and social life of Europe? Third, what constitutes the ideological color of Islamophobia and what are its elementary political orientations? Finally, are there any substantive and generic forms of Islamophobia in Western and South-Eastern Europe given the political, historical, social, and demographic component of this part of the old continent?

## **DEFINING ISLAMOPHOBIA**

Islamophobia as a widespread neologism, bound up with the understanding of Islam and Muslims, and coupled with the phenomenology of antagonism between the western world and the Orient, owes its origin to Western pseudo-intellectual circles in the mid-80's - last century. Accompanied by various elements of mutations and transformations depending on the context and nature of socio-political life in addition to religious, cultural and economic aspects, Islamophobia produces and generally defines new political, ideological and demographic realities.

Nusret Isanovic laconically defines Islamophobia as unfounded and pathologically conditioned fear of Islam and Muslims. The author argues that from its outset the term has meant xenophobia and fear of what was outside the European Christian cultural worlds, and given the fact that Muslims are treated here as "extremely distant and different" because they are nationally, religiously, and culturally diverse, so they can be nothing but evil. (Isanovic 2011, 128). Somewhat similarly, Peter Gotschalk treats Islamophobia as a certain kind of social anxiety about Islam and Muslims, while Stephen Schwartz defines it as marking all Islam and its history as dangerous and extremist and Muslims are perceived as a problem for the world, and in all contemporary conflicts Muslims are the key culprits. (Isanovic 2011, 128). However, Ivan Markesic seems most elusive in explaining the phenomenon of Islamophobia by categorizing it into three groups: (a) Islamophobia as a fear of Islam as a contemporary political project aimed at imposing European sharia-based living and working law on European territories. So Islamophobia in this constellation is a fear of political Islam; b) Islamophobia as an induced Western European imperialist ideology that after the termination of the Socialist Soviet Union in Islam finds a new enemy and adversary, experiencing itself in relation to Islamic culture and civilization supremely, aspiring to an "enlightenment"; (c) Hate to Islam as a religion in general, and to Muslims as members of that religion, implying not only an active political but also another type of struggle to suppress the spread of Islam, as well as the persecution of its promoters and followers. (Markesic 2013, 61-62).

## **THE POLITICAL AMBIENCE OF ISLAMOPHOBIA IN EUROPE**

The political ambience of Islamophobia in Europe will be presented in two respects. The first one is reflected in the general stereotypes of Islam and Muslims in European societies that directly influence hate speech in the mainstream media and online social networks. The second component is the experiences of Islamophobic incidents, assaults and physical assaults, actually acts of hatred against Muslims in European countries, as a direct consequence of such narrative.

### ***General stereotypes about Muslims***

The Council of Europe in its *Compass - A Guide to Education for Human Rights and Freedoms*, generally produced by Patricia Brander, cites Islamophobia as one of the most frequently encountered problems in Europe in the area of freedom of religion and belief. In this paper are emphasized several essential stereotypes related to Muslims: a) All Muslims are identical - Muslims are perceived to be the same, regardless of their nationality, social standing or political views; b) Religious motives that promote violence - any involvement of Muslims in violence is considered to have religious motivation; c) Perception as totally different from "us" - Muslims are considered to have little if any at all, interests, needs or values in common with people who are not Muslim; d) Cultural and moral inferiority - Muslims are seen as culturally and morally inferior and prone to irrational, violent and intolerant comportment of women, contempt for different worldviews, as well as hostility and resentment towards the West; e) Threat of terrorism and Islamization - it is considered that Muslims tacitly or openly support terrorism and want to Islamize the countries in which they live; and f) Impossibility for co-operation - As a consequence of the foregoing paragraphs, it is considered that there is no possibility of active partnership between Muslims and people of different religious or cultural backgrounds. (Brander et al. 2012, 567).

Bearing in mind this stereotype structure, the authors also state that this intolerance and stereotypical view of Islam is manifested in a variety of ways, ranging from verbal or written abuse of Muslims, discrimination in schools and workplaces, to psychological abuse or harassment, on individuals, especially women wearing hijab or niqab. (Brander et al. 2012, 567).

In this regard, we should emphasize the so-called "Impulse from above" that directly incites Islamophobia as a political and ideological discourse and hate speech that produces hate crimes. Tod Green rightly alerts to anti-Muslim statements by European politicians such as Geert Wilders, leader of the Freedom Party in the Netherlands, the late Jorg Haider in Austria, and then the ex UK - Prime Minister's xenophobic 2011 statements, David Cameron, when he declared that multiculturalism was guilty of undermining British identity, as well as the media's readiness to easily associate any terrorist act with Muslims (such as Breivik's terrorist attack in Norway). (Green 2012, 337). In this context, one aspect should be also mentioned, the caricatures of the Prophet Muhammad in the Danish daily Jullands-Posten of 2005, as well as the similar provocation of the French satirical weekly Charlie Hebdo from 2011. (Pavelic & Cacic-Kumpes 2015, 420).

### ***Hate crimes against Muslims in Europe***

Frequent hate speech, fueled by Islamophobic incitement that is rattling the European public, articulates its dimension through a series of hateful acts directed at Muslims. This situation reflects the second component of the political ambience and consequently directly attacks European values and the socio-political life of the old continent. For example, in Belgium in 2008 two women from the Maghreb were physically assaulted in Liege after previous verbal insults, and one of the assailants had extremely right-wing affiliations. (Stahnke et al. 2011, 7). In Denmark, besides the aforementioned cartoon - drawing, in June 2008 Kassem Saeed Ahmed, a former Islamisk Trossamfund spokesman, was stabbed in the face after being asked if he has an imam. (Stahnke et al. 2011, 11), and in 2019 copies of the Quran were burned. (The Local, 2019). A derogatory graffiti mosque was vandalized in Groningen in the Netherlands (Stahnke et al. 2011, 7), and in 2016 five people threw Molotov cocktails at the Enschede mosque, with around 30 people in the mosque, including children but none was not injured. (Stoter, 2016). There have been more than 20 incidents in the UK in recent years, and more significant here would be the attack on a Muslim boy in Hasting with two injured in 2010 (Stahnke et al. 2011, 7), the killing of 82-year-old Mohammed Salem in Birmingham (Express and Star, 2013), 2017 attack on Finsbury Park when a man enters a mosque after praying at a mosque injuring 11 people and killing one, as well as a series of separate incidents in Manchester with 5 injured. (Ganesh, 2017). Germany has seen more incidents, including the 2009 murder of Marwa El Herbini who was beaten to death in Dresden (The Local, 2009), attacks in Grafing when a 28-year-old man killed a 58-year-old man and three early injured (Connolly, 2016), as well as the bomb at the Dresden Mosque in 2017. (Al Jazeera, 2016). France has also seen about 20 incidents in recent years, notably: the desecration of a Muslim cemetery in Strasbourg in 2010 (Stahnke et al. 2011, 5), the beating to death of Mohammed el Makouli in Le Beaucet in 2015 year (Sabin, 2015), protests in Ajaccio and the burning of the Quran and the Islamic prayer hall in Corsica in 2015 (BBC, 2015). Of course, the attack that left the most trace was the one in Norway by Andres Breivik on 22 July 2011, attacking the Labor Party camp, killing 77 children and wounding 319, fueled by Islamophobic motives and followed by a speech and anti-Islamism for the defense of Christian values in Europe (Godfrey, 2011), while Switzerland is known to attack the Islamic Center in Zurich in 2016 in which one person was killed and three were injured. (The Guardian, 2016).

And Southeast Europe is not immune to such phenomena. Given the complexity of the political processes following the end of the wars in the former Yugoslavia, hate crimes against the Muslim population have an ethnic background. Examples of such are the burning of mosques like in North Macedonia after the military conflict in Bitola and Prilep in 2001, and also the burning of the masjid in 2015 in Kriva Palanka caused by the refugee crisis (Georgiev 2016, 363), the desecration of a Muslim cemetery in Karlovo - Bulgaria in 2010 (Stahnke et al. 2011, 5), while a series of constant incidents in 2011 were reported in Bosnia and Herzegovina damaging a significant portion of the property of the Islamic community in Brcko, Banja Luka, Doboj etc. (Islamska zajednica u BiH, 2011).



## **THE IDEOLOGICAL ASPECTS OF ISLAMOPHOBIA IN WESTERN AND SOUTHEAST EUROPE**

Although Islamophobia is a relatively new phenomenon, its roots have a deep historical background. Here we will first look at the general historical and initial ideological credo of Islamophobia, as well as the basic facts about Muslims in Europe, and then comparatively follow the determinant ideological postulates of Islamophobia in Western and Southeast Europe, concentrating on their similarities and differences.

### ***Initial Islamophobic creed and facts about Muslims in Europe***

Following Schwartz and Geisser's analogy, Pavelic and Cacic-Cumpes very clearly illustrate the initial reflection of the Christian Islamophobic discourse that we will take as a starting point here. Thus, according to them, the historical narrative and connotation from the Crusades onwards, coupled with a relatively poor knowledge of Islamic religion and Muslims, has led to a situation where the metaphorical image of Islam is reduced to a God-sent plague, a picture of devilish consciousness, heresy and blind worship. The mosques are described as temples of ungodliness, symbols of bizarre sexual practices, and Muhammad as the antichrist, the magician, the conspirator, etc. (Pavelic & Cacic-Kumpes 2015, 410).

It is important to add the five facts about the Muslim population that Conrad Hackett of the Pew Research Center points out in his analysis: a) France and Germany have the largest Muslim population in Europe, besides Switzerland and Norway; b) The Muslim population of Europe is steadily increasing and will continue to increase in the coming decades (from 3.8% to 4, 9%, to 11.2% and more, respectively, from 19.5 million in 2010 to 25, 8 million in 2016, and that figure is expected to double by 2050); c) Muslims are much younger and have more children than other Europeans; d) Between 2010 and 2016 immigration was the biggest factor in increasing the Muslim population in Europe; e) Views on Muslims vary widely in European countries, with negative views prevailing in eastern and southern Europe, while the percentage of anti-Islamic views in Western Europe is tied to the radical right. (Hackett, 2017).

### ***Opposition to multiculturalism***

Opposition to multiculturalism is a common denominator and one of the central positions of Islamophobia in both Western and Southeast Europe. Here we understand multiculturalism through the general perception of cultural plurality in a society and state. It is pluralism that transcends the majority-minority dynamic where national culture is predominant from the majority cultural matrix, and minorities are ghettoized into the minority rights complex and minority cultural group on the margins of the dominant culture. Multiculturalism is a model in which culture and cultural identity become instruments for achieving political legitimacy and influence. (Chupeska 2013, 72).

Ibrahim Kalin, reaffirming Charles Taylor's views, rightly notes that today's debate about multiculturalism in the Western world has become a debate about Islam and Muslims. In this context, it is argued that multiculturalism has become

suspicious and strongly associated with Islam because almost every reason for intolerance is obviously related to Islam and Muslims. The debate about Islam and Muslims in Western societies is turning into an alarming crisis of multiculturalism and the debate on how far it can really go. A good example can be cited by the French government's decision in 2004 to ban hijab in public schools, and that decision raised a series of questions ranging from "the real French spirit" to violence against women, integration, assimilation and pluralism. The attacks of multiculturalism have become the attacks of Islam and Muslims. (Kalin 2011, 3-4). By analogy, we should recall the statements of several European leaders such as British ex-Prime Minister David Cameron, German Chancellor Merkel, ex-President of France Nicolas Sarkozy, Spanish Ex-Prime Minister Jose Anzar expressing concern about multiculturalism. (Peskin & Wehrle 2011, 262-263).

In Western Europe through political-theoretical discourse we will differentiate two types of Islamophobic opposition to multiculturalism. The first one we will call (neo) liberal, and the second one far-right - Christian extremist. The neoliberal opposition to multiculturalism is aimed at preventing secularism and liberal individualistic policies. As Kimlika observes, people can form a firm bond with a language or culture, but that is their choice, not a liberal point of view. They should be responsible for the cost of their choices and not expect others to subsidize their "refined" taste." (Kimlika 2009, 363). Consequently, Markesic remarks very ingeniously that many European citizens like the writer Houellebecq call Islam "the most stupid religion in the world" and its members - the insolent assailants of the already achieved European secular values. (Markesic 2013, 63). The neoliberalist opposition to multiculturalism also found its basis in Bernard Lewis's thesis that secularization and other modernization processes that began in the West were nowhere near as unsuccessful as in Muslim countries (Lewis 1990, 60), hence the fear that the Muslim's migration in the West can make the process reversible. On the other hand, the far-right Christian extremist assault on multiculturalism has the fundamental aim of defending Europe as a Christian club. Norwegian terrorist Breivik, for example, thinks the EU is an "EuroArabia" project and is harmful to Christians, meaning it aims to Islamize Europe. He believes that all Muslims should be deported from Europe. Europe, in its manifesto, called the "European Declaration of Independence" should oppose multiculturalism and incline to nationalism and conservatism. (2083 European Declaration of Independence 2011, 287).

In Southeast Europe, opposition to Islamophobic multiculturalism is linked to the nation-state and the ethno-nationalist urge. Ivan Ejub Kostic correctly believes that unlike Western Europe where anti-Islam segments of the multiculturalism are linked to the migration crisis and to migration in general, in the Southeast European region that intolerance has "clerical-nationalist roots" and is both paradigms is a distorted picture of Islam. (Sinkovic 2019). Kostic also argues that Serbia has a different type of Islamophobia, i.e, an attack on multiculturalism, which is evident in the genocide, war crimes and expulsion of the Muslim population during the 1990's. (Sinkovic 2019).

### ***Anti-Sharia vs Anti - (Neo)Ottomanism***

The ideological opus of Islamophobia in Western Europe has primarily anti-immigrant motives, while in the Southeast European region it is a remnant of the animosity of Christian nations towards the former Ottoman empire. In such a constellation the Western Islamophobic discourse is fraught with the fear of a possible demand for the implementation of sharia in the western states, i.e. the Shari'a lifestyle practiced by Muslims in their countries of origin.

Chris Allen observes that the Islamophobic discourse of the West implies sharia-threatening power irreversibly aimed at the destruction and subsequent destruction of the West and everything it advocated. Such suggestions go in the direction that by 2025 London will be a Sharia state and that Christian Europe will be subdued by Islam. (Allen 2010, 40). Anti-Shari'a orientation can also be seen through the theses of Paul Vallely, a British Christian apologist and writer who considers that much less educated women are oppressed by Islam, Sharia law is barbaric, and Muslim tradition is anti-democratic and opposite to Western liberal values. (Allen 2010, 60). Also noteworthy are the Islamophobic demonstrations and protests featuring banners such as "Sharia is not welcome in Europe" "Sharia - No thanks" and "Immigrants and Sharia are not welcome in Germany", organized by the political movement PEGIDA (Patriotic Europeans against Islamization of the Occident), as well as the xenophobic and discriminatory texts of Anne Marie Waters and her "Sharia Watch" organization, which emphasize that sharia is undemocratic and incompatible with human rights and freedoms. (Sharia Watch 2018). Even the ruling German party CDU and presidential candidate Christian Friedrich Merz said there was "no sharia on German soil" (The Local 2018).

In Southeast Europe, as we have already mentioned, the Islamophobic ideological credo is rooted in the Orthodox antagonism of the former Ottoman Empire. Ivan Ejub Kostic clearly points out the different position of Islamophobia in Western and Southeastern Europe. He argues that what is common to western Islamophobia is the distorted image of Islam and the danger of Muslims coming to Europe for some sharia. In Serbia and the Southeast European region, he thinks, it is a different type of Islamophobia, which is primarily tied to the historical heritage, specifically to the Ottoman period. (Sinkovic 2019). Add to that a new concept in Turkish foreign policy called "strategic depth doctrine". The Balkan countries represent one of the main contours in the doctrine of strategic depth, i.e. neo-Ottomanism as the primary concept of such ideological proliferation. In this regard, Tase points out that Albania, Kosovo, Bosnia and Herzegovina and North Macedonia are perceived as "central to neo-Ottoman authors of Turkish identity" and are therefore crucial to shaping the neo-Ottoman concept and policy. (Tase 2013, 10). The connection between Islam and neo-Ottomanism, that is, the connection of Muslims in Southeast Europe and Turkey, is obvious. Hence the nationalist Islamophobic creed of this area of Europe possesses anti - (neo) Ottomanism as a crucial ideological construction in its matrix. Marko Attila Hoare recalls that when Orthodox peoples in the Balkans rose up in rebellion against their Ottoman masters in the 19th and 20th centuries in order to gain independence from the Ottoman Empire, such a process involved the expulsion or extermination of a large Muslim population identified as foreigners and non-nationals. (Hoare 2017, 167). This antagonism was also observed during the war in Bosnia and Herzegovina

in the 1990s, as well as the 1999 war in Kosovo. Turkey's support for the Muslim population has never been called into question.

## **CONCLUSION**

The political and ideological phenomenon of Islamophobia that has been sweeping Europe's political, social and cultural scene has been gaining momentum in recent years, especially after the 11 September 2001, terrorist attacks in the United States, as well as London and Madrid in 2004. The Islamophobic ideological and political credo gained momentum with the migrant crisis in 2015 that directly affected Western European countries, and the countries of Southeast Europe were directly affected as a transit zone. The ideological coloring of Islamophobia is differentiated by several general conclusions of a nomological, political - historical and ideological nature.

First, Islamophobia is a multi-layered ideological and political phenomenon that involves fear of Islam as a political project, an imperialist benchmark in exchange for the former USSR and the then "enemy figure", as well as the complexity and distorted image and antagonism of Islam. Secondly, the political ambience of Islamophobia in Western and Southeast Europe is manifested by general stereotypes of Muslims as "all the same", "totally different from Europeans", "religion that supports violence", "fear of terrorism" etc. On the other hand, hate crimes against Muslims are widespread in Western Europe, and the Southeast European region is also not immune to this phenomenon coupled with the collective memory of war crimes during the 1990s.

Third, the ideological aspects of Islamophobia are inextricably linked to contemporary economic, social and political relations, but also to historical conditions, especially in Southeast Europe. The initial Islamophobic creed where Islam is treated as godless, totalitarian religion, or anti-Christian is a common denominator of the overall Islamophobic political discourse. The opposition to multiculturalism as an Islamophobic ideological and political component has common goals, but the completely different ideological nature, such as the fear of abandoning secularism, the threat to Christianity in Europe and the concept of Europe as a Christian Western European club, as well as nationalist positions in the Islamophobic public in Southeast Europe. Analogous to such benchmarks, the elements of anti-Sharia stance aimed at "defending Western liberalism and Christianity" in Western Europe on the one hand, as well as anti (neo) Ottomanism penetrated by Balkan Orthodox and Christian nationalism in the Southeast Europe, are logically complemented. The fundamental European values that primarily rest on human rights and freedoms, as well as social and political inclusivity, are seriously undermined by such ideological creed and political narrative.

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## **THE BENEFITS OF EU MEMBERSHIP IN THE FIGHT AGAINST ORGANIZED CRIME**

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### **Abstract**

Organized crime is the most serious form of criminal activity and the culmination of criminal groups. For several decades now, organized crime has threatened the security and society of not just one country, but its effect is always felt in the territory of several countries. Organized crime today is an international project of criminal organizations. Therefore, the fight against all forms of organized crime has long gone beyond the actions of local police and the government is already demanding broader access and involvement of more agencies and security services. The remediation of international criminal groups by their actions also requires the involvement of organizations with legitimacy to act without geographical or political constraint, so that victims, banking, economic and political systems recover as soon as possible and successfully defend themselves against new actions by mafia organizations.

Organized crime is increasingly internationalized. He does not choose a state, religion, nation, etc.

EU member states are co-operating in the fight against international organized crime. There are common rules for combating terrorism, drug trafficking and child pornography. Customs, police and public prosecutor's offices of EU member states are co-operating in the fight against crime. The fight against organized crime in each state is different in terms of effectiveness, but for each state there is one goal and its suppression.

**Keywords:** organized crime, security, state, society, victims

### **ORGANIZED CRIME HISTORY**

The term organized crime first appears in the British Islands when government prosecutors tried to explain the activities of one of the London gangs

that dealt with thefts on docks with an established hierarchy and divided duties within the group.

The roots of organized crime can be found in Sicily during the 19th century, when an attempt was made to reform society and the hitherto feudal way of disposing of land. Church property was divided between the unemployed and the poor. However, this collapse of feudalism actually brought only greater poverty to the poor, because the largest number of estates fell into the hands of those who until yesterday managed them for the benefit of the church and the feudal lords. Then there was an even greater difference between rich and poor, which led to the disruption of normal relations in society on the island.

One of the ways for the poor inhabitants of Sicily to survive in such difficult conditions was to turn to grain, fruits, vegetables, and cattle from the rich. Whenever they were left with some stolen goods that they would not use for their own needs, they would sell them on the black market.

The Sicilian mafia becomes a serious opponent of the state at the moment when the first agreements are made, which provide the mafia with political protection in Sicily. After World War II, the mafia collected votes in the elections for the Christian Democratic Party, which fought against the Communist Party for a parliamentary majority. The mafia collected more than 100,000 votes, and in return, the local self-governments controlled by the mafia received huge financial resources for the arrangement of roads and infrastructure, as well as a large amount of agricultural machinery.<sup>1</sup>

In this case, we see a real form of organized crime that is growing stronger thanks to cooperation with politicians. This remains a matrix that continues today and that is why it is important to prevent the connection of politicians and organized crime, so that we do not have another rise of a criminal group because they are supported by certain politicians who became representatives of the mafia as was the case in Sicily.<sup>2</sup>

Today, although it is still known as the place of origin of organized crime in the form of the Mafia, Italy is also one of the leaders in the fight against organized crime in the world. They passed a lot of laws on confiscation and origin of property, financial investigations and the like. Since 1982 and the enactment of the first anti-mafia law, more than 20,000 properties and over 3,000 companies worth tens of billions of euros have been confiscated. However, organized crime, like the octopus, is still fiercely fighting to keep its place in everyday affairs, as evidenced by numerous studies of many NGOs in Italy. with crime and try to hide in that healthy system, such as tourism or construction companies, and make a tremendous effort to maintain the semblance of legality. " says Ricardo Guido from the "Anti Mafia" organization. In addition, the state had numerous casualties among citizens, especially protected witnesses, police officers and prosecutors, of whom the most

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<sup>1</sup> Jane Schneider, Fifty Years of Mafia Corruption and Anti-mafia Reform, Current Anthropology Volume 59, Supplement 18, April 2018

<sup>2</sup> Arlacchi, Pino. „Mafia business: the mafia ethic and the spirit of capitalism”, Verso, London 1986



famous judge Falcone was killed in 1992, as well as his successor and colleague Paolo Borsellino, who was killed only 2 months later.

In the United States, organized crime is linked to the 1920s, the collapse of the stock market and prohibition, as an extended arm of the Sicilian Mafia in America known as Cosa Nostra in the foreground, but also to organized gangs of remnants of immigrants to the Americas, primarily Irish and Jews. in the first moments.

The sudden emergence of organized crime in Europe is also linked to the fall of communism and the opening of borders to the flow of people and goods, as Misha Glenny writes in one of the best books on organized crime, *McMafia: Crime Without Borders*. Criminals began to deal with the import and export of stolen goods, but also to start criminal activities primarily related to property crime and in hitherto unattainable countries. Precisely this characteristic, acting on the territory of several countries, will eventually become one of the foundations of organized crime and a synonym for Russian, Italian, Chechen, Georgian, Chinese and other mafias, many of which emerged in response to the communist social order. and a closed economy, subordinated to the interests of the ruling elites, where laws were passed solely on the interests of the ruling minority and did not rely on economic conditions but on police elements of total control because the legal order of these states was based on pure repression instead of legal principles, constitution and laws, respect for human rights and market freedom.

The sudden change of the internal system with the opening of borders, the influx of people and goods was not accompanied by adequate legal provisions, changes in criminal laws or changes in the training of police, prosecutors and judges. A legal vacuum was created decisively influenced the creation of organized crime in post-communist and post-socialist states.

A key change in the methodology of organized crime in the Balkans, and thus in its treatment, occurred in 2003, in Serbia, when, on March 12 of that year, the Prime Minister of Serbia, Dr. Zoran Djindjic, was assassinated.<sup>3</sup> But despite that, many countries have been late in passing the necessary laws for several years since the democratic changes, such as Serbia, where a multi-party electoral system has existed since 1990 and democratic changes were introduced in 2000, while the law on determining the origin of property was passed in 2020.

If we watch organized crime as a system that threatens the very foundations of democratic government, because its goal is to establish anti-government as the opposite of civil society and a democratic state governed by the rule of law (Pavšić, Vejić, 1998; 239) then it is quite clear that laws aimed at suppressing it must be passed much faster in order to avoid tragedies such as the assassination of the Serbian Prime Minister by the then strongest criminal group in Eastern Europe.

The twenty-first century has brought a new way of life to the entire planet. It seems like the planet has moved to another dimension under the influence of globalization.

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<sup>3</sup> Aleksandar Fatić, „, Osnovi borbe protiv organizovanog kriminala na Balkanu “ „Beograd, UDK:343.9.02(497), 2005

The main factor of acceleration is certainly the Internet. Thus, the Internet, through which a large part of our lives is currently happening, has become a place where a lot of criminal groups has moved, but it has also become a place for the emergence of new criminal groups that operate only in the virtual world. In many countries, unfortunately, cybercrime has not yet received the status of organized crime, as evidenced by numerous studies which state that in many countries organized crime is not clearly defined at all.

Paoli (2001) and Paoli and Van der Beken (2014) (among others) have proposed there is no universal or agreed definition of organized crime or organized crime groups. Not only for ordinary people, but for a lot of security officials it is unclear what is organized (the Russian mafia, Cosa Nostra, the Chinese triads) or disorganized (groups of pickpockets), how many members have to be involved in order to be considered as organized crime and why certain activities are seen as organized (human or drug trafficking) while others are not (cybercrime) (Paoli 2001; Siegel 2008).

Disputes among researchers are very common when studying criminal groups that deal with classic crime in an organized way and at the same time deal with crime over the Internet. One of the main disputes is the number of members of the group who deal with crime via the Internet, the amount of money needed for the group to earn that way, and the number of victims. There is also great controversy about how long it takes for a criminal group to carry out its activities over the Internet in order for it to be characterized as organized crime. If conclusions are reached on the basis of free interpretation, this may affect the quality of the investigation, indictment and verdict. Any ambiguity and lack of precise instructions can also lead to corruption in order to interpret insufficiently precise laws more favourably for the perpetrators.

The US FBI also investigates people who run various types of cybercrime, especially internet fraud, most of which have never entered the United States but the victims are American citizens, declaring it one of the priorities in their actions in the fight against international organized crime.<sup>4</sup>

We emphasize this because in most countries the fight against this type of crime is not dealt with by the organized crime departments with the greatest resources and the best international cooperation, but by national or regional police administrations that deal with cybercrime as an independent form of endangering the security of citizens and states, although the level of organization of the perpetrators of this type of crime is far above the regional or even national level.

It seems that the time has come for the UN to get involved again with the adoption of a new resolution and new protocols, because 20 years have passed since the adoption of the previous one from Palermo in 2000, during which time organized crime has mutated several times and gained a larger budget. .

## **TRANSNATIONAL CRIMINAL GROUPS**

In this part of the scientific work we will deal with transnational criminal groups like the Yakuza, the Triad, and the Colombian Mafia. The name Yakuza in

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<sup>4</sup><https://www.fbi.gov/investigate/organized-crime>

Japanese means bad man. The Yakuza are well-organized criminal groups dealing with illegal activities such as: drug dealing, organizing prostitution, organizing gambling and infiltrating their dirty money into legal businesses such as: opening restaurants, casinos, hotels, cafes and other activities. These criminal groups could be clearly identified: short haircut, characteristically tattooed, without a little finger on his hand, they worked as bouncers or protectionists at corporate assemblies.<sup>5</sup> Yakuza gangs have twenty times more numerous membership of the American Cosa Nostra, moreover, Yakuza are very useful for right-wing intimidation of those who think differently, to restrict the freedom of the press and speech. The organization is involved in the creation of sex slaves. The members of this organization are very active in California, where they are involved in drug smuggling in the USA, weapons in Japan, as well as recruiting American entertainers as prostitutes in Japan. (Ignjatović, Škulić, 2012). Members of the Yakuza are of Korean origin, and its members are recruited mainly from those lowest strata of society.

Triad or what is also called black societies, are the secrets of the Chinese organization called so because of the ritual use of numbers. For them, the number three has a special meaning and hence the name of the triad. The symbol of the organization is an equilateral triangle whose sides symbolize three basic conceptions: about paradise, earth and man (Ignjatović, Škulić, 2012). Their origin is connected to the year 1674 where in a Buddhist monastery in the province of Fukien and consisted of 128 monks extraordinarily trained for martial arts, which included a special kind of self-defense called kung fu. These groups are primarily involved in prostitution, illegal gambling, extortion and heroin trafficking. One of their favorite activities is car theft, especially in California. Members of the triad kill the drivers of expensive cars, which are then quickly transferred to the nearest port and transported to China. There, these cars are resold at a much lower price. Positions within the Triad are numbered: 489 Head of Organization, 438 master of ceremonies, 415 financial advisor, 426 kung fu expert, 432 message bearer - a person to maintain contact with other groups and 49 ordinary members (Bresler, 1980). Triads are even more specific in that they use a traditional ceremony admission to membership with pronunciation the following sentences: "If I change my mind and give up membership in the Hung family, let a multitude of swords kill me"<sup>6</sup>

The Colombian drug mafia is dealing with drug production and distribution in the US and the two leading cartels, one in Medellin and the other in Cali. Medellin is a city in the province of Antioquia. Leading experts in organized crime consider it one of the most dangerous places in the Western Hemisphere. The multitude of unsolved murders, kidnappings, wars between the warring clans of Medellin and Cali put it in the first place in terms of using the brutality used by these two clans. In the eighties the biggest drug boss in the world was Juan Pablo Escobar, who even then was claimed to have thousands of murders on his soul. Juan Pablo Escobar controlled as much as 80% of the cocaine market in the US and found itself on the list of the richest people in the world, published by Forbes

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<sup>5</sup> Ignjatović, Đ., Škulić, M., (2012) Organized crime, Faculty of Law, University of Belgrade;

<sup>6</sup> Ignjatović, Đ., Škulić, M., (2012) Organized crime, Faculty of Law, University of Belgrade;

magazine. It was said that his property was estimated at three billion dollars. His name is connected to the emergence of "Narkoterizma" as political security phenomena. More precisely, Juan Pablo Escobar bribed a terrorist organization that will fight on his side against the police. Juan Pablo was killed in Medellin on the roof of his house at the age of 44 while fleeing from the police. Cali is the center of the Colombian agricultural region. There was a group created for the purpose of drug trafficking. It was formed by banker Gilberto Rodriguez Orejuela, lawyer Miguel, officer Jose Santacruz Londono and former professional kidnapper Geraldo Moncada. However, as Juan Pablo Escobar was the most famous drug trafficker, the group from Cali was the most dangerous. While Escobar put a lot of effort into public relations, those from Cali put a lot of emphasis into contacts with local courts, thanks to which they enjoyed de facto immunity. They also managed to involve high-ranking officials in their illegal activities. At the beginning of the 20th century, the group from Cali pushed Escobar's group out of the position of the world's first cocaine dealer. The earnings were huge. (Ignjatović,Škulić,2012:109).

### **CONNECTION BETWEEN ORGANIZED CRIME AND TERRORISM**

One of the more serious problems in the research, prevention and suppression of terrorism and organized crime, as well as in identifying their connection, is that in theory and practice terrorism is treated as a form of organized crime. The approach itself is wrong and can have negative consequences for the security of citizens and the state. Certainly, these two concepts are increasingly characterized by common characteristics such as: high level of organization, secrecy in action, planned crimes, violence and brutality, money laundering and corruption of public officials and government officials, their aspirations to control the economy (national and international level), financial power, abuse of high technology for criminal purposes, endangering human rights and freedoms, weakening citizens' trust in state institutions, deepening economic crisis, kidnapping, assassination etc. A number of criminal activities which link terrorism and organized crime, and among them are money laundering, illegal transfer of weapons and military equipment, can deal with illicit intelligence work so they have certain intelligence-security structures, falsification of documents, corruption, concealment of stolen items and vehicles, destructive psychological propaganda, etc.<sup>7</sup>. The difference between terrorist groups and organized criminal groups is in their ultimate goals, and while terrorist groups strive to achieve political goals, the goals of organized criminal groups are: strengthening economic power with significantly low risks, and later legalizing illicit profits -while organized criminal groups unlike terrorist groups, have no political ambitions but tend to corrupt public officials in state enterprises, especially high-ranking politicians. Due to the large presence of corruption in state-owned enterprises, countries where this happens, organized crime increases its power, and then reaches a much better and more efficient power in relation to the state, which is sinking due to corruption. Terrorists are characterized

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<sup>7</sup> Amidžić,G., Lazić,A. (2011) Relationship between organized crime and terrorism, Proceedings Fight against terrorism: international standard and legal regulations, Banja Luka;

by the use of political violence for political purposes, where they publicly announce their political goal, unlike organized criminal groups. If they assess that their violent actions are positively influenced by some form of organized crime, they establish business relations with its bearers or carry it out themselves. Organized crime is always a criminal activity of a criminal association, while behind terrorism there does not have to stand a group, or several persons, but it can be an act of political violence of an individual. Also, organized crime is a phenomenon that is much more widespread in the world in relation to terrorism, because almost every country has problems with organized crime, which cannot be said for terrorism (Amidžić, Lazić, 2011). For Professor Mijalkovic, the relationship between organized crime and terrorism can be functional and instrumental. A functional relationship exists when organized crime is placed in the function of terrorism, while on the other hand, an instrumental relationship is reflected in the dealing with organized crime by terrorist groups or vice versa, when members of an organized criminal group commit terrorist acts<sup>8</sup>. Execution of a terrorist act also requires certain sources of financing for what terrorist organizations resort to various forms of organized crime. The most common sources of funding for most terrorist organizations are the illicit drug trade and the illicit arms trade, and munitions which provides huge financial resources. In addition, funding is generated through human trafficking and organized prostitution. Lately, terrorists have shown great interest in weapons of mass destruction, so there is an illegal trade in nuclear materials, chemical and biological agents, radioactive waste and other hazardous materials. They often resort to various forms of financial fraud such as money laundering, gray economy and other financial frauds, as well as armed robberies, kidnappings, blackmail, extortion and racketeering. Terrorist organizations use various methods of transferring money, and the two primary methods are the physical transfer of money and the use of financial institutions such as banks, non-governmental organizations, charities, casinos, etc. Today, terrorism and organized crime are increasingly becoming informal centers of financial and political power, and through the abuse of legal political institutions and corruption, they tend to outgrow international centers of power (Mijalković, 2012). In addition to direct financial assistance, organized crime was used to arm terrorist groups, but also to allow terrorists to cross the border illegally<sup>9</sup>.

## **INTERNATIONAL DOCUMENTS AND INTERNATIONAL COOPERATION IN FIGHT AGAINST ORGANIZED CRIME**

The organized crime in its essence represents cross – border crime, which occurs in many states, where those states or countries through their law enforcement conduct, organize, and take actions to deal with illegal deeds. When we say organize and conduct actions before all else I mean international help and cooperation in those states. This kind of cooperation between law enforcement aka the police is extremely complex and it takes time, effort, patience, etc. with the purpose to achieve adequate and useful benefits or successfully completed actions.

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<sup>8</sup> Mijalković, S. (2012) Organized crime and terrorism, Belgrade, Criminal - Police Academy;

<sup>9</sup> Mijalković,S.(2008) The dichotomy of organized crime and terrorism from the point of view of national security, Review for security no 12/8

As far as the international documents for the cooperation of law enforcement agencies are concerned it's important to mention their division into 1 *Bilateral documents/agreements* and 2 *Multilateral documents/ agreements*. As we previously know, bilateral are those which are concluded between two countries, for instance: The agreement on stabilization and association between the EU and the Former Yugoslav Republic of Macedonia /Serbia /Montenegro /Croatia /Bosnia and Herzegovina/ Albania. On the other hand, Multilateral documents are international documents which are conducted between two or more states or international organizations. As more crucial multilateral documents for international cooperation, we listed the following few: European Extradition Concession of 1957 with the additional protocol of 1975, European Convention on International Legal Assistance in Criminal matters of 1959, with the additional protocol of 1978, as well as a second additional protocol to the 2001 convention.<sup>10</sup>

International cooperation in the fight against organized crime unfolds through many concepts for international cooperation, which differ from one another nevertheless they complement each other. In the following, I will enumerate and briefly explain them.<sup>11</sup>

1) Mutual Legal Aid- as the oldest and most efficient concept the mutual legal aid it is prominent through the countries around the world, through searching and delivering help in collecting facts and evidence available in one country with the aim to help another country.

2) International Police cooperation which occurs with the help of a single, standardized, centralized, and coordinated international police body.

3) International judicial assistance as the third concept of international cooperation in the fight against organized crime between the courts and the public prosecutions of specific countries and cooperation with ECHR.

4) International customs cooperation as one of the concepts of international cooperation.

5) Lastly, there is Direct operational assistance in the investigation phase.

International cooperation in the fight against transnational organized crime takes place on a world level but above all at the level of Europe ie. Of the European community\union. In the past, with the formation of the TOC forum, \group officially started the police cooperation on the soil of the European Union. TOC group in the fight against international terrorism, radicalism, and extremism set the institutional basis as well norms for the cooperation of the states in the fields of internal affairs (police departments)<sup>12</sup> and justice (judiciary and prosecution). In the beginning, this group coordinated the answer of the European states against terrorism, later to begin to spread its occupation respectively activity on many other areas in which is enumerated: cross-border police cooperation in EU, in the fight against drug trafficking and narcotics, organized crime, etc.

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<sup>10</sup> Злате Димовски, Криминалистичко разузнавање, стр 221

<sup>11</sup> Злате Димовски, Криминалистичко разузнавање, стр 221

<sup>12</sup> Снежана Никодиновска – Стефановска, скрипта-Меѓународни односи, Скопје 2010 – Факултет за безбедност, стр 163

Quite significant international body for international cooperation of internal police justice works as well as in the fight against transnational organized crime is EUROPOL (European Police Office). As I mentioned previously EUROPOL represents the international body that has a mission to conduct a significant contribution to EU actions against transnational organized crime and terrorism in the world especially in targeting organized criminal groups\organizations. Since its formation 07.02.1992 until today EUROPOL developed as a fairly firm police network which set quite ambitious tasks and those are: Enhancing the cooperation and efficiency of the police forces of the member states in the fight against terrorism as one of the many organized criminal activities, drug trafficking, drugs and other serious forms of organized crime that indicate the existence of an organized criminal structure or organization which affects two or more member states. The firm network of EUROPOL includes so-called state liaison officers, sent by EUROPOL by the national units, the national central bureaus in the concerned member state. Liaison officers are appointed by the state itself with the prior consent of the director of EUROPOL and the management board of EUROPOL from the ranks of specialists and experts from the area of prevention and repression of forms of crime.

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Furthermore, the international cooperation in the fight against organized crime its conducted between the law enforcement agencies, the police, and the customs, also a quite significant role have the judicial bodies courts and public prosecutor's offices. So, from here onwards I can say that in 2002 on the European soil we formed a new body, a new European judicial cooperation body known as EUROJUSTICE (EUROJUST). This body of the EU is set up primarily to deal with the difficult and organized transnational crime, and according to the preamble of the decision of its establishment, the purpose of the former is optimal cooperation in the criminal prosecution proceedings of perpetrators of the crime that would be carried out of the territory of several member states, but with the respect for the fundamental freedoms and right of man and citizens. The essential aim or function of this body is to support and help the cooperation in the prosecution of the severe shapes of the criminal, like the following: Cybercrime, fraud and corruption and all other acts affecting the financial interest of the EU, money laundering and other proceeds of crime, environmental crime, participation in crime, organization, group or gang and other acts predicted in the EUROPOL convention in 1995. Its activities in the fight against the criminal in the world EUROJUSTICE accomplish it proactively, with certain requirements, proposals, interventions, etc. In relation to the competent authorities of the member states which proceed by the request of the organs. In achieving its goals and activities, EUROJUSTICE cooperates with other bodies in the field of judicial and police cooperation such as EUROPOL. When we talk about international cooperation we always come across regional cooperation because they are closely related. Namely in my paper, I will elaborate on SELEC group\center which is formed for regional cooperation in Southeast Europe and its closely related to international police cooperation in the fight against transnational

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<sup>13</sup> <https://www.pravdiko.mk/koi-se-nadlezhnostite-na-evropol/> 10.08.2020 12:41

organized crime. SELEC- Southeast European Law Enforcement Center represents initiative for cooperation for the countries of Southeast Europe, created as an expression of the Euro – Atlantic projection for the development of that region. The main goals of the SELEC center are the development and support of the regional operational cooperation, the support of the countries towards the process of association with the EU, development of the regional concept of crime suppression and only operational cooperation between the police and customs services in the field of security against the transnational organized crime. SELEK is the only operational organization that facilitates the fight in the rapid exchange of data and information between law enforcement agencies from different countries in terms of cross – border\transnational crime.<sup>14</sup>

The SELEC center conducts its operational activities on a regular basis within seven task force, ie. working groups that address issues such as related to drugs and human trafficking, stolen vehicles, smuggling and customs fraud, financial and cybercrime, terrorism, and container security. When I am talking about the working groups, I would also like to mention the SELEK working group in our country, namely in R.N Macedonia there is a working group for financial and cybercrime, which group is divided into five subgroups- subgroup for money laundering, copyright theft subgroup, cybercrime subgroup, Credit Card Fraud Working Subgroup and Counterfeiting Working Subgroup money. The SELEC center makes a series of analysis and reports for specific areas of organized crime and organizes a series of training for the representatives of the bodies which are implemented by the law of the Member States. Namely, as goals of the SELEC center we can extract:

1. Establishment of a mechanism based on increased cooperation between the police, customs, and other key actors in the fight against transnational organized crime.
2. Support in performing field activities.
3. Providing assistance in the harmonization of the Member States accordingly requirements of the European Union.
4. Support national efforts to enhance domestic cooperation between law enforcement agencies.
5. Providing support to specialized working groups.

The SELEC center provides a place for member states to exchange legal and operational data and information quickly, expeditiously, and in a timely manner coordinate multinational investigations in that region. And it all grows old through the three methods,

1. A request for regional assistance is sent to the SELEC center from by individual states through liaison officers,
2. Liaison officers then disseminate them to the liaison officer of the country concerned,
3. The answers to requests are forwarded by the liaison officers involved with the country that submitted that request.

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<sup>14</sup> <http://www.mvr.gov.mk/Upload/CEJIEK.pdf>



Namely, the SELEC center focuses its operational activities on:

1. exchange of information and 2.coordination of the working groups of the center. That is a very important fact which on October 7, 2011, entered into force the founding document of the SELEC Center, the Convention on the Enforcement of Law in Southeast Europe, in fact, the date is also of great importance because SECI actually became SELEC and its strategic and operational capacities were transferred to SELEC as its successor but in effect, they were the same expanded and deepened.<sup>15</sup>

International co-operation in the fight against organized crime is taking place through several of the above-mentioned bodies of the European Community, Interpol, Europol, Eurojust, The Selection Center, Trevi, Regional Cooperation Council, etc., where their activities take place are performed in accordance with international documents, ie. contracts, concessions, and protocols. Among the most important documents for international cooperation in the fight against transnational organized crime are the before mentioned concessions for extradition, for assistance in criminal matters, is further included here The Schengen Agreement and the Convention Implementing the Schengen Agreement, UN Convention on Transnational Organized Crime, Palermo Convention, Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna Convention, Convention on Laundering, Investigation, Seizure, and Confiscation of funds acquired through crime or terrorist financing and many others international acts against organized crime within the EU and European community.<sup>16</sup>

## CONCLUSION

Organized crime is a complex phenomenon and involves a wide range of activities. Organized crime seeks through various methods to reach the highest authorities and other important entities, in order to ensure the greatest possible concessions, adequate protection and social status for the heads of criminal organizations.

The fight against organized crime and terrorism requires proactive thinking, which includes cooperation between the public and private sectors. It is also necessary to develop a multidisciplinary approach to this phenomenon, close cooperation between political decision-makers, executive and legislative institutions as well as international cooperation. The need for a realistic assessment of these phenomena and the desire to combat them is part of the process of establishing and implementing a real and successful strategy. Also

staff specialization and appropriate training of those involved in the fight against organized crime and terrorism, resource sharing and finding better ways of regional and international co-operation. International and regional co-operation also plays a very important role in developing a solid strategy for fighting organized

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<sup>15</sup> SELEC, as successor of SECI Center founded in 1999, is established to provide support to its 11 Member States (Albania, Bosnia and Herzegovina, Bulgaria, The former Yugoslav Republic of Macedonia, Hellenic Republic, Hungary, Moldavia, Montenegro, Romania, Serbia, and Turkey) to enhance the coordination in preventing and combating crime, including transnational serious and organized crime.

<sup>16</sup> *Translation-Marija Rutevska*

crime. As is well known, there is no country that can deal with the organized on its own crime and terrorist activities. Only with international cooperation can we hope to reduce these activities.<sup>17</sup>

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<sup>17</sup> <https://www.pravdiko.mk/wp-content/uploads/2014/09/kriminalitet.pdf> 26.08.2020 20:43

# **CIVILIAN CONTROL OF THE POLICE: DIFFICULTIES AND OPPORTUNITIES. IN PARTICULAR CONCERNING HUNGARY**

**Vince Vari**

## **Abstract**

Constitutional democracies with a long history have high expectations of the public administration, including the police, at a fundamental level. An important pillar of this is the establishment of a system of checks and balances and its operation within the constitutional system. Its law enforcement aspect seeks to answer the question of the degree of transparency of organizations with a monopoly on the use of violence. Furthermore, how and by what means society can control them. Post-socialist countries are in a particularly difficult situation. In their structure and operation, their police organizations are hardly capable of giving NGOs greater scope to be involved in the control of their activities. Of course, for civilian control to work well within the police, it is also necessary for the community to truly feel its role in creating and developing public security, rather than transferring responsibility to the political leadership and authorities

**Keywords:** civil control, law enforcement, police, public security, third sector

## **INTRODUCTION**

An important and indispensable basis for democratic social organization is formed by non-governmental organizations, which have become active participants in our everyday lives through their active participation. The role of civil society in the democratization process was summarized by English political scientist Gordon White as follows.

Civil society:

- it can shift the balance of power between the state and society in favor of citizens;
- controls and supervises the state so that civil servants are accountable and the soundness of political decisions can be judged in public forums;
- plays a key mediating role between the private and public sectors (which can be embodied, for example, in the process of negotiation or compromise between the state and certain social groups) (White 1994, 383).

In the exercise of power in a democratic way, the functioning of power and the legitimacy of decisions at the governmental and municipal levels are controlled by civil society. NGOs also play their part in open legislation and represent a variety of interests. As NGOs are able to provide alternatives to the community in the field of public services, the state is increasingly allowing civic participation in the fields of education, culture, health and social care, among other things, thus taking the

burden off the state (Fricz 2019, 292). By its very nature, civil society complements the state supply system, so it is clear that the current government and local governments have the same interest as non-governmental organizations in the development of a well-regulated system of cooperation and cooperation between the state and the civil sphere.

## USE OF TERMS

The term civic is used in the context of the social and economic organizations that make up civil society, which are non-state, exist for purposes other than financial gain, and act voluntarily and in the public interest. The activities and organizational forms of such organizations range from a very wide range of diversity. The term civil sphere is a negative definition that refers to characteristics that are different from the public and market sectors. The most important characteristics of non-governmental organizations can be stated below (Kuti 1998; Bartal 2005; Csefkó 1999):

- institutionalization,
- independence,
- prohibition of profit distribution,
- self-government,
- volunteering.

The civil sector and civil society are not to be confused. The term civil sector should be understood as meaning non-governmental organizations and non-profit organizations, while the concept of civil society has a much broader meaning, as it includes all informal organizations outside the civil sector which citizens have set up through their voluntary organizations. Were created. So they are located between the two (Frey 2001, 47).

Civil society has a key role to play in mediating between the private and public sectors. There are a number of terms used in a similar sense for NGOs, such as non-profit organizations; In addition, non-governmental organizations ('Non-Governmental Organization', or NGO) taken over from the European Union (EU) are also synonymous with non-governmental organizations. The European Commission's 1999 discussion paper (Official Journal of the European Communities C329 / 10 / 17-11-1999) identified common characteristics of non-governmental organizations.

It is expedient to choose different names depending on which characteristics of the role of the civil sphere in society we want to highlight:

- Civil society organizations: focusing on the importance of citizens' initiatives;
- Civil society: the key elements are citizens' initiatives, the voluntary and autonomous protection of citizens' interests and values;
- Non-profit organizations: autonomous, non-profit social organizations serving social needs;
- Voluntary organizations: sheds light on the voluntary nature of the work of supporters and members;
- Civil sector - third sector: the name emphasizes that the civil sector is separate from the public and market sectors;

- NGO: a phrase arising from international practice, when the non-governmental nature of partner organizations representing society is of particular importance.

## **FORMS OF NON-GOVERNMENTAL ORGANIZATIONS AND GROUPING OF THEIR ACTIVITIES**

The civil sector consists of the following organizational forms (Bíró 2002, 4.):

- foundations
- public foundations
- associations
- economic and professional interest groups
- public bodies
- clubs, circles, self-help groups
- mass organizations
- public benefit purpose companies

The activities of NGOs can be grouped according to several aspects. It is a general ordering principle when it is based on the defining functions and primary scope of activities of organizations.

Another type of categorization is the International Classification of Nonprofit Organizations (ICNPO), which is an internationally accepted, widely used classification (Kákai 2009, 7).

The Hungarian Central Statistical Office's (HCSO) classification list for non-governmental organizations groups the categories of activities as follows:

- communications, publishers
- art, culture
- sports, hobbies, education
- health activity
- social organizations
- environmental, animal and disaster protection
- settlement and economic development
- protection of rights and interests
- interest representation organizations, bodies (Source: HCSO)

## **CHARACTERISTICS OF THE THIRD SECTOR**

It is an accepted paradigm in our rule of law that the principles of a market economy and democratic functioning now require the cooperation of three sectors instead of the two sectors traditionally defined by the economy: that is, public, market and civil economic actors.

The three most important criteria for the third sector are:

### **1. Prohibition of profit distribution:**

NGOs do not belong to the market sector because their establishment and operation are not driven by profit goals. It is conceivable that their income is generated through their core business or businesses, but it is utilized for predetermined purposes and is in no way distributed among each other (founders, members, sponsors, etc.) (Márkus 2016, 16).

## 2. Separation from the government sector and operational autonomy:

NGOs are not part of the public sphere, so they are not directly dependent on government. They are characterized by self-government, they have their own governing and decision-making body, and the state only exercises legal supervision over them. However, this autonomy does not preclude them from receiving state subsidies or from performing public tasks (Gyórfy 1995, 51).

## 3. Institutionalism, independent legal personality:

NGOs are officially listed institutionalized organizations that act in accordance with their internal rules of operation and act to achieve their goals.

No less important additional characteristics of NGOs could be the following:

- volunteering
- public benefit (Czike 2002)

## **THE ROLE OF THE CIVIL SECTOR IN SOCIETY**

NGOs play a significant role in the life of society, as the public-private sphere, ie mediation between public authorities and citizens, is one of the most important elements of the functions they represent. In addition, they serve to meet complex social needs, providing social control by making state power subject to community control and accountability through their operational mechanisms (Korten 1996, 118). The use of the services they provide is an alternative to the performance of public duties, as well as representing not only social but also professional interests, as well as protecting social pluralism by strengthening cultural, ethnic, linguistic, religious and other identities.

In general, their purpose can be said to be more than an organization that performs a task for the common good (Solomon et al. 2003,20). Here it is important to emphasize the role of the ability to compromise. In the expression of common civic interests, individual opinions go through a kind of filter, and in the expression of the public good modeled in the end result, solutions can be considered that are not optimal for the realization of individual ideas, but certainly for the service of group interests.

It is also important to mention that from a governmental point of view they meet many social self-organization needs and that they stimulate the need to express civic behavior in all areas of social life, encouraging people not to always rely on the goodwill of state power (Stumpf, 1999, 108-109). Due to this characteristic, non-governmental organizations also appear as active shapers of social policy, as they often try to influence decision-makers and politics in connection with their operation. In implementing this function, civilians try to use a number of influencing techniques; one of these is open lobbying. Code of Conduct for the Conference of International Civil Society Organizations, adopted in October 2009 (CONF/PLE 2009 Code 1)

However, civilians have learned from their past experiences and now try to use a range of alternative methods to open lobbying in order to succeed in influencing decision-makers (Zoltán, 2009, 2-4). In order for NGOs to be involved in the political decision - making process without discrimination, a stimulating and

empowering environment is needed, based on a common and uniform interpretation of democratic values and the rule of law (CONF / PLE (2009) Code 1, p. 6). ).

## **COOPERATION BETWEEN THE CIVIL SOCIETY AND THE ADMINISTRATION**

Until the 1990s, non-governmental organizations could only assume a complementary role in the performance of public tasks - however, the change of regime, which also brought about the growing non-governmental role mentioned above, brought the third sphere to the forefront.

NGOs seeking to meet rising expectations and EU patterns have been challenged by the sometimes controversial requirements, which have become a criterion not only for taking over and performing more effectively the tasks of budgetary bodies, but also for addressing new societal needs (including unemployment, improving the situation of the homeless, collective redress and the environment). On the other hand, it could be feared that NGOs, partly due to their financial unreliability, would not be reassuringly capable of performing public tasks. It follows from the uncertainty of this financial efficiency that the importance of the third sector is most innovative, due to its ability to fill gaps in the fulfillment of government tasks, and that its services are an alternative to public service. The variation in cooperation between the civil sector and government agencies is not only territorially and formally diverse, but the orientation of the system of relations between them can also be very diverse (Baranyai et al. 2003, 20).

However, the mutual benefits of cooperation are not always clear. The trend in practice also shows that long-term and short-term interests often do not materialize at the same time, while fiscal burdens are immediate for the state, while the expected benefits of state aid usually occur only at a delayed time.

Due to the above-mentioned financial uncertainty of the civil sector, the primary task of the state is to create legal regulations that make the financial instability of the NGOs of the third sector available if necessary and have the appropriate legal tools to deal with it.

NGOs can be of great benefit to a community as well as the state. Due to their special knowledge, integration into society, and the motivation of their employees, they are able to perform and solve tasks and challenges to which the public administration cannot or only less effectively respond (Sebestyén 2002, 7). The voluntary participation and autonomous unity of the people in social life is an essential element of a healthy civil democracy.

NGOs are more productive and economical in terms of operations. On the one hand, because they do not require continuous state funding as opposed to the administration. On the other hand, a well-functioning non-governmental organization can achieve longer-term and larger-scale results with the significant added activity and voluntary commitments from the funds received from grants and tenders. The amounts of support allocated to them are incomparably smaller than what would have to be spent on the maintenance and operation of a state or municipal body in the case of the same or similar task volume (James 1987).

## **THE POLICE AND THE CIVIL SPHERE**

The change of regime in Hungary also resulted in the rebirth and strengthening of civil society. A large number of social groups, that is, civil communities, were formed, and the framework for social self-organization gradually developed. Volunteering, self-activity and donation are the characteristics and forms of civic activity that tens of thousands of citizens live as a specific terrain for the fulfillment of their individuality. The participation of non-governmental organizations is also unavoidable in the creation of public security as a collective social product. The police cooperate with state and local government bodies, social and economic organizations and their communities. It supports the voluntary activities of citizens' communities to improve public safety (Act of XXXIV of 1994 on the police. 2. §. and 3/1995 on the Police Staff Regulations. BM Decree 91.§.).

The possibility of cooperation between non-governmental organizations and the police is also provided by an internal organizational norm, which also gives the head of the local body the opportunity to conclude cooperation agreements with non-governmental organizations (instruction 44/2008. (OT. 26.) ORFK).

The relationship between law enforcement and NGOs can be basically divided into two parts. On the one hand, non-governmental organizations can be involved in the process of creating public security by taking an active part in it, especially with regard to local law enforcement tasks, with an active contribution to it. The most typical form of this is involvement in crime prevention, with emphasis on victimization or victim support, drug prevention and harm reduction. (Cooperation between the White Ring Public Benefit Association and the Police. Prevention of becoming a victim, victim assistance within the framework of the TÁMOP-5.6.1.C-11 / 1-2011-0001 tender.) In the reduction of criminal opportunities, the presence of public places together with or next to the law enforcement agencies, as well as informing, assisting and enlightening the citizens.

The task that forms the need for the participation of other prominent non-governmental organizations is the civilian transparency, ie the civic transparency of the operation of law enforcement activities. All this would mean the continuous monitoring of the legitimacy and professionalism of the exercise of public power with a monopoly of violence, the independent investigation of possible violations of the law and the provision of appropriate professional feedback to the professional and political structures of the police. In order to identify system-wide and case-specific operational problems and to propose solutions. One of the typical problems is the elimination of ethnic disparities in police action practice ([www.ekint.org](http://www.ekint.org)). Police action on Gypsies has long been the focus of civil society organizations, in particular the Society for Civil Liberties, a human rights civil rights organization, with a high profile. Their active involvement is well illustrated by the fact that in 2018 they provided legal assistance in 3,000 cases in human rights violation proceedings and had 185 pending cases ([tasz.hu](http://tasz.hu)). The Hungarian Helsinki Committee (HHC) also launched a consultative forum in connection with the police's certification practice, in which a structured dialogue was held on the subject with the involvement of the local population (Strategies For Effective Police Stop And Search - Effective Police Certification Strategies, 2011-2012. The Project of the Hungarian Helsinki Committee). The importance of this issue is well illustrated



by the fact that the European Union gives priority to the prohibition of ethnic discrimination and, by providing financial and intellectual resources, encourages action against hate crimes related to ethnicity. As part of this, a working group against hate crimes was set up, which was also set up by NGOs in 2012, and serious efforts are being made to curb hate crimes with the involvement of experts ([gyuloletellen.hu](http://gyuloletellen.hu)). As stated in the strategy, their aim is to improve investigative procedures and police communication. Improving the control of police behavior, in particular the detection and prevention of crime, does not in itself presuppose the involvement of new external factors. The body's own response systems, the Law Enforcement Protection Service, the investigator, and the military prosecutors could, in principle, be able to do this work together. However, as Szikinger puts it, it is another matter that this system is largely closed, by its very nature it gives the appearance to the outside that there are really no problems. He never acknowledges any systemic errors in his external communication, so he does not conduct comprehensive research or investigation to identify them, he also tries to keep external scientific research away from them. Emerging negative cases are set as individual professional errors, and efforts are made to ensure that negative and comprehensive conclusions cannot be drawn regarding the operation of the entire organization (Szikinger 2007, 3).

For civilian control to function effectively in a democracy, it is certainly necessary for a community to truly feel its role in creating public security, not to place its creation and responsibility for its mistakes on the authorities alone. It is obvious that the democratic institutional system and legal regulation in Hungary are already sufficiently developed for the greater role of non-governmental organizations in the direction of the police. Only an adequate social background is not provided for a qualitative leap. The main reason for this is that citizens continue to expect the state, especially the police, to establish public order, so they also blame the law enforcement agencies for the failures in this process. Rather than showing a greater sense of responsibility, they would realize that they themselves are not doing everything they can to make the police work with greater transparency and accountability. And the police organization alone: in its nature and operation, is not suitable for opening and initiating role. Especially because, similarly to the period before the change of regime, in a closed military and strict hierarchical system, representing a specific subculture, it was encapsulated in society as a kind of inclusion (Kr mer 2003, 147). This particular social attitude is supported by the research carried out in 2011 by the Social Sciences Department of the Hungarian Law Enforcement Society (MRTT) regarding the role of the Civil Guard (CG) in crime prevention and the shaping of public safety. It was found that the CG does not have a separate place, only together with the police, in the municipal power and security space, close to the security factor of acute security, law enforcement presence and security establishment. Together, they form the segment of the municipal power and security space where the CG is also located. This part of the space is far from the space occupied by both individuals and other institutions. People perceive in their own place of residence that the CG (and the police) have only a weak, insecure relationship with other actors present in the settlement. What they think of development and change suggests that they have no idea how

important it would be for these actors to work together, nor how important their own contribution to security would be.

## **CONCLUSION**

Constitutional democracies with a long history also have serious expectations at the level of the administration, including the police, one of the important pillars of which is the development of a system of checks and balances and its practical manifestation in the constitutional system. The law enforcement aspect of this provides the most answer to the extent to which organizations enjoying a monopoly on the use of violence are transparent and to what extent they are controlled by society (Vári 2018, 311). In England, police data on legitimacy is provided by population surveys and independent organizations. Each police unit is associated with independent advisory bodies who can visit police detention facilities and production facilities at any time, in an unannounced manner, and examine the conditions of detention and talk to detainees and persons under trial. An annual report is being prepared, and in 2016, a pilot program was conducted for complaints against 13 police bodies that did not meet the criteria in at least 3 or more respects (Best Use of Stops and Search revisits. HMIC, September 2016). Similar forms of civil control are far from present in Hungary. In my own empirical research, We came to the conclusion that We agree with the arguments of the cited authors: We found an adequate social milieu to promote civilian control and greater involvement of NGOs, and the lack of an open and supportive police organizational culture. Unfortunately, the police feel that they are much more in solidarity with the population than the population in their direction, and would even support the population's self-organization of public security, but they clearly reject the role and importance of the CG and greatly underestimate it. It is valued that the police carry values that are independent of citizens, not community-based, but power-based, authoritarian, and politically governed. According to the majority of the responding police officers, there is currently an authoritarian, non-communal police station operating in Hungary, which should move towards a communal approach, but primarily away from political and power interests, with its basic social purpose (Vári 2016,163). In focus of this, We believe that the key to the solution may continue to be the growing and transparent role of non-governmental organizations in society. It is expedient to communicate the benefits and role of these in the widest possible circle of society. In addition, the dialogue between NGOs and the police needs to be strengthened, with the active use of all existing communication channels. The latter could effectively contribute to breaking down mutual prejudices. A number of excellent initiatives have been launched recently, but there are still many tasks to be solved to achieve a relationship between non-governmental organizations and the police operating in Hungary at a level similar to Western democracies.

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### **Abbreviations**

- NGO : Non-Governmental Organization  
ICNPO: International Classification of Nonprofit Organizations  
EU: European Union  
HCSO: Hungarian Central Statistical Office  
ORFK: National Police Headquarters  
BM: Home Office  
MRTT: Hungarian Law Enforcement Society  
HHC: Hungarian Helsinki Committee  
CG: Civil Guard  
NKE: University of Public Service  
MTA: Hungarian Scientific Academy

## **LAWS PREVENTING RECIDIVISM OF CONVICTED OF CRIMINAL OFFENSES AGAINST SEXUAL FREEDOM**

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### **Abstract**

In the Republic of Serbia in recent years, the criminal procedure is subject to frequent changes. Apart from the adoption of new regulations, the proposals, amendments and additions to certain laws are often made. In this regard, the National Assembly of the Republic of Serbia adopted the 2013 Law on Special Measures for the prevention of crimes against sexual freedom of minors. It provides certain specificity for offenders against sexual freedom, such as the ban on mitigation of punishment, the prohibition of conditional release, nezasterevanje prosecution nor the execution of the sentence. At the same time, special measures are foreseen and special records are introduced. This law derogates certain institutes that are regulated by the Criminal Code. The legislature started from the assumption that this law is to prevent recidivism of convicted persons for criminal offenses to which it applies the above mentioned Act. Also, the aforementioned legal text before all has importance for special prevention, but its general prevention with all the specifics characteristic of the perpetrators of these crimes is not excluded. The authors critically analyze the individual provisions of the Law on Special Measures for Preventing the Execution of Criminal Offenses Against Sexual Freedoms against Juveniles in order to show that the Law contains major defects and that some of its provisions are inapplicable in practice.

**Keywords:** recidivism, sexual freedom, records, commutation of sentence, parole.

### **INSTEAD OF INTRODUCTION**

In the Republic of Serbia, new laws are often enacted or changed by the existing public. Often, after committing the (most serious) criminal act, the existing legal solutions are changed. Legal solutions are changed or adopted without adequate (or even without) research and without the participation of the most competent professional public. For this reason, apart from raising the question of the justification of such solutions, the regulations contain certain illogicalities, contradictions, which creates certain problems in practical application.

In 2013, the Law on Special Measures to Prevent the Commitment of Sexual Offenses against Minors was passed.<sup>1</sup> ZPM entered into force eight days after its publication in the Official Gazette of the Republic of Serbia. As stated in the Explanation of the Law: in view of the increased number of sexual offenses committed against minors, it is necessary to, in addition to the existing system of criminal sanctions, which have not proven to be fully effective, introduce special measures to eliminate the conditions that could influence the perpetrators of these crimes in the future.<sup>2</sup> ZPM has a total of 19 members. It prescribes derogations from the rules prescribed above all by the Criminal Code, such as: 1. Prohibition of the imposition of a sentence and parole and non-observance of a criminal prosecution and execution of a sentence; 2. the legal consequences of the judgment; 3. special measures; 4. special records.

### **TO WHOSE CRIMINAL OFFENSES APPLIES ZPM?**

The Law on Special Measures to Prevent the Commitment of Sexual Offenses against Minors, does not apply to all perpetrators of crimes, but only to certain individuals. Therefore, in order to apply the ZPM, three conditions must be fulfilled, namely:

A. that any of the following crimes were committed:

- 1) rape (Article 178, paragraphs 3 and 4 of the Criminal Code);
- 2) a promise against a helpless person (Article 179, paragraphs 2 and 3 of the Criminal Code);
- 3) promise with the child (Article 180 of the Criminal Code);
- 4) promise of abuse of office (Article 181 of the Criminal Code);
- 5) unlawful sexual acts (Article 182 of the Criminal Code);
- 6) Undertaking and facilitating sexual intercourse (Article 183 of the Criminal Code);
- 7) mediation in the practice of prostitution (Article 184, paragraph 2 of the Criminal Code);
- 8) displaying, obtaining and possessing pornographic material and exploiting a minor for pornography (Article 185 of the Criminal Code);
- 9) Indication of a minor to attend sexual acts (Article 185a of the Criminal Code);
- 10) exploitation of a computer network or communication with other technical means for committing criminal offenses against sexual freedom against a minor (Article 185b of the Criminal Code).<sup>3</sup>

B) that the offender is of legal age. Although not explicitly prescribed by law, it is required that the perpetrator is of legal age when he or she commits the crime;

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<sup>1</sup> Law on Special Measures to Prevent the Commitment of Sexual Offenses against Minors, Official Gazette of the RS, No. 32/2013 (hereinafter also ZPM).

<sup>2</sup> From the Explanation of the Proposal of the Law on Special Measures to Prevent the Commitment of Sexual Offenses against Juveniles, p. 7. Available at: <https://www.srbija.gov.rs/prikaz/183505> (12/22/2019).

<sup>3</sup> Art. 3 of ZPM.

V) the passive subject must be a minor.  
ZPM cannot be applied to juvenile offenders.

## **PROHIBITION OF IMPOSITION OF PENALTY**

If it is established in a criminal proceeding that a criminal offense has been committed and the defendant is guilty of the offense, the court is obliged to carry out the individualization of the criminal sanction. If in court proceedings it is determined that the offender should be sentenced to imprisonment, the court is obliged to carry out the individualization of the sentence of imprisonment. This will make a way as to impose a prison sentence within the limits prescribed for the offense. As a rule, imprisonment is carried out in a penal institution, but it is possible for the court to determine in a judgment that the sentence of imprisonment is served in the premises where the convicted person resides.

If there are conditions provided for the mitigation of imprisonment, the court may mitigate the imprisonment of the prisoner within the limits prescribed by the CC. However, when it comes to the perpetrators of the crimes to which the ZPM applies - the sentence cannot be mitigated.

## **PROHIBITION OF PAROLE**

One legal way to get a prisoner out of prison earlier is possible in the case of parole. Conditional release is the most important right / privilege / benefit that a convict can obtain from the court while serving a prison sentence. As a general rule, a convicted person has the right to apply for parole after serving 2/3 of their sentence. The petition is decided by the court. When deciding on parole, the most important thing for the court is the behavior of the convicted person while serving a prison sentence. The court evaluates the convict's behavior on the basis of reports submitted to prison by the prison authorities from the penitentiary where the prisoner is serving his sentence. However, there are certain categories of convicts who cannot be conditionally released for various reasons.<sup>4</sup>

When it comes to our case of ZPM interest, and with respect to parole, it is important to emphasize that convicted persons sentenced to imprisonment for criminal offenses that apply ZPM cannot be conditionally released. The point is that there is a legal ban on parole for this category of convicts.

At first glance, such a legal solution may seem justified, as it prevents the convicted person from leaving the penitentiary and thus prevents him from repeating the criminal act of freedom - to be a recidivist. On the other hand, there are at least six questions:

1. are these really the most dangerous convicts, so they should not be conditionally released?
2. in this case, are they the irreparable perpetrators of the crimes?
3. What is the purpose of sentencing - primacy - special prevention?
4. What is the purpose of the execution of the sentence - isolation?
5. is it necessary for these convicted persons to serve their sentence separately from other convicts?

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<sup>4</sup> There is also a rule, prescribed by the Penal Code, a convicted person who has been twice disciplined may not be conditionally released.

## 6. Treatment of prisoners in a penal institution?

We do not agree with this decision of the legislator. It is not justified that there is no hope for the convict that he will be conditionally released. This decision was made by the legislature under the influence of the general public. Given that it is the intention of the legislature to bring this convicted population.

### **NON-APPLICABILITY OF STATUTE OF LIMITATIONS TO CRIMINAL PROSECUTION AND PUNISHMENT**

The statute of limitations on prosecution is an important institution of criminal law, for which it is not entirely certain whether, by its nature, it is dominant in the field of substantive or procedural criminal law (Škulić, 2016, 9). Statute of limitations is the legal basis for extinguishing criminal penalties due to the lapse of time, which results in the loss of the state's right to prosecute or to enforce the imposed criminal sanctions (Stojanović, 2009, 331). There are exceptions to the general rule that criminal prosecution and the enforcement of a criminal sanction are outdated. According to the Criminal Code it was stipulated that the prosecution and execution of the sentence shall not be time-barred for the offenses provided for in Art. 370 to 375 of this Code,<sup>5</sup> as well as for criminal offenses for which, under ratified international treaties, statute of limitations cannot occur.<sup>6</sup> ZPM has made certain innovations regarding this institute, in such a way that prosecutions and the execution of sentences are not time-barred for the offenses to which it applies. Viewed from the point of view of obsolescence, the legislature classifies these crimes as the most serious crimes, ie. it ranks them in the rank of genocide and war crime.

### **SPECIAL RECORDS**

Each offender is recorded in certain records for a specified period of time. Although, there are certain offenders who are never deleted from the records. In the Republic of Serbia, every perpetrator (natural person) of the criminal offense was registered in the criminal record - CR. Until the adoption of the ZPM, the criminal record was the only record in which offenders were enrolled.<sup>7</sup> The ZPM introduces a special record in which the perpetrators of the offenses to which it applies are entered. Therefore, convicted persons to whom the ZPM applies are recorded in two records - in CR and in separate records. Certainly the question is whether it is justified for one convicted person to be recorded in two records, or is it sufficient only to be entered in one - in this case in a separate record?

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<sup>5</sup> Genocide (Art. 370); Crimes against humanity (Art. 371); War crimes against civilians (Art. 372); War crime against the wounded and sick (Art. 373); War crime against prisoners of war (Art. 374); Organizing and inciting the commission of genocide and war crimes (Art. 374); Organizing and instigating the commission of Genocide and war crimes (Art. 375).

<sup>6</sup> Criminal Code, Official Gazette of the RS, no. 85/2005. However, the latest amendments to the Criminal Code also bring certain novelties related to obesity. Law on Amendments to the Criminal Code RS Official Gazette, no. 35/2019. The sentence of life imprisonment is introduced, and in this connection it is stipulated that the criminal offenses for which the sentence of imprisonment is prescribed are not statute of limitations.

<sup>7</sup> There are exceptions when it comes to sanctions that can be imposed on juvenile offenders.



The special records shall include data concerning the perpetrator of the crime and the crime committed.<sup>8</sup> A convicted person who is entered in this record is never deleted from it, as the data from the special record is kept permanently and cannot be deleted. It is now possible for one person to be deleted from the CR when a certain amount of time has elapsed, but not to be deleted from the special record (Milić, 2015, 239-251).

In this way, the legislator decided that one person convicted of the crimes to which the ZPM applies should remain on the record for the rest of their lives. Unlike the CR kept by the competent police departments, the Special Records are kept by the Directorate for Execution of Criminal Sanctions. The administration is an organ within the ministry responsible for justice.<sup>9</sup> The point is that in the Republic of Serbia there is only one record (unique record) in which convicted persons are registered who commit a criminal offense to the territory of Serbia to which the Criminal Procedure Code applies. This makes it easy to get information on whether a person has previously been convicted of these offenses.

It is important to emphasize that this record also contains the DNA profile of the convicted person, which in some cases, if a new crime is committed, will enable him to quickly identify which perpetrator - if the DNA profile matches, or exclude certain persons as possible perpetrators - unless DNA matches.

## **SPECIAL MEASURES**

That every convicted person serving a sentence of imprisonment will one day be welcomed in the Republic of Serbia shall not be valid as of December 1, 2019. Namely, on that day the Law on Amendments to the Criminal Code entered into force, imposing a sentence of life imprisonment for certain offenses without the possibility of parole. Until then, according to ZIKS, in several cases, a convicted person is released from the penitentiary, as follows: 1. Due to the expiration of the sentence; 2. Due to amnesty; 3. Pardon; 4. Due to parole; 5. Due to early release (Milić, Dimovski, 2018, 77). Convicted persons who are released from the penitentiary, unless it is a condition of conditional release under electronic supervision, as a rule have no obligations to the state authorities. When we say obligations - we mean, first and foremost, reporting to the competent authorities in order to exercise some control over them.

There are exceptions when it comes to convicted persons to whom the ZPM applies. Convicted persons to whom the CAP applies after serving a prison sentence are not free persons as well as other convicted persons to whom this Law does not apply. According to the perpetrator of the criminal offense to which the ZPM

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<sup>8</sup> These are the following data: 1) the name and surname of the convicted person; 2) the unique identification number of the convicted citizen; 3) address of the convicted person's residence; 4) information on the employment of the convicted person; 5) information on the importance for the physical identification of the convicted person and his photograph; 6) DNA profile of the convicted person; 7) information about the criminal offense and the sentence to which he was sentenced; 8) information on the legal consequences of the conviction; 9) information on the implementation of special measures prescribed by this Law.

<sup>9</sup> See Art. 12 of the Law on Execution of Criminal Sanctions, Official Gazette of RS, no. 55/2014 and 35/2019

applies, the following special measures are implemented after serving a prison sentence:

- 1) mandatory reporting to the competent police authority and the Administration for Execution of Criminal Sanctions;
- 2) prohibition of visiting places where minors gather (kindergartens, schools, etc.);
- 3) compulsory visit to professional counseling centers and institutions;
- 4) compulsory notification of change of residence, residence or workplace;
- 5) compulsory travel notification.

These are special measures whose pronouncement does not depend on the court but is implemented on the basis of the law itself. Special measures shall be implemented for a maximum of 20 years after the sentence has been served. However, this does not mean that each convicted person will be subject to special measures for exactly 20 years. The point is that after a certain period of time, the need for further duration of special obligations is reviewed. In the proceedings in which it decides on the need for further implementation of special measures, the court shall obtain reports from the authorities and organizations competent for the implementation of those measures. The examination shall be carried out *ex officio* or at the request of the person subject to special measures, within the following time limits (Milić, 2017, 449-451):

1. After the expiry of every four years from the date of application of the special measures, the court which rendered the first instance judgment shall decide of its own motion on the need for their further implementation;
2. A request for review of the need for further implementation of special measures may also be submitted by the person to whom these measures relate. The request may be lodged with the court which delivered the first instance judgment after the expiry of every two years from the date of application of the special measures.

#### **MANDATORY REPORTING TO THE COMPETENT POLICE AUTHORITY AND THE ADMINISTRATION FOR EXECUTION OF CRIMINAL SANCTIONS**

Under the obligation of reporting to the competent police authority and the Directorate for Execution of Criminal Sanctions, the duty of the offender shall be reported personally to the organizational unit of the police at his place of residence and the organizational unit of the Administration for Execution of Criminal Sanctions responsible for treatment and alternative sanctions, no later than 15. days of the month.

#### **PROHIBITION OF VISITING PLACES WHERE MINORS GATHER**

Prohibiting visits to places where minors gather is a duty of the offender to refrain from visiting places where minors gather, such as school buildings, school yards, kindergartens, playgrounds, children's events, etc.

## **OBLIGATION TO VISIT PROFESSIONAL COUNSELING CENTERS AND INSTITUTIONS**

The obligation to visit professional counseling centers and institutions implies the duty of the offender to visit the professional counseling centers and institutions according to the program determined by the organizational unit of the Criminal Sanctions Administration responsible for treatment and alternative sanctions.

## **OBLIGATORY NOTIFICATION OF CHANGE OF RESIDENCE, RESIDENCE OR WORKPLACE**

Compulsory notification of change of residence, place of residence or workplace shall mean the duty of the perpetrator to personally inform the competent organizational unit of the police and the organizational unit of the Criminal Enforcement Administration responsible for treatment and alternative sanctions within three days of the change permanent residence, residence or workplace.

## **OBLIGATORY TRAVEL NOTIFICATION REQUIRED**

Compulsory notification of traveling abroad implies the duty of the perpetrator to report personally to the competent organizational unit of the police no later than three days before the trip abroad. Also, the perpetrator is obliged to provide the competent organizational unit of the police with information on the country to which he travels, as well as his place and length of stay abroad.

## **EXECUTION OF SPECIAL OBLIGATIONS**

Bearing in mind the fact that a convicted person subject to special measures is at liberty to discharge special obligations is not a simple task for the authority under whose jurisdiction the fulfillment of special obligations falls. From the provisions of the ZPM, we see that the convicted person is obliged to report first and foremost to the police and the commissioner - so that they are also responsible for implementing the measures. With regard to enforcement, the first question that arises is - what regulation governs enforcement? In 2014, the Law on the Enforcement of Extra-institutional Sanctions and Measures was adopted in the Republic of Serbia,<sup>10</sup> so it also contains provisions on the implementation of special measures. The seventh chapter is dedicated to the implementation of special measures. In addition to this Law, by-law - the Rulebook on the Method of Execution of Extracurricular Sanctions and Measures and the Organization and Work of the Commissioner<sup>11</sup> shall regulate the performance of special obligations.

The perpetrator of the criminal offense is obliged to report personally to the competent Commissioner within three days from the day of execution of the criminal sanction imposed on him. The Commissioner is obliged, within three days from the day the offender reports, to begin preparations for the implementation of the measures and to establish cooperation with the police, professional counseling centers and institutions essential for the implementation of the special measures execution program. Then, the Commissioner is obliged, within eight days from the

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<sup>10</sup> Official Gazette of RS, no. 55/2014 and 87/2018.

<sup>11</sup> Official Gazette of RS, no. 30/2015.

day of reporting of the offender, to draw up a program of execution of special measures and to inform the offender of the program and the consequences of the default.

The program shall include the manner of carrying out the following special measures, in accordance with the law:

1) the obligation to report to the Commissioner every month not later than the 15th day of the month;

2) respect for the prohibition of visiting places where minors gather;

3) designation of a professional counseling center or institution;

4) informing the Commissioner of the change of residence, place of residence or workplace;

5) the way of cooperation with the police and other institutions important for the implementation of the program.

The Commissioner program submits the decision to the court, the police, the counseling center and the institution. At the request of the competent court, the Commissioner shall, within three days, submit a report on the implementation of the program of execution of special measures. In case of non-implementation of special measures by the perpetrator, the Commissioner is obliged to inform the court thereof. If during the implementation of the program circumstances that prevent its implementation (illness of the offender requiring longer treatment or other special circumstances) arise, the Commissioner shall immediately inform the court which rendered the first instance judgment.

## **INSTEAD OF CONCLUSION**

Based on the presentation of certain provisions, the Law on Special Measures to Prevent the Commitment of Sexual Offenses against Minors, as well as on the basis of its Explanation, seems to be the main objective of its enactment, the prevention of recidivism. It can be concluded that, first of all, recidivism is prevented by depriving a convicted person of his or her imprisonment as soon as possible, of course within the time limits prescribed by law. This is achieved by the fact that the ZPM prohibits the reduction of sentences and the conditional release of convicts. recidivism is also prevented by the way the convict is supervised / controlled even after serving a prison sentence.

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## THE RUSSIAN FEDERATION'S POLICY TOWARDS BULGARIA IN 1989 – 2020

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### **Abstract**

Considering the bilateral relations between Russia and Bulgaria, which are the subject of the article, one should bear in mind the history of both countries and nations, which, having been deeply rooted in social consciousness, has repeatedly explained or even justified Moscow's expansionist policy towards Sofia. Over the centuries, Russia has had an interest in influencing the Balkan region. It focused mainly on geopolitics and security, economic, cultural, and religious relations. With geopolitical changes in the 20th century, the collapse of the communist system, and the USSR's disintegration, Russia's influence decreased. However, not enough to completely abandon the previously pursued policy of "encircling" the weaker and more prone to creating extensive ties Balkan states. One of them was Bulgaria. The created military, energy, and economic dependencies allowed Russia to implement its plans for many years. Thus, they led to a situation in which today "Russia can do without Bulgaria, but Bulgaria cannot do without Russia"<sup>1</sup>. Despite the political and economic changes in Bulgaria over the last thirty years and rapprochement with NATO and the European Union, Russia's presence is still visible. Membership in the EU has given Bulgaria a sense of belonging to the "West", constant socio-economic development, and credibility. Belonging to NATO has brought a guarantee of military security and good relations with the USA. Nevertheless, it was impossible to avoid Russia's influence, which guarantees Bulgaria energy security, income from tourism, real estate, or mafia connections, which probably generate the lion's share of profits. The Russians permeated all spheres of Bulgarians' life. The Russian media, shops, restaurants, casinos, hotels, and real estate have become a widespread in Bulgaria. Russian funds became the source of income for many Bulgarian families on the Black Sea coast. This is the main reason why political correctness between states must be preserved.

**Keywords:** Russia, Bulgaria, bilateral relations, energetics, tourism

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<sup>1</sup> E. Manołowa, B. Szef wywiadu rosyjskiego: *Rosja może się obejść bez Bulgarii, ale Bulgaria bez Rosji nie*, [Head of Russian intelligence: Russia can do without Bulgaria, but Bulgaria cannot do without Russia] Sofia, 20.06.1997

## INTRODUCTION

Since the fall of communism in 1989, Bulgaria has turned to the West, i.e., joined NATO (2004) and the European Union (2007), and has implemented the priority assumptions of the state's foreign policy. However, this did not change the fact that Russia remains an essential partner for Bulgaria, and in bilateral economic relations, "everything is about gas and oil". Russia treats the Balkans as a region of strategic importance. Although not all planned projects bring tangible financial results for Moscow, the very fact of its interference in Bulgaria's affairs is what counts. Energy projects that have been carried out since the 1980s are of much more political than economic importance. Their success or failure influences the Bulgarian prosperity. Bulgaria's economy is mainly dependent on supplies of Russian gas and oil. Tourism and real estate, mainly on the Black Sea, are Bulgaria's biggest parts of its GDP, and the Russians are interested in them. Any objection from Bulgaria directed towards Moscow results in threats that the undertaken investments will not be completed or even turned down. Bulgaria is too weak and too dependent on Russia to put it under pressure. That is why over the years, it has tolerated the endeavors of Russians on its territory, explaining Russian interference in its internal affairs as the consequence of history and cooperation of nations. Bulgarians realize that they must consider Russia's role in the international arena. Their foreign policy is an eternal balancing act between the West and Moscow. For 85% of Bulgarian society, Russia is not a threat (Gallup Institute), and Russian investors and tourists, who spend big money in tourist destinations are welcome. Russia is "playing for time with Bulgaria" and is an "Ace" in the game. The Russians are masters of diplomacy, using courtesy and a variety of tactics in their endeavors.

The article is based on the PAP (Polish Press Agency) <sup>2</sup> press releases published and devoted to the Russian Federation's policy towards Bulgaria over the past thirty years. Insight into them confirms the existence of solid and deeply entrenched ties between Russia and Bulgaria. It demonstrates the belief that it would be difficult for Bulgaria to function without Russia's participation in many respects.

## THE ORIGINS OF MUTUAL RELATIONS

Tsar Boris III of Saksoburggottski (1894-1943) used the apt phrase that Bulgaria "was always with Germany, never against Russia"<sup>3</sup>. Psychological, energy, and economic dependence continues to play an important role in bilateral relations. Russia is Bulgaria's second trading partner after the EU. About 20% of the Bulgarian economy is in the hands of the Russians. Oil, gas, and nuclear fuel are almost entirely imported from Russia via Lukoil and Gazprom. Russian companies participate in the restructuring and construction of new projects, exercising direct

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<sup>2</sup> PAP – Polish Press Agency

<sup>3</sup> The Russians brought the Bulgarians long-awaited freedom and liberation from Turkish captivity in 1878.

E. Manolowa, *Bulgaria: nigdy przeciw Rosji* [Bulgaria: never against Russia], Sofia, 19.04.2014

supervision over work. Russians<sup>4</sup>, who own over 400,000 real estate objects located mainly on the Black Sea, are the biggest contributors to Bulgarian tourism, which generates about 15% of country's GDP. Russian settlements, shops, media<sup>5</sup>, even writings in restaurants remind Bulgarians of how much they owe the Russians. They are the driving force behind the construction industry in resorts. 9% of GDP is provided by the only petrochemical plant Neftochim-Burgas, which is 100% owned by the Russian Lukoil. The Bulgarian defense industry (tanks, fighter aircrafts, machine guns) has been dependent on Russian supplies of spare parts and permits for the modernization of weapons since the 1940s<sup>6</sup>. There is a direct link between economic dependence, which has not been eliminated over the past 25 years, and the Bulgarian economy's structure, mainly copying the Russian oligarchic model.

Russia has been pursuing a policy from a position of strength in the Balkans. Making the countries, including Bulgaria, and partly Romania or those still outside the EU: Turkey, Serbia, Montenegro dependent. It tries to put pressure on the West (including the EU) and use it to pursue its interests. In September 2019, the Bulgarian prosecutor's office published a document on the "Russophiles" movement's activities and goals, drawn up by Nikolai Malinow<sup>7</sup>. The statements in the document are broadly in line with the vision of cooperation pursued by Moscow for years. "Bulgaria should become a country that builds its future together with Russia. Russia is stronger than us, and we realize that we will not survive without it (...) Our main goal is the geopolitical direction of Bulgaria based on Eastern Church Orthodoxy, Slavic culture, and traditions that invariably connect us with Russia"<sup>8</sup>. For this, "serious support is needed in the form of presence in key economic sectors,"<sup>9</sup> – writes Malinow. "To expand Russia's influence and whip Bulgaria off the sphere of Western and US influence, a political party must be established. The media can play an important role here, including a TV channel and web portals with a pro-Russian orientation"<sup>10</sup>. Sofia's integration with NATO and the EU took away Russia's "exclusivity for Bulgaria". It was not the first time that happened in history.

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<sup>4</sup> According to data from the Bulgarian Ministry of Tourism, in 2019 over 9.3 million tourists visited Bulgaria, including 450,000 Russians. *Bulgaria tylko minimalnie poprawiła turystyczny wynik* [Bulgaria has only slightly improved its tourist result], turystyka.rp.pl, 13.02.2020

<sup>5</sup> In 2004, the president of Bulgarian public television, Kiril Gocev, was fired for "systematically violating the Radio and Television Act," including signing an agreement with a Russian advertising agency that made the Russians the only time managers of advertising time on Bulgarian public television. E. Manołowa, *Rada Mediów zwolniła prezesa telewizji publicznej* [The Media Council dismissed the president of the public television], Sofia, 16.03.2004

<sup>6</sup> In 1945–1990 Bulgaria received about 650 licenses from Russia to produce weapon and military equipment. E. Manołowa, *Bulgaria obawia się trudnych negocjacji z Rosją ws. licencji na broń* [Bulgaria is afraid of difficult negotiations with Russia regarding a gun license], Sofia, 9.12.2004; E. Manołowa, *Rosja może zablokować modernizację bułgarskich śmigłowców* [Russia may block the modernization of Bulgarian helicopters], Sofia, 11.02.2005

<sup>7</sup> Nikolaj Malinow is the leader of the Russophiles movement.

<sup>8</sup> E. Manołowa, *Prokuratura opublikowała materiały ws. afery szpiegowskiej* [The prosecutor's office published information on the spy scandal], Sofia, 13.09.2019

<sup>9</sup> Ibidem

<sup>10</sup> In the report, Malinow mentions the need to acquire the Vivacom mobile network operator, two large armaments factories, TV channels, i.e. TV7 and BTB, and giving them a pro-Russian direction. E. Manołowa, *Prokuratura opublikowała materiały ws. afery szpiegowskiej* [The prosecutor's office published information on the spy scandal], Sofia, 13.09.2019



When the Red Army entered Romania, Yugoslavia, and Bulgaria in 1944, Moscow gained an advantage in the Balkans (except Greece and Turkey). Plans were made to establish a Balkan federation between Yugoslavia, Bulgaria, and Albania. Supported by Stalin and influential political activists representing Yugoslavia and Bulgaria, the plans ruined when Josip Broz Tito chose a "different path". During the Cold War, only Bulgaria remained entirely subordinate and loyal to Moscow<sup>11</sup>. To a large extent, this fact made it difficult to reduce dependence between states<sup>12</sup>. However, the need to introduce changes in Bulgaria's foreign policy was indicated. After 1991, the Balkans became an area of minor importance among Russian strategists and diplomats. The collapse of the USSR and the war in Yugoslavia brought the West to the foreground in the Balkans. It became difficult for Russia to continue to control Bulgaria, and Romania, Greece, Serbia, and Montenegro. That is why alternatives to guaranteeing Russian interests in the Balkans began to be sought. In the first half of the 1990s, the classical pattern of signing bilateral agreements was applied to Bulgaria. A sign of the need to maintain bilateral relations at the highest level was, i.a. the Agreement on friendly relations and cooperation signed in Sofia on August 4, 1992<sup>13</sup>. The third in a row, the post-war pact, unlike the previous ones, was devoid of ideological issues and military clauses<sup>14</sup>. The new agreement, supplemented with further agreements on mutual investment protection, avoidance of double taxation, trade, transport, visa issues, became the basis for renewing relations in a new time space<sup>15</sup>. At the same time, "to overcome the lack of understanding and trust between the countries", <sup>16</sup> efforts were made to build "modern and European" bilateral relations with Russia. When, in May 1995, the Bulgarian government adopted the program for the next four years, special attention was paid to the integration of Bulgaria with NATO and the EU, and cooperation with the Balkan countries in terms of foreign policy. It was announced that the relations would be built without the ideologisation, typical of the 1944-89 period<sup>17</sup>. President Zhelyu Zhelev was aware of the fact that it was impossible to sever relations with Moscow completely. "The most important thing is to overcome the

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<sup>11</sup> In the interwar period and during World War II, the USSR did not play a major role among the Balkan states, and Bulgaria. The geopolitical situation changed in the era of socialism, in 1944-1991. Bulgaria was called the sixteenth Soviet republic during the communist era

<sup>12</sup> E. Manolowa, *Czernomyrdin jedzie rozmawiac... o gospodarce i o NATO* [Chernomyrdin goes to talk ... about the economy and NATO], Sofia, 18.05.1995

In the second half of the 20<sup>th</sup> century, many Bulgarians who in the 1990s held high state positions, incl. Zhan Videnov, graduated from the Moscow State Institute of International Relations (MGIMO). Political ties, rooted in the doctrine, as well as economic ties related to the dependence on supplies of Russian energy resources, and the fact that the most important positions in the state were assigned to "their own people", prevented Bulgaria from taking a new path

<sup>13</sup> The treaty was signed by presidents Borys Yeltsin and Zhelyu Zhelev

<sup>14</sup> Relevant agreements on military matters are discussed in a separate agreement at the level of defense ministries

<sup>15</sup> E. Manolowa, *Rosja i Bulgaria podpisaly nowy uklad o wspolpracy* [Russia and Bulgaria signed a new cooperation agreement Russia and Bulgaria signed a new cooperation agreement], PAP, 04.08.1992

<sup>16</sup> E. Manolowa, *Czernomyrdin jedzie rozmawiac* [Chernomyrdin goes to talk], *op.cit.*

<sup>17</sup> E. Manolowa, *Rzqd przedstawil program na najblizsze 4 lata* [The government presented a program for the next 4 years], Sofia, 15.05.1995

lack of understanding and trust between the countries”<sup>18</sup> – Russian Prime Minister Viktor Chernomyrdin stressed during his first visit to Sofia. Thus, while building relations, several agreements were signed, ranging from transport, energy, through the pharmaceutical, tobacco and food industries, to many others, aimed at "strengthening the raw materials and energy infrastructure of Bulgaria and developing its external markets"<sup>19</sup>. The challenge of the 1990s was for Bulgaria to skillfully maneuver between the obligations arising from the talks for membership in NATO and the EU and political correctness in relations with Russia, which did not share the Bulgarian, Euro-Atlantic euphoria. "Bulgaria's further talks with NATO could lead to a new cold war and new divisions in Europe." <sup>20</sup>. "There can be no question of Russia's readiness to make any compromises regarding military cooperation (Bulgarian) with NATO," <sup>21</sup> – emphasized the Chairman of the Russian State Duma, Gennadiy Seleznev. In the media, however, the Russians ensured respect for "every decision of Sofia".

Bulgaria's gradual dependence on Russia was intensifying on many levels. In 1993–1997, Russian investments in Bulgaria targeted the financial sector, amounting to USD 30.9 million<sup>22</sup>. Bulgaria exported to Russia the production of even entire industries: food, pharmacy, tobacco, and cosmetics.<sup>23</sup> Bilateral relations depended on the success or failure of investments and increased or decreased demand for individual products. When in June 1995, the Russians handed over significant amounts of weapons (worth around USD \$ 600 million) to the Bulgarians, it was speculated that this was a "compensation" in exchange for Bulgaria's withdrawal from its plans to join NATO <sup>24</sup>. Russia tried to reassure the Bulgarians that some benefits are resulting from close cooperation with Moscow. Special tariff advantages for Bulgarian goods on the Russian market, talks about the future of Topenergy, which was supposed to become the main distributor of Russian natural gas in the Balkans, and the construction of the Novorossiysk-Burgas-Alexandroupolis oil pipeline showed that Russia treated the Balkans and South-Eastern Europe as its zone of vital interests. While using raw materials with the help of energy giants such as Gazprom, the United Energy Systems, it proposed lucrative geostrategic projects to Bulgaria<sup>25</sup>. "Bulgaria, as such, is not Russia's economic interest. The interest is caused by the geopolitical situation and pro-Western orientation in Bulgaria," said Minister of Interior Boris Bonev in 1997. He was explaining that any proposed investments were, in fact, government investments and

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<sup>18</sup> E. Manolowa, *Czernomyrdin jedzie rozmawiac...* [Chernomyrdin goes to talk], *op.cit.*

<sup>19</sup> *Ibidem*

<sup>20</sup> Reuter, *Czernomyrdin ostrzega przed pospieszna rozbudowa NATO* [Chernomyrdin warns against a hasty expansion of NATO], Sofia, 19.05.1995

<sup>21</sup> E. Manolowa, *Giennadij Sielezniow zadolony z polityki Bulgarii i aktywnosci premiera Widenowa w kontaktach z Rosja* [Gennadiy Seleznev is satisfied with Bulgaria's policy and Prime Minister Videnov's activity in contacts with Russia], Sofia, 25.03.1995

<sup>22</sup> E. Manolowa, *Inwestycje rosyjskie w Bulgarii* [Russian investments in Bulgaria], Sofia, 03.11.1997

<sup>23</sup> *Ibidem*

<sup>24</sup> E. Manolowa, *Prasa bulgarska o rosyjskiej dostawie broni* [Bulgarian press on the Russian arms supply], Sofia, 30.06.1995

<sup>25</sup> Kan, *Kapital o stosunkach bulgarsko-rosyjskich* [Capital on Bulgarian-Russian relations], PAP, 27.05.1997

not those of leading financial firms. Gas pipeline projects, projects in the nuclear energy sector, electricity and oil transit, possible participation in the Neftochim petrochemical plant's privatization, were an example of Russia's implementation of its geopolitical motives, aimed at creating mechanisms for political influence from outside".<sup>26</sup> Therefore, gas supplies' talks quickly turned into the leading problem in Russian-Bulgarian relations. The once inherited structure of energy supplies made Bulgaria dependent on Russia's policy. "In the political sphere, Bulgaria has become an object of special interest to Russian military and foreign policy. It was one of the countries which, over the years, showed their susceptibility to political and military as well as military-technical pressure, and which systematically defended Russia's interests while developing its foreign and defense policy. It took years for Moscow to realize that Sofia would defend its interests by aspiring to NATO and the European Union. The apparent failure of the Russian geopolitical strategy in the Balkans was the explanation for the sharp economic pressure from Russia to impose the political will on Bulgaria".<sup>27</sup>

When in February 1997, the Bulgarian government decided to begin its efforts to obtain full membership in NATO officially, Bulgarian-Russian relations reached the most critical level in the history of cooperation. In bilateral relations, important economic issues remained unresolved. There was no contract for importing natural gas, and the case of the customs tariffs on Bulgarian goods exported to Russia remained unclear<sup>28</sup>. Neftochim became an example of the strong dependence of the Bulgarian economy on energy supplies from Russia. Oil, gas, fuel for the Kozloduy nuclear power plant could be stopped at any time. Fuel price increases posed a severe threat to the Bulgarian economy. In 1997, Bulgaria was utterly dependent on Russia's gas supplies, imported in the amount of 6.5 billion cubic meters annually.<sup>29</sup> As a result of the "gas war" between the state-owned supplier Bulgargaz - the owner of the pipeline network in the country and the private companies Overgas and Multigroup, associated with Russia's Gazprom, its price continued to rise. To bypass the country through which the transport to Turkey passes, Russia concluded an agreement with Ankara to build the "Blue Stream" gas pipeline<sup>30</sup>. The cost of the investment leading through the Black Sea amounted to USD 3.3 billion.<sup>31</sup> The first deliveries via the pipeline were made at the end of 2002<sup>32</sup>. Russia, in this case, again followed its typical pattern. It interrupted gas

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<sup>26</sup> E. Manolowa, *Parlament przyjął deklarację o stosunkach z Rosją* [Parliament adopted a declaration on relations with Russia], 24.10.1997

<sup>27</sup> Ibidem

<sup>28</sup> E. Manolowa, *Problemy we współpracy gospodarczej Bulgaria-Rosja* [Problems in economic cooperation Bulgaria-Russia], Sofia, 25.09.1997

<sup>29</sup> According to the government formed by the anti-communist coalition, the prices imposed by Gazprom were already too high then. Yy, *Rosja grozi Bułgarii zmniejszeniem dostaw gazu* [Russia is threatening Bulgaria with a reduction in gas supplies], Sofia, 16.01.1998

<sup>30</sup> *Blue Stream* – a gas pipeline that runs along the bottom of the Black Sea, which supplies natural gas from Russia to Turkey. It was built by a joint venture of the Russian Gazprom and the Italian company Eni.

<sup>31</sup> E. Manolowa, *Media: Rosja traktuje Polskę, jak niegdyś Bułgarię* [Media: Russia treats Poland as it used to be Bulgaria], Sofia, 09.09.2005

<sup>32</sup> Ibidem

supplies several times, prolonging the negotiations related to its price-fixing<sup>33</sup>. In Gazprom's policy and how such an essential issue for Bulgaria was approached, Bulgarian politicians saw attempts to exert economic pressure on Bulgaria.<sup>34</sup> It was a "punishment" for Bulgaria's decision to move closer to NATO, which the Russian side took as "strategic and emotional disappointment."<sup>35</sup> In 1998, Gazprom threatened to halve gas supplies to Bulgaria unless a new agreement was signed. There is a conflict of interest<sup>36</sup>.

The activities of the Bulgarian-Russian company Topenergy were to be a remedy for the strained bilateral relations. Established in 1995 on the initiative of former post-communist prime minister Andrey Lukanov (killed in 1996), it combined the interests of Gazprom, Overgas and Multigrup. The agreement it signed for the delivery of 5 billion cubic meters of natural gas was offered at prices significantly lower than that of the competing Bulgargaz.<sup>37</sup> One problem remained - Topenergy did not have its pipe network and was dependent on state-owned companies to which Bulgargaz did not grant access. Simultaneously, the governmental Energy Committee and Bulgargaz delayed giving Topenergy's customers a gas import permit. The promised supply of alternative fuel (e.g. mazut) turned out to be troublesome. At the beginning of 1998, Bulgarian cities and facilities essential for their operation were deprived of gas.<sup>38</sup> Russia's energy resources then turned out to be the most important, and perhaps the only weapon

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<sup>33</sup> For Turkey, the agreement with Russia turned out to be unfavorable. It exposed Turkey to huge financial losses. By 2007, they amounted to 6 billion USD. Since the gas was transported via the Black Sea, the price of gas has increased by approx. 12%. An investigation has been launched against the former head of the Turkish gas company BOTAS, which signed an agreement with Russia. E. Manolowa, *Media: Rosja traktuje Polskę, jak niegdyś Bułgarię* [Media: Russia treats Poland as it used to be Bulgaria], Sofia, 09.09.2005

<sup>34</sup> E. Manolowa, *Wiceprzewodniczący Dumy radzi Bułgarom, by zajęli się swoimi problemami gospodarczymi zamiast myśleć o NATO* [Deputy Chairman of the Duma, advises Bulgarians to deal with their economic problems instead of thinking about NATO], 03.02.1997

<sup>35</sup> Russian Ambassador to Sofia, Leonid Kierestedzianc's statement on Bulgaria's accession to NATO. E. Manolowa, *Ambasador Rosji w Sofii wyraził negatywną opinię Rosji w sprawie rozszerzenia NATO* [Russian ambassador to Sofia expressed a positive opinion on NATO enlargement], Sofia, 25.02.1997

<sup>36</sup> The Bulgarian side objected, stating that if Russian gas supplies to Bulgaria were suspended, it would stop further gas transit to Greece and Turkey. When Bulgaria opposed Gazprom's attempt to control Bulgaria's gas pipeline network in 1997, a "gas war" with Russia broke out. Eventually, Bulgaria retained ownership of the network. However, if the Russians restricted transit, Bulgaria would be deprived of a significant income share.

<sup>37</sup> According to the original plans, "Topenergy" was to be a private company and its shareholders: Russian Gazprom and Bulgarian Multigrup. The Bulgarian government did not grant concessions for over a year and argued that the state should own half of the Bulgarian stake. The first head of "Topenergy" was Andrey Lukanov, who in 1994 gave up politics in favor of business. According to the official version, he quitted so that he would not irritate Prime Minister Videnov with his presence and facilitate the concession. Speculation that he was defending Russian interests in Topenergy came up when Ambassador Avdeyev showed up at Lukanov's murder scene a quarter of an hour after the news of his death was announced. Together with the family of the deceased, the ambassador participated in the memorial service. dmi, dg, *Gazprom naciska na Sofię – chce stać się współwłaścicielem sieci gazociągów w Bułgarii* [Gazprom is putting pressure on Sofia - it wants to become a co-owner of the gas pipeline network in Bulgaria], Sofia, 11.11.1996

<sup>38</sup> E. Manolowa, *Dwa miasta bułgarskie bez gazu* [Two Bulgarian cities without gas], Sofia, 04.01.1998

used to achieve the superpower's strategic influence. The lack of self-sufficient, alternative energy sources showed that Russia could not only supply its bills with billions of dollars but also master the gas network of those who could not pay high rates.

Another issue was the repayment of US \$ 100 million by Russia (to Bulgaria). Moscow undertook to repay its debt with spare parts for military aviation and the steel industry. The modernization of the largest Bulgarian steelworks "Kremikovtsi", located near Sofia, was dependent on their deliveries."<sup>39</sup> When, in 1998, the USSR's arms production license granted to Bulgaria since the 1940s was coming to an end, the Russians knew that this time a defense opportunity should be seized. The ending of the twenty-year license for the production of Kalashnikov AK-47 automatic rifles became another topic of talks. Russian experts emphasize that "Bulgaria is illegally continuing the production of AK-47"<sup>40</sup> tried to supervise the production of military equipment and its possible recipients.

Overcoming the crisis in the Bulgarian tourism industry in the first half of the 90s was a huge challenge. The old accommodation base did not meet the expectations of potential foreign tourists. The real benefits of the hotel and gastronomy sector began to be noticed only after 1997 when they became interested in the purchase of real estate and tourist facilities in the northern part of the Bulgarian coast, e.g. members of the Russian mafia. By 2000, 80% of tourist bases in Bulgaria had been privatized. Apart from Russians, British, Germans, and Slovaks also became interested in the Black Sea. Travel agencies such as TUI, Neckermann bought and renovated Bulgarian hotels, creating their most popular holiday destinations, mainly in Golden Sands and Sunny Beach.<sup>41</sup> In addition to tourism, illegal activities snowballed in Bulgaria. Dirty money was invested in sports teams, real estate, financial institutions, gambling, and insurance companies. Bulgaria became famous for the casinos visited by, among other, Russian oligarchs<sup>42</sup>. The Russo-Bulgarian mafia grew and formed broad links between the world of business and politics. Organized crime, reaching the top of Bulgarian power, has gained a corrupting influence in all Bulgarian institutions, government, parliament, judiciary, and political parties<sup>43</sup>.

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<sup>39</sup> The privatization of the steelworks was announced in 1998

<sup>40</sup> E. Manolowa, *Rusza prywatyzacja przemysłu obronnego* [The privatization of the defense industry begins], Sofia, 20.07.1998

<sup>41</sup> E. Manolowa, *Turystyka wychodzi z kryzysu* [Tourism is recovering from the crisis], Sofia, 27.06.2000

<sup>42</sup> After legislation amends in Russia in 2009 and the ban on gambling in large cities, the Russians began investing in Bulgaria's gambling industry. man/hb/ap, *250 mln euro rocznie wynoszą zyski mafii* [250 million euros annually in the profits of the mafia], Sofia, 13.12.2007

<sup>43</sup> According to the report, funding from mafia sources included, i.a., the party of Tsar Simeon Sakskoburggotsky and President Georgi Parvanov. The report comes from the period preceding Bulgaria's accession to the EU. E. Manolowa, *Wikileaks: ambasador USA o korumpującym wpływie mafii* [Wikileaks: US ambassador on the corrupting influence of mafia]

Murders in organized crime circles were widespread. Most of them were associated with the fight for smuggling channels and the drug market, tourism, fuel trade, or garbage disposal. E. Manolowa, *250 mln euro rocznie wynoszą zyski mafii* [250 million euros annually in the profits of the mafia], Sofia, 13.12.2007

The Yeltsin era, which lasted until 2000, focused on relations with leading EU countries, the USA, Russia-NATO, Russia-China, and Russia-India dialogue<sup>44</sup>. Russia's role in the Balkans decreased during this time<sup>45</sup>. This did not mean, however, that Bulgaria was no longer in the Russian sphere of influence<sup>46</sup>. In 2000, on Bulgarian Prime Minister Ivan Kostov and the center-right government were blamed for bringing relations with Moscow to a collapse.

## THE TIME OF BIG RUSSIAN INVESTMENTS

On June 17, 2001, the former Tsar Simeon II<sup>47</sup> (Kasprowicz, Styczyńska, pp. 242) triumphed in the momentous election as the head of his party he had founded just two months before (National Movement Simeon II - NDSV)<sup>48</sup> (Bujwid-Kurek, pp. 175). His faction promised not only to reduce taxes and the budget deficit to zero but also to improve relations with Russia. The society, tired of its predecessors' rule, received the tsar with euphoria<sup>49</sup>. "The time has come for a more favorable era in Bulgarian-Russian relations," stressed Simeon II in an interview with President Putin in 2002. The topic of joint ventures was brought up again. At that time, three energy projects were of great importance for Russia: the Burgas-Alexandroupolis oil pipeline, the South Stream gas pipeline, and the Belene nuclear power plant supplemented by further investments in the fuel<sup>50</sup> and defense

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<sup>44</sup> V.Mihailov, *Państwa i narody bałkańskie w świadomości geopolitycznej Rosji. Rosja w świadomości geopolitycznej państw i narodów bałkańskich* [Balkan states and nations in Russia's geopolitical consciousness. Russia in the geopolitical consciousness of the Balkan states and nations], Przegląd Geopolityczny, 2010, no. 2, pp. 81-82

<sup>45</sup> Ibidem, pp. 83

<sup>46</sup> After the summit in Malta (1989), the Bulgarian intelligence began to inform the authorities about the agreements reached between M. Gorbachev and G. Bush on strategic spheres of influence in Europe. It was decided to continue to "understand Russia" and leave the US the existing partners, i.e. Greece and Turkey. As the leaders emphasized, "the US cannot be everywhere". The role of Russia "as a superpower in post-communist Europe" was to establish direct influence in Yugoslavia, Bulgaria, and Romania. ro, now, *Bulgaria została w sferze wpływów Rosjan na żądanie Busha* [Bulgaria remained in the sphere of Russian influence at the request of Bush], Sofia, PAP, 18.07.1993

<sup>47</sup> In 2001, the National Movement of Simeon II (NDSV) was established, later transformed into a political party. D. Kasprowicz, N.Styczyńska, *Charyzmatyczni przywódcy i obietnice odnowy - populizm na przykładzie Bułgarii i Rumunii* [Charismatic leaders and promises of renewal - populism on the example of Bulgaria and Romania], *Krakowskie Studia Międzynarodowe*, VIII: 2011, no. 4, pp. 242

<sup>48</sup> E. Bujwid-Kurek, *Transformacja ustroju politycznego wybranych państw Europy Środkowej i Południowo-Wschodniej* [Transformation of the political system in selected countries of Central and South-Eastern Europe], Kraków 2015, Libron, pp. 175

<sup>49</sup> Simeon's party won 50% of the seats in the Bulgarian Parliament (120 out of 240), but did not manage to hold for too long. In 2005, it already had 53 seats in parliament, where it established a joint cabinet with the socialists and the Movement for Rights and Freedoms. In 2007, it lost its current status. E. Bujwid-Kurek, op.cit., pp. 177

<sup>50</sup> To consolidate the Bulgarian market and take control over it, in 2004, Lukoil-Bulgaria, the Bulgarian branch of the Russian fuel giant, announced its intention to buy gas stations belonging to the former state monopoly - Petrol. For Lukoil, owned by Neftochim-Burgas, the largest petrochemical plant in the Balkans, the transaction meant the takeover of approx. 500 petrol stations in Bulgaria (approx. 20% of the Bulgarian fuel market). Russia victoriously attempted to control the Bulgarian fuel market. Schell and OMV also had a strong position on the Bulgarian fuel market, i.e., 30%. The remaining stations belonged to small owners. Lukoil began operating in Bulgaria in 1999, buying the Neftochim

markets. The first two projects carried geostrategic significance to reduce Russia's dependence on transit countries - Ukraine and Turkey. They also acted as a counterweight to the emergence of competing projects, such as the Nabucco gas pipeline, the Constanta-Trieste oil pipeline, or the Odessa-Brody pipeline. The third, the Belene nuclear power plant construction, was of purely commercial importance for Russia<sup>51</sup> (Dąborowski, 2011).

## BELENE POWER PLANT

As for Belene, the second nuclear power plant after Kozloduy<sup>52</sup>, which was launched in 1985, it is difficult to speak of success. The construction, interrupted by numerous social and government portals with decisions to withdraw from the project, was not yet fully completed. Bulgaria's negotiations with the EU returned to the topic of power plants. One of the Bulgarian accession conditions was the shutdown of the four oldest units at the Kozloduy nuclear power plant. EU policy, which was to help Bulgaria, at least partially, to become independent from Russia, led to an increase in energy prices and numerous social protests in Bulgaria<sup>53</sup>. Without proper research, analyzes, environmental impact assessment of the power plant, in April 2004, the controversial project was resumed, the contractor of which was the Russian Atomstroyexport, and the strategic investor was the German concern RWE (owner of 49% of shares), which withdrew from the project in 2010 and construction. The reason it recognized the low profitability of investments and ambiguities in cooperation with Bulgaria. In 2011, a company responsible for constructing the power plant was to be established, composed of: the state-owned National Electricity Company NEK, Russian Rosatom (the parent company of Atomstroyexport), Finnish Fortum, and French Altran Technologies. The memorandum of establishing the company made Russia, the strongest in the system,

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petrochemical plant near Burgas and taking over 58% of the total. The largest share in Bulgaria and the entire Balkan refinery for USD 101 million. The State Treasury retained the so-called golden share, which gives it a decisive vote in making strategic decisions, including changes to its articles of association. In 2005, the Russians already owned 94 percent. refinery shares. Lukoil-Bulgaria controlled 35% of the fuel market in the former Yugoslavia and 25% of Greece's polymer market at that time. In 2001 Its turnover was USD 1.5 billion

E. Mańłowa, *Lukoil kupuje największą sieć stacji benzynowych* [Lukoil buys the largest chain of petrol stations], Sofia, 13.12.2004

E. Mańłowa, *Lukoil-Bulgaria wycofuje się z giełdy* [Lukoil-Bulgaria withdraws from the stock exchange], Sofia, 22.06.2005

<sup>51</sup> T. Dąborowski, *Bułgarsko-rosyjskie gry energetyczne: czas rozstrzygnięć coraz bliżej* [Bulgarian-Russian energy games: the time of decisions is getting closer], Komentarze OSW, no. 61, 05.10.2011

<sup>52</sup> The Kozloduy power plant's construction began on April 6, 1970, under the agreement between Bulgaria and the USSR's governments in 1966. More on this: *Elektrownia jądrowa Kozłoduj* [Kozloduy nuclear power plant], nuclear.pl, <http://nuclear.pl/lokalizacja,kozloduy,elektrownia-jadrowa-kozloduy,0,0.html> (Accessed 1.06.2020)

<sup>53</sup> M. Wrzos, *Belene – atomowy problem Bułgarii rozwiązany?!* [Belene - Bulgaria's nuclear problem solved?!], eko-unia.org.pl, 08.09.2011

a shareholder and supplier of nuclear fuel, and providing technology and engineering works. Thus, it further deepens the dependence of the Bulgarian energy sector on Moscow<sup>54</sup>. The construction was stopped in 2012 under the rule of Prime Minister Boyko Borissov and the center-right, explaining the decision as being unprofitable, full of environmental threats, and due to dispute with the Russian company "Atomstroyexport". The case went to the Court of Arbitration of the International Chamber of Commerce in Paris. In 2016, a court ordered Bulgaria to pay € 620 million to Russia<sup>55</sup>. In complying with the commitment, Bulgaria acquired two VVER 1000+ nuclear reactors with 1000 MW capacity each<sup>56</sup>. Plans to resell the reactors, e.g. to Iran has failed. The largest of the announced Bulgarian investments turned out to be a failure entangled in corruption activities at the highest gaps<sup>57</sup>.

President Rumen Radev's coming to power (2016) and the opposition's actions influenced the decision to complete the construction. Prime Minister Borissov (2018) did not manage to obtain EU subsidies for it. The Balkan states were also not involved in the project. Representatives of a Chinese nuclear energy company have declared their readiness provided that Bulgaria will give state guarantees for the construction<sup>58</sup>. Russian Rosatom was also willing to participate in the invitation to tender<sup>59</sup>. In November 2018, Bulgaria concluded a five-year agreement with Atomstroyexport on maintaining the reactors it had previously supplied. The deadline for submitting binding bids for the power plant's investor, planned for the end of May 2020, was postponed due to the COVID-19 pandemic. Still, the most serious candidates are: Russian Rosatom, Chinese and South Korean nuclear companies and the American giant "General Electric" and the French company "Framatome" consortium<sup>60</sup>.

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<sup>54</sup> Ibidem

<sup>55</sup> The interest on the fine was 167,000 euro a day. In October, the parties, i.e., the Bulgarian National Energy Company (NEK) and the Russian Atomstroyexport, agreed that if Bulgaria repays the debt by mid-December, Atomstroyexport will cancel the interest payments.

<sup>56</sup> E. Manolowa, *Powrót do współpracy w 2018 z „przyjaciółmi” w kwestii budowy Tureckiego Potoku/South Stream w kierunku Bułgarii* [Return to cooperation in 2018 with "friends" on the construction of the Turkish Stream / South Stream towards Bulgaria]

<sup>57</sup> In 2016, the Bulgarian parliament established a commission to investigate the facts related to the construction of the Belene nuclear power plant, previous investments, and orders. The prosecutor's office indicted three former ministers of economy and energy and two former directors of the NEK, E. Manolowa, *Bulgaria zapłaciła Rosji 620 mln euro za dwa reaktory atomowe* [Bulgaria paid Russia 620 million euros for two nuclear reactors], Sofia, 09.12.2016

<sup>58</sup> Government guarantees are valued at around 10 billion euro. E. Manolowa, *Parlament za powrotem do budowy drugiej elektrowni atomowej* [Parliament in favor of returning to the construction of the second nuclear power plant], Sofia, 07.06.2018

<sup>59</sup> The French company Framatome (formerly AREVA) expressed interest in the building. Experts then concluded that the refusal to give government guarantees would raise the power plant's cost to EUR 10 billion. Giving government guarantees would reduce the investment costs. E. Manolowa, *Parlament za powrotem do budowy drugiej elektrowni atomowej* [Parliament in favor of returning to the construction of the second nuclear power plant], Sofia, 07.06.2018

<sup>60</sup> E. Manolowa, *Pandemia koronawirusa opóźnia realizację dużych projektów energetycznych* [The coronavirus pandemic delays the implementation of large energy projects], Sofia, 28.04.2020



## **SOUTH-STREAM GAS PIPELINE**

The South-Stream gas pipeline was an important project for Russia. The first agreement on the project was signed on December 20, 2006, between Russia and Serbia. It was the basis for further research on running a gas pipeline on the route from Bulgaria to Serbia. In November 2007, the project was officially announced for the first time, and an agreement was reached on the establishment of a company to carry out marketing and technical feasibility studies for the project. A preliminary agreement between Russia and Bulgaria on participation in the project was signed in January 2008. At the same time, South Stream AG was registered in Switzerland, Gazprom and Eni became its shareholders. After Serbia, Hungary, and Greece signed intergovernmental cooperation agreements on the construction and operation of the Greek line of the Southern Gas Pipeline, the Bulgarian Parliament ratified the agreement. In Sochi, an agreement for the construction of the gas pipeline was officially signed in May 2009. Subsequently, talks were conducted with Turkey, Slovenia, and Italy, and in subsequent years also with Croatia (further agreements were signed). South Stream Serbia AG was established in November 2009, responsible for the design, financing, construction, and operation of the pipeline's Serbian section. A year later, Electricite de France joined the venture, and in 2011, Slovenia and Russia signed an agreement to establish a joint company South Stream Slovenia. The agreement between the shareholders: Gazprom, Eni, Electricite de France, Wintershall on the establishment of the South Stream Transport AG company, which is to handle the Black Sea section of the Nord Stream gas pipeline, was signed in September 2011. After Turkey granted permission to build an area through its waters (December 2011), construction began at the Russian Anapa compressor station in 2012 (December 2012). The South Stream gas pipeline was transported from Russia's Anapa to Varna under the Black Sea. The Republic of Macedonia joined the project in July 2013. In March and April 2014, contracts for constructing the 1st and 2nd line of the Black Sea section were signed (Saip, Allseas companies). The arrangements for building the next lines, i.e., 3 and 4, were to be signed in December 2014 and January 2015. Unfortunately, the project was suspended in 2014 as it was considered incompatible with the EU's Third Energy Package. The Ukraine conflict prompted the European Parliament to adopt a non-binding resolution against the construction of the gas pipeline. Thus, he recommended Bulgaria looking for alternative gas suppliers for the EU. The Turkish Stream project has replaced South Stream.

Bulgarians were strongly affected by the changes, especially in economic terms<sup>61</sup> (Pieńkowski, 2016). The Russian-Ukrainian conflict significantly contributed to the ongoing decline in Russian investments in Bulgaria. Russia forbade its citizens to travel to Bulgaria. The following years brought stagnation in the Bulgarian tourism industry and significant financial losses. There was a decrease

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<sup>61</sup> The EU obliged Bulgaria, Hungary, Slovenia, Greece, Croatia, and Austria to re-sign the agreements. More on this: J. Pieńkowski, *Przyszłość relacji rosyjsko-bułgarskich po wyborach prezydenckich w Bułgarii* [The future of Russian-Bulgarian relations after the presidential elections in Bulgaria], Biuletyn PISM, no.84 (1434), 2.12.2016.

in the number of tourists reaching even 20%<sup>62</sup>. Russians, British, Germans, Poles, and Slovaks, who eagerly visited the Bulgarian coast, noticed a better standard and lower prices in Turkey, Spain, or Egypt. In 2019, Bulgaria's tourist season was not the best, and in 2020, the pandemic took away hope on another excellent holiday season.

Despite earlier opposition to the South Stream gas pipeline project, Prime Minister Boyko Borissov assured that the agreements had been agreed with the EU. However, it was not possible to return to its original version. An alternative for Sofia is the competitive Nabucco project, supported by the EU and the USA<sup>63</sup>. The sudden change of Prime Minister Borissov's "course" was perceived by the center-right party "Democrats for a Strong Bulgaria" as a betrayal of state interests. The former prime minister, Ivan Kostov, who headed it, went as far as to say that the policy pursued "is an evasion by the government from the obligation to defend the country's interests in the energy sphere"<sup>64</sup>. Perhaps the head of government's decision was influenced by ties with Russia, and the purchase of a luxury villa and shop in Barcelona, worth around 5 million euros, "changed politician's point of view".<sup>65</sup>

Along with the Bulgarian political scene's changes, Sofia started to be interested in the east-west thread of the Turkish Stream. If the current transit were to be stopped, the country would lose more than EUR 100 million a year<sup>66</sup>.

The situation has shown that Moscow uses energy sources as a political instrument which it strives to divide Europe through." North Stream 2 and the second line of Turkish Stream are a problem because they do not guarantee Europe's energy diversification. They destabilize Ukraine because Russia is taking advantage of the possibility of bypassing this country," notes US Deputy Secretary of State for Political Affairs David Hale<sup>67</sup>.

Turkey currently receives Russian gas via two routes - the Blue Stream under the Black Sea and the Trans-Balkan Gas Pipeline via Ukraine, Romania, and Bulgaria, which does not meet its needs. The Turkish Stream, which is scheduled to be launched in 2020, is to achieve a capacity of 63 billion cubic meters, i.e., the

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<sup>62</sup> Data from the Institute of Tourism Analysis, E. Manolowa, *Mniej turystów na wybrzeżu, tłok na granicach* [Less tourists on the coast, crowds on the borders], Sofia, 05.07.2019

<sup>63</sup> The following countries are participating in the Nabucco project: Austria, Hungary, Bulgaria, Romania, Turkey. The construction of the Nabucco project, which is aimed at reducing Europe's dependence on Russia, which is detrimental to Russian interests, is scheduled for 2012. Gas was supposed to be flowing through the pipeline in 2015. E. Manolowa, *Porozumienie w sprawie gazociągu South Stream* [Agreement on the South Stream gas pipeline], Sofia, 13.11.2010

<sup>64</sup> E. Manolowa, *Porozumienie w sprawie gazociągu South Stream* [Agreement on the South Stream gas pipeline], Sofia, 13.11.2010

<sup>65</sup> In February 2020, the Spanish prosecutor's office announced an investigation against Bulgarian Prime Minister Boyko Borissov. Valentin Zlatev, the former head of the management board of the Russian Lukoil concern, the Neftochim refinery, and an employee of the company mentioned above Alexander Czaushev also participated in money laundering.

<sup>66</sup> According to data provided by Minister Petkov, in December 2018, the Bulgartransgaz transfer company reached 207 million leva (105 million euros) annually for gas transit, 17 billion cubic meters for transit, of which 14 billion cubic meters went to Turkey, the rest to Greece, Macedonia, and Serbia.

<sup>67</sup> E. Manolowa, *USA sprzeciwiają się drugiej nitce Tureckiego Potoku – Departament Stanu* [USA is against the second line of the Turkish Stream - State Department], Sofia, 10.01.2020

same as the unrealized South Stream. Part of the gas flowing towards Turkey is to be delivered to Serbia, Hungary, and Slovakia. Bulgaria has already completed a tender for 90% of transfer capacity for the next 20 years. Gazprom Export and its subsidiary from Switzerland reserved the largest part of the capacity. In Bulgaria, a tender has been announced to select an investor to build a section between Turkey and Serbia, and then to Hungary and Austria with a transfer capacity of 15.5 billion cubic meters. Its cost is estimated at 2.86 billion leva (1.43 billion euros), excluding VAT<sup>68</sup>. The construction is currently carried out by the Saudi consortium Arkad, with which Bulgaria has concluded a contract worth 1.1 billion euros. The completed section is to connect the Turkish and Serbian borders through the territory of Bulgaria<sup>69</sup>. According to the assurances of Prime Minister Boyko Borissov, the pipeline was to be put into use at the end of May 2020<sup>70</sup>. However, due the pandemic caused the deadline was postponed.

### **BURGAS-ALEXANDRUPOLIS OIL PIPELINE**

In April 2005, the talks from thirteen years ago were resumed, concerning the construction of the Burgas-Alexandrupolis oil pipeline, connecting the two ports on the Black Sea and the Aegean Sea (285 km)<sup>71</sup>. The investment in an oil pipeline (912 km long), which connects Albania, Macedonia, and Bulgaria, competing for the American oil consortium AMBO construction, was another one aimed at making Bulgaria dependent on Russia. The state-owned Russian company Unified Energy Systems (RAO), in May 2005, offered the highest bid for the purchase of the two largest Bulgarian heating plants in Ruse and Varna. Thanks to them, Russia was to

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<sup>68</sup> E. Manołowa, *Rosja może wstrzymać tranzyt gazu przez Bułgarię w 2020 r.* [Russia may suspend gas transit through Bulgaria in 2020], Sofia, 15.03.2019

<sup>69</sup> E. Manołowa, *Rosyjski podwykonawca przyspieszy budowę bułgarskiej nitki Tureckiego Potoku* [The Russian subcontractor will accelerate the construction of the Bulgarian line of Turecki Potok], Sofia, 25.02.2020

<sup>70</sup> Currently, gas flows through the Turkish Stream to Greece and North Macedonia via the existing Bulgarian infrastructure. In 2020, when the Bulgarian line is established, deliveries to Serbia and Hungary are to begin. In Bulgaria, an 11-kilometer section is ready for now, connecting the Turkish Stream with the Bulgarian gas pipeline system and allowing the redirection of natural gas supplies from the Trans-Balkan Gas Pipeline, passing through Ukraine, Moldova, and Romania, to the Turkish Stream running under the Black Sea. This was done in early 2020. Originally a Bulgarian line of the Turkish Stream with a capacity of 15.75 billion cubic meters annually was supposed to be ready on January 1, 2020, but it was delayed due to numerous problems with the investor selection procedure. E. Manołowa, *Rosyjski podwykonawca przyspieszy budowę bułgarskiej nitki Tureckiego Potoku* [The Russian subcontractor will accelerate the construction of the Bulgarian line of the Turkish Stream], Sofia, 25.02.2020

<sup>71</sup> zab/ro 446, *Bułgaria-Grecja-Rosja, Porozumienie ws. budowy ropociągu Burgas-Aleksandrupolis* [Agreement on the construction of the Burgas-Alexandrupolis oil pipeline], Sofia, 12.04.2005

strengthen its position in the state's energy sector.<sup>72</sup> The Bulgarian antimonopoly authority, however, opposed the sale of the Russians' facilities<sup>73</sup>.

When Boyko Borissov's center-right government took power in July 2009, three significant regional energy projects with Russian participation were frozen, which had been planned for years. Talks with Atomstroyexport were resumed only after a year, when Bulgarian President Georgi Parvanov, who was unfavorable to Russia, signed a package of agreements regulating the design and construction of the South Stream gas pipeline.

Russia's tenacity in pursuing its own goals was also visible in the armaments industry. After Bulgaria joined NATO, Russia officially demanded that the production of arms and other military equipment be manufactured under Russian licenses and sold, including the Iraqi army<sup>74</sup>. In 2005, it threatened to block the Russian-made helicopters modernized by Bulgarians. The Israeli company Elbit won a tender for its modernization<sup>75</sup> at the end of 2004 in a consortium with Lockheed-Martin. One of the competition requirements was for the winner to provide certificates by the helicopter manufacturer - MIL plants, which are part of the Russian arms giant "Rosoboronexport". Elbit did not have an appropriate contract with the Russians, it was supposed to be signed in the following year, but the Russians refused, which was justified because it was illegal<sup>76</sup>. If the machinery was not modernized, Bulgaria would have problems meeting its NATO commitments. Thus, the cancellation of the previous tender<sup>77</sup> put modernization into the hands of the Russians again. In 2006, as a result of a bilateral agreement, they started to repair Mig-29 fighters to protect the state's air force<sup>78</sup>. Russian control of the arms industry, although Bulgaria became a NATO ally, was maintained. In March 2018, Sofia and Moscow signed an agreement for the overhaul of the MiG-29 training and combat aircraft, which will be used until the armed forces adopt new aircrafts<sup>79</sup>. This is "another proof of the need to rebuild mutually beneficial relations with the Russian Federation," President Rumen Radev emphasized in 2018.

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<sup>72</sup> In 2005, the Russian concern Lukoil was the owner of Bulgaria's largest petrochemical plant Neftochim near Burgas, producing from 7 to 9% of Bulgaria's GDP, E. Manolowa, *Rosja kupuje największe ciepłownię bułgarskie* [Russia buys Bulgaria's largest heat plants], Sofia, 09.05.2005

<sup>73</sup> E. Manolowa, *Rosyjska RAO Energosystemy zrezygnowała z kupna ciepłowni „Warna”* [Russian RAO Energosystemy, resigned from the purchase of the heating plant "Varna"], Sofia, 09.01.2006

<sup>74</sup> Since 1996, when Russia was paid 350,000 USD as interest on exports, Bulgaria has not paid for exports. *Ibidem*.

<sup>75</sup> It was about the modernization of 12 Mi-24 combat helicopters and 6 Mi-17 transport helicopters..

<sup>76</sup> This is what the Russian defense minister, Nikolai Swinarov, spoke about the case.

<sup>77</sup> The modernization of post-Soviet helicopters was taken away from the Israeli concern Elbit in March 2005.

<sup>78</sup> E. Manolowa, *Bułgaria i Rosja podpisały porozumienie o remoncie myśliwców Mig-29* [Bulgaria and Russia signed an agreement on the overhaul of Mig-29 fighter aircrafts], Sofia, 01.03.2006

<sup>79</sup> As required by NATO, member states of the organization may purchase military equipment and aircraft only from the Alliance's member states. Agreement for the overhaul and servicing of the 12 combat and 3 combat training MiG-29, E. Manolowa, *Prezydent Bułgarii: nie możemy kupić od Rosji nowych myśliwców MiG-29* [Bulgarian President of the Bulgarian air force for 4 years: we cannot buy new MiG-29 fighters], Sofia, 21.05.2018

## VARIABILITY OF OPTIONS

Since President Rumen Radev came to power, the perception of bilateral relations between Sofia and Moscow has changed.

The promises of the improvement of mutual relations with Russia and the “cooling” of NATO's intentions to strengthen its presence in the Black Sea region<sup>80</sup> (Pieńkowski, 2016), made Radev talk about the need to lift EU sanctions against Russia, considering them to be a factor harmful to the Bulgarian economy. Due to the geographical proximity and the resulting economic ties, the deterioration in Russia's relations has become much more felt in Bulgaria than in other EU countries<sup>81</sup>. Membership in the EU prevented Bulgaria from openly boycotting the community's decisions, even at the price of Russian favor. Sofia does not want to endanger Moscow. Hence, despite media reports of "harmful Russian's in Bulgaria," the Bulgarian authorities are trying to silence the reports. Russians are blamed for attempted poisoning of the owner of large Emko and Dunarit defense plants - Emilian Gebrev, his son and business partner in 2015, and former GRU agent - Sergei Skripal and his daughter Yulia in 2018<sup>82</sup>. Another problem with bilateral relations was the spy scandal involving Nikolai Malinov<sup>83</sup> (September 2019), reports that Bulgaria is the center of Russian military intelligence in the Balkans, the expulsion of Russian diplomats from Sofia (December 2019)<sup>84</sup>, refusal of accreditation indicated by Moscow military attaché.

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<sup>80</sup> When an unsuccessful coup took place in Turkey, Turkish President R. Erdogan started talking about changing the Greek-Turkish border, threatening to open Turkish borders for migrants heading to the EU indirectly threatened Bulgaria. The issue of increasing NATO's presence in the region could have aggravated the situation. In July 2016, the Romanian project to establish an Alliance permanent naval force in the Black Sea, where the Turkish navy was to play the leading role, was rejected. J. Pieńkowski, *Przyszłość relacji rosyjsko-bułgarskich po wyborach prezydenckich w Bułgarii* [The future of Russian-Bulgarian relations after the presidential elections in Bulgaria], PISM Biuletyn no. 84 (1434), 2.12.2016

<sup>81</sup> Ibidem

<sup>82</sup> momo/mtom/kwoj, *Twierdzi, że mógł zostać otruty nowiczokiem. Trzech Rosjan oskarżonych* [Claims that he may have been poisoned by a novichok. Three Russians accused], PAP, 23.01.2020

<sup>83</sup> Malinov was given the order of "friendship" by Russia in November 2019. The undercover agent contacted Rzeszetnikov and Malofeyev, carrying out tasks under the "Bulgaria" project to acquire assets worth EUR 500 million. The funds were probably provided by Malofeev, the head of the "Double-Headed Eagle" organization. According to Georgiyev, "the pattern consisted in financing activities that aimed at national security had a purpose of waging a hybrid war against the West." Ibidem.

<sup>84</sup> Russian intelligence has been operating in Bulgaria for a long time. The first spectacular case in 50 years related to the expulsion of Russian diplomats from Sofia took accused of espionage place in 2001. Since then, similar cases have increasingly been reported. E. Manolowa, *Media: Nasz kraj jest ośrodkiem rosyjskiego wywiadu na Bałkanach* [Media: Our country is the center of Russian intelligence in the Balkans.], Sofia, 02.11.2019

dmi/ap, *MSZ: rosyjscy dyplomaci zbierali informacje objęte tajemnicą państwową* [Ministry of Foreign Affairs: Russian diplomats collected confidential information], Sofia, 24.01.2020

## CONCLUSION

Undoubtedly, Russia "remains the most important challenge, but also the threat in terms of Bulgarian security."<sup>85</sup> In the 21st century, military threats were replaced with economic "blackmail". Russia is vigilant. It observes the Bulgarian political scene's events, trying to get involved and exert the influence, e.g., through Russian companies' involvement. This fact may be evidenced by, among others reports from the Bulgarian State National Security Agency, which already in 2016 indicated that "there is an increased interest in Bulgaria on the part of foreign secret services. (...) They attempted to exert pressure and gain access to classified information, and tried to influence the Bulgarian public opinion, including using the Bulgarian media".<sup>86</sup>

Russia's involvement in states' internal affairs, including attempts to interfere in Bulgarian politics, leads to a permanent violation of the geostrategic and military balance in the Black Sea region.

"In the field of security, especially in the Black Sea and Baltic Sea region and in the Eastern Mediterranean, Russia is increasing its military potential and intensifying its military operations. Security is also threatened by the continuing conflicts on the periphery of the European continent and neighboring regions, which lead to permanent instability,"<sup>87</sup> – the report's authors indicate. The intensive expansion and modernization of the Russian military potential in the illegally annexed Crimea, the measures taken to integrate this potential with the economic, social, and political life of Russia, as well as a broader move towards the Black Sea, including energy resources, lead to a permanent geostrategic violation and military balance in the Black Sea region"<sup>88</sup>. Relations between Russia and NATO, and the EU have never been and are never the best. The accompanying courtesy only superficially conceals problems in mutual relations. The integration process, which involves inviting Russia's neighboring states to more or less integrate with Euro-Atlantic organizations, is for Moscow a reflection of the West's offensive policy. For the West, it is an expression of solidarity and opposition to "Russian imperialist aspirations"<sup>89</sup> aimed at destabilizing the weaker links and postponing plans related to accession to the North Atlantic Alliance and the EU. The new conditions that Western countries had to face since Russia's invasion of Georgia (2008), the occupation of Crimea, and the outbreak of the conflict in Ukraine (2014) have only confirmed that it is impossible to remain indifferent to Russia's policy. Inaugurated in 2014 in Warsaw, the activities of the Bucharest Nine (B9), an initiative officially

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<sup>85</sup> The Minister of Foreign Affairs of the Republic of Poland, Jacek Czaputowicz's statement made after the meeting of the heads of diplomacy of the Bucharest Nine, March 2020

<sup>86</sup> E. Manolowa, *Bułgarski kontrwywiad: Obce służby wywiadowcze są u nas bardzo aktywne* [Bulgarian counterintelligence: Foreign intelligence services are very active here], FORSAL.PL, 18.04.2017, <https://forsal.pl/artykuly/1035882.dans-bulgarski-kontrwywiad-obce-sluzby-wywiadowcze-sa-u-nas-bardzo-aktywne.html>, (Accessed 12.08.2020)

<sup>87</sup> Bulgaria's government report on the state of national security for 2016

<sup>88</sup> More on this: K. Pavlov, *Ananalysis of the Online Media Reactions to the Government's Annual National Security Report for 2016*, (in:) Critique Humanism, 2018

<sup>89</sup> M. Starowiejska, *10 lat temu zaczęła się wojna w Gruzji* [The war in Georgia began 10 years ago], Rzeczpospolita, 08.08.2018

signed a year later in Bucharest, did not appeal to Russia from the very beginning. The forum associating the countries of NATO's eastern flank <sup>90</sup>, was established to join efforts for "a strong, credible, sustainable military presence of NATO in the region" <sup>91</sup>. The B9 countries pledged to increase their involvement in EU projects, tighten cooperation, and share the members' perceptions and security problems.<sup>92</sup> Similarly to the Romanian initiative of the NATO fleet in 2015, with the participation of Bulgaria, Turkey, and Ukraine, it caused consternation among Russians, who saw in it further actions aimed at Moscow. Russia does not always implement the provisions of international treaties in the field of conventional arms control.

In conclusion, Russia uses history for political purposes. In bilateral relations, "everything is about gas and oil." The failure to respect the territorial integrity of independent states, information warfare and the massive use of hybrid strategies by Russia undermine mutual trust and make it difficult to return to dialogue or the search for lasting political solutions related to security in Europe <sup>93</sup>. The Balkans are a region of strategic importance for Russia, realizing its assumptions there. What matters is the mere fact of having political influence. All projects in which Russia is involved confirm this. The spy scandals also make people aware of how strong Russia's involvement in Bulgaria is. Corrupt authorities guard political arrangements and dependencies shrouded in secrecy. It is difficult to fight corruption and organized crime when the links with the criminal world reach the state's highest representatives. Fighting corruption, in the absence of the supremacy of the law, seems to be a fiction. "All parties in the coalition government of the center-right GERB party of Prime Minister Boyko Borissov and nationalist groups, as well as almost all Bulgarian newspapers work for Russian interests," say analysts from the Center for the Study of Democracy, which studies the political and economic life of Bulgaria<sup>94</sup>. This is particularly true when it comes to defending energy projects that run counter to the economy (e.g., the extension of the Turkish Stream) or threaten national security (e.g., the Belene nuclear power plant project)<sup>95</sup>.

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<sup>90</sup> The Bucharest Nine (B9) consists of: Bulgaria, Poland, the Czech Republic, Estonia, Lithuania, Latvia, Romania, Slovakia, and Hungary.

<sup>91</sup> *Wschodnia flanka NATO. „Jesteśmy nierozzerwalną częścią Sojuszu” [ NATO's eastern flank. "We are an integral part of the Alliance"]*, DW, 05.04.2019, <https://www.dw.com/pl/wschodnia-flanka-nato-jeste%C5%9Bmy-nierozzerwaln%C4%85-cz%C4%99%C5%9Bci%C4%85-sojuszu/a-48230202>, (Accessed 10.08.2020)

<sup>92</sup> Ibidem

<sup>93</sup> *Raport Rządu Bułgarii o stanie bezpieczeństwa narodowego za 2016 rok [2016 report of the Bulgarian government on the state of national security]*

<sup>94</sup> The opposition Bulgarian Socialist Party (BSP) is the "most pro-Moscow" party in parliament. It is not Eurosceptic, but systematically works for Russia's economic interests. The BSP has a low-circulation daily "Duma", whose line is backed by several TV channels, partly linked to the nationalist party, National Union "Attack" and other groups claiming to be independent. Some of the large-scale press, including the newspapers "Telegraf", "24 ", "Trud", and "Monitor", disseminate Russian propaganda, emphasizing the rightness of Russian foreign policy in Europe, the Middle East and Latin America. E. Manolowa, *Telewizja o przyczynach wydalenia rosyjskich dyplomatów [Television on the reasons for the expulsion of Russian diplomats]*, Sofia 27.01.2020

<sup>95</sup> Ibidem

The recent events with the participation of President Radev show how difficult the fight against Russia and the Bulgarian Russophiles is. Bulgaria "has come to terms with the fate and passivity leading to unfair elections, blind decision-making (about the fate of the state and citizens - MLM), and irresponsible spending of money," Rumen Radev said in his speech on January 1, 2020<sup>96</sup>. Extensive consultations with the legal community, undertaken with regard to the independence of the Bulgarian judiciary and the powers of the prosecutor's office, led to the president's criminal liability<sup>97</sup>. It only showed how strong Bulgaria's coordinated struggle is against the president and all those who oppose Moscow<sup>98</sup>. "Bulgaria has suffered from the most dangerous crisis in the history of the political transformation that has been going on in 30 years."<sup>99</sup> There is a lack of will to fight corruption and embezzlement, the systematic violation of the law and moral principles has led to the paralysis of many social systems and institutions (...). Legislation becomes a hostage to lobbyists' interests, while poverty and social inequality continue to grow. Even the country's sovereignty is traded in the name of protecting its interests."<sup>100</sup>

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<sup>96</sup> E.Manolowa, *Bulgaria: prezydent Radev skrytykował rząd w orędziu noworocznym* [Bulgaria: President Radev criticized the government in the New Year's speech], Sofia, 01.01.2020

<sup>97</sup> E. Manolowa, *Prokurator generalny kwestionuje immunitet prezydenta* [Attorney General questions the president's immunity], Sofia, 27.01.2020

<sup>98</sup> Criminal proceedings were not initiated due to the president's immunity guaranteed by the constitution. It means that a crime has been committed, and this gives rise to steps to dismiss the Attorney General. According to the lawyers, according to the law on special intelligence, the tapes had to be destroyed, since they had not been used in an investigation or trial. The fact that the tapes were not destroyed and made public proves another crime. E.Manolowa, *Prawnicy: prokuratura bezprawnie opublikowała treść podsłuchów dot. prezydenta*, Sofia z dn. 30.01.2020

<sup>99</sup> E. Manolowa, *Bulgaria – Prezydent Radev: wycofuję swoje poparcie dla rządu* [Bulgaria - President Radev: I'm withdrawing my support for the government], Sofia 04.02.2020

<sup>100</sup> Ibidem



## ORGANIZED CRIME IN THE FIELD OF PROFESSIONAL SPORTS: THE INTERNATIONAL PROBLEM

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### **Abstract**

The international community, consolidating efforts to counter transnational organized crime, has been faced with its active penetration into the sports field.

Organized crime activities to obtain a material benefit from sports are highly latent. The aim of the study was to identify sectors of social life in the field of sports that are most affected by organized crime.

The study found that the most common and profitable offenses are, in the order of decreasing: organization of match-fixing matches, getting kickbacks during transfers of athletes, improper refereeing, buying sports ratings and the rights to hold prestigious international competitions, and doping scams.

The reasons for the high latency of these crimes are identified, and proposals for measures to counter them are formulated.

**Key words:** organized crime, sport, security of sport.

### **INTRODUCTION**

The United Nation's Convention against Transnational Organized Crime was signed in Palermo (Italy) 20 years ago. This event has been preceded by long-term work to create a normative definition of organized crime phenomenon and to reveal the ways of gaining the illegal proceeds used by organized criminal groups.

But at first it was necessary to define the very concept of organized crime. There are many theories about what is the essence of organized crime, what kind of a social model it follows. Diverse ideas on this subject can be found in the reviews undertaken by the criminologists specializing in the organized crime research (Von Lampe 2011; Kleemans 2014): the "alien conspiracy theory" – that "organized crime is the result of an alien conspiracy of outsiders that threatens open, democratic societies" (Kleemans, 32), the version more political than scientific; the bureaucracy model – such a pyramid with a strict hierarchy, codes of conduct and so on; protection theory, based on the controlling over specific territories by Mafia (Kleemans, 33-34); etc.

Most American criminologists describe organized crime as the informal, decentralized structure, built and operating according to the model of an enterprise, and organized crime – as the laying and management of an illegal enterprise to extract profit from an underground business and to lay the legitimate business under contribution (see, e.g. Albanese 1996). Dwight S. Smith, whose name, as K. Von

Lampe states, is associated with the view of organized crime as of an enterprise (“enterprise model”), wrote that organized crime, in the same way, just like legal business, focuses on economic activity and acts according to the rules of the market (Von Lampe, 292).

The UN experts' approach to the concept of organized crime as a criminal enterprise (since the Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders, held in 1975) is based on data of the national characteristics of organized crime in those countries that were among the first to face this threat.

So, the American RICO Act considers a complicity, for the purpose of committing fraud or extortion within the framework of an enterprise, as a criminal offence, while “enterprise” may mean both an officially existing organization, for example, a commercial one, or any group of persons united for the purpose of committing crimes (Burnham 2006, 890-891).

Thus, according to the Article 2 of the UN Convention against Transnational Organized Crime, “organized criminal group” means a group of persons acting in complicity with the purpose of committing serious crimes in order to obtain a financial or other material benefit, and it does not matter if the proceeds of crime are derived from prohibited activities, or a legitimate business is the source of illicit proceeds.

In contrast to common infringements on property, the objects of greatest interest for organized crime are the objects suitable for long-term, systematic extraction of criminal profits, not for a one-time capture and end use. The sports sphere, full of such objects, has become some kind of a nutrient medium for this type of crime.

While the criminality of the sports sector was underestimated both by civil society and by criminologists for a long time, largely due to the closed nature of this area for persons not involved in the participation and organization of sports events. Up to the new century the international community did not pay enough attention to the breaking the rules of fair play and honest competition in professional sports with the aim of making the incredible material profits.

It took time to recognize that “all international sports are now under serious threat from organised crime, which makes millions from bribing players to fixing matches, or parts of, and even whole tournaments”, as Chris Eaton, an international sports integrity consultant of 30-year experience, has admitted in his column under the title “Organised crime threatens all international sports” (2018).

## **WHY SPORTS ARE VULNERABLE TO ORGANIZED CRIME**

The concept of organized crime, especially transnational crime, included, at the beginning, drug trafficking, smuggling of migrants and trafficking in persons, trafficking in firearms, illicit goods, counterfeiting and money laundering, and corruption – as a necessary component of organized crime, not only an anti-social phenomenon accompanying organized crime. It allows to draw a conclusion that organized crime is sure to be interested, first of all, in those spheres of social – or anti-social – life that will give the opportunity to derive the maximum illegal profits.

One can notice that this is the list of solely “shadow” types of business. But one should take into account that organized crime is a very flexible system, sensitive

to every social, political and economic trend in the surrounding world. The evolving nature of organized crime was marked during the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (Bangkok, 18-25 April 2005) in the working paper prepared by the Secretariat, and its diversification was named as the key trend in the global development of organized crime. One could notice, during several last years, how quickly the organized crime becomes able to recognize the new sources of obtaining any material benefit or to intensify the obtaining illegal profit from proven sources that have become more promising.

It is appropriate to mention, for example, that the international community has faced the problem of the smuggling of migrants, as a manifestation of the transnational organized crime, long before the so-named “Europe’s humanitarian crisis”. The United Nations Office on Drugs and Crime (UNODC) reported about 55 000 migrants illegally brought from Africa to Europe in 2008, and paid to be smuggled, that let smugglers earn approximately US \$ 150 million per year (“The globalization of crime. – A transnational organized crime threat assessment”), meanwhile the smugglers all over the world earned about US \$ 7 billion per year, but a record profit was made by human smugglers in 2015: between \$3 billion and \$6 billion. The head of Europol Rob Wainwright established the fact that the business of human smuggling has become close to rivalling the trade in illicit drugs and has entered in the “Champions League” of criminal enterprises in Europe (McDonald-Gibson 2016).

But sports are multi-billion euro global business too. Suffice it to mention that South Africa spent \$ 6 billion on the World Cup in 2010; Brazil, in 2014, – more than \$ 11 billion.

Besides, and this is very important, the patronage of the most popular sports provides a positive public image; as concerns the criminal bosses, the so-called “image laundering” takes place, side-by-side with carrying out underground criminal activities (Di Ronco, Lavorgna 2015, 177). The history of Russian (Soviet) organized crime also tells about the connection between sports clubs and criminals, but with reserve that, until the 80s of the XX century, this relationship was more image than commercial for the criminal “godfathers”, they liked to be friends with famous athletes and to feel themselves like their patrons. (Vershov 2008). This opportunity stimulated the additional attractiveness of the sports sphere as a victimological space for representatives of organized crime from the top of criminal hierarchy, because of their inherent striving for looking some law-abiding and respected members of society, for surface respectability (see Topilskaya 2015, 79, 238).

So, if we are talking about the extraction of illegal income from legal kind of business by organized crime, we have to choose the most rich part of public life where the huge money circulates, therefore sports fit perfectly.

In connection with the above-mentioned, organized crime naturally could not ignore the increasing infusion of funds into the sports, especially into the professional sports. Thus, the sphere of sports has predictably aroused the interest of organized criminal groups, since sport, as the most massive and spectacularly attractive type of human activity, has been extremely generously alimanted by the state budget, as well as by public and private funds. The extraordinary financing of

world-class events such as Football World Cup or other championships excite the temptation of unjustified overpricing in the construction of sports facilities, the conditions for embezzling funds, receiving kickbacks, etc.

In addition, the internationality of sports correlates with the transboundary nature of organized crime, and this circumstance makes the perpetration of offences by transnational criminal groups much easier, and at the same time complicates seriously the combating crime by law enforcement.

## **THE MAIN PROBLEMS OF STUDY AND PREVENTION ORGANIZED CRIME**

The list of criminal interests of organized crime has been periodically updated and supplemented since the mid-1990s, when the United Nations had begun to prepare the Convention against Transnational Organized Crime. Sports, nevertheless, was not considered a significant area for organized crime to extract illegal profit, up to the first decade of 21st century, contrary to, for example, drug trafficking, smuggling of migrants or counterfeiting and money laundering. Of course, D.Hill (2013; 2015, 213) points out that match-fixing was recorded at the ancient Olympics and there were numerous examples of it in differing historical eras and sports since that time; but the corruption in sports, match-fixing, illegal sports betting had really manifested on a worldwide scale, committed by organized criminal groups, not so long ago.

Recollecting some of the first high-profile scandals in sports took place at 1970-90s, – such as “Case of 53” (Germany,1971: Football clubs Kickers and Arminia were involved in match-fixing through their players; both clubs were expelled from the Bundesliga, 53 players were disqualified), or “Totonero case” (Italy, 1980: some footballers from leading Italian clubs received money from two Roman businessmen who ran an underground sweepstakes. AC Milan and Lazio are excluded from Serie A, and a number of players, including Paolo Rossi and Enrico Albertosi, have been disqualified), we cannot consider it as organized crime manifestation, because it was not a *net*.

Yes, in 1973, the Select Committee on Crime of the United States Congress held hearings in the House of Representatives on organized criminality in sports, in order to determine the extent of the impact of organized crime on sports and sports-related activities. The hearing report noted that clandestine sports betting is the main source of illegal income for American organized crime in sports, but it also was a national problem.

It seems that the international community, consolidating efforts to counter transnational organized crime, has been faced with its active penetration into the sports field not earlier than at the beginning of a new century. At least, that was the point where the representatives of international organizations for fair play and security in sports (such as Sportradar, The International Center for Sport Security (ICSS) etc.) have noted that huge profits in the sports sector attracted organized crime, criminal groups controlled 25% of the world’s sport (see: “Organized crime is the main threat to world sport” 2014). Thus it can be stated that the influence of organized criminal groups on sport on an international scale spread like a hurricane, in a rather short period of time. From international officials combating crime, as

well from the media-sources, one can get some information that “organized crime stands behind the organization of match fixing all over the world”, that “organized crime is the main threat to sport” (WADA Director General 2014) in terms of conducting corrupt transactions, illegal drugs, etc.

The lack of information of an empirical and theoretical nature regarding the state of organized crime in the field of sports is conditioned by the lack of time to research and scientific developments of the problems of criminological counteraction to such crime. The research in this field is also complicated by the insufficient transparency in financial transactions in sports and inaccessibility of sports community for social control.

## **THE METHODOLOGY AND FINDINGS**

The followings methods of specific criminological research were used for achieving the results of studying organized crime in the field of sports:

1.the questionnaires on a specially designed program, the respondents were the police detectives and investigators having the experience of combating organized crime (51 respondents, of different length of service, from 2 up to 30 years) and 48 persons not related to professional sports, from different regions of Russia – Moscow, Sankt-Petersburg, Tambov, Vologda, Krasnodar etc., – and Belarus, Minsk.

2.interviewing, the sports officials and sports commentators (4 persons).

3.the documentary method: the study of international standards of security and integrity in sports; the study of criminal cases of crimes in the field of sports in Russian Federation;

4.the comparative method: studying the good practice of European states in the fight against organized crime in the field of sports.

83% of respondents who are not associated with professional sports are sure that the results of sports competitions do not always meet the principles of a fair and uncompromising competition. Despite the fact that almost 90% of the respondents – common citizens (and 82.4% of detectives and investigators) have no doubt about the corruption in sports, only 33.3% of citizens (34% of law enforcement officers) consider the level of corruption in sports to be high, and 35% (36% of law enforcement officers) rate it as average.

56.3% of respondents believe that it was corruption that caused the bias of sports referees (judges), 29.2% – blame sports officials.

According to the respondents, the reasons for corruption in sports are:

economic factors, including the lack of effective control over the process of spending finance – 45.8% of responses of citizens (law enforcement officers – 38%);

lack of transparency in the work of sports organizations and federations including their income – 47.9% of responses of citizens (law enforcement officers – 77.6%).

Both groups of respondents feel lack of security subdivisions specializing in the detection and investigation of crimes related to the organization and conduct of sports events – about 43% of responses in each group.

According to the law enforcement officers opinion, the most widespread method of the illegal influence on the result of a sports competition is bribery – 92.2% of respondents think so.

The opinions about the results of fighting against the crime in sports practically coincided: 43.8% of citizens and 43.1% of law enforcement officers consider the fight against crime in sports ineffective, while 33.3% of citizens and 43% of detectives and investigators found it difficult to answer.

During the interviewing, the sports officials and sports commentators agreed that about a quarter of all football matches are fixed, and that proved the hypothesis on the proportion of fixed matches. And all interviewed persons named the most common and profitable offenses committed by organized criminal groups in the field of sports, in the order of decreasing: organization of match-fixing matches, getting kickbacks during transfers of athletes, improper refereeing, buying sports ratings and the rights to hold prestigious international competitions, and doping scams.

Two of them explained how some organized criminal groups benefit from player transfers: “When we went to sign a contract with a football club ... for A. (a famous footballer), first local bandits came to the meeting and warned that if there were any problems with signing a contract, they had to be informed. And we could not arrange the deal for a long time, until our counterparts called the bandits, and everything was decided.” Organized crime gets the illicit profit in a such way: the amount of remuneration is said to be overstated, the club transfers money to the agent, and each of them – the club, the agent, and representatives of organized criminal groups – knows that there is a share of criminals who “oversees” this club; the agent must give this share to them.

## **INTERNATIONAL COUNTERMEASURES AGAINST ORGANIZED CRIME IN SPORTS**

So, the first important international documents specially aimed at combating organized crime in sports appeared only in 21st century (with the exception of the Council of Europe Anti-Doping Convention, 1991). Among them, a special place was taken by the International Convention against Doping in Sport developed by UNESCO, adopted in 2005, as well as the Council of Europe Convention on the Manipulation of Sports Competitions. The last mentioned document makes a direct reference to the fact that the manipulation of sports competitions as a cross-border phenomenon is associated with organized criminal activity. That is, it was only in the 21st century that the international community demonstrated an understanding of the seriousness of the threat posed by organized crime to sport.

Later, numerous measures were taken to combat transnational organized crime in sports, especially some useful practical tools, not only conventions, such as: Resource Guide on Good Practices in the Investigation of Match-Fixing, Memorandum of Understanding between the International Olympic Committee and the United Nations Office on Drugs and Crime signed in May 2011, which provides a framework for cooperation between these organizations in the fields of preventing and fighting corruption in sport, and taking note of their joint publication entitled Model Criminal Law Provisions for the Prosecution of Competition Manipulation.

The first joint match-fixing forum organized by FIFA and Interpol was held in Rome, 2013. On 15 July 2017 Kazan Action Plan, adopted by the Sixth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport of the United Nations Educational, Scientific and Cultural Organization.

Then, both Europol and Interpol held some successful investigations of organized criminal activities about sports corruption, fixing matches, doping etc. Both international organizations publish reports on that investigations to highlight links between sports and organised crime, give the characteristics of criminal networks, describe their structure and *modus operandi*. One of the last documents of this type, “The involvement of organised crime groups in sports corruption”, was published by Europol, 5 August 2020.

## **CONCLUSION**

It is very important to clear up the question of *modus operandi* of organized criminal groups in the field of sport in order to break the vicious links between criminal groups and athletes together with the sports organizations, competition organizers, agents and sports betting operators.

Illicit bookmaker activity associated with illegal influence on the outcome of sports competitions prevails in the list of ways to extract illicit proceeds in the field of sports all over the world. Back in 2013, the head of Interpol compared the money turnover around fixing matches in modern football with the income of the Coca-Cola company, indicating that it reached hundreds of billions of euro a year (Noble 2013; see “Europol identified hundreds of fixing matches around the world”, BBC).

The organization of match fixing in most cases is a way of illegal earnings on the sweepstakes. If match-fixing or unfair refereeing is not directly aimed at deriving benefits from bets on a previously known result of a sports competition, then this is done to increase the sports rating of a team or athlete, and ultimately also to extract material benefits.

Organized crime activities to obtain a material benefit from sports are highly latent.

The latency of such offenses in sports, due to their corrupt nature, is greatly enhanced by the urge toward the resolving any scandal issues and cases of violence of fair play rules within the community of professional sports world.

Turning the world of sports into a more transparent area, more open to social control, not only to law enforcement, would help to bring down an interest of organized crime to this part of human activity.

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# **STATUS AND REGULATION OF LANGUAGE RIGHTS IN THE CONSTITUTIONS OF THE POST-SOVIET COUNTRIES**

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## **Abstract**

After the dissolution of the USSR, the successor states, adopt their own constitutions, which regulate, among other, the language rights. Each of the states in their constitutions, as their first state language, designates their national language, i.e. (Kazakh, Kyrgyz, Tajik, Turkmen and Uzbek), and in some of them Russian has the status of official language in (Kazakhstan and Kyrgyzstan) or Language for inter-ethnic communication in Tajikistan, or not mentioned in the constitution in (Turkmenistan and Uzbekistan). The purpose of this paper is a comparative overview and analysis of the constitutional provisions regarding language rights and the legal language policies in post-Soviet Central Asian republics (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). This analysis will contribute for comparative constitutional studies and will give a legal overview of the legal framework of the language rights in that region.

**Key words:** Constitutional Law, Constitutional rights, Human Rights, Language Rights, Post-Soviet countries, Central Asia

## **INTRODUCTION**

Constitutional regulation of the use of languages is not a popular category in institutional law. Most often, language rights are regulated by one article, and then regulated by legal solutions. In some countries, illegal legal acts do not specify the official language of the country at all (USA, Australia) and most constitutions state only one official language for official use. Bilingual (multilingual) and multinational (multilingual) countries usually have more than one language in their constitutions as official (India, Switzerland, Belgium, Finland, Canada). The subject of this paper will be the constitutional regulation of the use of languages in Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, after their independence in 1991. After the collapse of the USSR, each of the above-mentioned states gained its independence and adopted its own constitution. In the 1990s, large numbers of Russians migrated to Russia, and Central Asian countries began to experience a more intense awakening to nationalism. A process of de-

Russification begins, rejecting the cultural and linguistic influence of Russia and the Russian language in the media: by reducing TV and radio programs in Russian, the same happens with newspapers, scientific and professional literature, but also by reducing the number of Russian schools or schools in which all teaching is conducted in Russian. This analysis will contribute for comparative constitutional studies and will give a legal overview of the legal framework of the language rights in the region of Central Asia.

## **HISTORY OVERVIEW OF CENTRAL ASIA**

The Russian conquest of Central Asia took place in the second half of the nineteenth century. The land that became Russian Turkestan. From the founding of the USSR until the break-up of the Union, minority and linguistic rights changed significantly. The policy during Lenin's rule towards minorities and language rights was regulated by the "Declaration of Rights of the Nations of Russia", which was signed by Lenin in 1917. This Declaration declared equal rights of all nations for self-determination, and provided freedom. to ethnic minorities for development. (Ismailova 2001, 23)

With the coming to power of Stalin, the policy towards minorities was aimed at general assimilation and Russification, in order to strengthen the centralized government. Between 1917 and 1926, Arabic alphabet was used in Central Asia despite its inability to convey some of the Turkic phonemes. Starting from 1926, Latin was introduced because it was assumed to have more potential to eliminate existing alphabetical deficits of Arabic origin. Latin script was used until late 1930s before it was replaced by Cyrillic alphabet. (Ismailova, 2001, 25)

During Stalin's rule, under the guise of dismantling "bourgeois nationalism," Russians were represented at the leading party and administrative posts, rather than locals. At the same time, the forced deportation of various ethnic minorities began, officially named as voluntary resettlement, and their settlement in the territory of the Central Asian republics, mostly in Kazakhstan, which rapidly changed the ethnic structure of the population. Examples include the deportation of some 127,000 Koreans from the Far East in 1937 on suspicion of spying for Japan, or the deportation of Germans after the outbreak of World War II by decree on August 28, 1941, for fear of possible espionage. and diversion in favor of Germany.

In 1938, the Russian language became a compulsory subject in all schools in the Soviet Union. During Khrushchev's rule, Russians in republics outside the RSFRS ceased to be required to learn the languages of the republics where they lived, such as Kazakh, Kyrgyz, and so on. In the era of Brezhnev's rule, the process of Russification and assimilation generally continues, which as a final result will be the awakening of nationalism among the minorities but also among the Russian population. In the 1980s, Russian language in the Central Asian states becomes language of administration, official documentation and instruction media in higher educational institutions. It slowly but constantly becomes the dominant language in the capitals of all five republics, because, the ethnic Russians are mainly concentrated in urban areas. Traditional agricultural, indigenous people of the region remained in the rural areas, As a result, native languages will become an instruction medium in rural schools. The teaching in the Universities of most of the

curricula takes place in Russian language and for enrollment in the faculty, it is necessary to take a test for the knowledge of the Russian language. Russian becomes the language of the urban population, everyday life, television, radio, administration, judiciary. But since the dissolution of the Soviet Union and gaining independence of the Central Asian countries in 1991, many things regarding demographics, politics, culture and economics of the new independent states have dramatically changed. The ethnic Russians suddenly found themselves living as a minority in countries which were culturally, religiously and socially alien. Many of them stated emigrating to the Russian Federation. Thus, the Russian population in the Central Asian states where sometimes even formed a majority (eg. Kazakhstan) started declining dramatically. In the 1939 census, the Kazaks became a minority in Kazakhstan for the first time, and later in 1959 comprising just 30% of the total population of Kazakhstan, where Russians comprise majority numbered 42.7%. Such a demographic change has largely influenced the Kazakh society in many aspects of the social, cultural, political and economic life. Kyrgyzstan has undergone a pronounced change in its ethnic composition since independence. The percentage of ethnic Kyrgyz has increased from around 50% in 1979 to over 70% in 2013, while the percentage of ethnic groups, such as Russians, Ukrainians, Germans and Tatars dropped from 35% to about 7%. The nation's largest ethnic group are the Kyrgyz comprise 73.3% of the population, Russians (5.6%), Uzbeks (14.6%) and others.<sup>1</sup> In 1989, ethnic Russians in Tajikistan made up 7.6% of the population, but they are now less than 0.5%, after the civil war and the intensive Russian emigration. Today, Tajikistan's population is comprised of Tajik 84.3% and Uzbek 12.2%.<sup>2</sup> The percentage of ethnic Russians in Turkmenistan dropped from 18.6% in 1939 to 9.5% in 1989.<sup>3</sup> Uzbekistan is Central Asia's most populous country. Its 32.5 million people, comprise nearly half the region's total population with ethnicity Uzbek 83.8%, Tajik 4.8%, Kazakh 2.5%, Russian 2.3%.<sup>4</sup>

## LANGUAGE RIGHTS IN THE CONSTITUTION OF KAZAKHSTAN

After the independence of Kazakhstan, the process of Russification ended and started a new process of Kazakhization. Kazakhstan along with Tajikistan and Kyrgyzstan remained the three Post-Soviet Central Asian republics that granted official status of the Russian language in their Constitutions. The first Constitution of independent Kazakhstan from 1993 in the preamble of the Constitution, entitled Fundamentals of the Constitutional Order, consisting of nine parts, in the eighth part provides that the Kazakh language is the State language, and later on that the Russian language is a language of inter-ethnic communication. Today, the legal usage of languages in Kazakhstan is regulated in the Constitution from 1995 and a

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<sup>1</sup> Natsionalny statistichesky komitet Kirgizskoy Respubliki <http://www.stat.kg/ru/statistics/naselenie/> (visited on 19.08.2020)

<sup>2</sup> Agentstvo po statistike pri prezidente Respubliki Tadjikistan <https://www.stat.tj/ru/perepis-naseleniya-2020> (visited on 19.08.2020)

<sup>3</sup> Central Asia: Turkmenistan <https://www.cia.gov/library/publications/the-world-factbook/geos/tx.html> (visited on 19.08.2020)

<sup>4</sup> Central Asia: Uzbekistan <https://www.cia.gov/library/publications/the-world-factbook/geos/uz.html#People> (visited on 19.08.2020)

lower legal acts such as the “Law of the Republic of Kazakhstan on Languages in the Republic of Kazakhstan” from 1997.

The Article 7 of the Constitution stipulates: in Paragraph 1: The Kazakh language is the state language of the Republic of Kazakhstan. In paragraph 2 it is stated that: In government institutions and local governments along with Kazakh, the Russian language is officially equally used. Thus, the Russian language in Kazakhstan has an official status and can be used in all spheres of society.<sup>5</sup> Further, in the Kazakh legislature regarding the usage of languages, the use of the Russian language is regulated in the “Law of the Republic of Kazakhstan on Languages in the Republic of Kazakhstan” where it is stated that all acts of government institutions, and all documentation can be developed in Russian. The Russian language can be used in court proceedings while concluding contracts and transactions, and the authority has the right to respond in Russian to citizens statements.

With the new Constitution of 1995, the Russian language gained the status of an official language, instead of the formulation language for inter-ethnic communication as it was in the previous constitution from 1993.

The Russian language is restricted in its use in the sphere of mass media. According to the law “programs on TV and radio broadcasters, regardless of their forms of ownership should be more in the state language than in other languages.(...) However, it was difficult for electronic mass media to meet the requirements due to the lack of Kazakh “content”. Programs in the Kazakh language are broadcast more often in the evening and at night when the audience is minimal. On the contrary, programs in the Russian language broadcast in “prime time”, when the number of viewers and listeners reaches the peak. Besides, the residents of the country have free access to satellite television and can watch Russian channels ignoring the Kazakh speaking TV channels. As for the printed mass media and online content, we can state that the Russian language still dominates. In practice, the Russian language dominates in Kazakhstan, and it is stimulating motivation for Kazakh nationalists concerned with the disproportionately small role of the state language.(Aksholakova, Ismailova 2013, 1583 ).

By 2025, Kazakhstan plans to become the third Central Asian country to switch to the Latin alphabet from the Cyrillic alphabet. In this regard, the decision of the Kazakh government to switch to the Latin alphabet caused a mixed reaction, and was seen by some as an attempt by Kazakhstan to escape from the influence of Russia. In 2016 many influential figures in the Kazakh society demanded that the President of Kazakhstan remove from the Constitution the paragraph where it is regulated the use of the Russian language. This was rejected by Nazarbayev’s advisor on political issues Yertisbaev stating that no one, nowhere and never can suppress the Russian Language in Kazakhstan.

This leads that sometimes, state language policies cannot be implemented in the actual daily life and the use of language of the population cannot be regulated by law only. The government stimulates the population with programs for learning the

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<sup>5</sup> Konstitutsiya Respubliki Kazahstan [https://www.akorda.kz/ru/official\\_documents/constitution](https://www.akorda.kz/ru/official_documents/constitution)(visited on 19.08.2020)

State language, in this case Kazakh, and there are some results which show progress regarding this question, but it will probably be a long process. Although the Constitution of Kazakhstan gives priority to the Kazakh language, the population in urban cities still sees Russian as their language for daily communication. Thus, the process of de-russification and government efforts to replace the Russian language with Kazakh is under challenge.

## **LANGUAGE RIGHTS IN THE CONSTITUTION OF KYRGYZSTAN**

The territory of present day Kyrgyzstan was occupied and annexed by the Russian Empire in 1876. In 1928 the Arabic script of the Kyrgyz language was replaced by Latin based alphabet and in 1941 it was changed into Cyrillic script.

By the Gorbachev era, the Russian language, slowly displaced Kyrgyz as the language of inter-ethnic communication in the republic, it had also assumed the role of a first language among ethnic Kyrgyz living in urban areas. The second generation of urban Kyrgyz, in particular, had effectively lost facility in Kyrgyz. The national library of Kyrgyzstan had only four percent of its books in Kyrgyz, and the state film agency had only nine percent of its film inventory in Kyrgyz or subtitled in Kyrgyz.

Kyrgyz was proclaimed as the state language in September 1991. The 1993 Constitution of the Kyrgyz Republic regulates the use of the Kyrgyz languages as a State language and the Russian language as an official language. The constitutional standardization of language rights is reflected in the later new constitution. The new Constitution, adopted in a referendum in 2010, states in Article 10 indent 1 that the State language in the Kyrgyz Republic is the Kyrgyz language, in line 2 it states: In the Kyrgyz Republic the Russian language is used as the official language. With this, Kyrgyzstan is among the countries of post-Soviet Central Asia which, in addition to the national language, ie the State language, give Russian the status of an official language. Furthermore, Article 45, paragraph 3 of the Constitution stipulates that the State will provide conditions for every citizen to study the State language, the Official language and one international language, starting from pre-school educational facilities, until the general basic education. As well, pursuant to article 62, for running for the President's office the candidate is obliged to know the State language, meaning the Kyrgyz language.<sup>6</sup>In 2000, the Law on the Use of the Official Language was adopted, in the text of the law it is mentioned with the name the language for international communication, whose regulations stipulate that the Russian language is used in the sphere of state bodies, administration, court proceedings, The official language guarantees protection from the state, as well as an obligation of the state to create conditions for its development and promotion. The citizens of Kyrgyzstan are expected to have the opportunity to address the official language of the country before the state authorities. Article 4 states that the decrees of the President of the Kyrgyz Republic are issued in two languages, in the

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<sup>6</sup>Konstitutsiya Kirgizskoy Respubliki <http://cbd.minjust.gov.kg/act/view/ru-ru/202913?cl=ru-ru> (visited on 19.08.2020)

state language and in the official language. Article 14 provides that proceedings before the courts are conducted in the state language or in the official language.<sup>7</sup>

## **LANGUAGE RIGHTS IN THE CONSTITUTION OF TAJIKISTAN**

Right after the dissolution of the USSR, Tajikistan proclaims independence. Shortly after a civil war starts. The civil war in Tajikistan began in May 1992, when ethnic groups in the Garm and Gorno-Badakshan areas, who felt they were not adequately represented in government, rose up against the government. By the end of the war in 1997 many people were displaced as refugees, many fled to Russia and remained there.

A generation ago, Russian was the primary language of Tajikistan's cities, but today it is spoken mainly by a dwindling elite. Due to war and economic decay over the past two decades, hundreds of thousands of the best-educated Tajiks – generally Russian-speakers – have left the country. (...) But legislation passed in 2009 mandated that all government documents be published in Tajik only. When that happened, non-Tajik speakers could no longer find jobs in state agencies. Of course, many Tajiks like to speak their own language. (...) Without Russian, many Tajik migrants find that their job possibilities are limited, thereby hampering their earning potential. That means Tajik migrant workers are sending less money home than they could if they had better command of Russian. Ultimately, then, Tajikistan's economy, which is heavily dependent on migrant remittances, takes a hit.<sup>8</sup>

In Article 2 of the Tajik constitution it is stated that: The state language of Tajikistan shall be Tajik. Russian shall be the language of international communication. All nationalities and peoples living on the territory of the republic shall have the right to use their mother tongue. <sup>9</sup>Tajikistan is the only country in Central Asia to give the Russian language the status of language for inter-ethnic communication, as we mentioned above Kazakhstan and Kyrgyzstan have it as official language in their constitutions. Today, the Russian language remains the main language for many other ethnic groups living in the country, including Tatars, Ossetians, Ukrainians, Koreans living in Tajikistan. Many Tajiks learn Russian in order to migrate in Russia, where are accepted as cheap labor, Russia provides students from Central Asian countries, including from Tajikistan, with quotas for studying at Russian Universities.

Annually, schools receive new textbooks, especially for students and teachers from Tajik-teaching schools through the local representative office of the Russian state cultural-humanitarian organization “Rossotrudnichestvo”. In 2017 and in September 2018, 60 Russian language teachers were sent from Russia to Tajikistan to work in local schools (...) The local government is gradually

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<sup>7</sup> Zakon Kigizkoy Respubliki Ob ofitsialnom Yazike Kirgizskoy Respubliki <http://cbd.minjust.gov.kg/act/view/ru-ru/443/20?cl=ru-ru> (visited on 19.08.2020)

<sup>8</sup> Tajikistan: Locals Saying “Proshai” to Russian <https://eurasianet.org/tajikistan-locals-saying-proshai-prosai-to-russian> (visited on 19.08.2020)

<sup>9</sup>Konstitutsiya Respubliki Tadzikistan <http://prokuratura.tj/ru/legislation/the-constitution-of-the-republic-of-tajikistan.html> (visited on 21.08.2020)

conducting a policy of increasing a number of hours to teach Russian in Tajik schools. Thus, Russia shows how it is concerned about Russian proficiency level in Tajikistan, and indeed this fits well into the strategy for setting up soft power tools. At the same time, the Government of Tajikistan contributes to this situation, understanding how high the demand for Russian language and for its teaching in the country.<sup>10</sup>

The Russian Federation plays an active role in spreading its language, culture, literature as soft tool for influence in Tajikistan as it does in the other Central Asian countries. Tajikistan remains strongly connected with Russia, although a new wave of Chinese influence in the whole region of Central Asia, including Tajikistan is starting to arise.

## **LANGUAGE RIGHTS IN THE CONSTITUTION OF TURKMENISTAN**

Turkmenistan was very effective in the process of Turkmenization of its people. Russian schools, which were part of the schooling system until the 1991, after the independence of Turkmenistan, they almost disappeared. Turkmenistan is the most isolated country in whole Central Asia. Just as an image, in 2006 Turkmenistan was visited by only 5,600 foreign tourists, and in 2016 the number has not increased a lot and numbered 6,000.<sup>11</sup> From the countries in Central Asia, Turkmenistan is estimated to have less Russian influence, the Russian Language is not mentioned in Turkmen constitution at all. In article 14 of the Turkmen constitution it is stated that the state language of Turkmenistan is the Turkmen language. Regarding constitutional language rights, the same was stated in the previous constitution of Turkmenistan from 1992.

The most extreme case of moving away from everything Russian, including the language, is Turkmenistan. The country has done everything to distance itself from Russia's lingual soft power tool. The first step was the shift to the Latin alphabet in 1991. (...) Education in Russian, both elementary and secondary, is almost non-existent. (...) Thus, Turkmenistan now has a new generation of citizens that do not have any knowledge of Russian. Additional barriers for Russian influence have been a visa regime with Russia and the lack of labor migration to Russia.<sup>12</sup>

This radical process of de-russification is conducted very successfully, and amazingly it avoided any conflict with Russia, the national Turkmen identity has strengthened, the Russian influence declined. In 1995 the UN General Assembly recognized Turkmenistan's status of permanent neutrality. Revenues from

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<sup>10</sup>Muslimbek. M. (2019) How Popular Is The Russian Language In Tajikistan?, Central Asian Bureau for Analytical Reporting [https://cabar.asia/en/how-popular-is-the-russian-language-in-tajikistan/#\\_ftn5](https://cabar.asia/en/how-popular-is-the-russian-language-in-tajikistan/#_ftn5) (visited 21.8.2020)

<sup>11</sup>Is Turkmenistan Turning Its Back on Lucrative Foreign Tourism?<https://en.turkmen.news/spotlight/is-turkmenistan-turning-its-back-on-lucrative-foreign-tourism/#:~:text=In%20the%20whole%20of%202016,a%20population%20of%203.7%20million>.

<sup>12</sup>Muslimbek. M. (2019) Russian Language Status in Central Asian Countries, Central Asian Bureau for Analytical Reporting <https://cabar.asia/en/russian-language-status-in-central-asian-countries/>



Turkmenistan's sales of natural gas, Turkmenistan has the world's fourth-largest gas reserves, enabled the government to isolate the country. Russia was the largest buyer of its natural gas. Turkmenistan has a location which is strategically important for Russia, it borders with Iran, Afghanistan and on the West with Azerbaijan the Caucasus. It is expected that in near future Russia will strengthen its influence on this country, and that will include the spread of Russian language and culture as well.

## **LANGUAGE RIGHTS IN THE CONSTITUTION OF UZBEKISTAN**

Uzbekistan after Turkmenistan is considered as the second in the region with regards to attempts to stop the Russian influence using the language as a power. The Russian language is not mentioned in the Uzbek constitution in the mid 1990s, preparing the legal framework for wider de-russification. Documents issued by the Government authorities are strictly in Uzbek.

In 1993 the country adopted the law “On Introduction of the Uzbek Alphabet based on the Latin Script”. (...) Russian is taught maximum two hours a week at schools. Faculties that provide higher education fully in Russian remain only at the Ferghana State University. The state has passed laws requiring at least 70 percent of all TV and radio shows to be in Uzbek. In contrast to Turkmenistan though, newspapers in Russian are widely circulated in the country. Labor migration to Russia is an important factor for the government and people of Uzbekistan to remain committed to studying the Russian language. The country ranks first in terms of supplying workers to the Russian labor market. In 2018 alone, over 1.5 million Uzbek citizens travelled to Russia for working purposes. Uzbek labor migrants contribute to the economic development at home as well; the remittances sent from Russian to Uzbekistan amounted to USD 3.9 billion in 2017.<sup>13</sup>

Thus, Uzbekistan remains very dependant from the Russian Federation in many terms from economy to security in the region. It is expected that Russian influence will rise and the role of Russian language will be increasing. Even today, the high ranking government officials in Uzbekistan speak the state language (Uzbek) very poorly, due to the fact that the entire Uzbek elite got education in Russian language.

Russian is a sacred political language for the population of Uzbekistan. This is a language of power and might. Laws are made in this language, scientific works in the institutes of the Academy of Sciences are being written in this language and even serious people on TV discuss the urgent problems of Uzbekistan in Russian.<sup>14</sup>

Despite the fact that the Russian-speaking population in Uzbekistan drops, the Schools with Russian as a language of instruction are significantly declined, the influence of the Russian language increases. It is an instrument with which the country's organism is operating. Article 4 of the Constitution of Uzbekistan of 1992,

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<sup>13</sup>Muslimbek, M. (2019) Russian Language Status in Central Asian Countries, Central Asian Bureau for Analytical Reporting <https://cabar.asia/en/russian-language-status-in-central-asian-countries/> (visited on 21.8.2020)

<sup>14</sup>Alimdjanov, B. (2019), Uzbekistan: Why Uzbek Language Has Not Become a Language of Politics and Science?, <https://cabar.asia/en/uzbekistan-why-uzbek-language-has-not-become-a-language-of-politics-and-science/> (visited on 21.8.2020)

which states that the official language in the Republic of Uzbekistan is the Uzbek language, and after several amendments, the last one in 2017, regarding the use of another language remains unchanged.

## CONCLUSION

The language rights, and the use of languages play an important role in Central Asia, especially when the Russian language and its legal regulation is in question regarding the state languages. After the dissolution of the USSR, the successor states, adopt their own constitutions, which regulate, among other, the language rights. Each of the states in their constitutions, as their first state language, designates their national language, i.e. (Kazakh, Kyrgyz, Tajik, Turkmen and Uzbek), and in some of them Russian has the status of official language in (Kazakhstan and Kyrgyzstan) or Language for inter-ethnic communication in Tajikistan, or not mentioned in the constitution in (Turkmenistan and Uzbekistan). The constitutions in the newly formed republics tend to preserve their national cultural values and the Turkic languages and the Tajik language. Uzbekistan and Turkmenistan went further, they do not give any status of the Russian language in their constitutions, thus demonstrating a determination to strengthen their national identities and try to go away from the Russian geo-political interests in Central Asia. Although the process of de-russification in all Central Asian countries is continuing in the sphere of media, print runs of literature, Russian schools and etc, all of the mentioned countries are very dependant from Russia in many fields of cooperation, especially in terms of economy and security.

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# JUDICIAL REVIEW OVER DECISION ON "FIRST ELECTION" ON JUDICIAL OR PROSECUTORIAL FUNCTION - REALITY OR UTOPIA

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## ABSTRACT

The current Constitution of the Republic of Serbia introduced the concept of "first election" for functions of Judges and Deputies of Public Prosecutors, which is further elaborated through accompanying legislation. In short, High Judicial Council or State Prosecutors Council nominate candidates for aforementioned functions, while National Assembly will, definitely, decide upon these nominations. However, many scholars, professionals and officials criticized the above mentioned concept, although its procedure is based on arbitrariness too, regardless of the existence of a certain criteria contained in the relevant positive law. On the other hand, the Decision on the "first election" could be challenged before the relevant Court, but its, essentially, discretionary character and the lack of transparency reduce the Court's intervention to the point of absurdity. Therefore, one should analyze the existing legal framework, as well as with a review on some of the proposals and perspectives too.

**KEY WORDS:** Administrative Court, National Assembly, Judge, Deputy of Public Prosecutor, "first election", judicial review

## INTRODUCTION

Constitution from 2006 (hereinafter: Constitution) has been criticized since its adoption, especially parts related to the Judiciary and Public Prosecutor Offices.<sup>1</sup> *Inter alia*, it made a distinction between the so-called "first election" and "permanent election" for Judicial and/or Prosecutorial Function (Petrov 2014, 99). Namely, "first election" refers to the Judges and DPP, which means that they are on *sui generis* probation period of three years, while after that period they could be permanently elected for above mentioned Functions. HJC and SPC, only, propose candidates for the "first election" to the Assembly that will, definitely, decide about concrete proposals. Election regime is far more differentiated in terms of the

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<sup>1</sup> More about: Grabenwarter, *et al.* 2006, 13-8; Rakić, Vodinelić, *et al.* 2012, 36-13; Pajvančić 2011, 7-20; Škulić 2014, 64-75.

Prosecutorial Functions because there are various rules for the elections of PP and DPP (Marković 2006, 24). Additionally, PP is time limited Function *ipso iure*, but he/she, *ex lege*, becomes a DPP in PPO which was the head after the expiration of his/her mandate, without the procedure related to the "first election".

Furthermore, accompanying legislation and by-laws have elaborated both (s)election procedures related to the "first election" in order to provide the choice of the most capable candidates on objective and transparent manner. However, there is a great discrepancy between proclaimed goals and their implementation, which reflects, necessarily, to Decision on the "first election" (hereinafter: Decision). Of course, aforementioned Decision could be challenged before the AC, but its character reduce maneuver space for Court's intervention. Even more, problem is lack of practice, since there is not any AC's decision related to the "first election" on above mentioned functions. In this regard, one has to analyze relevant legal framework of the "first election" concept in order to consider key problems and dilemmas, as well as to clarify current regime of its judicial review with some perspectives and proposals too.

## **OVERVIEW AND CRITICAL ANALYSIS**

### **Procedural aspects related to Decision**

Decision is based upon HJC's or SPC's proposal, while both of them must be explained and non-discriminatory, except in multi-national regions in which equal participation and representation of national minorities must be taken into account concerning "first election" as Judges or DPPs. Interested persons for Judge or DPP must fulfill certain cumulative conditions, such are citizenship, completion of Faculty of Law and Bar Exam, "general conditions for work in State Organs", relevant work experience in legal profession after completion of Bar Exam, competence and credibleness. Also, HJC and SPC must interview candidates before proposing, but transparency is totally abandoned in aforementioned segment.<sup>2</sup> However, there are certain differences among above mentioned regimes. Namely, HJC could propose, only, one candidate for concrete announced Judge Position, while SPC could propose more candidates for concrete announced position of DPP. Therefore, Assembly is tied with HJC's proposal which may accept or not accept.<sup>3</sup> On the other side, it may choose one of, potentially, many SPC's proposals or not accept none of them.

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<sup>2</sup> Certainly, transparency has been met much more in previous by-laws. Every interested person could attend on interview with candidates before HJC or SPC, while each interview had been recorded by adequate technical devices too. In this regard, one should mention Decision of Commissioner for Information of Public Importance and Personal Data Protection against SPC from 2017 in which it was stated that records of proposed candidate's interview present information of public interest and they should be publicly available. Unfortunately, current by-laws excluded recording of candidate's interview, while other candidates, decision-maker and overall public have no opportunity to get direct impressions on proposed and/or elected candidates.

<sup>3</sup> Meanwhile, HJC had neglected procedure in a few times, but Assembly did not react. Concretely, HJC had announced elections for 8 Judges in Commercial Court in Belgrade and 22 Judges in First Basic Court in Belgrade, while it proposed 10 candidates for Judges in Commercial Court in Belgrade and 39 candidates for Judges in First Basic Court in Belgrade. So, numbers of proposed candidates

Further, proposal should be considered by the relevant Committee as Permanent Working Body of Assembly composed of the Assembly's members. In this regard, session will be held if majority of members attend, while proposal must be supported by majority of present members in order to be continued with further procedure. After, it would be forward, as well as included in agenda of particular Assembly's session and members of Assembly would, definitely, decide by majority vote of all members with public vote. Mostly, proposal presents list of candidates for several different Functions, but every member of Assembly may challenge the proposal regarding particular candidate, but with explanation.<sup>4</sup> Thus, voting before Assembly will be separated, since it would be decided solely regarding each challenged candidate, while others non challenged candidates remain part of list on which will be decided as whole.

### **AC's jurisdiction over Decision**

At first glance, no one can notice whether Decision could be challenged, because it does not contain any kind of instruction on legal remedy. However, there is widespread opinion that Decision could be challenged in AD before AC.<sup>5</sup> Namely, AD is not limited, just, on examining legality of definitive Administrative Legal Acts or cases of so-called Administrative Silence (Radošević 2015, 1971-85). Thus, legality of definite individual legal act which deciding on right, obligation or interest of concrete natural or legal person may be challenged in AD too, but only if law does not provide some different type of legal protection for particular case. Of course, above mentioned definite individual legal act are not Administrative Legal Acts, because they had not been enact in administrative matters (Milkov 2011, 127), while some authors nominate them as Quasi Administrative Legal Acts (Teofilović, and Korhecz 2018, 294), since they have some procedural and deciding aspects related to the AD. Obviously, Assembly through aforementioned Decision decides on right or interest of concrete persons, particularly on their constitutional right to perform Public Function that are, *per se*, Functions of Judge or DPP. So, it presents individual legal act, because (s)election procedure is conducting on individual level in order to determine fulfillment of necessary conditions of every candidate, while every member of Assembly may challenge the proposal regarding particular candidate which would result with separate voting, and Assembly will decide solely regarding each challenged candidate. Anyhow, legal nature should be irrelevant in concrete case, because absence of other type of legal protection is crucial and sufficient reason for constituting jurisdiction of AC within AD (Milkov 2011, 127).

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were higher in comparison with numbers of announced positions, which is *contra legem*. Moreover, Assembly accepted above mentioned proposals by its Decisions, which is far more embarrassing.

<sup>4</sup> In many cases, there was lack of explanation why some candidates have been challenged by Assembly's members, which resulted with their non-election on appropriate Functions.

<sup>5</sup> More about: Tomić 2012, 180-1.

### **AD against Decision - Legal Anatomy**

AD is initiated by claim that must be submitted in period of 30 days from delivering concrete Administrative Legal Act or other definite individual legal act to the particular party. However, Decision is not delivered to the elected Judges, DPPs or other not elected candidates, since it is announced in Official Gazette. Therefore, above mentioned period for submitting claim should start from announcing concrete Decision in Official Gazette. On the other side, Assembly has no limit to decide on HJC's or SPC's proposals, which means that AD could not be initiated for silence of decision-maker, unlike cases of so-called Administrative Silence.

Who would be the parties within such kind of AD? Definitely, claimant would be candidates who had not been proposed or elected, because concrete Decision violates their rights or interests. Also, PP may be claimant too according to its own estimation that public interest has been violated in concrete case. Thereby, Republic PP could be, only, legitimized for initiation of AD, since its competence coincides to the jurisdiction of AC as the Court of Central State level (Tomić 2012, 363). On the other side, Assembly is respondent, because it adopted Decision as definite individual legal act, while "firstly elected" Judges and/or DPPs can have status of Interested Person. So, aforementioned natural persons could participate within AD along with respondent too (Tomić 2012, 384), since the abrogation of challenged Decision would cause direct damage to him/her.

Generally, claim in AD does not postpone execution of challenged Administrative Legal Act or other definite individual legal act, but execution may be postponed if it would cause irreparable damage to claimant, as well as if it would not cause greater or irreparable damage to respondent and/or Interested Person and if it would not be contrary to public interest. However, execution of Decision could not be postponed within AD at all, because aforementioned conditions are set cumulatively (Tomić 2012, 456), while postponing of execution would cause, definitely, great damage to elected Judges and/or DPPs as Interested Persons and, potentially, could endanger public interest.

Anyhow, claimant is obliged to specify reasons for initiating AD, as well as to propose scope of abrogation of concrete Administrative Legal Act or other definite individual legal act. In general, AD can be initiated for following enumerative reasons: incorrect or total absence in application of relevant regulations, issuing of above mentioned legal acts by non-competent authority, improper application of procedural rules, factual errors, exceeding legal limits or ignoring objectives in deciding by discretionary power, while claimant may opt for some or all of above mentioned reasons. However, involvement of non-competent authority in issuing of Decision would be the most dubious and unimaginable reason in such kind of AD, but other reasons are feasible and interconnected in many situations. Mostly, reasons for initiating AD against Decision would be related to the non-application of relevant law, procedural issues, factual errors, as well as to the exceeding legal limits or ignoring objectives in deciding by discretionary power. "First election" concept is regulated by the law with, more or less, clear procedure, while every formal failure by proposer and/or decision-maker should be legally sanctioned. On the other side, incorrect application of relevant regulation should be related to the examining of necessary conditions for proposing and electing on

above mentioned Functions. Pretty much, some of them are obvious and, *per se*, objective e.g. citizenship, completion of Faculty of Law and Bar Exam, as well as ones contained in broad phrase "general conditions for work in State Organs". Namely, aforementioned conditions relate to the evident facts, and it should not be disputable for proposers and decision-maker. However, work experience is very broad notion that includes voluntary jobs, part-time jobs; work on projects, etc.,<sup>6</sup> although its scope is limited after completion of Bar Exam and within legal profession in terms of "first election". Hypothetically, persons without any kind of "work experience" within Courts, PPOs or in other "traditional" legal professions e.g. Lawyers, could be proposed and elected as Judges or DPPs too.<sup>7</sup> Furthermore, if concrete candidate has relevant work experience and fulfills other necessary conditions, than it could be, even, "firstly elected" as Judge or DPP in highest Court or PPO, because "first election" concept, simply, neglects positions in hierarchy. In this regard, Law on Judges mention that HJC would appreciate, especially, type of works after completion of Bar Exam, while Law on Public Prosecution lacks with such kind of provision, although SPC, many times, emphasized aforementioned criterion in proposing candidates. Therefore, above mentioned condition may be candidate's (dis)advantage, as well as notable argument for proposers or/and decision-maker in opting for concrete candidate. Of course, it could be significant argument for challenging Decision before AC. Also, credibleness and competence are very problematic aspects, especially method of their determinations. Namely, HJC, SPC and Assembly are totally free in examining and interpreting candidate's credibleness, while relevant regulations, just, mention, *exempli gratia*, characteristics that are immanent for credibleness of Judges and DPPs. However, competence should be determined through some objective parameters, but there are two parallel models: IT within JA and obligatory exams for other candidates that are performing by HJC or SPC. First one is paid training program for (s)elected persons before their election for appropriate Judicial or Prosecutorial Function, while every person who, previously, had completed Bar Exam and fulfilled aforementioned general conditions for working in State Organs, such as legal age, citizenship, professional qualification, graduated from Faculty of Law, etc. can take Entrance Exam, which consists of three successive parts: Written Test, Personality Test and the Oral Part that are all recorded and transparent. Candidates who were highly ranked according to their success on the Entrance Exam will become Beneficiaries and start the IT Program, which lasts two years, while its theoretical part takes part through the processing of certain thematic units within JA and its practical aspect through work in Courts and PPOs under the supervision of mentors, as well as outside of the aforementioned institutions. Therefore, Beneficiaries will have the opportunity to train in a comprehensive manner, both as Judges and Prosecutors (Debeljački 2015, 224). At the end, they have a Final Exam on which practical knowledge and skills that Beneficiaries had acquired during IT would be checked

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<sup>6</sup> More about: Judgment of the Supreme Court of Cassation Rev2 No. 212/2015 from 02 December 2015.

<sup>7</sup> For instance, Secretary of the Regional Medical Chamber for Central and West Serbia or, even, employee in private company "Fresenius Medical Care" had been proposed and elected as Judges.



through a simulation of a trial with a Beneficiary in positions of both Judge and DPP. Of course, Final Exam is transparent too, since its entire duration and content are recorded. On the other side, HJC and SPC introduced testing as method of determination of candidate`s competence, while it relates, especially, for ones from ranks of other candidates, because Beneficiaries are excluded from aforementioned examination in certain sense.<sup>8</sup> Generally, content of exams depend on the type of Court or PPO, while both by-laws predict methods of Written Test and Written Case Study, but they are not transparent and they lack an oral presentation in comparison with IT. Also, questions on Written Test before HJC are known in advance, because they are constantly available on the web presentation of HJC, while Written Test regarding SPC refers, only, to the audit of knowledge of Criminal Law, omitting other areas in which Prosecutor acts as well, such as Misdemeanor Law, Civil Law, etc. Oppositely, IT does not exclude any of the relevant legal areas, while aforementioned models are limited and superficial, as well as unlawful regarding Constitution and many other laws. Anyhow, Decision presents typical legal act that is based on discretionary powers, since decision-maker is allowed to consider, freely, some conditions in order to elect the best candidate for Judge or DPP.<sup>9</sup> Exactly, discretionary power allows decision-maker to choose between alternatives according to the relevant aspects and for the purpose of concrete situation within framework of positive law (Krbek 1937, 296). In concrete case, decision-maker is allowed to consider and decide, freely, regarding proposed candidates, but discretionary power must be within legal framework in order to elect the most capable candidate on aforementioned Functions, since its improper examination and/or incorrect interpretation may cause AD.

Claimant may propose entire or partial abrogation of Administrative Legal Act or other definite individual legal act, while AC is tied with aforementioned claimant`s proposal (Tomić 2012, 456). In this regard, claimant is allowed to challenge Decision regarding some concrete "firstly elected" Judges or/and DPPs. Also, AC may decide to abrogate above mentioned legal acts partially too, regardless of claimant`s proposal for entire abrogation, but only if it is possible to segregate concrete part from entirety (Tomić 2012, 624). So, it is possible that AC abrogate challenged Decision, just, in terms of some of "firstly elected" Judges or/and DPPs, regardless of claimant`s proposal for its entire abrogation. Furthermore, AC may nullify, *ex officio*, Administrative Legal Act or other definite individual legal act entirely or partially, which relates, *mutatis mutandis*, on the Assembly`s Decision. Anyhow, it can opt to return or not of entire or challenged parts of concrete Decision to Assembly as decision-maker on reconsideration and re-decision. However, AC cannot decide within so-called full jurisdiction regarding Decision. Briefly, this is situation when decision of AC replaces arrangement established by challenged Administrative Legal Act or other definite individual legal act, without possibility of concrete decision-maker to act again (Cucić 2016,

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<sup>8</sup> Beneficiaries are not obliged to pass aforementioned exams upon the completion of IT Program for Functions of Judges at MC and BC or DPP at Basic PPO, while they must pass above mentioned exams for Functions in other Courts or PPO, like all other candidates.

<sup>9</sup> Few times, members of Assembly challenged some candidates without any detailed arguments, which resulted negatively regarding their "first election".

324). Crucial argument presents Decision's character, since it is based on discretionary power of decision-maker to examine and decide freely in terms of certain above mentioned conditions for proposing and electing of Judges and DPPs. Pretty much, Decision is similar to the Administrative Legal Act based on discretionary power, while Law on Administrative Disputes, explicitly, forbids so-called full jurisdiction procedure for such kind of Administrative Legal Act, which should refer, *per analogiam*, on above mentioned definite individual legal act too. Therefore, AC would decide on legality of Decision within so-called restricted jurisdiction procedure.

Finally, AC's Decision is legally binding by its issuing, since appeal as regular remedy is excluded completely within AD (Milkov 2011, 137). However, there are two extraordinary legal remedies, precisely RRCD and RCP. First one is submitting to the SCC as the highest court in Serbian legal system and it relates with serious breaches of relevant law (Tomić 2012, 668), while AC or SCC could be in charge for the second one depending on which court had issued concrete decision. Briefly, RCP involves factual and procedural issues (Tomić 2012, 689), such are new facts, new or incorrect evidences, relevant decision of the European Court of Human Rights, etc., and it can be initiated against AC's decision. On the other side, situations is not so clear regarding RRCD, since there are three alternative conditions: predictability in law, deciding in full jurisdiction or lack of appeal within concrete type of Administrative Procedure, but none of them does not fit to the aforementioned type of decision. Therefore, unsatisfied party dispose, only, with RCP as some kind of extraordinary legal remedy against above mentioned type of AC's Decision.

## CONCLUSION

Concept of "first election" on Judicial and/or Prosecutorial Function is complex category that involves various entities; such are HJC and/or SPC as official proposers and Assembly as decision-maker. Of course, main goal for all of them should be choosing of the best candidates on objective and transparent manner. Unfortunately, there is a great discrepancy between proclaimed goals and their implementation, which causes many controversies, difficulties, problems and dilemmas.

Legal protection over Decision should be sought within AD before AC, nevertheless of absence of explicit instruction. There are several reasons in favor of aforementioned standpoint. Firstly, it is "open approach" of AD, because every definite individual legal act which deciding on right, obligation or interest of concrete natural or legal person may be challenged through above mentioned proceeding before AC, regardless of its legal nature. Moreover, Assembly through Decision decides on right or interest of concrete persons, particularly on their constitutional right to perform Public Function that are, *per se*, Functions of Judge or DPP. Also, it is individual legal act, although proposals and Decision present list of many candidate for several different Functions. Namely, (s)election procedure is conducting on individual level in order to determine fulfillment of necessary conditions of every candidate. In this regard, every member of Assembly may

challenge the proposal regarding particular candidate which would result with separate voting, and Assembly will decide solely regarding each challenged candidate, while others non-challenged remain part of list on which will be decided as whole. Finally, Decision has definitive character, which cannot be appealed by regular legal remedy, which is crucial reason for constituting AC's jurisdiction.

Mostly, reasons for initiating AD would be related to the non-application of relevant law, procedural issues, factual errors, as well as to the exceeding legal limits or ignoring objectives in deciding by discretionary power. Namely, "first election" concept is regulated by the law with, more or less, clear procedure and every formal failure by proposer and/or decision-maker should be legally sanctioned. For instance, it is inadmissible and unlawful to propose and, even, elect greater number of Judges or DPPs in comparison to the previously announced number. Furthermore, Decision presents typical legal act that is based on discretionary power of decision-maker in order to elect the best candidate for Judge or DPP. Thus, discretionary power must be within legal framework. In this regard, lack of explanation and transparency would present formal failure too that should effect on Decision, but aforementioned situation happened in many times without any reaction and sanction. Moreover, decision-maker has possibility to be introduced on much more direct manner with the personalities of some candidates, since competence and personality of Beneficiaries are determined transparently and these information are publicly available, while other candidates remain "beyond the radar" of transparency which could be very problematic regarding (ab)use of discretionary power. So, this is very problematic situation for decision-maker too, because it could opt for some worse solution, although there is possibility to use its discretionary power properly and in accordance with legal authorization in order to elect the most capable candidate for above mentioned Functions.

However, maneuver space for AC's intervention is reduced, since it is tied to the claimant's propose and Decision's character. Of course, AC may decide upon entire or some of the "firstly elected" Judges or DPPs, but it can, always, decide narrowly regardless of claimant's propose for entire challenge of aforementioned definite individual legal act. Also, it is allowed to nullify, *ex officio*, Decision entirely or partially too. On the other side, AD could not be initiated for silence of decision-maker, since Assembly has no limit to decide on HJC's or SPC's proposals. Furthermore, AC cannot decide instead of Assembly on proposed candidates within so-called full jurisdiction procedure too, because it presents discretionary power of aforementioned decision-maker. In this regard, AC decides, only, on legality of above mentioned definite individual legal act within so-called restricted jurisdiction procedure, while it can opt to return or not of entire or challenged parts of concrete Decision to Assembly on reconsideration and re-decision.

Unfortunately, AD against Decision is between reality and utopia, since potential claimants lack determination and courage to tackle with above mentioned problem, despite on existence of good legal grounds for its examination, while bad practice must be exterminate in order to preserve both private and public interest.

## LIST OF ABBREVIATIONS

AC - Administrative Court;  
AD - Administrative Dispute;  
Assembly - National Assembly;  
Committee - Committee on the Judiciary, Public Administration and Local-Self Government;  
DPP - Deputy of Public Prosecutor;  
IT - Initial Training;  
JA - Judicial Academy;  
HJC - High Judicial Council;  
PP - Public Prosecutor;  
PPO - Public Prosecutor Office;  
RCP - Reopening of Court's Proceeding;  
RRCDD - Request for Review of Court's Decision;  
SPC - State Prosecutors Council;  
SCC - Supreme Court of Cassation;

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# CHALLENGES TO THE FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION

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## Abstract

In the pluralist age of human rights, the fundamental human freedom of thought, conscience, and religion is easily dismissed by a number of third generation human rights. Religious opinions that differ from liberal worldview are disregarded as either irrelevant or offensive and are limited to a narrow private sphere. Examining Rawls' concept of private faith and Sandel's and Wolterstorff's concepts of public faith, the article will address the question: what is the meaning of religious freedom if religious convictions have little or no effect in public life? Focusing on the case of Christianity, this article will examine the fluctuating position of the Church seen through early Christian authors such as Tertullian and Augustine regarding this issue. While the former strongly advocated for protection of the fundamental human right of worship, the latter called for sanctioning of polytheists in the Roman Empire. Using mainly descriptive and interpretative method, this article will offer some new perspectives of arguments in favor of freedom of thought, conscience and religion.

**Keywords:** freedom of thought, conscience, and religion; private faith; public faith.

## INTRODUCTION

The fundamental freedom of thought, conscience, and religion is guaranteed by Article 18 of the Universal Declaration of Human Rights.<sup>1</sup> This freedom is a “fundamental, and inalienable human right ... to adopt, hold, freely exercise, share, or change one's beliefs, subject solely to the dictates of conscience and independent of all outside, especially governmental control” (Global Charter of Conscience 2012). Charles Taylor and Jocelyn Maclure point that “core beliefs and commitments [...] include both deeply held religious and secular beliefs and are distinguished from the legitimate but less fundamental “preferences” we display as individuals.“ Through these core convictions of conscience, persons can resolve

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<sup>1</sup> “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” UDHR.

conflicts of values, define how they want to lead their lives, give meaning to their actions, and live what they believe is a “good” life (Maclure and Taylor 2011, 13, 91).

According to Os Guinness, freedom of thought, conscience, and religion allows human beings to internally understand who they are and what they believe, and then “to think, live, speak and act in line with those convictions”. Both historically and logically, freedom of religion and belief comes before freedom of expression, and the later depends on the former. Free people want to freely discuss things that matter to them most, such as truth, justice, human dignity and public policies that reflect the beliefs and worldviews of policymaking stakeholders (Guinness 2013, 69,88). This triad of fundamental freedoms represents the form and the content of the civil public square, enabling people to openly debate and deliberate on important public issues, sharing their concepts of what they believe is best for individuals in particular and society in general.

However, in the pluralist age of human rights, the fundamental human freedom of thought, conscience, and religion is easily dismissed by a number of third generation human rights. Religious opinions that differ from liberal worldview are disregarded as either irrelevant or offensive and are limited to a narrow private sphere.

We argue that Rawls’s theory of justice has contributed to the privatization of faith in the liberal neutral state. We will demonstrate this through two critiques from a communitarian and human dignity position.

## **JOHN RAWLS’ NEUTRAL STATE AND THE PRIVATE FAITH**

In his influential 1971 book, *A Theory of Justice*, John Rawls proposes a famous social contract model. We will only sketch the contours of Rawls’ model and focus on the effects on the freedom of thought, conscience and religion.

In order to determine the principles of justice that would govern a just society, Rawls introduces a hypothetical veil of ignorance. Behind this veil, people are unaware of their own social class and status, talents and competences, the size and composition of their society, as well as in which part of the moral, philosophical, cultural and socio-economic spectrum they will end up once the veil is lifted up. The veil is supposed to encourage people when deliberating on questions of justice to ask themselves the question: how they would like to be treated if they happened to be members of an unpopular, oppressed minority. A rational person would want to pursue their ends and be treated with respect. This position gives way to two principles of justice: equal basic liberties and social and economic equality. These principles serve as “independent standard” for framing a just constitution that would “establish a secure common status of equal citizenship” and realize political justice (Rawls 1999, 175). We will examine only the first principle: “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others” (Rawls 1999, 53). These basic liberties include:

political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person [...] from psychological oppression and physical assault and dismemberment



[...]; the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. (Rawls 1999, 53)

Rawls argues that, behind the veil of ignorance that hides the composition of society and people's religious and moral convictions and duties, the only principle that can secure the integrity of religious and moral freedom is the equal liberty of conscience (Rawls 1999,181). As independent selves "individuals are free to pursue their moral, philosophical, or religious interests without legal restrictions requiring them to engage or not to engage in any particular form of religious or other practice" (177-178).

Rawls' concept of neutral state is disassociated from all religions which are kept at equal distance from the state. The state's purpose is not to regulate issues arising from philosophical and religious doctrines, but to regulate "individuals' pursuit of their moral and spiritual interests in accordance with principles to which they themselves would agree in an initial situation of equality." People have the freedom to organize themselves in religious associations and arrange their own internal life (Rawls 1999, 186).

Rawls allows the freedom of thought, conscience and religion to be limited, but only for the sake of the "common interest in public order and security". This approach safeguards the neutral state from sliding into a confessional state promoting a particular religion or a omnicompetent laicist state that silences all religions (Rawls 1999,186). If a conflict arises between the principles of justice and particular religious and moral beliefs, then the principles override the beliefs. Clothed in neutrality, the principles have authority to balance "between opposing moralities" and "regulate the claims of rival religions." However, "when persons with different convictions make conflicting demands on the basic structure as a matter of political principle, they are to judge these claims by the principles of justice" (Rawls 1999, 193-194).

This brings us to Rawls' skepticism towards public faith. What dominant religious and moral belief systems have in common is their public advocacy for particular (and often irreconcilable) conceptions of the good life. Sandel summarizes Rawls's position: "To deliberate about justice... we should set aside our particular aims, attachments, and conceptions of the good. That's the point of thinking about justice behind a veil of ignorance" (Sandel 2009, 241-242). Only the neutral state enables free and independent individuals to choose their own worldviews and values for themselves. In his words: "the liberties of equal citizenship are insecure when founded upon teleological principles" (Rawls 1999, 185).

Even in his *Political Liberalism* (1993) and *The Idea of Public Reason Revisited* (1997), Rawls insists that when debating about justice and rights in the public square, citizens should "set aside [...] personal moral and religious convictions and argue from the standpoint of a 'political conception of the person'" (Sandel 2009, 248). Rawls finds this separation of moral and civil identity necessary in order to respect "the fact of reasonable pluralism" of conflicting religious, philosophical and moral doctrines. In line with this liberal neutrality, Rawls proposes that "in public reason comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens" (Rawls 1997, 766).

Although Rawls at first claims that the basic “liberties are to be equal”, a closer look in his theory of justice shows that some liberties are ‘less equal than others’. The freedom of thought, conscience and religion is, in practice, disconnected from the freedom of speech and assembly, and thus marginalized. Rawls’ proposal in effect disconnects freedom of belief from the freedom to put one’s beliefs into practice (Maclure and Taylor 2011, 79-80).

Rawls’ approach both in theory and in practice results with a concept of private faith that independent selves are to keep for themselves and circulate strictly within the their religious and moral associations, thus silencing religious and moral convictions in public square. This poses the question: what is the meaning of religious freedom if religious convictions have little or no effect in public life? Is the fundamental human freedom of thought, conscience and religion effectively silenced?

We will explore two responses: With Sandel’s communitarian answer we will examine the effects of privatization of faith on the community, while from Wolterstorff’s argument of religious freedom as a natural human right we will see the effects of privatization of faith on the dignity of individuals.

## SANDEL’S CRITIQUE

In his seminal book *Justice: What’s the right thing to do?* Harvard Professor Michael J. Sandel claims that Rawls’ vision of freedom is fundamentally flawed, as well as “the aspiration to find principles of justice that are neutral among competing conceptions of the good life.” He does not agree with Rawls that “freedom of choice—even freedom of choice under fair conditions—is an adequate basis for a just society.” In order to define rights and duties one has to take up “substantive moral questions” (Sandel 2009,228). Sandel objects Rawls’ liberal neutrality by pointing out that “many of the most hotly contested issues of justice and rights can’t be debated without taking up controversial moral and religious questions.” Important public questions, such as abortion, same-sex marriage, euthanasia, genetic engineering, human cloning, cannot be effectively addressed without reference to their moral and religious roots. Sandel’s argument is that when defining “the rights and duties of citizens, it’s not always possible to set aside competing conceptions of the good life. And even when it’s possible, it may not be desirable.” He goes on to say:

Asking democratic citizens to leave their moral and religious convictions behind when they enter the public realm may seem a way of ensuring toleration and mutual respect. In practice... the opposite can be true. Deciding important public questions while pretending to a neutrality that cannot be achieved is a recipe for backlash and resentment. A politics emptied of substantive moral engagement makes for an impoverished civic life. It is also an open invitation to narrow, intolerant moralisms. Fundamentalists rush in where liberals fear to tread. (Sandel 2009, 248)

The logical consequence of Rawls’s theory is a divorce between our identity as citizens and our identity as moral and religious persons. If citizens “introduce their moral and religious convictions into public debate about justice and rights” and “if their arguments prevail, they will effectively impose on their fellow citizens a

law that rests on a particular moral or religious doctrine” (Sandel 2009, 248). Ironically, advocates of the liberal left are doing precisely that. They are drafting and imposing laws that rest on particular secular moral doctrine. Taylor and Maclure warn against political systems that replace “established religion, as well as the core beliefs that define it, with a secular but antireligious moral philosophy, which in turn establishes an order of metaphysical and moral beliefs” founded on a particular conception of human nature (Maclure and Taylor 2011, 13-14). Such secular state can easily adopt an atheist or agnostic worldview, and marginalize religious concepts.

While he agrees with Rawls that “citizens in pluralist societies disagree about morality and religion”, Sandel claims that “it is not possible for government to be neutral on these disagreements”. Disagreements can enhance the civic culture of mutual respect by developing a civil public square that enables people with different religious, moral and philosophical worldviews to freely debate and deliberate on important public issues not in spite of their differences, but with all their differences. “To achieve a just society” concludes Sandel, “we have to reason together about the meaning of the good life, and to create a public culture hospitable to the disagreements that will inevitably arise.” After all, “a politics of moral engagement is not only a more inspiring ideal than a politics of avoidance. It is also a more promising basis for a just society.” (Sandel 2009, 261,268). We agree with this position. And so do Taylor and Maclure, who ask a relevant question: ”how can people become accustomed to the religious symbols with which the majority are not familiar if a certain number of key professions are closed to those for whom faith must be expressed through the wearing of such signs?” (Maclure and Taylor 2011,45). Religious and moral convictions cannot be truly respected by ignoring them.

Here we leave Sandel’s critique to Rawls’s concept of private faith and turn to Wolterstorff’s argument for public faith based on the understanding of religious freedom as a natural right of the person.

### **WOLTERSTORFF: NATURAL RIGHT TO RELIGIOUS FREEDOM**

Nicholas Wolterstorff analyzes four concepts of privatized faith based on a common Kantian root and a shared claim that religion and liberal democracy are essentially incompatible with one another. Each concept offers a different degree of containment of religion by its restructuring and accommodation to the principles of liberal democracy (Wolterstorff 2018, 220-225). Rawls calls citizens to renounce referencing religion in public debate. When articulating their position in public citizens must advocate for their favored policies or decisions using what Rawls calls “public reason”, that “consists of principles, drawn from the governing idea of liberal democracy, for the just distribution of benefits and burdens, civil rights and duties, by the state and other public institutions” (Wolterstorff 2018, 222). Second is Richard Rorty who claims that religion is dangerous for the health of liberal democracy because it breeds fundamentalism that publically questions secular policies. The solution is to privatize religion by reducing it to the inner life of the believer and thus keeping it out of the public square, until it eventually withers away. John Hick goes a step further by calling for particularist religions to denounce

their exclusivist and universal claims and, instead, embrace relativism. Only a relativistic religion that has no exclusivist and universal claims can be harmless to liberal democracy. Finally, Derrida's solution to the religious danger to the democratic society is "for determinate religion to be transmuted into 'religion without religion'" (Wolterstorff 2018, 222-224). In the case of Christianity, that would mean renouncing most of the content of the Niceno-Constantinopolitan Creed, including the promises for the second coming of Christ, the resurrection of the dead, the last judgment, the establishment of the Kingdom of God, and the life in the world to come.

In our view, Wolterstorff correctly objects these concepts of privatized faith by claiming that free exercise of religion is a natural right, since, human "rights are grounded in the worth or dignity of the rights-holder." In addition to the rational and normative agency of a human person, Wolterstorff proposes that a full-fledged human person possesses two additional fundamental capacities. First is the "capacity to interpret reality and one's place therein", which is "pervasive and fundamental part" of a person's life. Second is the "capacity to form valorized identity" understood as "the relative importance that the person assigns to the states and events in her own life". These include "beliefs,... commitments,... plans for action, her memories, her attachments to persons, animals, and objects, and so forth." (Wolterstorff 2018,218-219). Human persons have great worth and multifaced dignity precisely because they possess these unique capacities. Religions exercises these two capacities:

The belief that there is some kind of all-encompassing mind or spirit that is the foundation of the existence of the universe, of value, and of our own existence, nature, and purpose, is obviously an exercise of the remarkable and precious capacity for interpretation that I took note of above. And giving expression to that belief in one's life and practice is perforce an exercise of the remarkable and precious capacity for forming a valorized identity. (Wolterstorff 2018, 220)

Taylor and Maclure would agree with Wolterstorff's conclusion that "forbidding the religious person the free exercise of his or her religion is a deep violation of their personhood." Core beliefs enable people "to structure their moral identity" and are inseparable from "an individual's sense of moral integrity". Hence, "a person whose acts do not satisfactorily correspond to what he judges to be his obligations and core values is in peril of finding his sense of moral integrity violated" (Maclure and Taylor, 76).

## **FROM TERTULLIAN TO TRURO: THE CASE OF CHRISTIANITY**

We have thus far confronted the philosophical arguments for and against freedom of religious belief in the public square. However, this freedom is not a result of an armchair philosophers who discuss abstract concepts from the comfort zone of their ivory towers. Rather, the idea of human rights and freedoms is born in the midst of an oppressed minority whose members can feel the flaws of a political system on their own skins, and can more accurately and authentically pinpoint the solutions. This brings us to the fluctuating position of the Christian Church on the issue of freedom of religious belief seen through the early Christian authors Tertullian and Augustine.

The Roman Empire of the 2<sup>nd</sup> and 3<sup>rd</sup> century AD had a pluralistic religious landscape, with multiple faiths coexisting and competing in the public space. Individuals were no longer bound to follow the religion of their ancestors, but could freely choose from what John North calls a “market-place of religions” (Stroumsa 1998,174). However, this freedom was granted to all except Christians, whose faith was denounced as illegal and who suffered waves of state-sponsored persecution.

Within this context, Tertullian (c.155-c.240) argued against religious discrimination and coercion. Considered the founder of Western Christian theology he is one of the earliest advocates of religious tolerance. In his *Apology* (written in 197), he protests that Roman authorities have adopted an oppressive and unjust law that forbids Christians to exist. In a famous passage he writes:

Let one man worship God, another Jove; let this man raise suppliant hands to heaven, that man to the altar of Fides; [...] Look to it, whether this also may form part of the accusation of irreligion - to do away with freedom of religion, to forbid a man choice of deity, so that I may not worship whom I would, but am forced to worship whom I would not. No one, not even a man, will wish to receive reluctant worship. (*Apologeticum* 24.5-6)

After Scapula, the Proconsul of Africa, began persecuting Christians around 212, Tertullian sent an open letter of protest:

However, it is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions: one man’s religion neither harms nor helps another man. It is assuredly no part of religion to compel religion—to which free-will and not force should lead us—the sacrificial victims even being required of a willing mind. (*Ad Scapulam* 2.2)

Writing as a member of an illegal and often persecuted religious community, Tertullian recognized freedom of conscience as a natural right that political authorities are obliged to respect. A century later, in 313 the Edict of Milan protected Christianity from persecution and granted freedom of religious belief to everyone.

However, the tide slowly started to change. While at first Christianity was recognized as one among many religions in the Empire, by the end of the 4<sup>th</sup> and the beginning of the 5<sup>th</sup> century, Christianity gradually perfused the corridors of influence and power. Successive emperors issued laws (later compiled in the *Codex Theodosianus*) favoring Christianity over other religions and heresies.

Augustine of Hippo (354-430) supported the sanctioning of polytheists and heretics in the Roman Empire. Regarding political authority he came to the conclusion that coercion is a divine remedy for the Fall. Scholars have demonstrated that Augustine’s advocacy for coercion is neither “a fixed theory” nor a consistent doctrine, but a gradually developed attitude. Augustine initially preferred “to oppose the Donatists only with argument [...], for, as he later explained, he did not want people pretending to be Catholics through fear of the law” (Atkins and Dodaro 2001,xxiii). Faced with persistent Donatist atrocities and the success of the legal suppression of pagans and heresies who converted to Christianity, Augustine came to believe that coercive laws can bring repentance and correction. Kirwan summarizes Augustine’s justification: “coercion of the unjust is not only permissible

but often good, as when they persist in their false allegiance through indolence or fear: ‘It is a great mercy to them when these very imperial laws secure their rescue against their wills’” (Kirwan 1989, 217).

Just as Tertullian’s plea for religious tolerance gave birth to the freedom of religious belief, so were some of Augustine’s writings used in the following centuries to justify religious coercion. However, as Stroumsa rightly points out, the transformation of Christianity from an illegal and persecuted religion seeking recognition and toleration, to an established state religion denying others that same right “would be rooted in human nature, rather than in some implicit aspects of Christian theology” (Stroumsa 1998, 173).

The effects of Rawls’ privatized faith are felt not only in liberal democracies of the global north, but also in the global south. Commissioned by the UK Foreign Secretary, Bishop of Truro’s Independent Review of 2019 deals with the Christian discrimination and persecution. Its findings confirm the “inconvenient truth... that the overwhelming majority (estimated at 80%) of persecuted religious believers are Christians”. Since it re-emerged gradually and without a single cause, Christian persecution

has to some significant extent been overlooked in the West. And the western response ... has no doubt too been tinged by a certain post-Christian bewilderment, if not embarrassment, about matters of faith, and a consequent failure to grasp how for the vast majority of the world’s inhabitants faith is not only a primary marker of identity, but also a primary motivation for action (both for good or ill). (Truro 2019)

One of the enablers of this global persecution of religious minorities is the ‘need not creed’ mantra adopted by many Western governments. Rooted in Rawls’ privatized faith, this mantra prevents liberal democracies to treat the global phenomenon of Christian persecution as a human rights issue. As a result, “western politicians until now have been reluctant to speak out in support of Christians in peril.” The report calls the UK government “to recognise religious affiliation as a key vulnerability marker for members of religious minorities” and reject the privatized faith mantra in foreign policy contexts entirely (Truro 2019).

## CONCLUSION

John Rawls’ promotion of neutral state and private faith actually leads to a value-matrix of life that is far from neutral, but rather incites ousting any kind of religious tenets from the public sphere as a shaping force of society. Thus issues of lifestyle, morality, social policies, education and legislation must not be formed on any other ground but the secular one. This secularist agenda aims to transform the person into a mere individual guided by pure pragmatism. As we have seen from Sandel and Wolterstorff, this inevitably leads to breach of freedom of religion as a basic human right. When the Christian faith is used as a coercive force, as many tragic examples in history show, the ideal of God’s kingdom that can be fully established by God has been mistaken for the imperfect and corruptible human government. For Rowan Williams this is a fundamental exegetical and theological fallacy. In his *On Christian Theology*, he writes:

From human chaos God makes human community. But this act is not a process by which shape is imposed on chaos: it is a summons, a call which

establishes the very possibility of an answers. But what creation emphatically isn't is any kind of imposition or manipulation: it is not God imposing on us divinely willed roles rather than the ones we 'naturally' might have, or defining us out of our own systems into God's. (Williams 1999, 68-69)

Christian history has demonstrated that there has always been a current of thinking and interpretation that opposed imposition and manipulation. The Radical Reformation is case in point. Just like in the time of Tertullian, the state persecution has inspired the vision for religious pluralism and freedom on which the modern concept of human rights rests. While not turning a blind eye on the historic examples of Christian systematic and systemic intolerance of differing beliefs and opinions in the public square, one must not overlook the current situation in which Christians are demonstrably the most persecuted faith group in today's world, something well documented by the Truro Report.

The argument of this essay is that Rawls' leading theory that breeds scepticism for the role of faith in public fails in its aim to create a religiously and therefore morally neutral society. Instead, it enhances discrimination of believers in the public square and it allows the created vacuum to be invaded by radicalism and fundamentalism. We suggest that the contemporary world has to, all levels, engage with the basic questions of elementary decency and respecting those with different opinion. Human rights include the right of believers to publicly promote and foster the moral and social consequences of their faith. Safeguarding one's religious identity in the public square and building fellowship with people of all faiths and none are not mutually exclusive. State imposed public uniformity actually prevents personal and social human development. What history has taught us is that resistance to uniformity and openness for dialogue yield much better results towards the maturity of a flourishing society.

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# **HUMAN RIGHTS AND ORGANISED CRIME - LIMITATION OF HUMAN RIGHTS V. PREVENTION OF ORGANISED CRIME**

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## **Abstract**

Human rights are considered one of the greatest achievements of the modern world. Their promotion and introduction into legislations has ensured enjoyment of rights and freedoms for everyone. At the same time, organised crime is a phenomenon that is constantly growing and its effects oftentimes overstep the boundaries of states, causing enormous material consequences and jeopardising people's physical integrity and health. This is why, countries and the international community are expected to create efficient measures to fight organised crime. Such measures usually mean limiting guaranteed human rights to that end. This is also one of the greatest challenges and dilemmas of the contemporary criminal procedure. On the other hand, the practice of domestic and international courts (primarily the ECTHR) indicates that the principles of subsidiarity and proportionality are violated in many cases when it comes to the prevention of organised crime. The topic of this paper is: *firstly*, when and to what extent is temporary limitation of safeguarded rights and freedoms justified, and *secondly*, when does the prevention of organised crime overstep the boundaries of a necessary limitation of rights and freedoms and acquires a different dimension.

**Key words:** human rights, organised crime, principles, special investigative actions.

## **INTRODUCTION**

We start from two premises in our paper: *first*, organised crime is a threat to the modern age, and *second*, human rights and freedoms are the greatest values of our time. Finding a correlation between these two phenomena is not difficult. It implies that it is necessary to find a balance between the prevention of organised crime and a temporary limitation of human rights and freedoms to that end. Hence, the need to limit adopted rights and freedoms for the purpose of preventing organised crime is not disputed, rather its limitation within the bounds of necessity

is. From this stems the main principle upon which the present concept of the prevention of organised crime is based, and those are subsidiarity and proportionality, as it is precisely they, apart from the principle of legality and judicial supervision, that are crucial for the achievement of said goal. However, this balance is not simple to achieve in practice. Actually, opposing interests are at play here; on the one hand, there is the detection and proving of criminal offences of organised crime, and on the other, there is the protection of safeguarded human rights and freedoms. A particular challenge faces judicial institutions, which, performing their main role (detection and proving of criminal offences, adjudicating in a criminal matter) have to ensure the protection of basic human rights and freedoms. This is why, not even today, 70 years after the proclamation of human rights and freedoms and more than 30 years of international engagement in the prevention of organised crime do we have a solution to this situation. Hence, it no surprise to have so many judicial proceedings, both before the European Court of Human Rights and before the local courts (with appellate or higher jurisdiction) demanding the protection of human rights and freedoms.

The bibliography about the observed problems is ample and comprehensive indeed. It encompasses academic papers (books, dissertations, textbooks, articles), professional papers, institutional documents (primarily, publications by international and regional organisations, such as the United Nations, European Union, Council of Europe, etc.). Without going further into citing references, some of them have been used in this paper too, we invite interested readers to look up other bibliography on organised crime and human rights and freedoms.

The goal of the paper is to give answers to two questions: *firstly*, when and to what extent is temporary limitation of guaranteed rights and freedoms justified, and *secondly*, when does the prevention of organised crime overstep the boundaries of a necessary limitation of rights and freedoms and acquires a different dimension (most commonly characterised as the violation of rights and freedoms). In order to offer answers to the posed questions, we will analyse certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter: ECHR] and judicial practice of the European Court of Human Rights [hereinafter: ECtHR]. As an example of domestic legislation and judicial practice we will use the legislation of Bosnia and Herzegovina<sup>1</sup> and the practice of the Constitutional Court of Bosnia and Herzegovina [hereinafter: BiH Constitutional Court], given that this Court has appellate jurisdiction in certain cases<sup>2</sup> (for more detail, see: Simović 2018, Šikman 2017). Due to the limited space,

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<sup>1</sup> By this we mean the Criminal Code of Bosnia and Herzegovina [hereinafter: BiH CC] and Criminal Procedure Code of Bosnia and Herzegovina [hereinafter: BiH CPC], noting that there are three more criminal codes in Bosnia and Herzegovina, upon the principle of concurrent and shared jurisdiction (Criminal Code of the Republika Srpska, Criminal Code of the Federation of Bosnia and Herzegovina, and Criminal Code of the Brčko District of Bosnia and Herzegovina) and three criminal procedure codes (Criminal Procedure Code of the Republika Srpska, Criminal Procedure Code of the Federation of Bosnia and Herzegovina, and Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina).

<sup>2</sup> Pursuant to the Decision of the BiH Constitutional Court no. 34/01 of 2001: “The BiH Constitutional Court, as a local institution with appellate jurisdiction with respect to the rights and freedoms

the analysis will not be thorough, yet a conclusion will be made, and the analysed judicial practice will be specified in the list of references.

### **ORGANISED CRIME AS A THREAT OF THE MODERN AGE**

As we have concluded in our previous research (Simović & Šikman, 2017, 206), over the past 25 years, organised crime has become a global threat and acquired macroeconomic dimensions. Today, organised crime groups are a transnational problem: a threat to international security as well as to the security of national states, particularly in poor and conflict-ridden countries (Simović, Šikman, 2017, 206). According to the United Nations (2010): “organised crime is fuelling corruption, infiltrating business and politics, and hindering development, undermining governance by empowering those who operate outside the law” (UNODC 2010, 1). In addition, according to the SOCTA report (2017): “The profits generated by some of the successful organised crime groups and individual criminals active in the EU are enormous and rival those of multinational corporations. More than 5,000 OCGs operating on an international level are currently under investigation in the EU.” (European Police Office 2017, 10).

Criminal activity of organised crime posing a threat to the modern world may be observed through traditional forms of organised crime and those based on the abuse of modern, especially transformative technologies. Criminal activity in relation to narcotic drugs continues to be the most serious threat, as according to the United Nations Report (2019), in 2017, an estimated 271 million people, or 5.5% of the global population had used drugs in the previous year (UNODC 2019, 7). Also, in different parts of the world there are various patterns of trafficking in persons, including various forms of exploitation, which are on the rise (sexual exploitation, forced labour, forced marriage, trafficking of children for illegal adoption, etc.) (UNODC 2018a, 11). Directly linked to trafficking in persons is the fact that amid the ongoing migrant crisis, illegal channels and routes of human trafficking are largely used for illegal migration too. The United Nations Global Study on Smuggling of Migrants (2018) reads that: “Just like human trafficking, so does the smuggling of migrants affect all regions of the world and there is evidence that, at a minimum, 2.5 million migrants were smuggled for an economic return of US\$5.5-7 billion in 2016.” (UNODC 2018 b, 5). Apart from that, criminal markets of other forms of organised crime around the world rightly confirm the theory about the social danger and harmfulness of this criminal phenomenon. On the other hand, various forms of cybercrime are emerging, which nowadays basically dominate day-to-day life. Cybercrime equally affects individuals, companies/organisations and governments, incurring multiple negative effects on the society as a whole (UNODC, 2013). Along with this go the forms of crime with respect to transformative technologies, such as data manipulation, massive abuse of

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safeguarded by the BiH Constitution, must draw attention to the violation of rights and fundamental freedoms safeguarded by the ECHR, therefore the rights safeguarded by the BiH Constitution regardless of the fact that a procedure has not been finished” (BiH Constitutional Court Decision no. U 34/1 of 22 June 2001).

*blockchain* technologies where there is a strong connection with criminal activity in the darknet<sup>3</sup>.

## **HUMAN RIGHTS AND FREEDOMS AS A VALUE OF THE MODERN AGE**

Not many values are commonly shared by the majority of nations today like human rights and freedoms. They are deemed a greatest achievement of human civilisation. This stems from the Universal Declaration of Human Rights (1948) which proclaims in its Preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (Universal Declaration of Human Rights 1948, 1). Here we can add the ECHR (1950) which defines the obligation to respect human rights (Article 1) including the individually listed rights and freedoms, such as the right to life (Article 2), prohibition of torture (Article 3), prohibition of slavery and forced labour (Article 4), right to liberty and security (Article 5), right to a fair trial (Article 6), no punishment without law (Article 7), right to respect for private and family life and correspondence (Article 8), and other rights (European Convention on Human Rights 1950). In addition, the International Covenant on Civil and Political Rights (1966) reads in its introduction that: "the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights" (International Covenant on Civil and Political Rights 1966, 1).

It is these international legal documents that the foundations of human rights and freedoms in national legislations are based on. One of the main principles upon which constitution in national law is based is the safeguarding and protection of human rights and freedoms, which have the status of universal values accepted and respected by the majority of members of the international community (Pajvančić, 2011, 71). The BiH Constitution (1995) in its Article II Human Rights and Fundamental Freedoms explicitly stipulates: "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms," and that "The rights and freedoms set forth in the ECHR and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law," (para 2 of the Constitution of Bosnia and Herzegovina 1995, 2). These as well as other explicit constitutional norms specifically referring to the penal policy, prosecution and protection of human rights in criminal proceedings condition and define the boundaries of criminal legislation, therefore of the criminal law too (Kuzmanović & Dmičić 2002, 26). This is why, criminal justice

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<sup>3</sup> According to the European Monitoring Centre for Drugs and Drug Addiction (2019) organised crime groups active in the United Kingdom generate more revenue from illegal drug trade on the darknet than in any other country in Europe (it is estimated that they traded drugs in excess of 24 million pounds, 2 825 kg overall). Furthermore, a 2019 international police operation in Germany titled "Wall Street Market" is stated as an example, where one of the largest illegal darknet markets was shut down, which was mainly used for the trade in drugs, mainly cocaine, heroin, cannabis and amphetamines, as well as for sharing stolen data, fake documents and malicious software. The marketplace was in operation for two years, with more than 1 150 000 customer accounts and over 63 000 offers and 5 400-plus vendors (EMCDDA 2019, 70).

provisions laid down in the BiH CC (2003) stipulate that: “(1) Criminal offences and criminal sanctions shall be prescribed only for acts threatening or violating personal liberties and human rights, as well as other rights and social values guaranteed and protected by the Constitution of Bosnia and Herzegovina and international law in such a manner that their protection could not be realised without criminal justice compulsion,” (Article 2, para 1), where: “The prescription of criminal offences, as well as the types and the range of criminal sanctions, shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values” (Article 2, para 2). These norms are further safeguarded by the provisions contained in the BiH CPC (2003) which are supposed to ensure that: The rules set forth in this Code shall provide for an innocent person to be acquitted and for a perpetrator of an offence to be pronounced a criminal sanction in legally prescribed proceedings under the conditions provided by the BiH CC and other laws of the state of Bosnia and Herzegovina that prescribe criminal offences” (Article 2, para 1). The same Law also defines the presumption of innocence *in dubio pro reo* (Article 3), the principle *Ne bis in idem* (Article 4), rights of a person deprived of liberty (Article 5), rights of a suspect or accused (Article 6), right to defence (Article 7) and other rights.

Due to its importance, we have specifically singled out the principle of legally invalid evidence (Article 10), which prescribes that: “The Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code,” (para 2), as well as that: “The Court may not base its decision on evidence derived from the evidence referred to in Paragraph 2 of this Article” (para 3). This prohibition is absolute because, on the one hand, it refers to all illegally obtained evidence, regardless of whether it is in favour or to the detriment of the suspect or the accused, and on the other hand, such evidence is prohibited regardless of whether it is credible, truthful or trustworthy (Siječić-Čolić et.al. 2005, 66) and the prohibition applies in the entire criminal proceeding, from its initiation to its closure and refers to all cases, that is, all forms of proceedings (Simović & Simović 2016, 324).

### **TEMPORARY LIMITATION OF HUMAN RIGHTS AS A CHALLENGE FOR THE PREVENTION OF ORGANISED CRIME**

In addition to the exact prescription of the limitation of human rights and freedoms in time of war or other public emergency which threatens the life of the nation (Article 4 of the International Covenant on Civil and Political Rights and Article 15 of the ECHR), international legal acts also recognise other reasons for the limitation of safeguarded rights and freedoms. Those exceptions, specific limitations and reservations refer to the limitation of human rights and freedoms, as stated in the ECHR. Exceptions are prescribed in the right to life (Article 2, para 2) and right to liberty and security (Article 5, para 1), specific limitations are prescribed in Articles 8 through 11 of the ECHR, while reservations refer to the right of a State to make a reservation of any particular provision of the Convention (ECHR, Article

57). The essence of specific restrictions is that they allow a State to limit certain human rights and at the same time allow European authorities to exercise control over such activities of the State (Opservatorij za ljudska prava, 20.03.2020). It is clear that the main purpose of these limitations is the protection from the State's arbitrary interference in a person's private and family life, his home and his correspondence (Council of Europe/European Court of Human Rights 2018). Such practice has been adopted by the BiH Constitutional Court too, stating that "there shall be no violation of the right to a fair trial under Article II/3e) of the BiH Constitution and Article 6, para 1 of the ECHR when the disputed final and binding decision is not based on illegally obtained evidence, and when courts assess other presented evidence individually and in correlation, and on the basis of a careful and conscientious assessment of such evidence draw the conclusion that appellants committed the criminal offences they are charged with" (BiH Constitutional Court Decision no. AP 5409/10 of 27 February 2014).

From the viewpoint of this paper, particularly significant are the specific limitations prescribed in Article 8, para 2 of the ECHR which stipulates that: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." It derives from this that the limitation of the right to privacy and family life is possible, with cumulative fulfilment of three requirements: first, that the specific possibility is stipulated by law or is in accordance with law;<sup>4</sup>; second, that such limitations are in the interests of a democratic society; and third, that there exist defined, clearly expressed legitimate goals (see also: Simović i Simović 2016, 352; Krapac 2010, 1220). Here, states have to autonomously define the presumptions for the application of such measures, but such autonomy is limited by the Convention principles guaranteeing adequate and effective safeguards against arbitrariness and abuse to citizens, as stated in the Decision *Klass and others v. Germany* 1979 and *Weber and Saravia v. Germany* 2006. This includes precise definition of the scope and manner of exercise of discretion enjoyed by the public authorities (*Malone v. The United Kingdom* 1984), as well as the definition of the procedure of control during the application of the measure, including the drafting of a report on executing the measure, protection of confidentiality of its results and destruction of the results after the termination of proceedings or ordering an acquittal, as stated in the decision *Szabo and Vissy v. Hungary* 2016 (cf: Simović 2018, 73). That is why the ECtHR takes into account the circumstances of the case, such as the nature, scope and duration of possible measures, basis for ordering them, bodies in charge of their approval, execution and supervision, as well as the type of legal remedy prescribed by the national law (*Roman Zakharov v. Russia* 2015, p. 232.; *İrfan Güzel v. Turkey*

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<sup>4</sup> It is stated in the judgement *Kruslin v. France* 1990, where the legal basis has to be "accessible and precise" for citizens, instead of containing, for instance, only unpredictable administrative patterns (*Kruslin v. France* 1990).

2017, p. 85.; *Centrum För Rättvisa v. Sweden* 2018, p. 99. - 110.) (cf: Council of Europe/European Court of Human Rights 2018, 38).

When it comes to organised crime cases, appeals mainly focus on disputing the legality of gathered evidence on the basis of violations of safeguarded rights. Gathering of evidence constituting the limitation of the Convention right to a fair trial (Article 6) and right to respect for private and family life (Article 8) is usually special investigative actions prescribed by the BiH CPC (Simović i Simović 2016, 352; Šikman 2017, 404). The ECtHR judicial practice in this area understands the notion of illegally obtained evidence conditionally, because the Court does not check whether a certain piece of evidence is illegal by the national law, but whether the usage of such evidence is contrary to the ECHR (Martinović i Kos 2016, 319). Nevertheless, as stated by Damir Krapac (2010), by applying the elastic criterion of “a fair trial” from Article 6, para 1 of the ECHR it is assessed whether in a national proceeding the manner of gathering or presenting evidence in a specific case affected the “fairness” of the trial as a whole or whether another convention right was violated during the trial (Krapac 2010, 1207). The ECtHR’s view expressed in the case *Schenk v. Switzerland* 1988 too implies the aforementioned, where the Court accepted that the right to a fair trial was not necessarily violated when evidence was obtained by violating the right to respect for private life, given that the court examines the proceeding as a whole, which was reiterated and elaborated on in a series of other judgements, such as *Khan v. The United Kingdom* 2000, *P. G. and J. H. v. The United Kingdom* 2001, *Allan v. The United Kingdom* 2002, *Jalloh v. Germany* 2006, *Lisica v. Croatia* 2010 and others. (see also; Pavičić i Valković 2012, 757 quoted in Šikman 2017, 405; Council of Europe/European Court of Human Rights 2018, 38). On the other hand, violations of the right to private and family life are possible if evidence is obtained contrary to legal regulations. The ECtHR deliberated on the same matter in the case *Dragojević v. Croatia* 2015 and *Bašić v. Croatia* 2016, too, where it found violations of the right to private and family life (ECHR, Article 8) given that in both cases the investigative judge’s orders to carry out a specific action of supervision and recording of telephone calls of the accused were not duly elaborated even though they were supposed to be according to an explicit legal provision (Šikman 2017, 406). In the case *Nițulescu v. Romania* 2015, the appellant complained that her convicting judgement was mainly based on audio recordings that had been made without a prior court approval, whereupon the ECtHR in the judgement on the case established that the proceeding in this case, observed as a whole, did not meet the requirement of fairness (Kaber i Dumanjić 2018, 61).

Proceedings were also conducted to review constitutionality of the relevant provisions of the BiH CPC before the BiH Constitutional Court (cf. Simović 2018, 67). We can freely say that in its practice so far, the BiH Constitutional Court has been preoccupied with major constitutional disputes related to the application of special investigative actions (Simović 2018, 77). First, the BiH Constitutional Court recalls that telephone calls, even though they are not explicitly listed, and in line

with the ECtHR practice<sup>5</sup>, fall under the notion of private life and correspondence in Article 8 of the ECHR, and that the interception of telephone calls constitutes interference of public authorities into the right to respect for private life (Simović 2018, 77). The Constitutional Court adjudicated in every specific matter individually and established whether there was a violation of the right or not. In its Decision on admissibility and merits number AP 1758/15 of 30 June 2015, the BiH Constitutional Court concluded that the appellant's right to private life and correspondence in Article II/3.(f) of the BiH Constitution and Article 8 of ECHR was not violated when the appellant, on the basis of Article 119, para 3 of the BiH CPC, was informed of the conducted special investigative actions immediately after the court had suspended such operations, and not at the time when their application was approved or when insight was made possible during a hearing, because both kinds of interference were "in compliance with law" and "necessary in a democratic society" in terms of Article 8, para 2 of the ECHR (Decision on admissibility and merits no. AP 1758/15 of 30 June 2015). Furthermore, the BiH Constitutional Court found no violation of the appellant's right to private life from Article II/3.(f) of the BiH Constitution and Article 8 of the ECHR when interference in her private life was done by the usage of transcripts and recordings of the appellant's intercepted telephone calls, a report of cover-up investigators and telephone listings which were found to constitute legally obtained evidence in terms of valid regulations and was necessary in a democratic society for the purpose of achieving the legitimate goal of preventing and detecting the criminal offence and protecting the rights of others (Decision on admissibility and merits no. AP 1655/11 of 25 June 2014).

## CONCLUSION

Human rights and freedoms as the greatest values of modern times are safeguarded by the highest international legal acts and local legal regulations. There are no exceptions to this, except in cases prescribed by law. Hence, the possibility for a temporary limitation of safeguarded rights and freedoms in order to successfully confront organised crime is unequivocal. Namely, this criminal phenomenon has all elements of transnational crime, threatens people's safety and their property, and is identified by many states as a threat to their national security. Nevertheless, countries still have the duty to limit human rights and freedoms in accordance with the standards of international legal documents. Here, we primarily mean the standards stipulated by the ECHR and the judicial practice of the ECtHR, which state that such a possibility must be defined by law, in the interest of a democratic society (we have concluded that the prevention of organised crime justifies such an interest), in a proportionate manner, essentially needed (subsidiary), with provided judicial supervision. Only under these conditions can it be guaranteed

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<sup>5</sup> The ECtHR found that the supervision of communications and telephone calls (including the calls made from an office phone, as well as from home) fell within the scope of private life and correspondence in Article 8 (*Halford v. The United Kingdom* 1997, p. 44.; *Malone v. The United Kingdom* 1984, p. 64.; *Weber and Saravia v. Germany* 2006, pp. 76 - 79) (Council of Europe/European Court of Human Rights 2018, 38).



that temporary limitation of human rights and freedoms to individuals will not be the violation of their rights. This is what we call the balance of limiting the rights and a need for an effective suppression of organised crime.

The situation in Bosnia and Herzegovina in this regard is positive. This means that legal prerequisites have been made for the prevention of organised crime in the previously described fashion. What is evident is a small number of appeals to the ECtHR with respect to organised crime cases. The reason may be sought in the fact that the BiH Constitutional Court, in the scope of its jurisdiction, adjudicates in such cases, which is why the greatest number of proceedings end before this court. This is why many deficiencies, primarily with respect to the application of special investigative actions, have been removed. Here we primarily mean the contents of the order imposing them, which had some deficiencies in terms of the failure to state all the necessary data and facts (e.g. reasons for special investigative actions), which were removed for the most part thanks to the influence of the ECtHR judicial practice. Naturally, the respect for safeguarded rights and freedoms is a continuous process, subject to other challenges, obligating judicial institutions to respect them continually themselves.

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# **PRISON BASED EDUCATIONAL PROGRAMS AS A MEANS TO PROMOTE EX-PRISONERS' RIGHT TO LABOUR**

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## **Abstract**

In spite of the fact that the right to labour represents one of fundamental human rights, practice confirms that former prisoners often face a series of obstacles when attempting to enter the labour market and find a legal source of income. Having in mind the fact that obtaining legal incomes is considered one of the crucial preconditions for re-socialisation and recidivism prevention, the interest in offenders' reintegration and rehabilitation has been apparent through policies and/or programs that address ex-prisoners' education and employability. It is believed that prison based programs could be a useful tool for empowering ex-offenders by increasing their chances for employment and successful social reintegration, but they also, in more general sense, have the potential to contribute to lower rates of recidivism. Our goal is therefore to discuss the logic of the prison based programs, as well as to identify and analyse the main types of these programs. Moreover, some notable examples of implemented prison based programs in the world and in Serbia will be presented.

**Key words:** ex-prisoners, right to labour, prison based programs, reintegration, re-socialisation, employability, recidivism prevention

## **INTRODUCTION**

Former prisoners often face a series of obstacles when attempting to enter the labour market and find a legal source of income. Together with lack of accommodation and social stigma, deprivation from the right to work forms three main difficulties in the post-penal situation (Petrović, Jovanović, 2018: 36). Since

obtaining legal incomes is considered one of the crucial preconditions for re-socialisation and recidivism prevention, the interest in offenders' reintegration and rehabilitation has been apparent through policies and/or programs that address ex-prisoners' education and employability. Apart from beneficial financial aspects of legal employment, inclusion of former prisoners in social networks of mutual interdependences in the new workplace is also essential for their re-socialization. Having this in mind, prison based programs could be a useful tool for empowering ex-offenders by increasing their chances for employment and successful social reintegration, but they also, , have the potential to contribute to lower rates of recidivism.

The goal of this paper is to discuss the logic of the prison based programs, as well as to identify and analyse the main types of these programs. Moreover, some notable examples of implemented prison based programs in the world and in Serbia are presented.

## **THE RIGHT TO LABOUR AS A FUNDAMENTAL HUMAN RIGHT**

The right to labour is considered one of fundamental human rights (Herman, Čupurdija 2011, 55). It is a source of incomes and facilitates the individual's financial independence and represents the source of individual's dignity and self-realisation, which impacts personal development and participation in the community (Paunović, Krivokapić, Krstić 2013, 226).

The right to labour is proclaimed in several international treaties: 1) Universal Declaration of Human Rights (1948)<sup>1</sup> (Article 23(1)), 2) International Covenant on Economic, Social and Cultural Rights (1966)<sup>2</sup> (Article 6), 3) Revised European Social Charter (1996)<sup>3</sup> (Article 1). International Labour Organisation (hereinafter: ILO) is explicit about the prohibition of discrimination in the field of labour, highlighting that "Freedom from discrimination is a fundamental human right and is essential for workers to be able to choose their employment freely, develop their potential to the full and reap economic rewards on the basis of merit" (ILO 2019, 45). ILO standards pertinent to equality in the field of labour are proclaimed by its conventions: 1) Equal Remuneration Convention, 1951 (No. 100)<sup>4</sup>, 2) Discrimination (Employment and Occupation) Convention, 1958 (No. 111)<sup>5</sup> and 3) Workers with Family Responsibilities Convention, 1981 (No. 156)<sup>6</sup>.

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<sup>1</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 4 March 2020]

<sup>2</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 4 March 2020]

<sup>3</sup> Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163, available at: <https://www.refworld.org/docid/3ae6b3678.html> [accessed 4 March 2020]

<sup>4</sup> Equal Remuneration Convention, 1951 (No. 100), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100) [accessed 5 March 2020]

<sup>5</sup> Discrimination (Employment and Occupation) Convention, 1958 (No. 111), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312256:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312256:NO) [accessed 5 March 2020]

The 2030 Agenda for Sustainable Development (2015)<sup>7</sup> deals with the right to labour within goal 8 "Decent Work and Economic Growth". Rules against discrimination protect not only the employees but the persons looking and applying for a job as well (Kulić 2006, 93).

The Republic of Serbia (hereinafter: RS) is one of the parties to the aforementioned international documents and one of the members of ILO<sup>8</sup> and obliged to respect the principles that they proclaim. Article 60(1) of the Constitution of RS<sup>9</sup> guarantees the right to work in accordance with the law. Article 60(2) of the Constitution claims that: the right to choose the occupation freely, whereas Article 60(3) guarantees the availability of all work places under equal conditions.

The Law against Discrimination of RS<sup>10</sup> defines discriminatory activities in its Article 2 as: "any unjustifiable differentiation or unequal treatment or failure to treat (exclusion, limitation or giving advantage) of persons, groups of persons, their family members or persons close to them, committed either explicitly or implicitly, based upon their race, skin tone, ancestors, citizenship, nationality, ethnical origins, language, religious or political convictions, sex, gender, sexual orientation, financial status, birth, genetic characteristics, health, disability, marital and family status, conviction, age, appearance, membership in political, labour or other organisations and other genuine or presumed personal characteristics". This legal provision confirms that former conviction is considered as one of the grounds for discrimination in RS. Discrimination in the area of labour is explicitly prohibited by Article 16 of the Law against Discrimination.

The Law on Labour of RS<sup>11</sup> prohibits the discrimination of employees and persons looking for employment in Article 18. It is prohibited to discriminate the persons looking for employment or employees, either directly or indirectly, on the following grounds: gender, birth, language, race, skin tone, age, pregnancy, health condition, i.e. disability, nationality, religion, marital status, family obligations, sexual orientation, political or other conviction, social origins, financial status, membership in political organisations, labour unions or other personal characteristics. Although the law does not mention explicitly the circumstance that a person is a former prisoner as one of the grounds for discrimination, there are no

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<sup>6</sup> Workers with Family Responsibilities Convention, 1981 (No. 156), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C156](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C156) [accessed 5 March 2020]

<sup>7</sup> UN General Assembly, *Transforming our world : the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html> [accessed 5 March 2020]

<sup>8</sup> Further information about the membership of the Republic of Serbia in ILO is available at: [https://www.ilo.org/gateway/faces/home/ctryHome?locale=EN&countryCode=SRB&\\_adf.ctrl-state=17sxxrj9ax\\_9](https://www.ilo.org/gateway/faces/home/ctryHome?locale=EN&countryCode=SRB&_adf.ctrl-state=17sxxrj9ax_9) [accessed 5 March 2020]

<sup>9</sup> Constitution of The Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006, available at: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution> [accessed 4 March 2020]

<sup>10</sup> Law against Discrimination, Official Gazette of the Republic of Serbia, No. 22/2009., available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_zabrani\\_diskriminacije.html](https://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html) [accessed 9 March 2020]

<sup>11</sup> Law on Labour, Official Gazette of the Republic of Serbia, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018, available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_radu.html#](https://www.paragraf.rs/propisi/zakon_o_radu.html#) [accessed 4 March 2020]



obstacles to consider it one of "other personal characteristics" and, hence, one of potential grounds for discrimination in the context of the access to the right to labour.

Criminal Code of RS<sup>12</sup> in Article 102(4) declares that nobody has got the right to require from other persons to submit the evidence that prove that they have or have not been convicted of a criminal offence. In general, this also refers to the employer, who, apart from the situations where the characteristics and the type of work require, is not allowed to ask potential employees about their former conviction (Article 102(3)). Accordingly, the Ombudsperson declared that adequate measures should be applied in order to improve the position of the convicted persons in the context of their social inclusion without stigmatisation, particularly when it comes to their employment and the application of Article 102 of Criminal Code (Ministry of European Integration of the Republic of Serbia 2018, 74). This was confirmed by his Opinion No. 07-00-134/2016-02 from April 21, 2016<sup>13</sup>, adopted on the occasion of the complaint submitted by M.Ž.PN. against Limited Liability Company "K" because of an on line job application form uploaded on the this company's website. Some of the questions in the form were related to sensitive data and personal characteristics of job applicants, including prior conviction. The Ombudsperson agreed that asking such questions within a job application form should be considered the violation of anti-discrimination legislation and emphasised that the aforementioned personal characteristics do not represent actual ad decisive conditions for performing that job, having in mind the nature of the job and the type of activities this company is performing.

All this advocates that the right to labour is recognised as one of fundamental human rights that should be accessed without discrimination on the grounds of any personal characteristics, including the fact that a person has been convicted of a criminal offence. However, in order to access the labour market as all the other participants, the persons who have been convicted to prison sentence should be given the opportunity to obtain the professional knowledge and skills, since education represents a precondition for their future successful employment and the realisation of their right to labour.

## **THE IMPORTANCE OF PRISON BASED EDUCATIONAL PROGRAMS**

A renewed interest in offender's transitions and reintegration has been apparent in recent years and most correctional systems now feature policies and/or programs that address issues relating to the housing, employment, education and the broader 'resettlement' of offenders. However, introduction of various programs and policies that could enhance offenders' rehabilitation and reduce recidivism, brings considerable challenges. One of the most significant factors influencing

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<sup>12</sup> Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019, available at: <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html> [accessed 5 March 2020]

<sup>13</sup> For further reference see: Opinion of the Ombudsperson No. 07-00-134/2016-02 from April 21, 2016, available at: <http://ravnopravnost.gov.rs/prituzba-m-z-p-n-protiv-privrednog-drustva-k-d-o-o-zbog-diskriminacije-po-osnovu-vise-licnih-svojtava-u-oblasti-rada-i-zaposljavanja/> [accessed 5 March 2020]

reintegration is juridical and community support. Knowledge plays an important role in constructing community attitudes about a range of justice issues, and it appears that reintegrative ideas depend on community support in ways that other sentencing goals do not (Hardcastle et al., 2011: 116).

Studies on community views about reintegrative practices suggest that the public believes that sentences are too lenient and that the judiciary are out of touch with community views (Hough & Roberts, 1998; Mirrlees-Black, 2002; Paulin, Searle & Knaggs, 2003). Although the public thinks that sentences are too lenient, it does favour rehabilitation and community-based sentences over prison and punishment for juvenile and first-time offenders. To identify legislative and community obstacles to the success of reintegration, Victoria-wide survey of community views about the reintegration of ex-offenders was conducted (Hardcastle et al., 2011). Participants were asked for their views about sentencing objectives, and the nature of their support for employment and housing initiatives. The results showed low levels of overall support for reintegration, with numerous subtle distinctions. The findings also indicate a need for targeted research into the correlates of community readiness for specific aspects of offenders' reintegration, and the need for community education about the social implications of effective reintegration policies for urban, regional and rural communities.

Proponents of community-based models of reintegration argue for a reciprocal relationship between the community and offenders, encouraging offenders to reconstruct prosocial identities, participate in civic life and strengthen social ties, thus reducing reoffending beyond the limited extent achieved by rehabilitation and punishment (Hardcastle et al., 2011: 118). While an 'in principle' support for social policies is always desirable, unless the community members take their support for reintegration to the next level and express a willingness to work with and/or live near offenders, such policies will be ineffective. Community attitudes regarding these issues tend to follow the 'not in my backyard' (NIMBY) phenomenon, where the community supports a cause in principle, but not in close proximity (Hardcastle et al., 2011: 118).

## **CHALLENGES REGARDING PRISON BASED PROGRAMS AND OFFENDERS' EMPLOYABILITY**

Different programs related to prisoners' preparation for engaging in the workforce have many proponents since the participation in post release employment preparation and training programs is associated with lower recidivism (Graffam, Shinkfield, Mihailides, & Lavelle, 2005; Zhang, Roberts, & Callanan, 2006). There is also evidence that variables such as older age and stable employment contribute to lower recidivism (Schram, Koons-Witt, Williams, & McShane, 2006; Uggen, 2000). Despite this, ex-offenders face many challenges in their efforts to find and maintain employment (Holzer, Raphael, & Stoll, 2003; Lynch & Sabol, 2001; Travis, Solomon, & Waul, 2001). Some of the key challenges include: ex-offender substance abuse, physical and mental health, employability and workforce participation, housing, and the interrelationships among these factors (Travis et al., 2001). The research on ex-offenders' experience in re-entering workforce identified 11 domains encompassing their needs for education, training, and practical



assistance; challenges in obtaining and maintaining a job and available support, including personal networks and resources from the correctional system. Substance abuse issues also impact ex-offenders' social viability as well as their career-related re-entry attempts. Also, career development practitioners should understand the internal and external impacts of incarceration related stigma (Shivy et al., 2007).

Few studies have examined attitudes toward hiring ex-prisoners and offenders. In the employer survey, only 12% of employers agreed that they were inclined to hire an ex-prisoner (Albright & Denq, 1996). Employers' willingness to hire an ex-prisoner was higher for those with a college degree, a vocational trade, or a completion of two training programs. Employers reported that they were more willing to hire ex-prisoners on the basis of government incentives but were generally unwilling to hire an ex-prisoner convicted of a violent offence or crimes against children.

In another study, nearly two thirds of employers reported that they would not hire a person with a criminal record (Holzer, 1996). In fact, employers showed more willingness to hire welfare recipients and individuals with minimal work experience than someone with a criminal record. This study confirms a general reluctance by employers to hire someone with a criminal record. A later survey confirmed that self-reported willingness to hire correlated with actual hiring behaviour (Holzer, Raphael, & Stoll, 2003).

On the other side are ex-prisoner's beliefs about employer attitudes. A study conducted in Great Britain (National Association for the Care and Resettlement of Offenders, 1998) found that 42% ex-offenders reported that their criminal records were identified by employers as the reason for being unsuccessful at the job interview stage. Likewise, Fletcher (2001) reported employer's discrimination as the main barrier to employment for ex-offenders. Attitudes of employers to ex-prisoners and crime, lack of job contacts, financial difficulties, and problems making the transition from benefits to employment, along with numerous personal difficulties, restrict employment outcomes for this group (Webster, Hedderman, Turnbull & May, 2001).

A research on perceived employability of ex-prisoners and ex-offenders, demonstrated that apart from people with an intellectual or psychiatric disability, those with a criminal background were rated as being less likely to obtain and maintain employment than other disadvantaged groups. Ex-prisoners were rated as being less likely than offenders and the general workforce to exhibit the skills and characteristics relevant to employability (Graffam, Shinkfield & Hardcastle, 2008). This research is a rare example of investigation of views of four stakeholder groups - employers, employment service providers, corrective service workers, and prisoners and offenders - in an attempt to identify the extent and sources of attitudinal constraints toward employment of ex-prisoners and offenders. Overall, ex-offenders and ex-prisoner face multiple barriers when entering workforce, including negative attitudes of employers, reduced earnings, weakened job connections, lower participation in employment, erosion of employment skills among ex-prisoner groups, etc.

## **TYPES OF PRISON-BASED PROGRAMS**

Different types of prison based programs are developed with the idea to encompass all relevant elements of reintegration, including employment, housing, drug and alcohol treatment, and social network support. Apart from offering the prisoner a set of skills or knowledge, the key goal of these programs is the preparation for a lifestyle change, with employment as one of the key elements to a successful transition (Graffam, Shinkfield & Hardcastle, 2008: 11).

Although most state correctional systems endorse the provision of vocational services and programming to offenders, these services may differ from those typically developed and delivered by counselling and career development specialists. Lawrence and colleagues (Lawrence, Mears, Dubin, & Travis, 2002) identified four major categories of programming: 1) educational instruction 2) vocational training 3) prison industries and 4) employment services training.

Another typology is found in the *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders* by United Nation Office for Drugs and Crime (2012). It includes six categories of prison-based programs: 1) physical health care; 2) mental health care and psychological support; 3) substance abuse treatment; 4) programmes to address behaviour and attitudes (including cognitive-behavioural therapy); 5) education and vocational training; and 6) work experience. The programs including education and vocational training are based on the assumption that social reintegration is more difficult for offenders with poor basic education and unmarketable skills. Insufficient opportunities for prisoners to participate in vocational and educational training make it harder for them to plan a successful and law-abiding return to the community (United Nation Office for Drugs and Crime, 2012: 49). Several programmes can teach inmates functional, educational and vocational skills based on employment market demand and public safety requirements. Access to the job market requires a level of functional literacy and numeracy, as well as other basic working skills, which many prisoners have simply not achieved. Programs focused on work experience highlight that every prison should provide work for prisoners while serving the sentence, taking into account the personal preferences of the prisoners in what kind of work they wish to perform. Work in prison should be paid and that work should be such that it will maintain or increase the prisoners' ability to earn an honest living after release (United Nation Office for Drugs and Crime, 2012: 51).

## **PRISONERS' LABOUR AND EDUCATION IN INTERNATIONAL AND NATIONAL LEGISLATIVE FRAMEWORK**

The importance of education as a part of treatment programs in penitentiary institutions has been recognised by relevant international organisations, arguing that education, as an essential human right and need, is of crucial importance for personal development (Knežić 2017, 63). Education is a part of life-time process and there is no reason for it to be interrupted due to the enforcement of prison sentence (Knežić 2017, 63). The Standard Minimum Rules for the Treatment of

Prisoners (1955)<sup>14</sup> contained provisions relevant to prisoners' education and so does the document that supersedes them - United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2016)<sup>15</sup> (hereinafter: UNSMRTP). In compliance with Article 77(1) of UNSMRTP, further education of all prisoners capable of profiting thereby should be provided, whereas the education of illiterate and young prisoners shall be compulsory and in particular focus of the prison administration. As prescribed in Article 77(2) of UNSMRTP, the education of prisoners has to be integrated as much as it is possible with the educational system of the country so that they may continue their education after their release without difficulty.

According to Article 28(1) of European Prison Rules (2006)<sup>16</sup> (hereinafter: EPR), all prisoners have to be provided with the access to educational programmes, which: 1) are as comprehensive as possible, 2) take into consideration their individual needs and 3) take into account their aspirations. Article 28(2) and 28(3) of EPR highlight that the priority in the field of education should be given to the following prisoners: 1) prisoners with literacy and numeracy needs, 2) prisoners who lack basic or vocational education, 3) young prisoners and 4) prisoners with special needs. It is of particular importance to mention that EPR insist on the equal status of prisoners' education and work within the prison regime, in the sense that they must not be financially or otherwise disadvantaged if they participate in education (Article 28(4)). EPR oblige every correctional institution to have an adequately stocked library available for use by all prisoners and organised in co-operation with community library services (Articles 28(5) and 28(6)). Article 28(7a) EPR insists on the integration of prisoners' education with the educational and vocational training system of the country to ensure that they may continue their education and vocational training without difficulty after release. Article 28(7b) EPR insists that prisoners' education should take place under the auspices of external educational institutions. EPR also promote the vocational training of prisoners and oblige the prisons to provide it for all the prisoners that could benefit from it (Article 26(5)).

Law on the Enforcement of Criminal Sanctions of RS<sup>17</sup> (hereinafter: LECS) proclaims that convicted persons have the right to elementary and high school education, organised within the penitentiary institutions in accordance with the laws regulating education (Article 122 (1)). Penitentiary institutions are also entitled to organise other types and forms of prisoners' education (Article 122 (2)). It is

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<sup>14</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, available at: <https://www.refworld.org/docid/3ae6b36e8.html> [accessed 10 March 2020]

<sup>15</sup> UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) : resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, available at: <https://www.refworld.org/docid/5698a3a44.html> [accessed 10 March 2020]

<sup>16</sup> Council of Europe: Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec(2006)2, available at: <https://www.refworld.org/docid/43f3134810.html> [accessed 10 March 2020]

<sup>17</sup> Law on the Enforcement of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 55/2014 and 35/2019, available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_izvršenju\\_krivicnih\\_sankcija.html](https://www.paragraf.rs/propisi/zakon_o_izvršenju_krivicnih_sankcija.html) [accessed 10 March 2020]

particularly important to highlight that Article 124 of LECS prescribes that the diploma obtained during the enforcement of prison sentence must not contain any visible marks/signs that would indicate that in has been issued in a penitentiary institution.

The Rulebook on House Rules of Penitentiaries and District Prisons<sup>18</sup> (hereinafter: RHRPDP) regulates the issue of prisoners' education and vocational training in more detailed manner. In compliance with Article 40(1) of RHRPDP, the penitentiary institution is in charge of organising elementary and professional education of convicted persons, in accordance with the appropriate program and facilitates their examination either inside or outside the institution. A convicted person who is participating in the educational program has to be given appropriate conditions and enough time for that, within the capacities and program of the penitentiary institution (Article 40(2)). RHRDP (Article 41 (1)) considers prisoners' work in accordance with relevant legal provisions as a part of the program of acting<sup>19</sup>. The purpose of this type of work is to create, maintain and increase prisoners' working abilities, habits and professional knowledge and skills with the purpose to facilitate his successful social reintegration (Article 41(2)). Vocational training and professional education of prisoners is performed through theoretical preparation and practical training, within the capacities of the penitentiary (Article 41(3)).

## **PRISON BASED EDUCATIONAL PROGRAMS IN SERBIA**

Several programs and projects related to prisoners' professional education and vocational training are currently being applied in correctional institutions in RS and they all share some common features: 1) the participants take part in them on a voluntary basis; 2) they are aimed at facilitating prisoners' employment after serving the sentence 3) they combine theoretical knowledge and practical skills; 4) they insist on actual working engagement of prisoners and 5) they are based upon the idea of positive, therapeutic and healing effects of labour.

German organisation HELP<sup>20</sup> has played a crucial role in the application and promotion of prison based educational programs in correctional institutions in Serbia. HELP's re-socialization program started in 2014 and it is aimed at creating the working conditions and the increase of working engagement of prisoners by equipping the workshops within correctional institutions in RS with adequate and modern equipment suitable to contribute to the increase and improvement of production in terms of range and quality (HELP 2020, 1). HELP is also focused on the development and maintaining of prisoners' working habits, working engagement and vocational education, all within their treatment program. (HELP 2020, 1).

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<sup>18</sup> Rulebook on House Rules of Penitentiaries and District Prisons, Official Gazette of the Republic of Serbia, No. 110/2014, available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2014/110/1/reg>, [accessed 10 March 2020]

<sup>19</sup> Program of acting is made for each individual prisoner by the Treatment Service, based upon the assessment of his individual needs, capacities for change and the risk of recidivism (See: Article 20 of LECS).

<sup>20</sup> For further reference see: <https://help-serbia.org.rs/en/o-help-u/>, [accessed 10 March 2020]

Altogether 647 prisoners attended various vocational trainings including: tailoring, sewing, carpentry, cooking AUTOCAD 2D ad 3D, welding, production of aluminium and PVC joinery, baking, plumbing, printing etc. (Help 2020, 3). Moreover, 88 employees in correctional institutions attended vocational training in order to facilitate the transfer of knowledge in these fields (HELP 2020, 3). At the moment, the following vocational trainings are taking part in 11 correctional institutions in RS for 372 prisoners and prison staff members: CO<sub>2</sub> welding, CNC milling, automatic CAD/CAM application programming, basic computer training, hairdressing, furniture restoration, growing vegetables in greenhouses, growing and processing medical herbs, horse and dog training etc (HELP 2020, 3).

Innovative working and educational programs based upon the ideas of animal assisted therapy have been applied in correctional institution in Sremska Mitrovica since 2017. They include prisoners' work either with dogs or with horses, combined with theoretical education and practical training through which they obtain knowledge and skills necessary for taking care and training of these animals (Batrićević, 2019a, 16; Batrićević 2019b, 121).

The prisoners work with abandoned dogs from a dog shelter located within the prison complex, which allows them to have a contact with them on a daily basis (Batrićević 2019b, 122). The program lasts between eight and ten weeks and includes: theoretical education, as well as practical part that comprises dogs' feeding, grooming, cleaning and training (Batrićević 2019b, 122).

In order to be considered eligible to participate in the program of working with dogs, the prisoners have to meet the following preconditions: 1) that they are highly motivated to participate in the program; 2) that they have finished elementary school<sup>21</sup>; 3) that they have more than 6 months before the end of the sentence; 4) that they have not previously been convicted of criminal offence of killing and torture of animals (Article 269, Criminal Code of the Republic of Serbia)<sup>22</sup> (Batrićević 2019b, 123). The prisoners with elementary education and lack of professional knowledge and skills are particularly encouraged to participate in this program (Batrićević 2019b, 126). The advantage is also given to the prisoners who: 1) do not have well-developed working habits; 2) have a history of dysfunctional behaviour indicating impulsiveness and weak control; 3) do not have a developed sense of empathy (Batrićević 2019b, 127). At the end of the course, the participants receive a diploma, verified by the Faculty of Veterinary Medicine, University of Belgrade (Batrićević 2019b, 165).

The program based on prisoners' work with horses<sup>23</sup> combined with education about horses' anatomy, nutrition, healthcare, diseases prevention,

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<sup>21</sup> This precondition actually refers to the fact that the prisoners who participate in the program have to be literate in order to be able to read the written materials and resources that they are given throughout the program, particularly within theoretical lectures (Batrićević 2019, 123).

<sup>22</sup> For further reference about the criminal offence of killing and torture of animals from Article 269 of Criminal Cide of the Republic of Serbia see: Batrićević, Batanjski, 2014: 56-60.

<sup>23</sup> The research project which includes the monitoring of the application of the program based upon prisoner's work with horses in Correctional Institution in Sremska Mitrovica through interviewing and photo documenting is has been and still is conducted by one of the authors of this paper, Ana Batrićević since 2018. Since the research is still in progress there are no references on this

behaviour etc. and practical training in the field of horse-keeping, feeding, training and shoeing. The participants are selected by the prison staff in charge of treatment and education. Apart from their enthusiasm and readiness to participate in the program, it is important that they have not committed criminal offence of killing and torture of animals from Article 269. of the Criminal Code of RS. They also obtain a certificate as the proof of their participation in the program, which facilitates their employment after serving the sentence.

In Correctional Institution in Požarevac-Zabela, prisoners have the opportunity to attend a course providing them with knowledge and skills necessary for vegetables planting in green houses (Pavićević, Ilijić, Batrićević 2020). This course has been held in this penitentiary for the past couple of years by the lecturers from Agricultural High School and it consists of a combination of theoretical lectures and practical work in greenhouses located within the prison complex (Pavićević, Ilijić, Batrićević 2020). At the end of the course, the prisoners obtain a certificate to confirm their participation and knowledge, without any indications that it has been issued within a prison based educational program (Pavićević, Ilijić, Batrićević 2020).

In Correctional Institution in Niš, prisoners also have the opportunity to attend a professional training in horticulture as well as to apply the obtained knowledge in agricultural activities (including planting cereals and vegetables) within the prison complex (Pavićević, Ilijić, Batrićević 2020). The European Commission financed the application of prison based programs of professional education and training in 2012, including the area of agriculture and facilitated the placement of three greenhouses in the closed wing (Pavićević, Ilijić, Batrićević 2020).

## **CONCLUSION**

The analysis of legal and sociological aspects of prisoner's educational programmes, as well as the evaluation of the existing practices in Serbia, provide many valuable insights. First of all, former prisoners are facing two possible decisions in their post penal phase. One is both illegitimate and illegal, and that is continuing with (potentially) lucrative criminal activities. Second, which is legal, can hardly be acceptable for most individuals who leave prison, because it lingers between proleterization and precarization: being employed for minimal wage, or/and being employed in insecure workplace. This uneasy choice can be alleviated by offering them trainings for professions which are sought after in the labour market and which can provide a decent life.

As already sad, other social aspects of work are as important as financial ones. For example, team activities which can help prisoners to develop interpersonal skills between different social role holders should be preferred over isolated work tasks. Also, available professions should include regular care (for animals, plants, or possibly other people), in order to develop both sense of responsibility and empathy.

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program that can be cited. The information presented in this paper represent the findings that have been gathered within this research by now.

Examples of good practices from Serbia clearly show that cooperation between different stakeholders has great importance. Penal institutions on one side have to work in unison with expert institutions, NGOs and foundations, with valuable support from faculties and research institutes, who can provide guidance and expertise. In order to make this process even more successful, chambers of commerce (both national and local) and associations of entrepreneurs should also be included.

Another aspect of problem analysed in this article is response by wider social surrounding. Acceptance of former prisoners as employees and colleagues in their new workplace is necessary precondition, especially if we take into consideration their already vulnerable self-esteem and alternative habitual dispositions acquired during the process of *prisonization* (Ilijić, 2012). In the end, one must never forget that learning process of any kind, including acquiring professional qualifications, isn't only individual and philological in its nature, but social as well. Any success in this filed is an outcome of complex interactions between all mentioned actors, institutions and legal framework, thus both responsibilities and achievements are shared as well.

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## **RIGHT TO HEALTH CARE AFTER THE ECONOMIC CRISIS<sup>1</sup>**

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### **Abstract**

Today, there are numerous challenges that citizens and public policy makers face in terms of securing and financing health care. This problem can be seen in the broader context of socio-economic, financial, cultural and other social events in the world and in our country. The issue of the availability and comprehensiveness of health care, in line with the principle of equality in health, is posed as particularly challenging to standardize and implementation of legal rules. All these countries face the challenges. This problem is particularly acute after the global economic crisis in 2007, when most countries have acceded to the redefinition of health policy. The paper analyzes the impact of social change on defining health policy by applying the normative, comparative and sociological method, above all, the consequences of the economic crisis to health policy making in Serbia. Limited financial allocations for health in the face of significant socio-economic changes and the necessity of achieving equality in health for all social groups, on the other hand, are in conflict, thus it is necessary to determine an adequate way of overcoming them, all in the context of the sustainability of the system. In the further work, the authors point to the collapse of the health care system in Serbia, which began at the end of the last century, with the process of transition, and then further disturbed by the global economic crisis. Critical consideration of current health policy developments to identify alternative ways and to meet the conflicting interests of all stakeholders, i.e. policy makers, providers and users of health services, has been

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identified as a core subject of research, which will be considered in accordance with a holistic approach to the realization of human rights.

**Key words:** *health care, health insurance, social needs, economic crisis, transition*

## **INTRODUCTION**

Human health in each country depends on the official government policy and strategy and health policy and results in the context of the achieved health objectives, programs and adequate management of available resources. Good health is crucial to economic and social development, and a basic concern in the life of every person, family or society. Enabling people to have control over their health and its determinants strengthens the society and improves the lives of individuals (World Health Organization 2012, 5). However, the quality of health of every citizen is largely dependent not only on his or her relationship with one's or another's health, but also on many other factors: social, political, economic, and technical (Totić 2015, 31).

Special attention is paid to health care as the most vulnerable segment of social policy. Health care can not be considered only as a social, but also as an economic potential of a country. Observation of the health care system from an economic standpoint in terms of its sustainability has particularly been actualized in recent years (Sovilj 2018, 143-144). This has contributed to the transition process that has begun at the end of the last century and is still present in our country. In addition, the global economic crisis in 2007 contributed to an even greater collapse of the health care system, deepening the gap between the financial ability of the state and the citizens' expectations in terms of realizing the right to health care. Therefore, the paper emphasizes the role of the government as being crucial when it comes to creating the health policy, adopting measures, programs, and achieving the strategic objectives. The aim is to increase the coverage of the population with health care, to achieve the highest possible level of quality of health services in the conditions of scarce economic resources and financial possibilities of developing countries, such as Serbia.

From a sociological point of view, health care services represent an attack on the country's budget, while from an economic or financial standpoint, they represent both income health facilities and a reflection of public spending, given that each of them has its own financial value (Totić & Marić – Krejović 2010, 46).

## **THE IMPACT OF THE ECONOMIC CRISIS ON REDEFINING HEALTH POLICY**

Health policy represents only one of a number of public policies, whose social significance is of great value. The reasons we can list regarding its importance are numerous. We shall mention some of them. First of all, it represents a very sensitive issue of health and diseases. Namely, a successful treatment, as well as all other forms of health care, are observed with special attention, since possible errors can have fatal social consequences. Secondly, the financing of health care is very expensive, regardless of whether it is a matter of public or private financing.

Third, in modern societies, health systems are largely socialized, and represent one of the pillars of the welfare state (Zrinščak 2007, 194).

Good health is the basis of social and economic development. However, the economic and financial crisis that many countries have faced after 2007 have jeopardized the positive progress made in health care system. The emerging financial insecurity, the lack of social cohesion, environmental hazards, and the increase in the number of chronic diseases have affected the deterioration of health and put the sustainability of health systems and social protection systems in jeopardy (WHO 2012, 7).

The starting hypothesis is that public health can not respond to the needs of all citizens, due to the insufficient investment in this sector and the inefficient allocation of resources. In most countries in the world, a part of the national budget allocated to health care has never been greater, while the cost of health care progressively increased in relation to the country's GDP. Costs are primarily caused by the development of technology, new invasive methods of treatment, higher expectations of people in the context of reducing the risk of disease, as well as access to quality health care.<sup>2</sup>

The continuous development of medical science, and the prolongation of life expectancy,<sup>3</sup> has contributed to the increase in health care costs. On the other hand, in some countries of Southeastern and Eastern Europe, the opposite tendencies are observed. The high unemployment rate followed by a complete collapse of the social and health care, has led to the tremendous growth of poverty and a drastic rise in mortality. In the countries of the former Soviet Union, the total mortality rate increased by 35%, while for the population of men, between the ages of 25 and 39, the rate increased by 90%. Between 1991 and 1994, in Russia, the average life expectancy of men decreased from 64 to 57 years. Other Eastern Bloc countries (Belarus, the Czech Republic, Poland and Slovenia) that went through the transition process have resisted shock therapy and avoided a major increase in mortality (Katić 2014, 2).

In his text Katic says that as long as the economic crisis was deep and heavy, they do not kill. They are killing the modern medicines with which the crisis is lurking - shock therapy and a policy of big budget savings. Unhappy families, permanently sick people and in the end lost lives, are the price of such economic policies. In contrast to stock market index and indicators of economic growth, which sooner or later resurrection, the dead remain dead, when the economy recovers after the crisis.

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<sup>2</sup> In recent decades, healthcare expenditures in most OECD member countries have been increasing at least 1% per year faster than real GDP growth annually. For example, the average health expenditure in the OECD countries has increased from 5% of GDP in 1970 to 9% in 2010. (WHO 2012, 8).

<sup>3</sup> Life expectancy at birth in the Republic of Serbia has increased in the period from 1950 to 2002, and for men from 53.5 years to 70.1 years and for women from 56 to 75.1 years. Analyzing by regions, the longest life expectancy was recorded in Zlatibor district, while the least expected duration of life in the North Banat District. Strategy for palliative care, *The Official Gazette of RS*, no 17/2009. In China, the gradual transition accompanied by enormous economic growth contributed to an increase in the average life expectancy of the population from 67 to 75 years.

The last decade marked a significant increase in gross domestic product (GDP) for health care system in almost all developed countries. According to the World Bank, in the aftermath of the economic crisis and recession of the economy, the United States increased the allocation for the health care sector to 17.1% of GDP in 2014. At the same time, the EU Member States allocated on the average between 9 and 11% of GDP to the health sector. The largest allocation to the health sector was recorded in the Netherlands, which accounted for 12.7% of its GDP. In the reporting period, Serbia allocated 10.6% of GDP to the health care sector, which is at the level of Denmark, Austria, Greece and Belgium. In absolute terms, it was \$ 6270 in Denmark in 2013, and only \$ 475 in Serbia (Stošić & Rabrenović 2015, 34).

We note that the allocation of minimum health resources in absolute amount is the result of a relatively low gross domestic product. Taking into consideration the fact that expenditure on health care in Serbia, compared to the gross domestic product, is higher than in other countries in transition, and that the results of health care are at the average level, we conclude that there are significant inefficiencies in the national health system (Veselinović 2014, 154).

## **THE STATUS OF HEALTH CARE IN SERBIA IN TRANSITION AND PERSPECTIVES**

Structural changes that occurred in the region of Eastern and Southeastern Europe at the end of the last century and after the beginning of transition have drastically disrupted social cohesion and stability in most countries, and their consequences are still felt today. These changes did not only affect Serbia but also other countries of the Eastern Bloc that in the meantime became full members of the EU - Bulgaria, Romania, Slovenia, Latvia, Lithuania and Estonia. The negative effects of the reform have been present in almost all countries and spheres of economic and social life, and they have not bypassed the health care system. Most citizens, except the owners of large capital, consider these reforms as hostile (Zekić & Šegrt 2015, 5-6).

The objectives of the transition in economic and political terms were clearly defined – these are the free market and democracy. The economic and social consequences of the transition have been fully reflected in health security. Also, the process of European integration and globalization has contributed to the collapse of the health care system (Zrinščak 2007, 199-200). Despite numerous achievements, positive trends have been interrupted by transition. The general social crisis, which arose from the collapse of the country, civil war, UN sanctions, hyperinflation, which culminated in bombing, led to the collapse of the health system in the country (Perišić 2011, 275).

The period of transition in the health insurance represented a continuity during the period of socialism. Until 2005, when the Law on Health Insurance was adopted, there was only a mandatory social health insurance (Čolaković 2013, 31). The law retains the principle of mandatory health insurance and foresees the possibility of introducing a voluntary health insurance. In fact, the economic crisis, a chronic lack of sources of financing health care and private practice led to the need for the introduction of voluntary health insurance in early 2004 before its legalization (Janković 2011, 79).

The beginning of the transition marked the process of creating a parallel private health sector. Private medical practice has provided better conditions of treatment by hiring doctors normally employed in state health institutions to work illegally. Given that there was no integration of the private and public health sector, citizens were forced to pay double for their health care services. In addition to payment of contributions for mandatory health insurance on the basis of which they could not exercise their rights, the citizens were forced to pay for health care both in private and state health institutions. The high cost of health care and the constant lack of funds in the health insurance fund have led the patients to bear their own costs of diagnostics, treatment and procurement of medicines and medical supplies (Perišić 2011, 276). The financing of mandatory health insurance was further burdened by numerous companies that underwent the process of privatization, reorganization or bankruptcy and that had not paid healthcare contributions to their employees for years.<sup>4</sup>

Although the chronic deficit in the health fund was to be substituted by the introduction of private health insurance, the significant progress has not been made so far. The growth of the private insurance market is not significant, as it was originally expected. In addition to real financial incapacity, i.e. low purchasing power of the population, the sociological motives should also be taken into consideration. The heritage of a generous system from the age of socialism does not contribute to the strengthening of a private initiative. People consider that the state is obliged to provide them with all the necessary health services. Therefore, they do not want to invest additional money in private health insurance, considering it "a futile waste of money". This attitude prevails in countries with a strong egalitarian tradition, including the Slovenian and Nordic countries. The essential difference between the Scandinavian countries and Serbia is that horizontal cohesion, solidarity and investment are much more pronounced in Scandinavian countries, on the other hand, in Serbia it is expected from the state to provide help, while the payment of taxes and other charges is being avoided (Zekić & Šegrt 2015, 7). In that particular leading the owners of large capital.

Although more funds for financing health care system have been set aside for years now, the Republic Health Insurance Fund is continuously decreasing a package of health services financed from the budget. For example, a package of mandatory health insurance used to cover the services of treatment in military hospitals in our country and abroad, fees for medication and medical supplies purchased on the private market (Gajić - Stevanović, Dimitrijević, Vukša, Jovanović 2009, 15). The 2005 Health Insurance Act significantly reduced the mandatory

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<sup>4</sup> There are numerous examples. We will mention the case of "Magnohrom" from Kraljevo. After the privatization, complete destruction of production capacities, sales of production machinery, non-investment was completed. The damage that created was estimated at between 20 and 50 million euros. Employees of "Magnohrom" did not pay their agreed earnings and contributions before, during and after the privatization. Also, they have not been certified health cards. The same fate hit workers of the Car Factory Priboj (FAP). The workers were not paid monthly wages, nor have they been certified health cards. The company was in the process of restructuring for twelve years, but recovery did not occur. The reforms did not miss employed in public institutions. Suddenly, 4.000 employees were dismissed from health care system, and 5.000 from education system (Novaković 2017, 206- 239).

health insurance package. Among other things, the Act of 2005 abolished the right to compensation for funeral expenses. Also, the novelty constituted a condition for exercising the rights of former insured persons, justifying the policy makers' view that the content and scope of the right were aligned with the available funds (Perišić 2011, 281). The international financial institutions, primarily the International Monetary Fund and the World Bank, promoted further rationalization of the package of health services covered by mandatory health insurance. In contrast to previous periods when the dental services were free, the right to dental services funded by the Republic Health Insurance Fund now have children, pregnant women, persons older than 65 years and emergencies (Gajić – Stevanović *et al.*, 2009, 15). Thus, a large part of the adult population has no mandatory health insurance when it comes to covering the cost of dental services.

Despite the fact that every year more funds from the budget to finance health care are allocated, it is concluded that they are still insufficient (Arsenijević, Pavlova & Groot 2013, 19). The reasons for stating so are numerous. Firstly, the increase in costs is affected by the growing needs of the population (demographic changes, an increase of chronic diseases, etc.) (Gajić – Stevanović 2014, 2-17). Secondly, the intense development and application of new and innovative drugs, which are more effective in the diagnosis and treatment of diseases, affect the increase in the overall cost of treatment. On the other hand, the number of health care users, primarily elderly<sup>5</sup> and chronic patients,<sup>6</sup> increases from year to year, which, from the economic point of view, greatly burdens the health system by both taking a regular therapy and using a hospital accommodation and treatment services (Mitrović & Gavrilović 2013, 150-151).

A significant progress has been made in raising the health care quality, primarily by investing large resources in the rehabilitation of state health care institutions and the supply of modern equipment. However, the out-dated equipment is often changed for a new one, without rational purchase. For example, doubling capacities in more developed environments were noted (Perišić 2011, 284). The practice of non-use of the equipment supplied was also recorded since there was no trained staff.

Taking into account the current state of health care system in the Republic of Serbia, primarily, the problems with financing and maintaining of the health care system, there is a constant need for active involvement of the state authorities in resolving this problem. First of all, it is necessary to determine the extent of the rights of health care users on the basis of compulsory health insurance by implementing systemic laws. This would solve the on-going meaningless practice

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<sup>5</sup> The share of the elderly (65 years and over) in the total population, after the initial decrease in the period from 2007 to 2011, increased from 2012 to 2016, and in 2016 amounted to 19.2% (Institute of Public Health of Serbia 2017, 70).

<sup>6</sup> In accordance with the aging process of the population, the participation of chronic patients is increasing. Chronic diseases (heart and blood vessels, malignant tumors, diabetes, obstructive pulmonary disease) are the leading causes of illness, disability and premature dying (65 years of age). In Serbia, annually, every other citizens die of cardiovascular disease, every fifth of malignant tumors, and one in ten of diabetes and obstructive lung disease. Over the past 20 years, the highest increase in mortality in the population has been caused by malignant tumors and diabetes (Institute of Public Health of Serbia 2017, 43-45).



that patients, due to their inability to exercise their rights under mandatory health insurance, allocate additional funds for the provision of the same health services with the inability to refund those funds from the Republic Health Insurance Fund (Sovilj 2018, 151-152).

Despite the existence of a large number of private health institutions and proclaimed reform objectives, there is still a lack of adequate co-operation between the public and the private health sector. Frequently, this cooperation goes to the detriment of citizens. This problem is reflected in the impossibility of prescribing prescription drugs, the lack of opinion of the private practitioner when approving the sick leave or evaluation of the medical commissions, and the difficulties when it comes to referring to hospital treatment (Vuković 2009, 170). On the other hand, successful cooperation between the public and private sector exists, since health professionals are enabled to continue their work in private health institutions after completing work in a state institution. Moreover, the law allows healthcare professionals and associates who are employed in a health institution or private practice to conclude a contract of supplementary work with their employer, or at most three contracts of supplementary work with another employer, for a total duration of up to one third of full-time work.<sup>7</sup> In contrast, in Germany, a physician employed in a state health institution, does not work at the same time in private clinics.

In the previous period, the Law on Patients' Rights<sup>8</sup> and Zoja's Law<sup>9</sup> were adopted, which for the first time regulate patients' rights in a systematic way. This surely represents a major step forward in domestic health legislation, but it will be necessary to pass the long path until the rights of patients guaranteed by law are realized in reality.

"The wave of reforms" which spawned the adoption of a number of other laws (which is very typical of all countries in transition), drew closer the national health service to the modern achievements of European and global health care system.<sup>10</sup> At the same time, the current financial difficulties were resolved in the short term. This was achieved by reducing the extent of the rights to mandatory health insurance and increasing participation for a range of health services. However, it does not solve the key problems of financing and the availability of health care in the long term (Zrinščak 2007, 193).

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<sup>7</sup> Law on Health Care, *The Official Gazette of RS*, no 25/2019, Article 60.

<sup>8</sup> Law on Patients' Rights, *The Official Gazette of RS*, no 45/2013 and 25/2019

<sup>9</sup> Law on Prevention and Diagnosis of Genetic Diseases, genetically conditioned Anomalies and Rare Diseases, *The Official Gazette of RS*, no 8/2015

<sup>10</sup> The reform of the health care system has been followed by strikes and protests by health workers against the measure of savings, the reduction of earnings and pensions, and the lack of jobs. In Spain, the health staff protest in the period from November 2012 to February 2013, due to the announcement that the number of 75,000 employees would be reduced and that several state health centers would be closed. The patients also protested. In Madrid, 10,000 invalids protested against the layoffs of their abandonment and the abolition of centers for the disabled. After the economic crisis, in the period from 2010 to 2014, massive protests against health reform took place in other countries: Portugal, France, Germany, Great Britain, Italy, Greece, Slovakia, Romania, Bulgaria and Macedonia (Novaković 2015, 100-104). Novaković says that the protests were successful in the developed capitalist countries, but did not in the over-indebted countries and those on the periphery of the capitalist system.

In the forthcoming period, the resolution to the problems concerning further development and improvement of health care should be sought in a collective insurance, that is, in the insurance sponsored by the employers. It is necessary for the state to provide tax incentives for participation in the system of voluntary health insurance. At the same time, we should work on increasing the package of health services. If the conditions were such that citizens would prefer treatment in the private sector to the state health institutions the state insurance fund would be dissolved (Zekić & Šegr 2015, 8). This would create new job opportunities for health personnel in the private sector.

## **CURRENT SITUATION IN HEALTH CARE SECTOR AND SOCIAL NEEDS**

In recent years there has been an increase in diseases the populations suffers from and a rapid rise in mortality caused by unhealthy diseases of the modern age. The social needs and health services vary depending on their providers or beneficiaries. The differences are sometimes very pronounced, depending on the approach in considering the development of not only health, but also global, economic, political and social system (Totić & Marić – Krejović 2010, 46). Hence, it is recommended that when considering social needs in the field of health care, a distinction should be made between those that are purely medical and those related to health care. The medical needs of the population are satisfied with the services provided by a highly professional health personnel, whose activity is regulated by the systemic laws in the field of health care.<sup>11</sup> On the other hand, health care needs, which primarily refer to raising the quality of life and improving the human health, are realized within the broader social, not just medical subjects (Totić & Marić – Krejović 2010, 45).

Health care systems around the world face numerous problems. Primarily, the problem is to provide all necessary health care services from mandatory health insurance funds. This problem is complicated by the fact that the population is older and that it needs adequate health care and treatment. The aging population problem is present in almost all European countries. An additional problem is a smaller number of working population, where the number of employees paying contributions to the National Health Insurance Funds decreases from year to year (Zekić & Šegr 2015, 5). Adding this to the extension of the lifetime, which inevitably leads to the extension of the working age, we are faced with a serious imbalance in the mandatory health insurance budget. Although the measure of extension of the working age is aimed at reducing the number of retirees, it prevents young, working-age people from having a work relationship, and thus becoming contributors to health insurance. The result is the brain drain of young and educated people.

The right to health care is a universal human right, and is considered a part of modern society. In most countries around the world, the right to health care enforced through a mandatory health insurance. However, despite the worldwide

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<sup>11</sup> The activity of health personnel is primarily regulated by the Law on Health Care, which was recently adopted in Serbia. Law on Health Care, *The Official Gazette of RS*, no 25/2019

spread of the mandatory health insurance, no country can provide its citizens with all medical services at the expense of the state budget (Zekić & Šegrt 2015, 4). Hence, there is a need for introducing alternative ways of financing the health care. A Voluntary health insurance is an alternative to the mandatory health insurance.

There are various health insurance systems in the world. Although the system of mandatory health insurance is predominantly in the countries of the European Union, there is a growing presence of some form of the voluntary health insurance. In contrast to European countries, the United States is dominated by a private health insurance system. The market model of the private health insurance is based on the purchase of a health insurance policy, which includes a defined package of health services (Mihaljek 2008, 283-285). Given that the US health insurance system assumes a highly developed financial market with a pronounced presence of risk, it is not applicable to European countries (Marković & Vukić 2009, 192). A key feature of the American health care system is that it is socially unfair. The persons with minimal cash income, due to inability to pay insurance policies, remain without health insurance. This problem has been partially resolved by adopting a national health insurance program that covers persons older than 65 years - *Medicare* and socially vulnerable groups - *Medicaid* (Kovač 2013, 551).

In Serbia, the system of mandatory health insurance prevails, which covers the majority of the population, more specifically 97.2% in 2016. Despite the high coverage of the population by health care, the incidence of unsatisfied health needs remains high. The most common causes of dissatisfaction with health services in the period between 2014 and 2016 are primarily financial (the inability to afford a healthcare service because it is expensive), followed by the lack of free time, the expectation that the health condition is improved, waiting lists,<sup>12</sup> and corruption. The financial reasons for not meeting the health needs in 2016 are more common with women, the poorest, the elderly working population (45 to 64 years of age), and those older than 75 (The Government of Republic of Serbia 2018, 250). Additional dissatisfaction of the citizens, with the quality of provided health services, caused by the corruption, which is widespread at all levels of health care system. Based on the conducted investigations of the perception of corruption in Serbia, it was noted that citizens believe that corruption is well represented in health care sector. *Van Duy's* research shows that 73.6% of citizens in Serbia have this opinion. In a survey conducted by the *United Nations Development Program (UNDP)*, 68% of Serbian citizens perceive health as an area affected by corruption. In the survey of citizens' attitudes about corruption, it is noted that out of the total number of direct corruption cases, 47% refers to physicians (Vasiljević & Prodanović 2015, 99).

In parallel with mandatory health insurance, there is also a voluntary health insurance, introduced by the 2005 Health Insurance Act and the Voluntary Health

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<sup>12</sup> The average length of waiting for a specific intervention in 2017 was: for the implant installation in orthopedics, on average, 387 days; for cataract surgery and intraocular lenses 285 days; in the field of cardiovascular surgery for an average of 184 days; for the installation of a pacemaker for an average of 98 days; on an overview of magnetic resonance an average of 83 days; for diagnostic coronarography and / or catheterization of the heart for an average of 71 days; for the procedure of computerized tomography for 35 days. (Institute of Public Health of Serbia 2018, 10-11).

Insurance Regulation in 2008.<sup>13</sup> Regulating the field of voluntary health insurance, the legislator was aware of the limited scope of mandatory health insurance. The main reasons for the reduction of the package of compulsory health insurance is a chronic lack of funding sources and financial (un)sustainability of the Republic Health Insurance Fund.

By adopting the new Law on Health Insurance in 2019, the conditions and procedure for organizing and conducting voluntary insurance, as well as the obligations of the contracting parties, are regulated in detail. The Law envisages three types of voluntary health insurance: supplementary, additional and private health insurance.<sup>14</sup> Following the example of solutions in international and comparative law, the law provides for the prohibition of discrimination of insured persons by age, gender or health when concluding a voluntary insurance contract. This seeks to ensure the principle of equity of the insured in terms of scope, content and standards for exercising rights from voluntary health insurance, irrespective of the personal characteristics of the insured (Sovilj & Stojković Zlatanović 2017, 296).

In recent years the structure of users of voluntary health insurance has changed. There is an increase in the number of people who can afford adequate health care through voluntary health insurance. It has been detected a rise of the new population category, wealthy citizens and successful individuals, IT professionals, experts and managers of successful foreign companies that operate in Serbia. These persons and/or groups conclude private insurance contracts with insurance companies that operate internationally and transnationally. They are ready to pay a higher monthly premium insurance to save time, and in return get the best health service when they need it (Zekić & Šegrt 2015, 6). However, despite the initial positive trend, the number of users who pay some form of voluntary insurance is still insufficient, taking into account the total population. According to the available data, nearly 25,000 of voluntary health insurance contracts were concluded in Serbia. On the other hand, the underdeveloped voluntary health insurance market is affected by the low purchasing power of the population (Kočović, Rakonjac-Antić & Rajić 2013, 554). Taking into account the fact that the average salary barely covers the cost of the minimum consumer basket, there is little room to meet other needs, and thus to conclude some form of voluntary health insurance.

Based on the analysis of the current situation, voluntary health insurance should be supplementary to mandatory health insurance. Within the framework of voluntary health insurance, it would be necessary to insist on providing health services that are not covered by mandatory health insurance, that is, the provision of services of a higher volume and quality (Sovilj 2018, 158). This would avoid negative practices, otherwise very widespread, that patients allocate double funding for the provision of health services. Namely, the citizens are obliged to pay contributions to the Republic Health Insurance Fund, but due to the inability to

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<sup>13</sup> Law on Health Insurance, *The Official Gazette of RS*, no 107/2005, 109/2005, 57/2011, 110/2012 – resolution CC, 119/2012, 99/2014, 123/2014, 126/2014 – resolution CC, 106/2015, 10/2016 – other law, Regulation on Voluntary Health Insurance, *The Official Gazette of RS*, no 108/08 and 49/09.

<sup>14</sup> Law on Health Insurance, *The Official Gazette of RS*, no 25/2019, Article 174.

exercise the right to health care services within a reasonable time, they pay the same services in the private sector from their pocket.

In industrialized and developed countries, there is a practice of cooperation between the state health insurance and private health insurance fund. A basic package of health insurance is mainly provided from the state budget, while the larger scope of rights can be arranged through private insurance. For example, in Germany and Austria, the legal requirement is that each person must be ensured. This is why the state funds and private insurers compete for high-yield customers: managers, IT professionals, notaries, lawyers, engineers, etc. Precisely, the existence of competition contributes to raising the quality of services and the overall progress of health care (Zekić & Šegrt 2015, 6).

## **CONCLUSION**

Finally, we observe that even in the developed countries of the world there is no perfect health care system, which would be able to meet the needs not only of health care users, but also the needs of health care professionals, economists and policy makers. It is undeniable that certain positive developments have been made in the overall improvement of health care system, such as prolonging the average life expectancy, reducing the infant mortality, and so on. On the other hand, there are numerous complaints regarding the normal functioning and financing of the health care system. Above all, it is noted a pervasive discontent of citizens regarding the access to health services. Patients are often forced to pay for private health care services due to the inability to exercise their right to a healthcare service within a reasonable time. In addition to this, the health care staff is dissatisfied with both the height of average earnings and the working conditions. Therefore, the elements of corruption are presented in certain sectors.

The global economic crisis has influenced the redefinition of health policy. In years after the economic crisis, public health allocations have risen parallel to GDP growth. However, they were still insufficient to cover all costs. The continued development of medical science and the discovery of innovative methods of treatment contribute to the progressive growth of costs of treatment in relation to the economic growth of society. The issue should be sought in alternative ways of financing health services.

From the beginning of the transition, the reforms in health care have been permanently implemented in Serbia. Unfortunately, the objectives of the proposed reform is not implemented. The problem complicates the structure of the health care system, which is dominated by state ownership, while the private sector is not sufficiently integrated into the health care system. It is, therefore, necessary to focus on the integration of the private sector into the health care system, the empowerment and promotion of voluntary health insurance, the public - private partnership and the linking of private and state health institutions.

The reconfiguration of health care services and the introduction of incentives and changes in the structure of payments can contribute to better health care. The health sector is committed to cooperation with other sectors in order to improve people's health and contribute to raising the quality of health care. In this regard, it is necessary that the health sector should adapt to the daily challenges and

harmonize health policies with new changes. Future progress will be reflected in the country's ability to use new technologies to improve health and well-being of current and future generations.

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# **SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA VS ENGLAND; TURKEY; ISRAEL AND INDIA**

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## **Abstract**

Surrogacy is very important issue today. This study includes general information about surrogacy, definition of surrogacy, its medical concepts, artificial reproductive techniques, fertilization, embryos transportation modes and legal status in Republic North Macedonia VS England, Turkey, Israel and India. The most common definition of surrogate motherhood is that: embryo is formed from infertile couples who wish to have children transferred to a third party different woman's uterus. Artificial fertilization is divided into two parts: If the fertilization taking place in the tube is called in-vitro fertilization; if the fertilization taking place in the womb is called in-vivo fertilization. In our study has given the likely to happen combination of artificial fertilization in surrogate motherhood.

**Keywords:** Surrogate Motherhood, Fertilization, Embryo Transfer, Medical Ethic.

## **INTRODUCTION**

The advancement of the medicine and technology, and their insertion in every sphere of human life, especially in the reproductive sphere, allow couples to become parents using the methods of bio-medically assisted fertilization. Artificial insemination, in vitro fertilization and the surrogate motherhood are ways of biomedical assisted fertilization.

Surrogate motherhood is a contract by which a surrogate mother, after being artificially fertilized with a biological father's sperm or a donor embryo, carries and give birth to the child, then renounces parental rights and gives the child to its "intended parents" (Cicarelli J.C. & Beckman L.J. 2005, p.21-43).

There are many moral, ethical, religious and legal dilemmas in surrogacy in science and practice and therefore there are different opinions as to whether it



should be allowed or prohibited by states. In different countries surrogate motherhood is regulated differently. There are states which completely prohibited, there are states that allow only altruistic surrogacy, and states that completely allow it.

## **GENERAL NOTES, DEFINITIONS AND TYPES OF SURROGATE MOTHERHOOD**

Surrogate motherhood is one of the ways / methods of biomedical assisted fertilization. Surrogate motherhood is the process of entering the embryo created by reproductive material of the couple in the uterus of a third woman in cases where couples cannot have children naturally. The in vitro procedure and the surrogate mother are somewhat similar. The in vitro fertilization involves artificial insemination, an embryo is created from the reproductive material of the couple and the embryo is implanted in the uterus into a woman from the couple. In contrast, when we have surrogate motherhood, the embryo which is created with artificial insemination, it is implanted in the uterus of a third woman – the surrogate mother.

A surrogate mother is a woman who carries and gives birth to a baby.

A biological mother is a woman who gives birth to a baby. Sometimes the terms biological and genetic parenting of the child are mixed. About biological father and genetic father we can say that they are equal. When it comes to mother, the woman who carries and gives birth to the child is different from the woman who donates the egg. Therefore, the child's biological mother is considered the woman who carries and gives birth to the baby.

A genetic mother is a woman who donates an egg or a woman which her egg is used in this process. If the reproductive material from the couple is used, they are also the child's genetic parents. If the reproductive material which is used is from third-party, they will be considered as the child's genetic parents.

A genetic father is a man who donates sperm to create an embryo. He is a man from the couple, but sometimes he may be donor – only third person (Ben-Asher N. 2009, p.1885-1924).

When a woman for any reason cannot give birth, or birth poses a danger to her health, the woman who carries and gives birth to a baby is called a surrogate mother, and the whole act is called "surrogate motherhood". Based on the signed contract between the surrogate mother and the intended parents, in the uterus of surrogate mother implants an embryo and she carries and gives birth to the baby. After giving birth, surrogate mother is obliged to hand over the baby to the intended parents and give up her parental rights.

Although there are three main types of surrogacy, in theory there is no unity on their appointment. The first type is called traditional surrogate motherhood. Except as traditional surrogate motherhood, the terms genetic or partial surrogate motherhood are also encountered. In traditional surrogacy because the woman of the couple is infertile and cannot carry and give birth to a child, the surrogate mother's egg is fertilized with sperm from the man of the couple. In this type of surrogate mother, the surrogate mother is the baby's genetic and biological mother.

In gestational, or non-genetic surrogate motherhood, the ovaries of a woman who wants to have a baby are healthy, she has problems carrying the baby.

Therefore, pregnancy cannot end successfully. In this case, the egg of the woman of the couple is fertilized with sperm from her husband via In-Vitro Fertilization (IVF) procedure. And then the embryo is implanted in the uterus of surrogate mother. In gestational surrogacy, the surrogate mother is only the biological mother of the child.

According to another category, surrogacy can be altruistic and commercial. In altruistic surrogacy the surrogate mother does not receive any monetary compensation, she does it for altruistic reasons. In contrast, in commercial surrogacy, the surrogate mother receives monetary compensation for the service rendered (Donovan P. 1986, p.57-60).

### **SURROGATE MOTHERHOOD IN REPUBLIC OF NORTH MACEDONIA**

The matter of surrogacy in the Republic of North Macedonia is legally regulated in the Law on Bio-medically Assisted Fertilization (LBAF), which elaborates in detail both the notion of surrogacy and some legal issues related to surrogacy. Until the amendments to the law in 2014, surrogacy was regulated by Article 27 of the LBAF, entitled: "Prohibition of surrogacy". Under Article 27 it was prohibited through public notice, public media or in any other way to request or offer a childbirth service for another person (Law on Bio-medically Assisted Fertilization, 2014). After long discussions, with the amendments to the law from 2014, surrogacy in the Republic of North Macedonia is legalized. It can be said that the Republic of North Macedonia is one of the few countries in the world that allows surrogacy. The Law on Biomedical Assisted Fertilization does not use the terms surrogate motherhood and surrogate mother, but uses the term: "Fertilization by inserting an embryo obtained with own or donated gametes of a married couple in the uterus of a woman - gestational carrier"(LBAF 2014, Article 6-a). The law defines the terms: embryo, fetus, gestational carrier, a married couple requesting the initiation of the Bio-medically Assisted Fertilization (BAF) procedure with a gestational carrier, then describes the conditions to be met, the rights and obligations of the married couple and the gestational carrier, the contract to be to be concluded between the married couple and the gestational carrier (LBAF 2014, Article 1).

### **CONDITIONS WHICH SHOULD BE FULFILLED BY A MARRIAGE COUPLE AND BY SURROGATE MOTHER:**

In order to start the fertilization procedure by inserting an embryo obtained with own or donated gametes of the married couple in the uterus of a woman - gestational carrier, legally defined conditions which must be met.

#### **Conditions which should be fulfilled by marriage couple:**

- A man and woman to be married and citizens of the Republic of North Macedonia.
- The wife of the married couple has a congenital / acquired uterine or ovaries absence or congenital uterine or ovaries anomaly that cannot be corrected by modern surgical procedures according to evidence-based medicine.

- The husband of the married couple has a sterility that can not be cured with modern procedures according to evidence-based medicine, and at the same time the wife of the married couple meet the previous condition.
- At least three unsuccessful pregnancies of the married woman.
- Conditions which should be fulfilled by surrogate mother:**
- To be a citizen of the Republic of North Macedonia.
- To be in good psycho-physical and general health condition.
- To be at least 25 years of age, until the age at which the woman is in good psycho-physical and general health condition that enables a healthy pregnancy and the giving birth of a healthy child.
- Mother of at least one child at the moment of starting the BAF procedure.
- Parental Rights of the Mother has not been revoked or restricted.
- Legal capacity of the mother is not limited or taken away.
- Surrogate Mother must not be mentally ill or a person with intellectual disabilities.
- Surrogate Mother must not addicted to drugs or other psychotropic substances or alcohol.
- Surrogate Mother must not have a severe chronic disease or not to be ill with an incurable infectious disease (LBAF 2014, Article 6-a, Paragraph 6).

**INITIATING A BIO-MEDICALLY ASSISTED FERTILIZATION (BAF) PROCEDURE BY INTRODUCING AN EMBRYON RECEIVED BY ITS OWN OR DONATED GAMETES IN A WOMAN'S UTERUS – GESTATIONAL CARRIER:**

The procedure for BAF by inserting an embryo obtained with own or donated gametes into the uterus of a gestational carrier woman consists of several steps.

The procedure can be performed if the embryo or fetus that is inserted into the uterus of the gestational carrier is obtained with: (1) fusion of gametes of married couple or (2) sperm fusion of a man from a married couple requesting initiation of a BAF procedure with a gestational carrier and a donated egg, or by (3) fusion of an egg of a woman from a married couple requesting initiation of the BAF procedure with a gestational carrier and a donated sperm or (4) the embryo or fetus is obtained by fusion of a donated egg and a donated sperm (Marolov E. & Maksimova, E 2017).

The first step that those interested should take is to contact the Ministry of Health by submitting appropriate documentation as confirmation that they meet the legally prescribed conditions. The Ministry of Health maintains two registers, one for women who are potential gestational carriers and the other for married couples. After determining that the conditions are met, the Ministry enters the data in these registers. The second step that should be taken by the interested married couples is to submit a request to the Ministry of Health for inspection of the appropriate register in order to select a gestational carrier. The third step is for interested couples to contact the Ministry of Health with: a written request for initiating the BPO procedure with a gestational carrier; to submit a written statement notarized; to be previously expertly advised on the psychological and legal consequences of this

procedure by the Commission for Psychological Counseling and the Commission for Legal Counseling (Marolov E. & Maksimova, E 2017).

After receiving the written request, the Ministry of Health will determine whether all the conditions of this law are met for initiating a BAF procedure with a gestational carrier and will notify the married couple and the potential gestational carrier in writing. If the conditions for initiating a BAF procedure with a gestational carrier are met, the married couple and the potential gestational carrier enter into an agreement regulating the mutual rights and obligations arising from that procedure (Marolov E. & Maksimova, E 2017).

According Article 12-a Paragraph 10 from Law on BAF, the married couple has the right to request initiation of two BAF procedures with a gestational carrier that will successfully end with the birth of one living child from each procedure. Unsuccessful BAF procedure with a gestational carrier is considered a procedure in which there was a desired or unwanted termination of pregnancy and a procedure in which a stillborn child was born. In the procedure of BAF with a gestational carrier, it is allowed to insert a maximum of two embryos obtained with own or donated gametes of the married couple in the uterus of a gestational carrier. Article 12-a Paragraph 13 from LBAF obliges the married couple to take over all children born from multiple pregnancies, as well as to take over the child if the child is born with a disability due to which he / she has special needs, and which was not discovered during the pregnancy with standard medical procedures (LBAF 2014, Article 12-a).

## **SURROGATE MOTHERHOOD IN ENGLAND**

Surrogacy in the England is regulated by the Human Reproduction and Embryology Act 1990 and 2008 and the Surrogacy Agreement Act 1985. In fact, in the England, surrogacy contracts are legally unenforceable. If the surrogate mother does not want to hand over the child after his birth, the married couple who has entered into an agreement with the surrogate mother has no right to force her to hand over the child, nor does the surrogate mother have the right to sue the married couple for non-payment of the agreed amount. In this sense, the surrogate mother is considered as the mother of the child, regardless of genetic connection with the child. If the surrogate mother is married, her husband is considered as the father of the child. Six weeks after giving birth to a maximum of six months, prospective parents can apply for obtaining parental rights over the child. This can only be done if the child lives with the applicants and if at least one of the applicants resides in the England (Anderson P. 2010, p.37-50).

The Human Reproduction and Embryology Act from 1990 obliges the registrar to register the parenthood of the couple on the child, provided that there is a mutual agreement realized by a parenthood agreement. The Human Reproduction and Embryology Act of 2008 in article 54, allows same-sex persons and persons who have been living out of wedlock for a long time to become parents and acquire parental rights over a child by concluding a contract for surrogacy. For the validity of the contract must meet the following conditions:

First of all, to clearly see the mutual agreement between the persons. If the surrogate mother refuses to give consent, the couple loses the right to apply, which is limited to six months. The child must have a genetic link to at least one of

potential parents. Section 8 prohibits the payment of compensation to a surrogate mother (Nakash A. & Herdman J. 2007, p. 246 – 251).

### **SURROGATE MOTHERHOOD IN TURKEY**

According to the Turkish Civil Code (TCC) from 2001, Article 282/1 the indisputable legal presumption is that the mother of the child is the woman who gave birth to child. The legislature believes that cohabitation and the umbilical cord relationship with the mother are characteristic features of motherhood, and thus it is assumed that the child is related to the biological mother and not to the genetic mother (TCC, 2001).

The United Nations Convention on the Rights of the Child (UNCRC) from 1989 Article 2 Paragraph 1 provides that a child has the right to know his or her genetic origin and his or her genetic mother. But the child has no right to challenge the motherhood of his legal mother (UNCRC, 1989).

In Turkey, there is a special regulation called "Regulation on assisted fertilization centers" from 1987 which regulates artificial insemination. According to Article 1 of this regulation, only married couples who cannot have a child have the opportunity to receive treatment for artificial insemination and embryo implantation. According to the second article of this regulation, it must be medically proven that the couple cannot have a child due to infertility and that the gametes of the married couple must be used during the artificial insemination procedure. The regulation prohibits the implantation of an embryo in the uterus of a woman receiving medical treatment due to infertility belonging to a third party. In addition, the use of eggs and sperm from the married couple for other candidates is prohibited. As a result, egg / sperm donation as well as surrogacy are strictly prohibited by the Regulation.

Because surrogacy agreements are contrary to imperative regulations, human rights, and morals, they have no validity or can be enforced under Turkish law.

If a child is born to a surrogate mother in Turkey, the intended mother is registered in the hospital as the child's mother, and then the intended parents are registered as the child's parents in the registry office. This practice is considered a crime in Turkish law. According to Article 231 of the Turkish Penal Code, concealing and changing the genetic origin of a child is punishable by one to three years in prison (Şimşek A. 2014, p.42).

### **SURROGATE MOTHERHOOD IN ISRAEL**

In Israel, unlike many countries in the world, except that surrogacy is legally permitted, the costs are covered by public insurance. The Law on Contracts for Fetal Pregnancy of 1996, which regulates surrogacy, allows births in this way only if performed in Israel's hospitals. This law allows surrogacy to be performed under state control by a special commission selected by the Ministry of Health. This commission is responsible for controlling the legality of surrogacy contracts. One of the conditions for being a surrogate mother is that the potential surrogate mother must be 22 years old, but not older than 40, and has not given birth more than five

times. The surrogate mother and the couple are obliged to submit data to the Commission for their health and genetic condition, and confirmation from police that they have no criminal record. They also have to prove that they are Jews. Then three should have a blood test, pass a psychological test and pass controls diseases and mental disorders. Surrogacy is allowed only when a woman can not get pregnant, or if pregnancy does not end successfully. Israel's law allows to use the egg of the woman of the couple or a donated egg. However, it prohibits sperm donation. Therefore, sperm can only be used by the potential father of the child. The Surrogacy Act gives autonomy to the surrogate mother until the child is born. Israel's legislation provides an opportunity surrogate mother to terminate her pregnancy, but she has no right not to hand over the child after the child is born. For religious reasons such as incest and infidelity, Israeli law prohibits pregnancy and childbirth for a daughter or sister for altruistic reasons (Teman E. 2003, p.78-98).

### **SURROGATE MOTHERHOOD IN INDIA**

Although there is still no law regulating and allowing surrogacy in India, since 2002 commercial surrogacy has been considered as legal. Apart from the practice of surrogacy, it is becoming a growing industry in the country. In India, surrogacy is liberal and practiced by private commercial institutions, according to their criteria and contractual arrangements, without any state intervention. Commercial surrogacy was accepted by the Supreme Court of India in 2002. However, the Ministry of Health and Family has prepared a draft law in order to monitor and control the cases. If this bill passes the Parliament, the new Law on Reproductive Technologies will legalize commercial surrogacy, but this bill prohibits genetically related (traditional) surrogacy. In addition, a contract for surrogacy can be concluded only by those couples who are medically unsuitable for carrying and giving birth to a child. The prospective surrogate mother will need to be between the ages of 21 and 35 and be a citizen of India. In addition to these conditions, it is forbidden for a potential surrogate mother to give birth more than 5 times including her children and no more than three procedures can be performed by inserting an embryo into the surrogate mother's uterus for the same couple. The draft law allows the conclusion of legally relevant agreements between the bank for reproductive technologies and the surrogate mother and between the surrogate mother and the married couple (Amrita P. 2009, p. 379-397). At the same time, the surrogate mother is required to meet the following conditions:

- To make medical tests for infectious diseases that can endanger the health of both the child to be born and the surrogate mother;
- Until the delivery of the child, to refrain from any behaviors and actions that may be harmful to the fetus;
- To give up all parental rights to the child that will be born;
- If she carries more than one embryo, seek the consent of the surrogate mother if she wishes to have an abortion intervention on one of those embryos;
- If she is married, ask for her husband's consent (Palattiyil G.; Blyth E.; Sidhva D.; Balakrishnan G. 2010, p.686–700).

## **CONCLUSION**

As we saw above one of the essential functions of the family is the reproductive function.

From this paper it can be easily seen that the phenomenon of "surrogacy" is quite a new phenomenon for our country. The Republic of North Macedonia is one of the few countries in Europe and in the world that allows and regulates this issue. Legislation in many countries has not regulated this issue at all, which is quite relevant today as a way of assisted fertilization. In the legal order in which there are special provisions for the regulation of surrogacy, there is no unity and consistency in the legal framework for the regulation of surrogacy. Many legislations consider the surrogate mother to be the legal mother of the child, and give potential or intended parents the right to adopt the child after birth. However, few of them give priority and supremacy to the genetic mother of the child.

As we can conclude, there is no international regulation that will regulate this issue. For ethical, real and moral reasons that arising from surrogacy, this issue should be regulated internationally, taking into account the interests and rights of the child that will be guiding throughout the process. The gap that exists for the international order of matter must be filled as soon as possible. Unity must be achieved at least at some basic level, especially in terms of the child's affiliation and parental rights.

Surrogacy has the potential to replace adoption and is considered adoption before pregnancy and birth. However, in order to ensure adequate legal protection for the parties, it is necessary to avoid all abuses. The old Roman maxim, "the mother is always known", is now far from reality and truth. Legislation should therefore regulate conditions, rather than prohibit surrogacy. There is also a fragmentation of the mother concept. If in the past the woman who would give birth to the child was considered the mother of the child, now the child can have two or more mothers depending on the type of surrogacy. The child may also have siblings he or she will never meet. What has been stated so far in this paper on surrogacy is only a small segment of the multitude of data, practices and experiences related to its implementation on a global scale.

## **ABBREVIATIONS**

**IVF** – In Vitro Fertilization

**BAF** – Bio-medically Assisted Fertilization

**LBAF** – Law of the Bio-medically Assisted Fertilization

**TCC** – Turkish Civil Code

**UNCRC** - The United Nations Convention on the Rights of the Child

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# THE SUBJECTS OF INTERNATIONAL LAW AND ITS ROLE IN PROTECTION OF HUMAN RIGHTS

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## **Abstract**

In international relations in general, there is no doubt that the subjects of international law play an important role. For the subjects of international law are written and given different views from different authors, namely on the main actors initially on the regulation of international relations in general, as well as on the protection of human rights. Therefore, through this paper, especially based on the various literature of national and international authors, we will give a clear picture of what international relations actually are, and what is their scientific definition of international science, and who are the subjects who exploit these relationships, without neglecting the role of these subjects of international law in protecting human rights. Therefore, the aforementioned issues will be elaborated through a historical overview, namely the periods on which the subjects of international law passed until today or what was their role in the international arena and especially in the protection of human rights. Otherwise, the subjects of international law today play an important role in the field of human rights, but it would be more reasonable to start first with the human factor as a pretender for his rights based on the guaranteed domestic rules within the state as well as international acts that exceed the domestic law.

**Keywords:** human rights and fundamental freedoms, international law, organization, protection, state.

## **INTRODUCTION**

Subjects of international law as are recognized internationally, such as states, international organizations, whether they have international or regional character, they enjoys a central and comprehensive place in addition to their obligations that are arising from important documents which contain various rules of their operation in this case to state and international organizations on the other hand.

Therefore, in addition to their scope in different dimensions, of course, that their role does not exclude human's vital values and the enjoyment of human rights and fundamental freedoms. In this respect, it is important to note the role of individual itself, who has recently been accepted into international law to be also a subject of international law. Taking into consideration this selection, it can be said that because of the direct infringement of these freedoms and rights that belong to every individual and especially to their protection, whether on a national or

international level, normally, it would be more reasonable his role in the international area.

As was mentioned above, we say that the state as an organization of higher organization within a society guarantees and ensures the full exercise of human rights and fundamental freedoms. Therefore, these rights are uncontested and there is no compromise for them. In the absence of their realization, it is normal to observe the legal and social position of the state in relation to other states.

Historically, even without the creation of states, there have been important documents for people, which dealing mainly with human rights and fundamental freedoms, which initially consisted of stripping the powers of absolute power at that time. Today, we have central states, which with their constitutions proclaim besides all rights and obligations, certainly the human rights and fundamental freedoms. Thus, respecting and protecting these rights and fundamental freedoms, in addition to their formal aspect, it has been taken attention to their materialization, but of course this is not the case in all nation states.

In another part of this paper, it is given the importance to the subjects of international law, such as international organizations. Initially, it is about organizations with general character, starting from the League of Nations, the United Nations up to organizations with regional character. In this respect, also are mentioned some important documents and institutions of these organizations, which always have as their premise the protection of human rights and fundamental freedoms.

And finally, considering the theorist's opinions that an individual can also be presented as a subject of international law, which has recently been accepted in the science of international law, it turns out that this attribute of international subjectivity is also enjoyed by individuals as well .

## **STATE AS A SUBJECT OF INTERNATIONAL LAW AND ITS ROLE IN PROTECTION OF HUMAN RIGHTS AND FREEDOMS**

The state as a concept is most widely discussed in the social sciences. From the antiques to the Middle Time and up to our times, from the Greek city - states (*polis*) and the slavery state, from the medieval feudal kingdoms and sovereign states of the Westphalian model, up to contemporary states, it has been studied as a social phenomenon by many disciplines: from philosophy, sociology, political economy, law, and most recently from political science. However, all the most popular thinkers of different fields tried to answer to three basic questions: Where did the state come from? How did the state come from? What is the state in essence? (Reka, et. al. 2016, p. 153). And what was the role of the state in the protectinon of human rights and fundamental freedoms?.

In relation to the first question we will give a general breakdown based on theories on the state, which are ranked into two major groups of theories: (a) sociological theories; and (b) non - sociological theories.

The sociological theories, explain the state as a social phenomenon, while the non -sociological theories explain the state as a non - social phenomenon.

Without pulling apart the whole theoretical spectrum of the state from the antiquity up the present, we note that it has been treated as a problem since Plato,

Aristotle, Stoa, Cicero, and Justinian, (Greece and Ancient Rome); also Thomas Aquinas, Saint Augustine, (Christian Theories on State and Scholasticism), by Marsilius, Bodin, Machiavelli, Luther, Calvin, Montesquieu, Russo (theories of sovereignty, republicanism, on the separation of powers, protestant theories of the state, anti - royalists theories and those on social contract); by Kant, (theory of peaceful union); by Hegel, (idealist theory) Marx, Engels, Lenin (Marxist - Leninist theories); by Nietzsche Spengler, (crisis theory); by Weber, Aron, Popper, (explicit sociology and critical rationalism); etc.

Depending on the perspective on the state, were also the theories on the state: from theological to patriarchal explanations; from organic to conventional theories; from power theories to rational ones.

Focusing only on sociological based theories, it can be concluded that all these theories defined the state as a concept: legal and social - political, or that the state, according to them is: an organization or political institution supported by the public power and furnished with the legitimate monopoly of violence and with its implementing regulatory instrument - the law (Reka, et. al., p. 154). This would be the most significant and meaningful concept of the state, based on the positive law of different countries.

Therefore, the state is the most important and fundamental form of organization of the society. The term itself "*state*" in most languages derives from the latin word "*status*", french "*état*", italian "*stato*", english "*state*", spanish "*estado*", german "*staat*", albanian "*shtet*", etc. These terms make the limit state organization from feudal possession and of the society in the broadest meaning and appear later, at the end of the 16th century, in the period of presenting the true form of modern state organization, i.e. in the form of absolute monarchy. Also, the concept "*state*" is used in different meanings, namely it has different meanings. In the strict meaning the state means the state mechanism (the whole of individual and collegial bodies with hierarchical relations, as a whole of individuals, of the employees that are working in these bodies. But in the broad meaning, by the term state we mean the whole society involved with a state organization i.e. not only the state mechanism, but also the territory and inhabitants under the state power of a country (Saliu, 2001, pp. 187-188).

Taking into account the institution of human rights and fundamental freedoms, and in particular the legal significance of this institution, also is defined and expressed the legal position and the place of the citizen in society. In this manner it can be verified by how democratic and non - democratic is a society and a state. Through this institution, i.e. the institute of human rights and freedoms, especially the last ones, the international community assesses the level of democracy in different systems and countries. It is important to mention that the first sparks of proclamation and guarantee of certain rights of citizens is found in a document called *Magna Carta Libertatum* proclaimed in 1215 by King John Lackland of England. Then in some laws that are issued in Norway, Czech Republic, Poland, etc. Although the Great Charter deals with the rights guaranteed to the feudal lords, it is of great importance and has exerted great influence on many subsequent documents on human rights and freedoms, especially in England during the 17th century. The Grand Charter obliged the king not to demand from the

inhabitants greater taxes than those prescribed by law. Exceptionally, it could do so only with the consent of the Assembly of all the inhabitants - the *Commune Concilium*. Then the king was obliged not to arrest the nobles without a court order, etc. (Saliu, p. 121).

Other important documents which regulates this matter are also the *Petition of Rights (1628)*, the *Haebas Corpus Act (1679)* and the *Bill of Rights (1689)*.

The *Petition of Rights* has a declarative character, therefore it is not so important in the legal theory. Whiles, the *Haebas Corpus Act* represents a system of guarantees of personal liberties to the court and the police. And, although the *Bill of Rights* document resembles these two documents (i.e. *Petition of Rights* and *Haebas Corpus Act*), it differs from those two acts by the timing and manner of its adoption. At the beginning this act was also of a declarative character, until it was adopted by the parliament and by the king, when it took the power of obligatory law. In this manner, in addition to guaranteeing human rights and freedoms in England, it also presents support to parliamentarism in this country, because of making the constitutional restriction of the king's power for the benefit of the parliament. The impact of this act on establishment and strengthening the foundations of human rights and freedoms has been widespread outside of England, as in the USA and in many other countries (Saliu, p. 122). Therefore, these were important documents which represented the importance and the character of human rights and freedoms, regardless of social organization, but which still serve as an example, today in the law of different states, on which the organization and its foundation is provided by the highest legal act of a state, such as the constitution. The state, as a higher organization, is the one that must always ensure the constitutional - legal protection of human and citizen rights. Therefore, the proclamation of these rights and especially the exercise of these rights are based on the constitution, law, and rules of positive law within a state and to international rules.

In general, regardless of the constitutions of different states, even our state - North Macedonia, in its constitution, as a liberal - democratic constitution, pays special attention to human and citizen rights and freedoms. Thus, the constitution of the North Macedonia has classified the human and citizen rights and freedoms in: (a) civil and political freedoms and rights; (b) economic, social and cultural rights.

The first group includes personal freedoms and rights and political freedoms, while the second group includes economic, social and cultural rights.

Among the freedoms and rights guaranteed by the constitution, more of them which have a particular importance are personal freedoms and rights, which ensure the protection of personal and physical integrity as human beings. From this set of freedoms and rights, with the constitution the North Macedonia are guaranteed: (a) the right of life; (b) inviolability of physical integrity; (c) the right of privacy; (d) inviolability of human freedom; (e) the presumption of human innocence; (f) the right of protection; (g) the right of appeal; (h) freedom of movement and choice of residence; (i) inviolability of the apartment; (j) inviolability of secrecy of letters and other means of communication; (k) freedom of belief and the right of citizenship (Saliu, p. 369). Therefore, for the protection of these freedoms and rights definitely a key role play the state with its own representative and protective authority. It is important to mention a provision of the constitution of

North Macedonia, and in particular article 9, which provides: "The citizens of the Republic of Macedonia are equal in freedoms and rights regardless of gender, race, skin colour, national and social origin, political and religious beliefs; property and social status. Citizens before the Constitution and the laws are equal" (CNM, art. 9). If we make a brief analysis of this constitutional provision, in formal view, it means full protection of these freedoms and rights, but if analysed in the practical sense, it almost does not exist. We say this precisely because of the interference in the constitutional changes in 2001 with the amendments IV - XVIII, respectively, with the signing of the Ohrid Agreement in the same year. Also, there are interventions in the constitutional changes in 2018 on the occasion of the changes of the name of the Republic of Macedonia in the Republic of North Macedonia. This was the result of several years of dispute with neighbouring southern Greece, in order for our country to be opened the negotiations and become a member of the North Atlantic Treaty Organization (NATO), which happened later and member of the European Union in the future.

The state also guarantees the rights of the national communities to freely express, cultivate and develop national identities and characteristics, the right to use national symbols, the right to education in their mother tongue in primary and secondary schools, the right of establishment of institutions for the cultivation and development of their national identity, etc. (Saliu, 2001, p. 370). Also, the right to education is guaranteed with the International Covenant on Economic, Social and Cultural Rights, 1966 (Beiter, 2006, p. 11). The states which are parties to the above covenant recognize that, with a view to achieving the full realization of the following rights: primary education; secondary and higher education; the development of a system of schools at all levels; etc. (ICESCR, art. 13).

However, in case of violations of these freedoms and rights by national states, it is also foreseen their protection at the international level. For example, the European Convention on Human Rights, 1950, does not allow a state, group or person any right to engage in any activity or perform any act with aim destruction of any of the rights and freedoms i.e. human rights and freedoms (ECHR, art. 17). Therefore, here comes into consideration the principle of expression of respecting of the human rights and fundamental freedoms. These principles are considered as general and in the same time are internationally accepted (Reka and Sela, 2007).

Taking into consideration the subjectivity of the state in international relations, based on a "State - Centric", that consist only states are the subject in of international law and has a central role at once to relations with other states, it would be more reasonable for the same state to protect freedoms and rights, namely to protect the freedoms and rights of its citizens. It is understood that the principle of the rule of law is always taken into account, otherwise it would be in the hands of other international entities that always claim to protect and fully realize the human rights and fundamental freedoms and, which are considered as the most important values of the society.

## **INTERNATIONAL ORGANIZATIONS AS A SUBJECT OF INTERNATIONAL LAW AND ITS ROLE IN PROTECTION OF HUMAN RIGHTS AND FREEDOMS**

The first efforts to establish a permanent international organization, which would have the important task of keeping peace and security in the world, was the League of Nations.

The President of the USA, Woodrow Wilson, in his 14 point program, dated 8 January 1918, had proposed that immediately after the defeat of Germany, to be established an organization of peoples, with mutual guarantees of political independence and territorial integrity of all states, regardless if are small or large. In fact, the League of Nations Statute which was drafted later, was almost entirely inspired by Wilson's ideas. (Gruda, 2003, p. 317). Therefore, it can be said that through this document of the League of Nations, respectively, by the Statute of the League of Nations, the provisions of which limited weaponry to that extent, which would be compatible with national security and with the fulfillment of international obligations, with reciprocal guarantees of territorial integrity, of measures for securing peace and resolving disputes peacefully, of sanctions on the state that has entered into a war by violating the obligations of the Statute of the League of Nations, etc.

The League of Nations has operated from 1920 to 1939 year. In peacekeeping matters, it had some results at first, but later due to of slightly more serious conflicts, it was proved incapable for protect of the peace. The cause was, in the imperfection of the Statute of the League of Nations, on the one hand, and in the policies of the member states, on the other hand, especially to the main states. Therefore, the Statute of the League of Nations did not prohibit the war at all, and requiring unanimity in the Council in resolving matters within the competence of the Council, as well as for most matters in the Assembly, which allowed the use of a veto, thus leaving a parallel in the powers between the Council and the Assembly, because both of these bodies could deal with all matters that were a part of the activity of the League. Thus, the League of Nations was excluded from being able to be a centre of political activity and a decisive factor in preventing international conflicts. Apart from these shortcomings, such a result was also a consequence of the fact that the League of Nations from the beginning to the end failed to become a universal organization as a basic assumption of collective security (Gruda, p. 319).

After the end of World War II, the United Nations was established on the basis of its Charter as a basic document. The UN Charter itself, as an international agreement or as a multilateral treaty, represented a political and a legal compromise of the states that had signed and ratified it. This compromise is seems by the fact that the Charter, as an international agreement, was signed by the Great Powers as a future member of the Security Council - on the one hand, and the Great Powers and other states on the other hand. This double agreement is known as the "*Yalta Formula*", formalized in Article 27 of the UN Charter, which meant the possibility of veto power by the five major permanent members of the Security Council of the UN. Since of the founding of the UN with 26 states that had adopted the document known as the Atlantic Charter, they had also signed the United Nations Declaration.

This declaration sets forth the principles of this organization: peace; security; independence and human rights (Reka et. al, 2016, p. 195).

Article 1 sets out the goals and principles of the UN, including the human rights and freedoms, which states: "Among other goals, the UN's purpose is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (UN Charter, art. 1, paragh. 3). This is where starts the obligations of states which are internationally recognized to comply with these provisions of the multilateral agreement arise, and at the same time they serve as a practice intended to be a part of the domestic law of the member states, which are determined in their national constitutions.

As we said above, the human rights and freedoms were treated as a matter of national competence, so they were regulated by laws, declarations or constitutions. They will also be transferred to the international arena only after World War II, under the influence of a new worldview, and widespread during of the war, that only the international recognition and protection of human rights can be an obstacle and not to be repeated the crimes and violence committed in many countries that has unprecedented proportions during the World War II. According to the new worldview that was created, the respect for human rights is essential for keeping peace and international order. Thus, in addition to the UN Charter, the human rights are also addressed by the Universal Declaration of Human Rights, which was approved on 10 December 1948 by the United Nations General Assembly, which provide that all people are born free and equal, in terms of their dignity and rights (UDHR, art. 1). Also, is provided that everyone is entitled to all rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UDHR, art. 2).

Therefore, the UN Charter does not define the human rights and fundamental freedoms, nor does it have any provision that would ensure their respect. However, the UN Charter offers a general concept of recognizing and protecting human rights and fundamental freedoms and on the necessity of international cooperation with the aim to secure them.

The UN Charter has specified the central bodies that should carry out for human rights activities and which should take care for the implementation of the current provisions. Such bodies are: the General Assembly; the Economic and Social Council (Gruda, 2003, p. 365); Trusteeship Council; International Court of Justice and Secretariat (<https://www.un.org>). Thus, under the UN Charter it is provided that the Assembly shall initiate studies and make recommendations for the purpose to assist the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (UN Charter, art. 13, paragh. b). Whereas, the Economic and Social Council make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all (UN Charter, art. 62, paragh. 2). With the aim of securing these human rights and freedoms, the Economic and Social Council has set

up a special committee, the so - called Human Rights Commission, 1946, which is responsible for drafting the most specific human rights rules.

Therefore, in addition to the UN Charter and the Universal Declaration of Human Rights, the General Assembly of UN has also adopted several international covenants which relates to human rights and in the meantime are recognized in the international arena, such as: International Covenant on Civil and Political Rights; International Covenant of Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

Apart from the most important organizations of international character, which are at the same time the most important subjects of international law and which through their documents more closely foresee not only general rules, but also specific rules which had to do at all with human rights and freedoms and which always aims to protect these rights (Gruda, 2003). The UN also are provided the principles set by the Security Council, as a system that cares for the peace and security, on the basis of respecting of the human, political, economic rights, social progress and justice. However, the Security Council as a political body is not able for protecting of human rights and this invites an exploration of the evolving principles in the attitude of the Security Council to international human rights and humanitarian law (Ramcharan, 2002, p. 15). The Security Council framework of protection of civilians goes beyond a strict timeframe of an armed conflict (includes activities for prevention and post - conflict) and it includes a wide spectrum of activities, some of them not carried out by humanitarian relief agencies (Ramcharan, 2006, p. 120).

In the following we will mention some other international organizations of regional character, which consist, as we have mentioned before - the protection of human rights and fundamental freedoms. Among these organizations, it is important to mention the Council of Europe, and in particular the European Court of Human Rights, which is also a body of the Council of Europe based in Strasbourg. Therefore, the Council of Europe, as a first European organization, founded in 1949 after World War II among other objectives, has also the protection of human rights, which was one of its principles.

It is important to note also the regional organization of political character, such as the OSCE, which has played an important role in post - Cold War political change in Europe, especially with the inauguration of the philosophy of the human rights, democracy, the rule of law etc. (Reka et. al. 2016). Approximately some European Union institutions, such as intergovernmental organizations, envisage the issue of freedoms and human rights. In this respect it is worth to mention the role and function of the European Parliament, which pays attention to some of the personal rights related to membership procedures, association agreements with third countries, the imposition of measures against the Member State that violates the basic human rights, etc. (Davkova, et.al. 2004. p. 337). It is also important to mention how international organizations such as the EU rely on the right to human rights protection and its connection to the ECHR system. Two perspectives of analysis are provided below: first, an EU - based perspective of human rights law development, focusing on the Convention and Strasbourg regime of law, and, second, a Strasbourg - based view of EU human rights development, and gradual



recognition of the EU as a human rights liable entity and the means via which such relationship became construed (Korenica, 2015, p. 35)

## **INDIVIDUAL AS A SUBJECT OF INTERNATIONAL LAW AND ITS ROLE IN PROTECTION OF HUMAN RIGHTS AND FREEDOMS**

The State - Centric theory of international relations, excluded the individual as a subject of international law. Even the classical theory of international law, for three centuries, considered that only the states are subject of international law (Jellinek, Oppenheim, Tripel, Zhide), and by its later authors, apart from the states, this international legal subjectivity became known even to international organizations.

However, even among the classics of international law, there were authors such as Hugo Grotius, who recognized to individual the attribute of being an international subject, by defining that international law do not only regulates relations between states (as international public law), but also to their citizens (international private law). By the middle of the twentieth century, the number of theorists who thought that individual apart from the states is a subject of international law (Reuter, O'Connell, Alfaro, etc.). The most radical direction of this set of theories, is one that relates to the so - called individualistic theory, on which only the individual is a subject of international law (West, Lake, Krabbe, Sean, etc.). Even Rem considered that the states are members of the international community, and that the individual is subject of international law. Whereas the UN Charter and its human rights documents, such as the Universal Declaration of Human Rights (1948); the two human rights covenants (1966) recognized and guaranteed international human rights and fundamental freedoms. Moreover, the European Convention on Human Rights (1950) not only set out the recognized catalogue and guaranteed internationally of the human rights, but also set out the implementing mechanism for the protection of these rights, even against to the undisputed subject of international law - state, which may come into the position of the accused party by the individual whenever he considers that the state bodies of the concerned state violate his rights that are internationally guaranteed (Reka and Sela, 2007, p. 56).

Thus, the sphere of protection of the human rights emerged from exclusive intra - state jurisdiction and became a subject of international review, even with the power of compelling of the sovereign states to adhere to documents approved and ratified by them from non - judicial court of what is the European Court of Human Rights in Strasbourg. Or the "Doctrine of direct effect" in the EU, according to which the decisions of the European Court of Justice, which may enforce penalties against to sovereign states and in cases where the plaintiffs are individuals, also raised the human problem in international relations and international law, as a field until recently with the exclusive subjectivity of the sovereign states (Reka et. al. 2016, p. 2018).

## CONCLUSION

Whenever is talking about the human rights and fundamental freedoms, definitely there is required their respect through various mechanisms within a society, a state, an organization or even by the individual as a subject of international law.

The states are the ones that by the highest legal act guarantee the full functioning of these rights, but do not forget the limits of their exercise which are regulated by specific laws. Also, in order to achieve certain criteria, and in particular those of integration of the states into various and important international organizations, they must, except under certain conditions, there is a need to fulfill the part concerning to human rights and fundamental freedoms, which are considered as primary and very important conditions in the international arena. This is evidenced by certain acts and conditions that must be fulfilled if a state claim to be a member of an international organization.

In this regard, I would like to mention our state of North Macedonia, which is also a candidate for membership of the European Union. However, the question arises that how are respected the human rights and fundamental freedoms in this country, and how the judicial system works in bringing of judgments, respectively, whether the principle of impartiality and objectivity has been taken into account in certain cases. Therefore, there are some issues that are required by the European Union, that consists of fulfillment of certain criteria.

Another aspect concerns to international organizations that have in focus the human rights and fundamental freedoms. Despite their importance, their documents are still of proclamatory nature rather than obligatory for member states.

The individual must always request for the realization of his rights and freedoms. This is where the international subjectivity came into consideration as a result of the violation of his rights, either by society itself or by the state. Therefore, the individual will keep this subjectivity at all times, and it will be a part of the international courts that decide on this matter. This issue is related to human rights and fundamental freedoms, and as far as full the international subjectivity, it is already well known.

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## DEROGATIONS UNDER ARTICLE 15 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE CONTEXT OF COVID-19

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### **Abstract**

This article examines the current regime for derogation from the human rights and freedoms guaranteed under the European Convention on Human Rights established in Article 15 of the Convention, in the context of the COVID-19. Furthermore, it reflects the debate carried out regarding the question whether it is necessary to derogate from the Convention in response to the pandemic and briefly discusses the derogations already entered in this respect. The article also refers to the limited role played by the European Court of Human Rights in monitoring of derogations, given its deferential approach and the wide margin of appreciation granted to the States. Finally, it explores the possibility for introducing a new, non-judicial avenue for supervising the derogations with enhanced role of the Secretary General of the Council of Europe, which may help to prevent any abusive and arbitrary practices by the derogating States.

**Keywords:** COVID-19 pandemic, state of emergency, derogations, supervision

### **INTRODUCTION**

The ongoing prolonged, unprecedented and massive scale sanitary crisis presents a huge challenge for the national legal systems as well as for the international mechanisms for human rights protection. In response to the outbreak of COVID-19, numerous countries have declared states of emergency in order to take measures to tackle the pandemic, and between 17 March and 10 April 2020, 10 States (Latvia, Romania, Armenia, Moldova, Estonia, Georgia, Albania, North Macedonia, Serbia and San Marino) have exercised their power to derogate from their obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter: the Convention, the ECHR), pursuant to Article 15 of the Convention.

The previous derogations which have been submitted to the Secretary General of the Council of Europe concerned: the British governance of Cyprus in the 1950s (in the case of *Greece v. UK*); the terrorist violence in Northern Ireland in the late 1950s (e.g., *Lawless (no.3) v. Ireland*), early 1970s (*Ireland v UK*) and in 1989 (*Brannigan and McBride v. UK*); the *coup d'état* in Greece (the “*Greek case*”); the situation in south-east Turkey (*Aksoy v. Turkey*); terrorism in France

(2015 – 2017), civil war in Ukraine (2015 – ongoing) and the attempted military *coup d'état* in Turkey (2016 – 2018).

COVID-19 is a historic derogation made by States to address a contagious disease. The only situation before 2020 where a derogation was entered in relation to a public health emergency was in 2006, when Georgia [derogated](#) for thirteen-day period only in respect of one affected region to prevent further spread of the H5N1 virus (bird flu).

## **REQUIREMENTS FOR DEROGATION UNDER ARTICLE 15 ECHR**

Derogations are “instruments... to accommodate exceptional situations” (Venice Commission, 2020, §38) which consist in “temporary suspensions of certain human rights guarantees” (§41).

They are not unlimited. Resolution 2209 (2018) of the Parliamentary Assembly of the Council of Europe (hereafter: the PACE) envisages that “[a] state of emergency that requires derogation must be limited in duration, circumstance and scope” and “emergency powers may be exercised only for the purposes for which they were granted”, while “[t]he duration of... measures and their effects may not exceed that of the state of emergency” (§4).

Moreover, Article 15(1) sets out three main substantive requirements which have to be met in order for a derogation to be allowed.

First of all, derogations are permitted only “in time of war or other public emergency threatening the life of the nation”. It would, therefore, be necessary to establish the existence of an emergency, which is defined as “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the state is composed” (*Lawless v. Ireland (no. 3)*, § 28). As a rule, the European Court of Human Rights (hereafter: the Court, the ECtHR) defers to the assessment of the State concerning the existence of a public emergency. Only in the *Greek* case the Court refused to accept the evaluation carried out by the national authorities (the “*Greek case*”, §165).

Second, the measures introduced must meet the condition of proportionality meaning that they should be strictly required by the exigency of the situation. The derogation clause grants a State a wide discretion since it is believed that “the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it.” (*Ireland v. the United Kingdom*, 18 January 1978, § 207, Series A no. 25).

In *Brannigan and McBride*,<sup>2</sup> the Court acknowledged that: “The Contracting Parties do not enjoy an unlimited power of appreciation... The domestic margin of appreciation is thus accompanied by a European supervision... At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation” (§43). It further concluded that the UK Government had “not exceeded their margin of appreciation in

considering that the derogation was strictly required by the exigencies of the situation” (§66).

Third, the measures taken should not be inconsistent with State’s other obligations under international law. For instance, according to Article 4(1) of the International Covenant on Civil and Political Rights (hereafter: ICCPR), in order any derogation from the ICCPR to be justified measures taken should not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin.

Article 15(2) lists a number of non-derogable rights that can never be derogated from, which includes Article 2 (right to life, with the exception of deaths resulting from lawful acts of war), Article 3 (prohibition of torture), Article 4(1) (prohibition of slavery and forced labour), Article 7 (no punishment without law). Furthermore, no derogation is permitted in respect of the abolitions of the death penalty covered by Protocol No. 6 and Protocol No.13, as well as the *ne bis in idem* principle, as contained in Article 4 of Protocol No.7.

There is also a procedural requirement laid down in Article 15(3) that a State relying on the right of derogation shall keep the Secretary General fully informed of the measures it has taken and the reasons for doing so. In the absence of an official and public notice of derogation, Article 15 does not apply to the measures taken by the respondent State and the Convention applies in full.

Strasbourg organs consistently avoided deciding whether a State can rely on a derogation in the absence of (or following an inadequate) notification or it has to notify the derogation as a condition for its validity. However, some formal and public declaration of the state of emergency is a requirement for reliance on Article 15(1), without which Article 15 cannot apply (*Cyprus v Turkey*, § 527), despite the fact that there is no explicit provision for public proclamation of the emergency, as required by Article 4 of the ICCPR.

It is argued that notification ought to be a requirement for a State to be able to benefit from derogation, because it promotes transparency and adherence to the rule of law when the State is taking measures that would, under normal circumstances, constitute impermissible restrictions on human rights (Holcroft-Emmess 2020).

In the *Greek case*, the Commission concluded that Greece had not fully met the requirements of Article 15(3) because of the inadequate notification as the respondent government had failed to communicate to the Secretary General the texts of its emergency legislation and had not provided full information on the administrative measures taken, nor were the reasons for derogation communicated for more than four months after they had been taken (§81).

Article 15(3) “did not give any guidance either as to the time for submission of the notification or as to the extent of the information to be furnished to the Secretary General” (Council of Europe/European Court of Human Rights, 2019, §36). The obligation under Article 15(3) is not necessarily one of prior notification. A twelve-day delay in notification after the entry into force of the measures derogating from their obligations under the Convention was accepted by the Court as having been ‘made without delay’ (*Lawless (no.3) v. Ireland*, §47). In *Greece v UK*, the Commission decided that there was “no question of the measure taken...

under Article 15(1) being invalidated by reason of the delay... in complying with [the] obligation to inform the Secretary General of the measure” (§158). Higgins suggested that “failure to notify in reasonable time might be evidence of bad faith which would be a matter to be taken into account in deciding whether Article 15(1) was satisfied” (Harris, O’Boyle and Warbrick, 2009, 641).

PACE Resolution 2209 (2018) recommends that all States Parties to the Convention should “ensure that the Secretary General is notified immediately and, in any case, without any unavoidable delay, not only of the measures taken and the reasons therefor, but also of the Convention rights affected; and explain the justification for any extension of a derogation in time, circumstance or scope” (§ 19.3.). Moreover, it imposes an obligation on States to “constantly review the necessity of maintaining [the state of emergency] and any measures taken under it, with, a presumption against extending [it] or... further limiting the scope of measures taken under it” (§19.4.).

Similarly, Article 15(3) requires that a State shall inform the Secretary General when such measures have ceased to operate and the Convention provisions are again being fully executed. It also implies a requirement of permanent review of the need for emergency measures (*Brannigan and McBride v. the United Kingdom*, §54).

## **DEROGATIONS IN RESPECT OF COVID-19**

All COVID-19 derogations clearly fall within the definition of emergency and the fulfilment of the first requirement for their validity should, therefore, not be a subject of great dispute.

They were made in the form of letters (*notes verbale*) to the Secretary General. Even though the recourse to derogations “is not contingent on the formal adoption of the state of emergency or any similar regime at the national level”, while “any derogation must have a clear basis in domestic law in order to protect arbitrariness” (Secretary General, April 7, 2020. p.3), in their notices of derogation, the States have indicated that they had declared a state of emergency and they referred to the declaration of a pandemic by the World Health Organization on 11 March 2020. In addition, most of them have listed the emergency measures already taken and communicated the national legislation adopted to address the pandemic. Thus, the procedural requirement has been fully satisfied, also given that the notifications were made within several days to two weeks following the declaration of the state of emergency.

The derogating States stressed that the “...the epidemic, poses a threat to the life and health of the population and may result in the disruption of the normal living conditions of persons” (Armenia); and noted “the danger the spread of COVID-19 has posed to public health” (Moldova); “the evolution of the epidemiologic situation... and of the assessment of the public health risk for the immediate future” (Romania); “protection of health... [as] legitimate [ground] to restrict ... rights in order to... address the serious risks to the health of the population...” (North Macedonia).

Additionally, most States have indicated the Convention provisions from which they intend to derogate (with exception of Serbia and San Marino), including: Article 2 of Protocol No. 4 (freedom of movement); Article 2 of Protocol No. 1 (right to education); Article 11 (freedom of assembly and association); Article 8 (right to respect for private and family life); Article 1 of Protocol No.1 (protection of property); Article 5 (freedom of liberty and security). Only Estonia derogated from Article 6 (right to a fair trial).<sup>1</sup>

The Court's case-law has never established the requirement that the emergency be temporary and indeed, in practice, such "public emergency" has continued for many years (for instance, the security situation in Northern Ireland, or in the aftermath of the al-Qaeda attacks, as demonstrated in the case of *A. and Others v. the United Kingdom* [GC], §178). Due to the unpredictable development of the current public health crisis, the assessment of the point where emergency measures are no longer needed might be problematic in practice and it might require to reconsider the need of derogation and to review the proportionality of the adopted measures.

### **IS IT NECESSARY TO DEROGATE?**

There are slightly different opinions among scholars as to the question whether it is appropriate, necessary or desirable to derogate from the Convention in response to COVID-19.

Dzehtsiarou (2020) argues that as a result of permissible limitations under the ECHR, the ECHR is not an obstacle to effective governmental measures targeting the pandemic, since the ECHR rights are sufficiently flexible to adjust to the current COVID-19 crisis. He believes that the impact of Article 15 will be very limited on the Court's assessment as to the proportionality of the restrictive measures both as regards the non-derogable rights and rights guaranteed under Articles 8-11 which already have an embedded mechanism allowing limitations for protection of health and public order, as well as concerning Article 5, since its paragraph 1(e) permits the lawful detention of persons for the prevention of the spreading of infectious diseases. Although Article 15 might help to meet the requirement for legality of the limitations and loosen the scrutiny in proportionality analysis most States make some form of emergency legislation which will itself satisfy the legality requirement. On the other hand, national laws which transfer unlimited powers to the executives might be deemed unlawful under the Convention and Article 15 derogation will not be able to change such assessment.

On the contrary, Greene (2020) argues that Article 15 "should be used to accommodate the emergency lockdown powers necessary to confront the Coronavirus pandemic", as a framework that requires legality and full restoration of normalcy as soon as possible. In contrast, "failure to use Article 15 ECHR risks normalising exceptional powers and permanently recalibrating human rights protections downwards". He further notes that states of emergency constitute a

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<sup>1</sup> For more details, see the full list of derogations: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>.



different regime of legality, rather than ‘zones of lawlessness’ and warns that there can be *legal black holes* as “zones of discretion created by law ... within which there is little to no legal constraint on the decision maker”; or *legal grey holes* where “appears to be only light legal oversight and judicial review of this discretion”. This leads to creating “a *de facto* state of emergency that enables the same powers but lacking transparency, additional oversight and supervision that should accompany a *de jure* state of emergency”. He also refers to the dangers of permanent transformative emergency powers, where states that declared *de jure* states of emergency have not returned to the status quo ex ante, but instead, many emergency powers have been re-enacted as ordinary, permanent laws.

## **SUPERVISION OF DEROGATIONS**

The real impact of COVID-19 will be seen in a couple of years when the first cases related to it will reach the Court. Although a number of rights would be affected, most of the emergency measures include quarantines and lockdowns, and therefore, of certain relevance is the case of *Enhorn v Sweden* where the ECtHR set the criteria for determining the lawfulness of detention under Article 5(1)(e), such as, for example, “whether detention of the person infected is the last resort in order to prevent the spreading of the disease because less severe measures have been considered and found to be insufficient to safeguard the public interest.” (§44).

Nonetheless, this would be the first pandemic the ECHR would have to deal with and therefore, its current case law is sparse. The Court’s proportionality analysis will involve considering whether ordinary laws would have been sufficient to meet the danger caused by the public emergency; whether the derogation is limited in scope and whether the need for the derogation was kept under review; whether the measures are a genuine response to an emergency situation; whether they were used for the purpose for which they were granted and whether they were subject to safeguards; whether there was judicial control of the measures and what were the views of any national courts which have considered the questions (Council of Europe/European Court of Human Rights., 2019, §21).

While comparisons with the responses to other emergency situations are not the most adequate, they provide some guidance and might create a presumption that a similar approach towards a relatively wide degree of deference will be followed by the ECtHR when it will deal with COVID-19 cases. It is argued that “the ECtHR judges should give leeway to the ... states and their policy makers to shape their respective responses to COVID-19” (Tzevelekos 2020). In this context, the Commissioner for Human Rights stated that national authorities enjoy a large margin of appreciation in respect of derogations “precisely because the Convention presupposes domestic controls in the form of a preventive parliamentary scrutiny and posterior judicial review” (Commissioner for Human Rights, 2002, § 9).

On the other hand, “State Practice shows that the gravest violations of human rights tend to occur in the context of states of emergency and that States may be inclined... to use their power of derogation for other purposes or to a larger extent than is justified by the exigency of the situation” (Venice Commission, 2006, §12). Furthermore, 9 out of 10 States that derogated are former communist States with a yet fragile rule of law systems, and a significant number of judgments many of

which concern violations of the rights mentioned in the notifications of derogation. Consequently, their derogations could be considered not only as an act of transparency, but also “as an attempt to ‘shield’ from potential cases being brought against them before the Court” (Zghibarta 2020). It is, therefore, crucial in case of emergency to hold on to human rights, “to keep the authorities accountable and within certain limits because the crisis legislation giving new extensive powers to the executive branch can have long-lasting disproportionate effects on our lives, our freedoms and our societies.” (Dzehtsiarou 2020).

This could be achieved by exposing the States’ derogation practices to strict scrutiny by international supervisory mechanisms. Due to the lack of adequate institutional capacity for monitoring of the derogations, the ECtHR remains the sole mechanism to exercise such a role at the level of the Council of Europe.

There is a sharp criticism that its scrutiny of Article 15 is not particularly rigorous and its approach is often deferential given the wide margin of appreciation accorded to States based on the principle of subsidiarity and on the presumption that a democratic State will be careful before deciding to resort to derogation and the derogation will follow a proper domestic review, which is not always the case. In addition, the effectiveness of the supervision role carried out by the ECtHR is limited, also because it does not go beyond the analysis of individual application and it cannot address the magnitude of human rights concerns related to derogation regimes; the ECtHR cannot guarantee a timely review of derogation measures because the length of proceedings before the ECtHR takes more time than the state of emergencies themselves; and the ECtHR is ill-equipped to address in a systemic manner the effects of emergency measures on the rule of law and democracy (Istrefi 2020). Moreover, under its priority policy, applications addressing the impact of derogations are not classified as urgent, unlike applications related to the right to life or health or deprivations of liberty which may especially be relevant in the COVID-19 context (Epure 2020).

Therefore, more could be expected from other Council of Europe bodies than from the Court in responding to the COVID-19 human rights pressures (Dzehtsiarou 2020). This gap should be filled by the enhanced role of the Secretary General. In that context, PACE Resolution 2209 (2018), established a new layer of non-judicial supervision of derogation regimes. It empowered the Secretary General to actively engage with derogation practices acting as (i) an advisory body before and during the derogation phase which can “provide advice to any State Party considering the possibility of derogating on whether derogation is necessary and, if so, how to limit strictly its scope” (§20.1.); and (ii) an active supervisory body during the derogation phase (by opening an inquiry under Article 52 ECHR whenever a State derogates from the Convention) (§20.2.). Moreover, Resolution 2209 empowered the Secretary General to engage in “dialogue with the State concerned with a view to ensuring the compatibility of the state of emergency with Convention standards”. This corresponds to the duty of the derogating State to “periodically provide information to the Secretary General ... on the evolution of the emergency situation and the implementation of the state of emergency” (§19.5.).

These provisions are innovative as the wording of Article 15 does not suggest that States are under an obligation to collaborate with or to consult the Secretary General in the pre-derogation stage about the planned derogation. Even before their introduction, the Secretary General was quite active when she contacted the Hungarian Prime Minister Orbán warning that the new legislation would jeopardise democratic principles and human rights (Secretary General, March 24, 2020).

A more proactive role by the Secretary General could result in a timely review of derogations which, if there is any problem, could then be presented to PACE or the Committee of Ministers for further political pressure on the derogating State (Istrefi 2020). There is also a room for monitoring of derogations by the Commissioner for Human Rights who may ‘issue recommendations, opinions and reports’, pursuant to Article 8(1) Resolution (99) 50 of the Committee of Ministers (Harris, O’Boyle and Warbrick, 2009, 642). Thus, in 2002 the Commissioner issued an opinion on certain aspects of the United Kingdom’s 2001 derogation from Article 5(1), addressing the question whether there existed sufficient initial parliamentary scrutiny of the decision to derogate (Commissioner for Human Rights, 2002, §9).<sup>2</sup>

## CONCLUSION

Despite the ongoing academic debate and the flexibility given to the States, declaring a state of emergency under Article 15 of the ECHR could still be considered as the best practice. It ensures that the Court and the Council of Europe can monitor how powers are implemented and examine whether and to what extent emergency provisions are compatible with the ECHR. It could, however, be questionable to what extent is this mechanism likely to act as a safeguard for individual rights.

Since the Court will be called upon to decide whether certain measures are strictly required by the exigencies of the situation, there is a strong argument that derogations provide a framework for assessing whether any human rights infringements are justified or they constitute a violation. Given the relatively unprecedented nature of COVID-19, as well as the conflicting medical evidence guiding government responses, it is expected that the ECtHR will apply a wide degree of deference to States when carrying out the scrutiny of the national measures and the room for judicial intervention will be limited as well.

Even with an increased role of the Court, its judgments focus on individual complaints and the Court is unable to address the complexity of abusive derogations. Therefore, non-judicial mechanism of supervision of derogation regimes will be necessary to ensure respect of human rights and rule of law, as key values of the Council of Europe system. The emergency situation will be a litmus test for the Convention system as a whole, its authority and legitimacy. Taking into consideration that COVID-19 related derogations are the first derogations since

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<sup>2</sup> In addition, recently the Venice Commission launched its Observatory on the emergency situations, which aims to assess the level of compliance with rule of law and democracy by the member States of the Council of Europe in emergency situations. See: [https://www.venice.coe.int/WebForms/pages/?p=02\\_EmergencyPowersObservatory&lang=EN](https://www.venice.coe.int/WebForms/pages/?p=02_EmergencyPowersObservatory&lang=EN)

Resolution 2209 was adopted, it remains to be seen how engaged the Secretary General will be and whether it will become an effective supervisory body in relation to states of emergency and derogations.

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# SELF-REGULATION OF MEDIA, IMPLEMENTING OF THEORETICAL FRAMEWORKS AND RECOMMENDATIONS

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## **Abstract**

Self-regulation of media succeeds in highly democratic countries, and hence the standards recommended in Macedonian media space. But how effective is it? The media in our country seem more valued according to "who first published", in terms of technical ability to distribute information, rather than being judged by the degree of objectivity in informing and the public interest to process quality, verifiable and objective media products with high professional and ethical journalistic standards. In order to have a realistic perception, we need to make a basic distinction between media content and citizen information, especially on new media (social networks and blogs), but also websites that are presented as media- but aren't satisfying even minimum standards. The Macedonian internet space has no normative framework. There is no legal basis for prosecuting or sanctioning hate speech, fake news, or anything negative in the new media that would make functioning of internet portals and social media clear. This certainly does not mean that there is no regulation of hate speech as a phenomenon. From one side, it is clearly obvious that the new media encourages people to put forward what they have in mind, but democracy still needs independent and professional journalists working to provide credible and impartial news and analysis. Therefore, the self-regulatory mechanisms are believed to make it possible to restore and promote public confidence in the media appear on the scene. There is a thin line between regulation and media censorship, and therefore (self) regulation debates are hard. But the overproduction of news in the new media and its effects imposes the need for urgent concrete steps to save the media space. This paper contains comparative analysis of different countries self-regulation processes and recommendations about our country.

**Keywords:** self-regulation, censorship, new media, hate speech, fake news

## **INTRODUCTION**

Is there a system media to protect their functioning as a business and at the same time, gain and maintain citizens' trust? The answer to this question is "YES". This is possible through the so-called system of media self-regulation, which, simply explained: means a way of securing and protecting the right to freedom of expression and information. The self-regulation of the media is a kind of bridge between them and the public itself.

Formally or institutionally, self-regulation is achieved through the formation of the so-called regulatory body composed of the media and the public, which monitors, evaluates and responds appropriately when it comes to violation or non-compliance with professional and ethical journalistic standards. These bodies operate on the basis of the ethical code of journalists, which is a summarized variant of about 400 journalistic codes, so-called: nine principles of the International Federation of Journalists. Based on this, the Code of Journalists of Macedonia was developed in 2001 and consists of 17 articles. In addition, the Association of Journalists of Macedonia (AJM) has developed a Handbook on Ethics in Journalism, which contains guidelines for use and application by journalists. World best practices motivate other journalists and organization to think of other professional principals of journalistic behavior. Most of the codes contain the principles of truthfulness, accuracy, objectivity, impartiality, fairness.

There are two self-regulatory bodies in Macedonia, the Council of Honor and the Council of Media Ethics in Macedonia (CMEM). The first one never functioned as a real self-regulatory body. The second is trying to act, but we, as a society, are still far from a solid realization of self-regulation. Only the media are members of both bodies. There is no representative of the Ombudsman, no police representative, no judicial or prosecutorial factors, as in some other good practice - countries. On the other hand, the statistics of cases realized by the second body, the Council of media ethics, did not change the situation with the media in the country. Or, in numbers it means that complaints that arrive to the Council of ethics are in a continuous number. Which means there is no reduction of complains. For example from 2014 to 2017, the number of decisions made by CMEM is 214, but then in 2018 the number of received complaints is 83, which is the same as in 2019. In the first three years, the number of cases in which a moral sanction has been imposed, meaning the journalistic code has been violated is 175, while in the next two years, 60 decisions have been subsequently made. If the percentage is distributed separately for all years, the figure is the same. According to this, the clearest conclusion that could be drawn as to whether the self-regulation through CMEM has been fruitful- the answer seems to be no. It is because the number of imposed moral penalties has practically not decreased (CMEM report, 2014, 2015, 2017, 2018, 2019).

Now we come to the question to which this paper is expected to answer: is the thin line between self-regulation and censorship formal or real? Isn't it a censorship if strict guidelines for self-regulation of the media are given, with the warning that if it is practiced the state regulation will be reduced? Or said differently: isn't the self-regulation, besides state regulation - again not a kind of censorship? What is certain is that Macedonian internet space has no normative framework. There is no legal basis for prosecuting or sanctioning hate speech, fake news, or anything negative in the new media that would make functioning of internet portals and social media clear. That is why it is necessary to develop proper body for self-regulation and increase its competencies according to the models that already function in the EU member states, even in our closest environment. One of them is Slovenia.



## **CAN A SELF-REGULATION BE A SOLUTION BY ITSELF?**

According to the experience of developed democracies, the answer is yes. But, it is not the case in every democratic country. For example, a several years ago scandal with the wiretapping of Rupert Murdoch's media in Great Britain practically led to collapse of the local appeals commission (as a regulatory body), and the reason of this was because most of the media that injected finance were exactly the above. (Castells. 2009: 429) Due to this reason, the body did not react properly, on time, and then it crashed. After a few years, this country constructed a new self-regulatory body. Hence, the legitimate question is, if such a thing happened in a highly developed democratic country like Great Britain, how could it function in a country like ours – which, after all the Brussels evaluations, has not yet been ranked high according to the democracy practicing?

But it is not only about the self-regulatory mechanisms. There are also legal solutions that apply regardless of the information published anywhere. For example, hate speech as well as discriminatory speech are regulated by the Criminal Code (1996, Art. 137, 144, 173, 178, 179, 171, 181, 319, 394-d, 417), in the Law on Prevention and Protection against Discrimination ( 2010, Articles 5, 7, 9), as well as in the Law on Audio and Audiovisual Media Services (2013, Art. 48), which does not contain a sanction for the media, that are subject to its regulation. Experts are almost unanimous in their view that the proposed legislative framework for hate speech sanctions is in line with international standards and documents, but, in practice there is a serious inconsistency in the applicability of laws by the public prosecutor's office and the judiciary. Furthermore, at the insistence of media workers through their associations, the Law on Audio and Audiovisual Media Services was proposed and adopted in 2013, to introduce sanctions for "hate speech" or incitement to violence in audiovisual programs, which would be processed in a misdemeanor procedure. The draft text of the amendments to the Law of September 2017 initiated by the Ministry of Information Society and Administration contains this decision. In recent years, we have witnessed that the socio-political context has allowed for "tolerance" in responding to and defining hate speech and discrimination. And now we come back to the claim that only a developed and stable Council for Media Ethics can be a sufficient solution that will ensure media regulation. The scope of media regulation has been a contentious national issue for several years. During the legislative process which led to the adoption of the Law on Media and the Law on Audio and Audiovisual Media Services in December 2013, 4 several international organizations and NGO's expressed their concern about potential application of traditional statutory regulation (i.e. stipulated by primary and secondary legislation, created, adopted and implemented within the power of the State) to most if not all kinds of media, including media which, in the EU regulatory framework, clearly fall outside the scope of media regulation.

However, before concluding on the principles and formalities on which self-regulation should be based, let us mention a few more laws that should complete the overall picture of hate speech regulation as the most frightening media phenomenon. This includes the Law on Personal Data Protection (2020) that protects the right to publish photos without the consent of persons, publication of other people's personal

data, identity theft, password misuse and as well as the creation of fake profiles on the Internet. The law bans the posting of photos on Internet portals without the prior consent of individuals, as well as taking photos from Facebook and posting them on Internet portals. Also, if photos of minors are posted, parental permission is required. So there are about a dozen laws, including the Law on Free Access to Public Information, the Law on Protection against Discrimination, the Law on Labor Relations, the Law on Archive Material, which proves that the sphere of Internet media is not chaotically regulated, or, as it seems: unregulated. But it is more than obvious that there is no progress both in the state of law and in self-regulatory bodies. Therefore forcing the rule of law is censorship, so, the power of self-regulation needs to be strengthened instead.

## **GOOD PRACTICES**

In an effort to provide greater self-regulation power, media self-regulatory bodies from Macedonia, Serbia, Kosovo, Montenegro and Bosnia and Herzegovina merged in 2015. The common platform is called Media NETx and is based in Montenegro. The idea was to ensure closer coordination and exchange experiences that would achieve more results both in their own environments and in the region.

But years later, further progress is needed. The existing network is good valued...Still there is a lack of elements from the experiences of countries close to us as well as those in the network – but have higher rate of implementation of self-regulation. Specifically, it is necessary in these bodies to have competent institution members, that will only give more weight to each decision CMEM brings. Example of good practice is Slovenia.

In Slovenia, for example, as a former Yugoslav country, there is an information ombudsman in the media, which is an independent and self-governing body that protects the rights of the public to be properly informed, but also encourages journalists to respect ethics and professional code. It is also worth noting that in Ljubljana is based a website for reporting hate speech and child abuse. It's called "Spletno oko" ([www.spletno-oko.si](http://www.spletno-oko.si)) meaning “complete eye”. It is directly coordinated by the Center for More Safe Internet (CMSI), an organization within the University of Ljubljana, which, in addition to online media, includes members of the Slovenian Supreme Public Prosecutor's Office, police, and other human rights organizations. It operates on the principle of rapid registration of hate speech and also fast or expressive processing of cases to the police and the Prosecutor's Office.

Slovenia is closest to us from the countries - good practitioners of self-regulation. Practically, there is an increase in the level of understanding of self-regulation by Slovenian journalists. They don't see the participation of competent state institutions as an attempt of censorship, but as additional support for fight against fake news and hate speech. Institution also act as supporters to media self regulation process. Furthermore, another example is Luxemburg. Luxembourg Ethics Council is also not a binding organization in terms of media membership, but adheres strictly to the Luxembourg Code of Ethics. Although membership is not binding, journalists are obliged to check in detail before publishing and sharing content whether the text news, contain inadmissible elements at all. (Code of Deontology. 2004: online)

A similar level of self-awareness prevails among the media in Great Britain. After Murdoch's media scandal, which we discussed above, a self-regulatory body has been re-established. It is called: Media Appeals Commission. However, in the description of its work, it is clearly emphasized that there is no significant number of complaints because the media themselves- meaning their editorial teams, avoid to be on the list for critics and complaint. It seems that moral sanction is not an underestimation for them.

Another example is the Netherlands. There, too, the Council of Ethics has strong power, although it is only morally competent to process complaints against journalists, whether or not members. The fact that it has no power to impose sanctions does not make it any less influential than the regular state institutions which prescribe sanctions.

Germany is quite committed to the story called self-regulation. A well-known German discipline is copied in the Ethics Council, which consists of four organizations: the German Association of News Publishers, the German Association of Magazine Publishers, and two journalists' syndicates. Journalists themselves are members, and sometimes even lawyers, as well as representatives of certain publishing organizations. What is important to emphasize is that the state has nothing to do with the Council nor does it interfere in its work, but one-third of state's budget is separated to finance it. The other financial self-sustainability is provided by funding from journalists' unions. The rest of the budget is provided by the two journalistic associations. It is also important to emphasize that 95% of the German media have voluntarily, pledged to publish any possible moral sanctions against them, if deserved.

In Finland there is an Act on the Exercise of Freedom of Expression in Mass Media (2003). It defines "network publication" as "a set of network messages, arranged into a coherent whole comparable to a periodical from material produced or processed by the publisher, and intended to be issued regularly". The purpose of the law is to safeguard freedom of expression to ensure civil and penal responsibility of the media and to make sure that "interference with the activities of the media shall be legitimate only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law". This Act does not give any power to the media regulatory authority to regulate online media. Audiovisual media regulation is governed by two other Acts, i.e. the Information Society Code (2014) and the Act on Audiovisual Programmes (2011).

It can be seen that European countries do not have powerful members in their bodies for self-regulation of the media, such as those mentioned in Slovenia. But Ljubljana is, in a way, a bridge to the countries of the Western Balkans where moral sanction still lacks strong power and the self-regulation is needed more than ever. The Western Balkan media are still driven by the motto of propaganda machinery and clientelism, especially in the Internet space, than by the motto of objective, verified and accurate information.

## CONCLUSION

Self-regulation is a kind of mediation in solving problems between two sides. Something that means much greater relief than any ordinary court process (litigation) initiated on a relation party-medium. This means that the court practice is dispersed and the process does not cost money nor damages the budget. What proves to be a problem in our country is the fact that the decisions of CMEM do not have the force of sanction, but only moral criticism, or condemnation. At the same time, in a situation of direct regulation, the competent authorities may not react to certain online insults, hate speech, etc., considering that the internet intermediaries will remove the content. Another time, Internet portals can delete problematic content from a web page, but it will be saved somewhere in the Internet space.

According to the so-called ARTICLE 19 of the Brussels Recommendations, is important when choosing whether in a particular situation it is better to regulate or self-regulate, to take into account what is necessary and better, which will be more productive and easier to implement. Therefore, in such a dilemma, the structuring of the regulatory body following the example of Slovenia, would be of the greatest benefit. When it comes to promoting and achieving some legitimate public interest goals, self-regulation is the first choice for them, as it is less restrictive for the freedom of expression. Both mechanisms - self-regulation and regulation - must, according to ARTICAL 19, be effective and have the power to force actors to be accountable and, on the other hand, to protect the audience.

The European Commission is debating a possible revision of the Audiovisual Media Services Directive, and there are proposals to bring all audiovisual media services under the jurisdiction of regulatory authorities. The proposal applies to all media services, legal entities or individuals, which have editorial responsibility. ARTICAL 19 expresses concern that this could lead to unnecessary regulation of the Internet media and justifies this measure only if it is about services that have a clear impact on a significant part of the audience, which means the market share of the company, the share of the audience, the number of views of the online service over a period of time, the profit or non-profit company, the size of the company or its reputation among the audience. Given the fact that media services can be distributed through different channels, ARTICAL 19 recommends EU to take into account the global impact on a significant part of the audience, through a combination of different channels, which is a feature of mass media. This, according to ARTICAL 19, should be a "threshold" to start a debate whether is needed, and which audiovisual media services would fall under regulatory authorities jurisdiction.

What is also necessary and will enable raising public awareness about media self-regulation is a greater presence of CMEM in the public, through the media and through other ways of self-promotion.

The European Federation of Journalists (EFJ) on December 2019 welcomed the registry on self-regulation of online media in Macedonia, which was announced same month by the Council of Media Ethics together with the Association of Journalists of Macedonia (AJM). EFJ General Secretary Ricardo Gutiérrez stated that believes that journalists' organizations should promote for the public benefit

high ethical standards in journalism, based on five principles: truth and accuracy, independence, fairness and honesty, humanity, and accountability. (EFJ, 2019)

CMEM believes that this initiative will promote self-regulation of online media by committing online media to respect the Code of Journalists and publishing decisions by the Council of Media Ethics. The “Register of Professional Online Media”, has over [70 members](#) committed to respect the principles of the CMEM Ethical Code.

In addition to the Council of Ethics, what exists in some countries is the so-called media ombudsman. It promotes dialogue between readers, listeners, viewers and media workers. The idea is to offer contact between media users (the public), improve self-criticism and to promote media credibility. The Ombudsman takes care to follow the rules and practice established by a particular media house, providing a kind of internal quality control. The Ombudsman communicates directly with readers, listeners and viewers through direct correspondence, especially today when everyone has e-mail. Correspondence allows for quick identification of deviations and public reactions. The ombudsman imposes sanctions that have moral weight. In an ideal situation, they are the conscience of the medium. Now comes the question: who can be an ombudsman?

The fast evolving nature of online media, and the complex jurisdictional questions thrown up by a globalised environment, place self-regulation at the heart of the evolving media landscape. There are two overarching principles if we accept that self-regulation is the necessary alternative to state control of the media. Firstly all media actors, professional or business have obligations to uphold in exchange for the freedom of state interference that they rightly claim. These obligations should be centered on the need to protect and promote freedom of expression. Secondly, all such obligations should be made explicit and transparent and be the subject of regular reporting in the public sphere. Both conditions are essential if self-regulation is to protect freedom of expression and not just the interests of companies themselves.

But we can't dismiss that there are numerous valid arguments against media self-regulation. In the United Kingdom, where self-regulation has proven to be very efficient in some sector such as advertising standards, it has at the same time proven to be highly ineffective in other sectors such as journalism ethics, as it has been shown by the “News of the World” phone-hacking scandal in the United Kingdom has revealed the weaknesses and even the failure of self-regulation. In the UK, the system has been criticized for being inefficient, as shown by the Leveson Inquiry. (Leveson, L. J. 2012) To avoid such situations, public support for transparency, efficiency and effectiveness of self-regulation needs to be reinforced, as well as support to the adaptation of self-regulatory system to the challenges that the digital era imposes on them, both in terms of content of the issues at the stake and in terms of material and territorial scope of their jurisdiction (adaptation of code of ethics to new practices such as the challenge of moderation of users and to new challenges such as the speed at which cases have to be handled, inclusion of new public concerns such as respect of privacy and of new hybrid media such as pure internet players or internet portals or social media...).

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# PROTECTION OF THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE IN THE ERA OF DIGITAL SOCIETY

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## ***Abstract***

Article 8 of the European Convention on Human Rights provides for the protection of privacy, the right to family life, home and correspondence. However, given the nature of the rights guaranteed by this article, it is quite normal to have a wide range of situations that cannot be listed in the article itself. At the same time, with the development of modern digital technologies and consequently, with the development of case law, the scope of application of this Article is expanding in practice. Thus, in addition to protecting the above rights, in accordance with the practice of the European Court of Human Rights, this article also includes the protection of the right to self-determination in relation to sexual orientation and sex life, the right to choose sex, the right to choice to have or not to have children, the right to adopt and similar rights. In order to protect the rights of its citizens, the state in today's global era of digital society must find effective and efficient methods for that purpose. In this paper, I will analyze Article 8 of the European Convention on Human Rights, with reference to the case law of the European Court of Human Rights and in terms of protecting the right to respect for private and family life in an age of digital society.

***Keywords:*** right to privacy, right to family life, digital society, modern legislation, European Convention on Human Rights (ECHR), European Court of Human Rights (ECHR).

## **INTRODUCTION**

At the outset of the paper we will refer to Article 8 of the ECHR, as well as to the work of the European Court of Human Rights (ECHR), specifically in the part of the judicial decisions concerning Article 8 of the Convention.

In the abstract of this paper we have mentioned that in order to protect the rights of its citizens, the state in today's global era of digital society must find effective and efficient methods for that purpose.

Therefore, we believe that by analyzing the Convention as well as the case law of the ECHR, we can find ways and solutions to improve the protection of the



rights and freedoms of the citizens in our country, especially in terms of the right to respect for private and family life.

### **BRIEF REFERENCE TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ARTICLE 8**

The evolutionary character of the Convention is seen in its openness to the gradual incorporation of new human rights, through the legal technique of further adopting protocols and their ratification by the member States of the Council of Europe. For example, the original text of the 1950 Convention covered only 16, and today's text covers about 25 human freedoms and rights. Consequently, the Convention objectively becomes a "lively" and dynamic text, constantly open to new content. (Shkaric and Siljanovska-Davkova 2009, 408)

This tells us enough about the evolution of the European Convention on Human Rights throughout history.

The control mechanisms for the protection of human rights in the Convention have greater scope and importance for the human rights of the space and the meaning of the content and wording of the rights themselves. The provisions on the protection of rights are three times more than the provisions on the number and content of rights. (Shkaric and Siljanovska-Davkova 2009, 409)

From this we can see that these control mechanisms are the result of the awareness that for the law primarily is important its protection, and even then, its content and the existence on paper. In other words, it is not enough the protection of rights to be guaranteed only on a piece of paper, when in practice it would not be applied literally.

Article 8 of the European Convention on Human Rights refers to right to respect for private and family life.

In paragraph 1 of this Article it is stipulated that: "Everyone has the right to respect for his private and family life, his home and his correspondence."

Paragraph 2 of the same Article stipulated that: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 8 has the same structure as all qualified rights in the Convention. This means that the first paragraph specifies the content of the guarantee, while the derogatory clause contained in the second paragraph lists the general conditions and particular grounds on which the State-party may invoke to limit the exercise of the rights and freedoms in question.

From the very wording of Article 8 of the European Convention on Human Rights, we can undoubtedly conclude that this Article guarantees a right which belongs to the group of personal freedoms and rights.

On the basis of these freedoms and rights, a civil society is formed as an autonomous society in relation to the state power. Later, this list of freedoms and rights is supplemented by new freedoms and rights that more fully express and protect the spiritual and physical integrity of man in terms of parliamentary

democracy. Thanks to these freedoms and rights, there are civil states in the world. (Shkaric and Siljanovska-Davkova 2009, 357)

Personal freedoms and rights protect and express the physical and spiritual integrity of man and his legal standing in society. In constitutional theory, these freedoms and rights are labeled as negative freedoms and rights or as a prohibited sphere of state power. (Shkaric and Siljanovska-Davkova 2009, 357)

This means that the state government, through its institutions and mechanisms at its disposal, must not arbitrarily and willfully engage in violation of personal freedoms and rights.

The emphasized value of personal freedoms and rights derives from the fact that they are natural rights, that is, they are universal moral rights arising from the natural needs of man. In other words, they are objective rights because belong to the sphere of reality, not in the sphere of the ideal, as is the case with some socio-economic rights. (Shkaric and Siljanovska-Davkova 2009, 357)

While Article 8 of the ECHR aims to protect the four areas of personal freedom: private life, family life, home and correspondence - these areas are not mutually exclusive and one measure can affect simultaneously both in the private and family life of man.

## **A BRIEF OVERVIEW OF THE WORK OF THE EUROPEAN COURT OF HUMAN RIGHTS**

The European Court of Human Rights (ECHR) has been established as an institution under the European Convention for the Protection of Human Rights and Fundamental Freedoms dating from 1950.

The European Court of Human Rights, following the adoption of Protocol 11, has become the only institution for the protection of human rights and fundamental freedoms set out in the European Convention. The Court has been operating on a permanent basis, based in Strasbourg, France, since 21 January 1959, as a supranational instance for the application of the Convention for the Protection of Human Rights and Fundamental Freedoms. (Marguènaud 1997, 1)

The Court has the power to decide on complaints ("applications") filed by individuals and States concerning the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly referred to as the "European Convention on Human Rights"), which mainly concerns civil and political rights. He cannot initiate a case on his own initiative. Namely, a person, group or non-governmental organization that submits the complaint ("applicant") does not have to be a citizen of a Member State.

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However, appeals lodged with the Court must relate to violations of the Convention, allegedly committed by a Member State of the Convention and which

directly and significantly affect the applicant. Since November 2018, there are 47 States Parties to the Convention; these include the member states of the Council of Europe and the European Union. Some of these states have also ratified one or more Additional Protocols to the Convention, which protect additional rights.

However, complaints submitted to the Court must concern violations of the Convention allegedly committed by a State party to the Convention and that directly and significantly affected the applicant. As of November 2018, there are 47 State parties to the Convention; these include the Member States of the Council of Europe and of the European Union. Some of these States have also ratified one or more of the Additional Protocols to the Convention, which protect additional rights.

As of August 1, 2018, the Court also has advisory jurisdiction. According to Protocol 16 to the European Convention, which entered into force on 1 August, the highest domestic courts in the member states of the Protocol may seek the advisory opinions of the European Court of Justice on the interpretation of the European Convention and its Protocols. Questions must arise in cases pending before a domestic court.

As of August 1, 2018, the Court also has advisory jurisdiction. Under Protocol 16 to the European Convention, which entered into force on August 1, the highest domestic courts in the States that are a party to the Protocol may request European Court advisory opinions on questions of interpretation of the European Convention and its protocols. The questions must arise out of cases pending before the domestic court.

The Court has jurisdiction over the following issues: individual appeals; interpretation of the Convention at the request of the member states of the Council of Europe and providing advisory opinions on legal issues related to the interpretation of the Convention required by the Committee of Ministers. (Shkaric and Siljanovska-Davkova 2009, 412)

Because the purpose of this paper is not to go into detail in the work of the European Court of Human Rights, there still would add only that the judgments of the Court are final and enforceable. At the same time, they are binding and enforceable on the member states of the Council of Europe. The Committee of Ministers is responsible for the execution of final and enforceable judgments of the ECHR, as well as to take the measures necessary for their execution in case of resistance or non-execution by a Member State of the Council of Europe.

It should also be noted that the ECtHR has developed a theory of the objective effect of its judgments, according to which the member states of the Council of Europe are adjusting their national right to the ECHR.

At the same time, the ECHR is the main source of European Union (EU) law in the field of individual rights. The ECtHR applies the ECHR to specific legal disputes and thus incorporates its provisions into EU law.

Also, it is important to emphasize that the European Court of Human Rights apply Article 8, paragraph 1 of the European Convention on the individual facts of each case, but avoided establish a common understanding of what exactly cover each point.

## **THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN MACEDONIA**

With the adoption of the Law on Ratification by the Assembly of the Republic of Macedonia in March 1997, the Republic of Macedonia ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and the First Protocol, Protocol No. 4, Protocol No. 6, Protocol No. 7 and Protocol No. 11. to the Convention. The Law on Ratification entered into force on 19 March 1997. Thus, from that day the Convention became an integral part of the national law of the Republic of Macedonia, with the possibility of immediate application in domestic courts that received the opportunity to judge on the basis of the Convention, and not only on the basis of the Constitution, laws and international agreements ratified in accordance with the 1991 Constitution.

The Republic of Macedonia has also ratified Protocols no. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13 and 14 to the Convention.

On June 16, 2016, the Republic of Macedonia ratified Protocol no. 15, which has not yet come into force. With this protocol, the deadline for submitting an application to the ECtHR will be shortened from the current 6 months to 4 months, and the principle of subsidiarity and the doctrine of free margin space (*margin of appreciation*) is introduced in the Preamble to the Convention as well as change the acceptance criteria relating to significant damage to clear the second condition to prevent rejection of the case, which is not sufficiently tested in the domestic courts.

The Protocol shall enter into force after all High Contracting Parties of the ECHR have completed the ratification / acceptance / approval procedures (in accordance with Article 6 of Protocol No. 15).

The principle of subsidiarity and the doctrine of admissibility margin have been added to the ECHR preamble. The principle of subsidiarity helps to maintain the position and role of the ECHR system, as a system that should primarily be implemented at the national level by each High Contracting Party. Therefore, the possibility of addressing the ECtHR is open only after all domestic remedies have been exhausted, making it impossible to view the ECtHR as a third-instance court. The margin of tolerance has long been debated. The Court applied the same over the years, but has also used it in cases where a decision has to be made to cross the line of subsidiarity.

With the confirmation of the Law on Ratification of the Convention, the Republic of Macedonia accepted the provisions of Articles 25 and 46 of the Convention, which accept the right of individual appeal against a Member State for violation of the freedoms and rights of the Convention, with a special statement that right recognizes it only for the period after 1 January 1998. At the same time, the Republic of Macedonia ratifies all Protocols to the Convention, including Protocol No. 11. (Shkaric and Siljanovska-Davkova 2009, 412)

## **PERSONAL FREEDOMS AND RIGHTS IN THE MACEDONIAN CONSTITUTION**

The 1991 Macedonian Constitution provides for the imperative personal freedoms and rights that constitute an international standard in this area and are

inherent in any modern democratic state. This group of freedoms and rights includes: freedom of thought, freedom of religion, freedom of movement and association, the right to liberty, the right to privacy and the right to citizenship.

The Constitution lays the groundwork for ensuring the security and confidentiality of personal data and protecting against the violation of the personal integrity of citizens. At the same time, the Constitution guarantees every citizen respect and protection of the privacy of his personal and family life, dignity and reputation.

Article 25 of the Constitution guarantees every citizen respect and protection of the privacy of his personal and family life, dignity and reputation. Article 26 also guarantees the inviolability of the home. The right to home inviolability may be restricted only by a court order when it comes to detection or prevention of crimes or the protection of human health. The constitution also guarantees the right to a healthy environment, as well as the right to health care. (Ananiev et al. 2018, 17)

In this part of the paper we will analyze the right to life and family life, as well as the right to privacy.

The right to privacy implies the right of every person to personal and family life, as well as the right to dignity and reputation. Accordingly, the Constitution guarantees every citizen respect and protection of the privacy of his personal and family life, dignity and reputation. In function of that, the Constitution guarantees the security and confidentiality of personal data and contains an express prohibition on their misuse against a person's personal integrity and dignity. (Shkaric and Siljanovska-Davkova 2009, 367)

Any unauthorized intrusion into privacy means a violation of a person's personality, dignity and freedom. It is a violation of personal autonomy, emotional feelings and intimacy as a private sphere of man. That which is not intended for other people's eyes and ears - as if it does not exist. It is "the holiest law of human behavior." (Golswordi 2004, 93)

This means that the right to privacy protects the individual from illegal and unfounded interference and intrusion into his privacy, i.e. from arbitrary actions of public bodies and institutions. In order to achieve full protection of the right to privacy, the four dimensions of the individual's personal autonomy must be protected, namely: private life, family life, home and individual correspondence.

In theory, there are different views when it comes to the right to privacy, but we would agree that it is almost impossible to define all aspects of this right. There is no doubt that each state has established its own definition of the scope and content of the right to privacy in its national legal system.

From the text of the Convention we have concluded that it guarantees the right to respect for private and family life. Here we would add that under the term private life, the ECtHR covers both the physical and moral integrity of the person, including sexual life.

Family life is set within the private sphere where it functions freely from the arbitrariness of the state authorities. The court decides on the existence of family life on the facts in each case, showing a high degree of flexibility in resolving disputes between the parties.

Home is a place where a person lives all the time. The home is also an object in which the person lives occasionally, if the person owns the object. Business premises can also be a home, if they perform professional activity that can be done in a private room. And in this case, the Court shows a high degree of flexibility. (Kilkelly 2001, 21)

From the above we can conclude that the right to personal data protection falls under the broader right to privacy and is basically intended to protect the citizen from possible intrusion of public authorities into his privacy, including his private data.

At the same time, the legislation related to personal data protection obliges those responsible to respect and apply the values for protection of this category of data, and grants the right to citizens to personal data protection, if this right is abused.

It is important to note that the European Court of Human Rights requires precise and clear national legislation restricting the right to private and family life.

Although the European Court of Human Rights has in most cases not challenged the legitimacy of the state's legal interference in the enjoyment of the right to privacy and family life, it still seeks to prove that the impugned measure is necessary in a democratic society if it meets the necessary social need and corresponds to shared values. Exactly the aspect of necessity, an integral part of which is the proportionality of the goal to be fulfilled with the interference of the state in the right to private and family life, is a field where in practice the dispute between individuals whose (allegedly) violated this right and states.

Article 8 over the years has shown that it can cover a growing number of issues and expand its protection to a range of interests that do not fall within the scope of other articles. The European Court of Human Rights has accepted the extension of the scope of Article 8. This is partly due to the fact that there is no comprehensive definition of the interests of the same article, which makes them fully adaptable to times that are rapidly changing.

## **CHALLENGES FOR PROTECTION OF THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE IN THE ERA OF DIGITAL SOCIETY**

The main purpose of Article 8 is to protect the individual from arbitrary interference in private and family life, the home and correspondence. This obligation is fundamentally negative, but states have a positive obligation to ensure the rights of Article 8 even in the field of interpersonal relations. Therefore, from a practical point of view, when filing an appeal, the applicant must show that his allegations relate to at least one of the rights of Article 8, that there was an unlawful interference, or that the State did not fulfill a certain positive obligation. Given that Article 8 does not protect any of the absolute rights, States may restrict the rights under Article 8 in the interests of state and public security, the country's economic well-being, the protection of order and the prevention of crime, the protection of health and morals, or protection of the rights and freedoms of others. Thereby, restrictions are allowed if provided by law and if necessary, in a democratic society. (Ananiev et al. 2018, 177)

It follows that the right to respect for private and family life provided for in Article 8 of the Convention may, in certain exceptional cases provided for by law, be restricted. With today's level of development of information and communication technologies, the private and family life of each of us is becoming more and more at risk. Anyone who uses the benefits of these modern technologies should also be aware of the degree of risk of possible misuse of their personal data.

Given the constant technological and economic development of society as a whole, the perimeter of the protection of the right to private and family life has changed over the years.

The modern social system generally functions as part of the globalization and digital connection of citizens, businesses, government agencies, international institutions and organizations. All this is driving the world's development trends further. States have realized that in order to keep pace with modern technologies brought about by accelerated technological progress, they must find appropriate mechanisms to protect, above all, the citizens of their countries and economic operators, and of course their national interests.

We live in an age of e-commerce, e-banking, digital connectivity and online communication, both between individuals and business entities. The degree of exchange of information and data, many of which are personal and protected by law, is indeed a significant part of the overall information communication that is taking place today. This is because the Internet and digital technologies offer new opportunities every day in every field of business. However, the Internet and digital technologies themselves are vulnerable to risk and threat. Hence, the necessary need arises to find appropriate mechanisms for protection of all data of citizens, business entities, state institutions and bodies that have public authority.

In other words, "The development of information technology and the rise of the use of the Internet in the focus of debate has raised questions about individual privacy and the protection of privacy by the state and society." (Stojanovska, 4)

Speaking of the risks and threats we are all exposed to on a daily basis, we need to find appropriate mechanisms to protect privacy.

The need for legal regulation of privacy protection as one of the fundamental human rights stems from the fact that privacy becomes a collective value conditioned by technological progress that inevitably imposes on all individuals the opportunity to have a similar degree of privacy. In order to ensure a minimum degree of protection, the creation of the legal framework for the protection of privacy must take into account the cultural, moral and customary values of a society. The relativity of privacy can be considered from two aspects, the first raises the question of whether privacy has the same value for all people or its value depends on cultural differences, while the second aspect refers to whether certain aspects of life are by definition private or not. (Stojanovska, 4)

When it comes to the conflict between the right to privacy and the right to protection of personal data, on the one hand, and the right to freedom of expression and information, on the other hand, it can be concluded that it is common. It happens between individuals, and even more often between individuals and the media. It is the right and duty of the state to restrict the right of the media when they have an excessive influence on the right to privacy and the protection of personal

data. The restriction of rights should be within reasonable limits and with respect to values, and the individual should go through certain obstacles that cannot be reasonably avoided; namely, individuals may, to some extent, be called upon to sacrifice their rights for those in the common public interest. (Stojanovska, 4)

Here, too, a few dilemmas arise. The first may be about whether it is necessary for an individual to sacrifice his rights in the name of the ideal of common public interest. The second dilemma could be within what limits and to what extent the rights of the individual would be limited and for how long. A third dilemma could be the degree of trust in the entity that would restrict these rights. Furthermore, the dilemma arises as to what the degree of protection of privacy would be in case of its restriction.

There is no doubt that the authorities are obliged to take adequate measures to protect the rights and freedoms of citizens. Some of the measures for protection of the safety of the citizens, but also of the other social stakeholders, include mechanisms of control of the access to certain data, raising the awareness of the citizens and the business entities, but also of the state authorities for the threats. privacy, risk assessment, and mechanisms for implementing protection measures themselves.

## **CONCLUSION**

From the above, we could see that the main goal of Article 8 of the ECHR is to protect the individual from arbitrary and unauthorized interference in private and family life, home and correspondence. Only in certain cases provided by law can this right be restricted.

With today's degree of accelerated technological development, and especially with the advanced development of information and communication technologies, the private and family life of the individual is becoming more and more exposed to risks and threats. Anyone who uses the benefits of modern information technology should be aware of the degree of risk of possible misuse of their personal data, i.e. violation of the right to privacy.

In the modern age of e-commerce, e-banking, digital connectivity and online communication, both between individuals and businesses, the degree of exchange of information and data, many of which are personal and legally protected, is a significant part of the overall communication that takes place.

The authorities are obliged to take appropriate measures to protect the rights and freedoms of citizens guaranteed by the Constitution and international documents. The guarantee of these rights should not only remain on paper, but also come to life in real life.

National authorities, and especially the courts, need to ensure that every citizen enjoys the said freedoms and rights and to prevent and sanction any attempt to endanger or violate guaranteed rights. Of course, the European Court of Human Rights is also available to citizens regarding the protection of these rights.



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# HUMAN RIGHTS OF STATELESS PERSONS AMIDST THE COVID-19 PANDEMIC IN NORTH MACEDONIA

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## **Abstract**

Confined in isolation on a social distance, the right to freedom of movement has been restricted during the past months to secure the protection of basic human rights and public health on national level. The different state policies and approaches to the challenges posed by the COVID-19 pandemic have raised the discourse around human rights. Regardless of the state response, human rights have been substantially placed in quarantine surrounded by possible violations, particularly in the case of stateless persons as marginalised and vulnerable group. The citizenship status and its exclusive rights might be failing to place the stateless persons in the discourse and their possible disabled access to human rights amidst the pandemic. The purpose of this research paper is to investigate what appears to be invisibility of stateless persons and potential human rights violations during the COVID-19 pandemic in North Macedonia.

**Keywords:** statelessness, COVID-19, pandemic, human rights, violations, state policy.

## **INTRODUCTION**

*“They are invisible (as opposed to we are blind),  
they live on the margins (as opposed to we’ve pushed them to the periphery)  
and they are illegal (as opposed to our law is unjust)”*  
- Amal De Chickera

In a world where globalization has instigated international cooperation between different state and non-state actors, as well as established international mechanism for protection of universal human rights, they seem to remain a privilege for some persons, while struggle for others. Being with citizenship status does not simply affect identity, but also the provision and protection of rights by the state, as well as active participation in all social spheres. Statelessness represents the absence of a legal contract between the individual and given state, where the state is obliged to protect the elementary rights of the individual, hence sanction every violation, while the individual carries a certain burden of obligations. A stateless person resembles a phantom walking on the territory of a country, invisible to the legal, educational and welfare systems. The stateless have not been registered since birth and do not have the proper documents to prove their identity. These factors delimit

their ability to access human rights, including the right to life, health, education, work, freedom of movement, as well as freedom from any form of discrimination. Disabled access to these human rights is most visible in marginalized social groups, including the stateless, therefore states must address the necessities of these groups carefully during the pandemic whose unprivileged social status could affect the distribution of emergency relief. The absence of legal status in their cases additionally implicates their access to opportunities, placing them on the margins of society with unequal positions.

Accommodated between the legal and social field, this paper examines the invisibility of stateless persons and the potential implications for human rights, amidst the COVID-19 pandemic in North Macedonia. The research paper attempts to provide an answer to what extent statelessness has caused violations of human rights during the pandemic in a country which has obliged to implement mechanisms for eliminating statelessness. Demonstrating the possible violations of human rights due to absence of and its observation as a privilege challenging the universality of human rights, I would make an effort to demonstrate the potential struggles of stateless persons in an institutionalized labyrinth during difficult and uncertain times.

The relevance of this study consists in emphasizing the possible violations which should be addressed in order to improve the situation of the stateless, as the world is currently amidst the pandemic. Stateless persons seem substantially absent from the human rights discourse during the COVID-19 health crisis, which must be emphasized. States are obliged in any situations including state of emergency and lockdowns to secure and protect the rights of their citizens, but also human rights to all persons on their territory who do not have citizenship status, as well as secure the right to nationality to the stateless. The universality of the above mentioned human rights must be secured regardless of the pandemic, moreover their protection is crucial amidst a world pandemic.

## **INTERNATIONAL NORMATIVE FRAMEWORK ON STATELESSNESS**

The crucial international legal documents that regulate statelessness are *The 1954 Convention related to the Status of Stateless Persons* and *The 1961 Convention on the Reduction of Statelessness*, as well as other documents regulating the right to nationality and other human rights<sup>1</sup>. The states are obliged to fulfill the obligation acquired with the signature and ratification of international documents, however the problem arises in the invisibility of stateless persons in the states. Having in mind that stateless persons are not registered, human rights violations in their cases might be substantially disregarded. Their marginalized position results from the absence of substantive equality. According to former UNHCR assistant high commissioner for protection, statelessness was not on the international agenda due to the life of stateless persons in the shadows. She further stated in 2011 for Deutsche Welle that “People who are stateless people, that is people who do not

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<sup>1</sup> UN Conventions on Statelessness. Retrieved at: <https://www.unhcr.org/un-conventions-on-statelessness.html>

have an effective nationality or a country that is prepared to exercise protection and consular services on their behalf, they are exceedingly vulnerable people”.<sup>2</sup>

Fundamental rights and principles particularly protecting stateless persons are enshrined in the *1954 Convention related to the Status of Stateless Persons*. According to the 1954 Convention a stateless person is someone who is “not recognized as a national by any state under the operation of its law.”<sup>3</sup> Stateless persons do not have legal connection with any state, hence are unable to access fundamental rights and active participation in society, particularly political participation through the right to vote in matters implicating their life. The 1954 Convention guarantees stateless persons the right to housing, health, education, employment, as well as identity and documentation<sup>4</sup>. While the above mentioned Convention focuses on specter of rights regarding stateless persons, the 1961 Convention emphasizes the right to nationality. It establishes firm legal grounds to prevent or significantly reduce statelessness. It encourages state to amend their nationality laws allowing children to acquire the citizenship of the country of birth, when none other could be acquired, particularly in cases when the parents are stateless.

North Macedonia has ratified the Conventions on statelessness, however the absence of statelessness determination procedure and stateless protection status remains<sup>5</sup>. There is an evident effort to resolve the problematic with the modification of nationality laws. According to nationality laws North Macedonia accepts the principle of *jus sanguine*, acquiring the citizenship of the parents. However, the modified nationality laws allow the child to receive citizenship status according to the principle of *jus soli* if born on the territory of North Macedonia to stateless parents. Although this decreases statelessness, barely solves the problem. The Law on unregistered persons in the birth register was passed in February 2020 and immediately after entered into force, but the implementation of its provisions were postponed until the termination of the state of emergency. The existence of normative framework concerning statelessness could be oblivious to its implementation in practice. This represents a problem during state of emergency and health hazard that required reducing of working capacities in order to prevent the spreading of the virus, nevertheless the states must not be ignorant and forget the most vulnerable populations including stateless, refugees, homeless, persons living in poor sanitation and economic hardship.

## **THE IMPACT OF COVID - 19 PANDEMIC ON STATELESS PERSONS IN NORTH MACEDONIA**

Citizenship could be defined as a legal bond between the state and the individual. Although there is a difference between ethnicity and citizenship, what could be observed in the context of North Macedonia is the possible interconnection

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<sup>2</sup> Invisible and vulnerable, world's stateless face bleak future (2011). Retrieved at: <https://www.dw.com/en/invisible-and-vulnerable-worlds-stateless-face-bleak-future/a-15350795>

<sup>3</sup> UN Conventions on Statelessness. Retrieved at: <https://www.unhcr.org/un-conventions-on-statelessness.html>

<sup>4</sup> Ibid

<sup>5</sup> Statelessness Index on North Macedonia (2020). Retrieved at: <https://index.statelessness.eu/country/north-macedonia>

between statelessness and ethnic belonging. Although it is impossible to determine the number of stateless persons, according to a 2018 report on Statelessness in North Macedonia, majority of the stateless persons belong to the ethnic Roma community, and significant portion to the ethnic Albanian community.<sup>6</sup> North Macedonia has received four universal periodic reviews concerning statelessness which demonstrate disproportionate impact of statelessness on Roma, Ashkali and Egyptian community<sup>7</sup>. According to Chickera “the condition of statelessness adds a layer of vulnerability, exclusion and complexity to the experience of minorities, refugees and the poor.”<sup>8</sup> Precisely inequality creates a divergence between human rights and legal status of persons, placing citizens in more favorable positions. According to political scientist David Held citizenship is a “principle that recognizes the indispensability of ‘equal autonomy’ for all citizens, representing individuals and groups as political agents”<sup>9</sup>, more narrowly determined as opposed to the colloquial definition of citizenship as membership to a certain group accompanied by previously defined set of rights and obligations. Deprived from the most fundamental rights with disabled access to the benefits of the welfare system the stateless were marginalised prior the emergence of world pandemic, however the current health hazard might additionally endanger their well being<sup>10</sup>. The Minority Rights Group has closely followed the situation and conditions of the stateless during the pandemic and has stated on the matter that:

*"In Democratic states, measures including border closures and movement restrictions, health assistance, emergency relief and economic stimulus packages, privilege citizens and their concerns. Migrants, refugees, populations at risk of statelessness and the stateless themselves are left behind"*<sup>11</sup>

The international community has placed the stateless in the human rights discourse during the pandemic by issuing guidelines and documents concerning protection and treatment of persons without citizenship status. One of the relevant documents provided by United National High Commissioner for Refugees (UNHCR) enshrines policy recommendations and elaborates on the impact of COVID 19 on the stateless. These measures incorporate the situation of stateless persons who are unable to access assistance, health care or emergency relief due to unregulated legal status, or are unwilling to reveal their statelessness due to fear of

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<sup>6</sup> Conclusions and Recommendations from the analysis of the legal framework related to the registration and citizen registration regarding the connection (2018). Retrieved at [://myla.org.mk/wp-content/uploads/2020/07/мзмп-бездржавјанство-2.pdf](http://myla.org.mk/wp-content/uploads/2020/07/мзмп-бездржавјанство-2.pdf)

<sup>7</sup> Statelessness Index on North Macedonia (2020). Retrieved at: <https://index.statelessness.eu/country/north-macedonia>

<sup>8</sup> De Chickera, A. (2020). As the world washes its hands of the stateless, they risk facing COVID-19 alone. Retrieved at:

<https://www.opendemocracy.net/en/world-washes-its-hands-stateless-they-risk-facing-covid-19-alone/>

<sup>9</sup> David Held. Democracy and the Global Order: From the Modern State to Cosmopolitan Governance (Cambridge: Polity Press, 1995), quoted in: C. Haas. What is citizenship- Introduction to the concept and alternative models of citizenship. 1st Ed. (Copenhagen Active Citizenship and Non-formal education. 2001), p.4

<sup>10</sup> Minority Rights Group (2020)Joint Statement: In Solidarity with the Stateless. Retrieved at: <https://minorityrights.org/2020/05/27/in-solidarity-with-the-stateless/>

<sup>11</sup> Ibid

being deported or removed from the country<sup>12</sup>. Other documents containing urgencies and guidelines concerning the stateless have been issued including the urgent call to States, donors and other stakeholders to promote and protect the rights of stateless persons in their COVID-19 responses endorsed by 84 civil society actors, as well as the document by European Network on Statelessness regarding involving stateless people in Europe's COVID-19 responses<sup>13</sup>. Observing the reaction by the international community concerning the situation of the stateless during the pandemic it is safe to assume that recommendations and guidelines have a quite strong and united front concerning the stateless. States are obliged to take positive action toward protecting the rights of the stateless, as well as recognize the possible emergence of discriminatory practices and social stigmatization. The Stateless must be provided with proper and sanitary living conditions, means to access online education, uninterrupted functioning of essential bureaucratic services and access to the citizenship procedure, as well as proper health care and provision of information regarding prevention and treatment for corona virus. As the UN High Commissioner for Refugees Filippo Grandi stated:

*"Millions of people around the world are denied a nationality and the legal rights endowed with it. They do not exist on paper and most often live on the fringes of society. Our worry is that at such a critical time, in the middle of a global pandemic, they now are at great risk of being left behind in the response"*<sup>14</sup>

## **POVERTY AND HEALTH CARE**

The anomic world as painted by the COVID 19 pandemic reflects economic loss and health crisis. However, poverty was already part of the palette of colors driven by disparities and unjust laws influencing opportunities of the most vulnerable social groups. As observed during the COVID-19 pandemic, the right to health is interdependent from economic opportunities and realizing the right to work, deprived to the stateless as they are mostly found in the informal economy without social and health protection. As Martinez-Juarez et.al contend "the success of our global response to this pandemic will rely on the responses of the weakest health systems, sadly, health remains a luxury for many low-income populations" (2020, p.1)<sup>15</sup>. They further state that poverty causes shorter life expectancy and

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<sup>12</sup> UNHCR The UN Refugee Agency (2020). UNHCR warns stateless people risk being left behind in coronavirus response. Retrieved at: <https://www.unhcr.org/news/press/2020/5/5eb95222ec/unhcr-warns-stateless-people-risk-behind-coronavirus-response.html>

<sup>13</sup> Garza, I. (2020). How can we ensure access to health for the Stateless during Times of COVID-19?. Retrieved at: <https://oneill.law.georgetown.edu/how-can-we-ensure-access-to-health-for-the-stateless-during-covid-19/>

<sup>14</sup> UNHCR The UN Refugee Agency (2020). UNHCR warns stateless people risk being left behind in coronavirus response. Retrieved at: <https://www.unhcr.org/news/press/2020/5/5eb95222ec/unhcr-warns-stateless-people-risk-behind-coronavirus-response.html>

<sup>15</sup> Martinez-Juarez, L.A. Sedas, A.C. Orcutt, M. Bhopal, R. (2020). Governments and International Institutions should urgently attend to the unjust disparities that COVID-19 is exposing and causing. *EClinicalMedicine*. 2020 Jun. 4. Retrieved at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7272149/>

contributes to the appearance of co-morbidities as risk factor for the treatment of COVID-19.

The right to health and proper health care is enshrined in the fundamental documents of human rights, including the Universal Declaration of Human Rights and The Covenant on Economic, Social and cultural rights. As crucial concept it entails the nadir of health standard which states must ensure in order to provide and protect the right to health. There are surviving inconsistencies and discussion around the margins of required state action in order to ensure minimum health care, nevertheless in times of world pandemic it is crucial to secure the access to information, treatment and prevention, as well as proper health care that safeguards well being and the fundamental right to life. Although protected by crucial international legal documents, health care was not universally available to populations, and the consequences have been merely disclosed during the COVID-19 pandemic. The access to the health system understands regulated status, which excludes the stateless. States were urged to modify practices and allow access to treatment for every person during the health crisis. There is insufficient research regarding the access to health care by the stateless in North Macedonia, which by itself could be problematic.

Stateless persons seem to be observed and treated as objects of law, rather within their own subjectivity and active participation, hence they might be excluded from the planning and decision-making process, victims of several human rights violations including disabled access to social welfare.<sup>16</sup> The Stateless had difficulty accessing health services prior the appearance of COVID 19, which further threatens their social security. They are subjects to xenophobia and discrimination, denied access to information in a language they understand concerning prevention and treatment, as well as exclusion from emergency relief due to absence of identity or documentation<sup>17</sup>. The procedure for testing included correspondence with family or assigned doctors who further coordinate the process. Being unregistered and without legal status, stateless persons might have been unable to access testing procedures and treatment. Further the marginalized position of the stateless and economic dependency does not allow them for treatment in private health clinics. The inability of the stateless to access health care and proper information, as well as insanitary living conditions increase the risk of infections and spreading the virus.

### ***ADMINISTRATIVE PROCEDURES AND THE RIGHT TO NATIONALITY***

The states have implemented in the past months restrictive measures in order to prevent the spread of the virus, including lockdown. Measures concerning closure of vital institutions as the birth and civil registry have immense impact on the stateless, moreover they would be unable to access administrative procedures for acquiring nationality<sup>18</sup>. Therefore states are urged to consider birth and death service

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<sup>16</sup> De Chickera, A. (2020). As the world washes its hands of the stateless, they risk facing COVID-19 alone. Retrieved at:

<https://www.opendemocracy.net/en/world-washes-its-hands-stateless-they-risk-facing-covid-19-alone/>

<sup>17</sup> Minority Rights Group (2020) Joint Statement: In Solidarity with the Stateless. Retrieved at: <https://minorityrights.org/2020/05/27/in-solidarity-with-the-stateless/>

<sup>18</sup> Ibid

as crucial in the situation of the stateless amidst the pandemic, allowing for written and electronic services for determination of statelessness procedures, as well as secure extension of nationality or residency status for the duration of the pandemic<sup>19</sup>. The birth and death registries in North Macedonia continued working during the pandemic with fewer administrative workers as other institutions. The working capacities in every institution have been decreased and the procedures required time. During the state of emergency the Government adopted a decree with legal force concerning the implementation of the Law on Foreigners, stating in Art. 3 that:

*“The validity of the temporary residence permit and the permanent residence permit which have expired, i.e. it would have expired throughout the duration of the state of emergency, and after the termination of the state of emergency, is extended throughout the duration of the state of emergency, as well as after the termination of the the state of emergency until August 31, 2020.”<sup>20</sup>*

Stateless persons with residence permits, refugee status or subsidiary protection whose documents required extension during the state of emergency or post termination of the state of emergency had automatically been granted extension with the decree, pending further extension by 31st of August. As the deadline has passed and the situation remains uncertain, it is yet to be seen whether these measures will be reintroduced in the upcoming months. There is space for great improvement regarding the elimination of administrative impediments for registration of the stateless and regulating their status in order to secure access to human rights.

## CONCLUSION

Stateless persons could be visible and recognized in the future human rights discourse with drastic modification of national laws and procedures. States must additionally ensure the particularity of the stateless in uncertain times and ensure freedom from discrimination and hate speech, as well as modify administrative practices in order to guarantee the universality of human rights. Undoubtedly, stateless persons were exposed to human rights violations prior the pandemic, however the impact of the pandemic is immense and could lead to irreparable consequences. The pandemic has further brought into light the discriminatory practices and unjust laws, as well as the constant need for protection of universal human rights and action towards eliminating inequality which places the stateless in marginalized position.

The stateless are substantially invisible during the pandemic in North Macedonia. Although there is evident effort to modify administrative and procedural matters in order to ensure their status, there is insufficient data regarding their

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<sup>19</sup> Garza, I. (2020). How can we ensure access to health for the Stateless during Times of COVID-19?. Retrieved at: <https://oneill.law.georgetown.edu/how-can-we-ensure-access-to-health-for-the-stateless-during-covid-19/>

<sup>20</sup> Official Gazette of RSM, no. 169 dated 22.6.2020, Decrees with the force amending the Decree with the force of law enforcement agencies for foreigners (\*) during state of emergency. Retrieved at: <https://myla.org.mk/wp-content/uploads/2020/06/izmena-Zakon-za-stranci.pdf>



access to health care, as well as emergency relief and economic measures for unemployment caused by the pandemic. As the COVID-19 continues to occupy the world, it is essential that states, including North Macedonia, place the marginalized groups of population and their interests in the process of decision making, as well as secure universal implementation of human rights and freedoms, for the well being of every human being.

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## CREDIT CARDS SECURITY AND CYBERCRIME

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### **Abstract**

Together with the improving technology, that meeting the increasing demands of consumers requires new means of paying is one of the most important factors in the system of paying with credit cards. The increase in the number of the people using these cards and in spending has made it possible to give new physical shapes in appearance and utilization of them on the basis of the customers' demands. Credit cards can make life easier. They let you pay for items and services online, you can leave your cash at home when you go shopping, and when emergencies pop up, you can handle them even if you don't have enough saved. Unfortunately, credit card fraud is on the rise. Every cardholder should be aware of what cyber security measures to take to protect their card data.

**Keywords:** Credit Cards, Market of Credit Cards, Cybercrime, Security.

### **INTRODUCTION**

The dynamics and character of today's global economy break down all conventional, spatial and temporal barriers, especially in the functioning of banking. Rapid technological development has imposed the need to redefine the role and functions of banking institutions in the financial system. Electronic operations, the use of the Internet and modern telecommunication systems have caused radical technological changes in the functioning of banking institutions.

The development of macroeconomic factors with increasing demands and needs of individuals, forces companies that offer payment card services to develop in this direction. Along with the development of technology and due to meeting the needs of consumers, there is a need for new ways of payment. New payment methods are the most important factors in the development of the payment card system.

Electronic technology is increasingly used in modern business, ie a growing number of banking institutions in the world operate according to the concept of electronic banking. Electronic technology enables banking institutions to use electronic payment cards in the work with their clients, and the developed

information network enables modernization of their operations. Banks have set up their own ATM networks, and POS payment terminals with payment cards have been set up in trade (Heffernan Sh. 2004, p.154).

The payment card is an instrument for non-cash payment operations, ie non-cash payment for products and services. Payment cards are mainly divided into four major groups: Credit card, charge card, debit card and store card. Each payment card, whether it is a debit card, credit, card for customers with regular monthly income, etc., with its design and functionality, is adapted to the market segment to which it refers. Cards are a simpler and more efficient way to purchase deferred payment, and installments are deducted from the user's account on the due date. Payment cards have other advantages, ie they enable cashless payment, cash with drawal from ATM's 24/7, online shopping and more.

However, it must be emphasized that, in addition to the numerous advantages that payment cards offer as modern non-cash payment instruments, there are certain disadvantages that arise from their use. Namely, payment cards, lately, are often subject to abuse and manipulation by some people who are well versed in modern technology and the ways in which they can manipulate them.

The first payment cards appeared in the United States in the 19th century, known as "plastic money". Due to the advantages, such as reducing the risk of carrying cash, the ability to collect points - free shopping with those points and simplifying the method of payment, payment cards occupy a huge and important place in everyday life. In the beginning, when payment cards first appeared, their issuance was not as simple and fast as it is today. Today, unlike before, banks have the opportunity to issue credit cards to their customers who meet the requirements for holding such cards within 20 minutes (Putthof H.H. 1974, p.230).

The number of payment card users, as well as the increase in costs and transactions made through these cards, paved the way for competition between institutions or companies that offer card payment services. As a result of such competition, the physical appearance of payment cards and the properties for the use of payment cards are adapted to the wishes and needs of the users of such services - payment cards.

The payment card market is changing every day. Given the huge competition in the payment card market, the success of companies that issue such cards is related to the company's closeness to its customers, as well as meeting the needs of its customers. In the payment card market, the issuance of cards that will be the most sought after, most used and most desired by individuals, of all the cards that exist due to the huge competition of companies, occupies an important place. Companies strive to attract as many customers as possible who will use their payment cards and issue cards that will meet the wishes and needs of their customers, and not just issue cards that will not be desired and used by individuals (Schonle H. 1976, p.431).

## **DEFINITION OF PAYMENT CARD**

The term payment card means all cards with the use of which their user specifies an order of the bank to make non-cash payment of a certain amount of

money at the expense of his coverage on the bank account or within the approved loan.

There are different definitions of payment cards:

Payment cards, which began to be used in the United States in the 19th century, are a means of payment used in a variety of workplaces and are not limited by limits. The word "*credere*" in Latin "*credere*" has the meaning: "trust someone". Therefore, the company that issues the credit or payment card, issues that card after it is assured that the user will settle its debts on time and after doing all the necessary research for the user. From the above, the term credit card is used instead of a trust card (Uludağ İ. & Arıcan E. 2001, p.139-140).

According to another definition, the payment card is defined as: "agreement between the bank and the person to whom the payment card is issued, by which the user is authorized to use the funds approved by the bank".

"Credit card is a means of payment and the cardholder has the opportunity to pay for goods and services without using cash and to withdraw credit from banks and ATMs" is another definition of credit cards.

According to another definition, a credit card is defined as a means used to pay for goods and services with late payment and without the need to use cash, it is enough for the credit card to be connected to one system (VISA, MasterCard, etc.) (Ekinci M. & Esen S. 2005, p.364).

A payment card is defined as a means of payment used to pay for goods and services in millions of jobs, also online, and which is made of some plastic ingredients.

A payment card is a plastic card equipped with a magnetic stripe / chip on which significant data about its user are recorded, and it is issued by the bank and it can be used to pay for goods and services, but also to withdraw cash.

Payment cards are electronic means of payment that contain information about the cardholder's cash or are connected to the bank's computer center.

Payment cards can be defined as a specific non-cash payment instrument, issued by financial, commercial or specialized organizations, which can enable the user to fulfill their payment obligations to the sellers of certain goods or services by presenting the card. Thus, the term payment cards mean all cards with the use of which their user specifies an order of the bank to make non-cash payment of a certain amount of money at the expense of his coverage on the bank account or within the approved loan. It is payment cards, as a means of mass use of banking services, are "to blame" for the rapid growth of electronic banking. They aim to reduce the cash in circulation, but also to provide a certain comfort and status symbol to its user (Yılmaz E. 2000, p.124).

Payment cards are made of plastic with specified standard dimensions (dimensions are defined according to ISO / IEC 7810 ID-1 standard and are 85.60 × 53.98 mm, have rounded corners with a radius of 2.88 to 3.48 mm and the thickness of the card is 0.8 mm). Each payment card has a number defined according to the ISO / IEC 7812 numbering standard. On the front of the card is the name of the bank that issues that card, the owner of the card, the date by which it is valid and the logo with which it is branded. On the front of the smart cards, there is also an EMV (Europay, MasterCard and Visa) chip that is globally standardized for chip cards

according to the ISO / IEC 7816 standard, and on the back of the payment cards, there is usually a magnetic stripe, place of signature of the cardholder and security code of the card (this code is often used to verify the card in online payments and provides greater protection against fraud). It is usually requested for transactions made via the Internet, e-mail, fax or telephone. The code is a three-digit value, and these are the last three digits printed on the signature area on the back of the card. It is also called card security code (CSC), card verification data (CVD), card verification value (CVV or CVV2), card verification value code (CVVC), card verification code (CVC or CVC2), verification code (V-code or V code), card code verification (CCV) or signature panel code (SPC) (Gledović, B. 2008, p.100).

### **DIVISION OF PAYMENT CARD ACCORDING TO THE PAYMENT CARD USER**

All cards according to their users are divided into two basic types, namely (Zečević, M. 2009, p.305):

- cards intended for individuals and
- cards intended for legal entities

The main difference between these two types of cards is in the bank account. With the card intended for individuals, the payment is from the current account of the card user, ie. from his personal income. With the card, intended for legal entities, the collection is from the account of the business entity, ie the legal entity. In both cases the card is personalized in the name of the person authorized to pay with it.

### **ACCORDING TO THE TYPE OF PUBLISHER**

The cards are used to carry out business transactions depending on who their issuer is. Accordingly, the cards are divided into (Zečević, M. 2009, p.305):

- PAYMENT CARD
  - bank cards;
  - other franchisees and card issuers - (Diners Club, American Express);
- OTHER CARDS
  - club cards;
  - identification cards.

### **ACCORDING TO THE FUNCTIONS OF PAYMENT CARD**

According to the functions, payment cards are divided into (Carow A.K. & Staten M.E. 1999, p.222):

- horizontal (credit, debit, corporate, loyalty card) and
- vertical (gold, work, classic, online card).

### **ACCORDING TO THE MANNER OF COLLECTION OF THE TRANSACTION**

This division is made depending on the time when the payment is made, and includes the following types of cards (Uroš, T. 2006, p.405):

- pay before - prepaid card;
- payment at the moment of the transaction - pay now (debit card);
- deferred payment - pay later (credit card).

## **PAYMENT CARD SECURITY CYBERCRIME**

Global computer networks enable the creation of new forms of crime. The Internet, which is so vulnerable and insecure, due to the large number of users, openness and the large number of unregulated areas for safe use, is an ideal hiding place for criminals of various types.

It took a long time to establish the definitions of cybercrime, which was not possible during its infancy, but as the definition process developed, a new phenomenon emerged - cybercrime.

This type of crime means "crime which refers to any form of crime that can be committed with computer systems and networks, in computer systems and networks or against computer systems and networks" (Gledović, B. 2008, p.120).

It is a crime that, in essence, takes place in an electronic environment. Computer system means "any device or group of interconnected devices with which automatic data processing (or any other function) is performed", as defined in the Convention on Cybercrime by of the Council of Europe, then it is clear that without the electronic environment there will be no such type of crime. It is a complex term that covers a variety of criminal activities, including attacks on computer data and systems, computer-related attacks, content or intellectual property.

There are many definitions of what constitutes cybercrime and cyber terrorism. At one time there was confusion as to whether these two terms were synonymous or not. Some authors advocate the thesis that these two terms are synonymous, but others are not advocates of this thesis (Ачкоски, J. 2012, p.23).

The primary goal of cyber terrorism is to infiltrate the system of a certain institution where it aims to cause some damage (financial loss, casualties, damage to property) which will contribute to the destabilization of the security of the country itself.

Hackers, who usually cause cybercrime, often do this for fun and complete with each other for greater personal success, as well as for property and other purposes. On the other hand, hackers (cyber terrorists), who are often part of terrorist organizations, such as Al Qaeda, ETA, IRA, etc., do this for a specific political purpose.

Also, according to some authors, a division can be made that hackers who carry out entertainment attacks can be classified in the group of ordinary criminals, while cyber terrorists should be classified in the section of a more serious form of specific crime.

Cyber terrorists can attack clearly defined targets, which are of strategic importance in individual countries, which does not mean that the attack must be on a larger scale in order to achieve a specific goal. For example, the target of an attack could be a power plant that provides electricity only to the population living nearby. Performing this type of attack can cause damage on a smaller scale, but achieve a greater effect (Michael W. 1986, p.400).

Cybercrime is a form of criminal behavior in which computer technology and information systems are used to commit crimes or the computer is used as a means, ie a target and the consequences have a criminal-legal meaning. Cybercrime is also illegal data breach when it is changed from its previous state (so-called

computer manipulation), destruction (so-called computer sabotage) or when used in conjunction with hardware (so-called time theft).

Computers and computer technology can be abused in a variety of ways. Namely, the crime committed with the help of a computer can take the form of any other type of traditional criminal activities, ie theft, evasion, embezzlement, etc., while the data collected without authorization by misuse of information systems can be used on different ways of gaining illegal utility (Birch D.G. 2000, p.247).

Credit card data theft is one of the most feared Internet phenomena. Fear that credit card information will be stolen often prevents consumers from shopping online.

In the past, the most common cause of credit card fraud was lost or stolen cards used by others, followed by the theft of user numbers by employees and stolen identities (criminals applying for fake identity credit cards).

But today, the most common reason for stolen credit cards and stolen credit card data is the systematic hacking and robbery of corporate servers where information on millions of credit card purchases is stored.

Payment card abuse is becoming more common, especially in countries where this product and method of payment is still a novelty.

The misuse of payment cards can be enabled by its user, mainly by careless attitude towards the card. Cardholders are often unaware of the risk of using the card, and some research shows that users are not interested in the proper ways of protection, believing that it is the responsibility of the bank and the competent services to control payment operations. There is a wide range of possible misuse of payment cards, but most of it comes down to one thing: stealing card data, which later allows the "new" user to use it unauthorized. With the theft of card data, the "prospective" double user has the opportunity to use the funds for a long time, practically while being careful enough for the cardholder not to notice that the amount of his account is gradually decreasing. The actual user still physically owns their card but is unaware of their duplicate account (Tanacan O. 2003, p.760).

Card theft is done with fake readers, placed at ATMs or toll booths. Such devices copy the data from the card as well as the entered PIN codes. The data is later used to make fake duplicate cards or other electronic payment services.

The theft of the user's identity is most often done online with the help of fake shopping sites or fake bank sites, so called fishing sites. The users of the account practically negotiate and are persuaded to leave their data on those sites. Specifically, users catch themselves in the network of thieves.

There are several ways in which payment cards can be misused, i.e. several ways to provide data for counterfeiting payment cards, such as: using special equipment for recording data from magnetic tape and PIN code when using ATMs (skimmers, cameras, pinpad etc).

Skimmers are devices used for unauthorized collection of data from payment cards, namely data located on the magnetic stripe of the payment card and data for the PIN (Personal identification number) code of the card. There are two types of skimmers, i.e.

- a) fixed, which are mounted on ATMs (ATMs) and
- b) mobile, which read only the magnetic tape record.

Skimmers contain a medium for storing data obtained from other parts of it. The data reader of the magnetic stripe on the payment card is in the shape of the input segment of the ATM and the payment card passes through it unnoticed (Tuzun O. 1995, p.603).

Mobile skimmers are devices that criminals install in point-of-sale (POS terminals) terminals, or ATMs from which they copy account user data on an inserted payment card from a magnetic stripe on the back on the card. If the user uses a debit payment card, the personal identification number of the user (PIN) is copied together with the mentioned data. Copied data is later used to make counterfeit credit or debit payment cards to withdraw money from ATMs.

The cards are owned by the citizens and it is their duty to get acquainted with the proper ways to use and protect their cards.

An equally confounding issue has to do with the scope of cyber-crime. There is a vast range of illegal behavior that could be identified as cyber-crime. Consequently, there seems to be a degree of ambiguity about what is being discussed when the subject of cyber-crime is broached. Fraud, technology theft, security breaches, identity theft, child pornography, and even stalking all potentially fall within the realm of cyber-criminality. Even within the computer community, there seems to be some disagreement about which kinds of behavior should be classified as criminal. There are some who would argue that certain forms of hacking, where a secure computer system is breached and perhaps altered, should never be thought of as a criminal act. Advocates for this position would maintain that the motivation for these actions is often not malicious and may even prove to be beneficial in terms of identifying security shortcomings. Instead, this group would rather see a focus on only those cases where sabotage or financial gain is involved. Some definitions of cyber-crime are relatively narrow in focus. In some cases, only hacking behavior would fall under the definition of what constituted cyber-criminality. For example, the Council of Europe's Cybercrime Treaty makes reference to only those offenses that involve damage to data or to copyright and content infringements. However, most experts would agree that this definition is much too narrow and needs to take into account more traditional crimes, such as fraud and stalking, that make use of computers.

The legal definition of cybercrime used in the United States takes a relatively broad view of the kinds of behavior constituting computer crime. The United States Code proscribes a range of conduct related to the use of computers in criminal behavior, including conduct relating to the obtaining and communicating of restricted information; the unauthorized accessing of information from financial institutions, the United States government, and —protected computers§; the unauthorized accessing of a government computer; fraud; the damaging of a protected computer resulting in certain types of specified harm; trafficking in passwords; and extortionate threats to cause damage to a —protected computer. Taking into account the statutory provisions of the United States Code, the Federal Bureau of Investigation identifies a number of computer-related crimes that are part of their —cyber mission, including serious computer intrusions and the spread of malicious code, online sexual predation of minors and child pornography, the theft of U.S. intellectual property, breaches of national security, and organized criminal



activity engaging in Internet fraud (Federal Bureau of Investigation, 2006). As technology continues to expand and as offenders become more sophisticated in their criminality, new variations in computer crime are bound to emerge. Consequently, it may be better to try to define cybercrime in categorical terms rather than with precision. For example, Broadhurst identifies six offense categories and the current kinds of cyber crime that tend to fall in these categories:

- Interference with lawful use of a computer – which includes such crimes as cyber-vandalism, cyber-terrorism, and the spread of viruses, worms and other forms of malicious code.

- Dissemination of offensive materials – which includes child pornography, other forms of pornographic material, racist/hate-group material, online gambling, and treasonous content.

- Threatening communication – which includes extortion and cyber-stalking.

- Forgery and Counterfeiting – which includes identity theft, phishing, IP offenses, various kinds of software and entertainment piracy, and copyright violations.

- Fraud – which includes credit card fraud, e-funds transfer fraud, theft on internet or telephone services, online securities fraud, and other types of Internet fraud.

- Other types of cyber-crime – which includes interception of communications, commercial and corporate espionage (Federal Bureau of Investigation, 2006).

The risk groups of cyber crime are every person, couples, family, companies, organizations, even and states.

The scope of changes in society that are occurring through the adoption of computers have not been seen since the invention of the automobile and airplane in the early 20th century revolutionized transportation. I believe that cyber-crime will be the primary challenge for policing in the 21st century.

## **CONCLUSION**

According to the methods used in the research for the preparation of this paper, the following conclusions were made.

Banks are financial institutions, whose main activity is collecting deposits and approving loans, with the sole purpose of making a profit. During their operations, banks offer a wide range of services to their clients, from: deposit collection, loan approval, securities services, payments, investment services, payment of pensions and insurance, and more recently, electronic banking. Namely, today, modern banking is based on sophisticated information and communication technology, which allows removing the time and space barriers that limited traditional banking.

The transition from traditional to modern electronic banking results in increased growth of efficiency and competitiveness, better market performance, new products and services, conquering new markets and so on. However, although banks are equipped with modern technology, the transition from traditional to modern

banking is still taking place with varying intensity in both developed and transition countries.

Electronic banking is associated with the increased application of telecommunications and computer technology, especially in the process of processing and transfer of data and information, i.e. communication with customers. New modern technology has radically changed the overall operation of the banking sector. The reason for the emergence of electronic banking and the complete computerization of banking operations is found in the growing number of transactions and vast documentation, which is almost impossible to process quickly and efficiently with traditional banking methods, within the stipulated time. Also, with the globalization and expansion of the banking system outside the borders of one country, it further complicates the operation.

Today, banks are required to adapt to the needs and desires of their customers, so there are several types of electronic banking, i.e. banking based on POS terminals, ATMs, internet banking, mobile banking, SMS banking. Electronic banking has certain advantages, but also disadvantages for both banks and customers, as well as for traders.

Payment cards occupy an important place in the modern economic world. A payment card is a specific non-cash payment instrument issued by a financial institution, trade or other specialized organization. The card allows the user to pay for the purchased products and services by simply attaching it.

With the growing use of payment cards as a tool for non-cash payments, the risk of their misuse increases. To reduce the risk of abuse, smart cards are now on the market that offer a greater degree of transaction security. Namely, it is a card that looks like an ordinary credit or debit card, but with the difference that it has an integrated circuit or chip, which has a processor and memory. Certain data can be safely stored on the chip. The smart card has about 100 times more memory space than the card with magnetic stripe and processor, which allows you to perform calculations directly on the card. This means that the whole encryption process starts and ends on the card, so that no data leaves it, which makes this card much more secure. Payment with smart cards can be contact or, more recently, contactless payment is also present. Payment cards can be used at POS terminals, ATMs or for online payments.

Modern communication technologies and computer networks are a good basis for creating a kind of sophisticated crime, characteristic of modern times. Namely, the misuse of payment cards is a crime today. Payment card crime or financial crime damages the world economy by millions of euro a year.

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# **SOCIAL CONTEXT OF THE IMPACT OF THE MEDIA ON TERRORISM**

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## **Summary**

The complexity of social change that is current today is reflected in the frequent use of terms such as information society and networked society. While the term "information society" is often thought to be a product of the late 20th century and early 21st century, this is not entirely true. Specifically, the information society, the networked society, and therefore social media, have been researched for over 50 years.

The peculiarity of networked society is in the generation of new knowledge as the basis of productivity of the whole society. Therefore, through the processing of information using technological solutions (eg analysis of financial statements through analytical software), it encourages the continuous development and improvement of information technologies, leading to the creation of new knowledge. This development has been called "Informationalism" because it is based on information technology where the purpose is the constant production of new knowledge and the vein of information is transmitted through the media.

**Keywords:** *society, information, media, terrorism, partnership, technology.*

## **INTRODUCTION**

Today's technological revolution, based primarily on information technology, is transforming the basic determinants of society, turning it into a global, interdependent society and a well-informed or well-deceived society. For this reason, it is not possible to talk about the development of one part of society without linking it to trends in other segments, where the media play a primary role as a media.

Technology and society today are interdependent and can no longer be separated. Technology is society, society is technology, society influences the

media, media has a strong influence on society, media can be created from the context of society, and a different society can be created from the context of media. (Ludvig, 2012:398)

Since terrorists operate on the principle of coordinating activities at a certain point in time, it is undoubted that technological developments have enhanced their operations. Various applications are used as an important mechanism to enable closer connection and instantaneous communication, which in itself reflects the place and role of networked society in the world of modern technologies.

One of the great analysts of the networked society gave an insight into the differences between the old society and the new, networked, or media-informed society (Castells, 2000: 12). In industrial society, the backbone of productivity is the new types of energy and the way to use that energy in a decentralized way. In a networked "information society", productivity bases are the technologies used to generate knowledge, that is, the basis for the development of a networked society are knowledge and information transmitted through the media.

### **CHARACTERISTICS OF THE NETWORK SOCIETY**

In order to understand networked society, one must start from social change. Namely, they can be viewed from the perspective of a society based on economic sources and through the direct generation of new knowledge, ie. information (Castells, 1996:17).

Through this paradigm, an attempt was made to describe the transformation of society by defining the elements that make up the basis of that paradigm, ie. basics of media addiction and networked society:

- The first characteristic is that the basis for the development of society is good media exploitation of the networked society through the transfer of knowledge, ie. information.

- Another characteristic is that information technology has an effect on all types of activities.

- The third characteristic relates to the media in terms of the existence of a network logic that defines relationships in the field of organization and application of information technologies. The basic feature of a network is its flexibility and its ability to give structure to relationships that are not structured, but in defining the structure, relationships are not restricted so that the innovation process unfolds smoothly.

- The fourth characteristic is flexibility. The very basis of new technologies, which implies the Internet infrastructure, enables the reversibility of the process and the ability to change the structure without consequences due to the decentralized way of functioning of the Internet, which corresponds to a modern society that is in a constant state of change.

- The fifth feature is the convergence of technologies into a single, interdependent system. For example, the performance of personal computers, tablets, smartphones and other devices largely depends on the characteristics of their components (processes, working memory).

From the above definitions, a new term emerged as a "networked organization" as a specific model of organization within which parts of the network

are independent and dependent at the same time, and may also be parts of other networks. In other words, a networked organization follows the principle of a decentralized Internet structure.

A network organization differs from a traditional organization in that it has a flexible structure that relies heavily on information technology. Therefore, the media, networks and in general electronic forms of communication, not organizations, are the basic working units of a networked society. How successful a network is depends on its connection to other networks and how free communication within it is enabled (Pfeiffer, 2012:232).

In addition, the networked organization can be viewed as the base of the information economy, and the main arguments of such attitude are in fact the characteristics of the networked organization such as flexibility, innovation, adaptability and generation of new information, which enables the use of information technologies in the work of the networked organization. It can expand and constantly include individuals who share common goals and can function within that first network. It is important to note that the structure of the network is not disrupted if innovation within the network is to be introduced (Pfeiffer 2012, 238).

The preceding paragraph clearly shows why terrorist organizations operate on the basis of the fundamental characteristics of a networked organization. Unlike large formalist hierarchical organizations, terrorist power is deployed within network components, with no top executive at the top with a clear line of command. Although "embedded" and thus not independent, network components enjoy autonomy in the sense that they do not receive orders (Mayntz 2004).

In this way, flexibility and adaptability are ensured so that a possible "fall" will not disrupt the entire organization, so that the media message gets meaningful and is securely forwarded, which is very important for terrorist acts. Otherwise, this is also a system that needs to be followed if the same act is to be prevented.

## **NETWORK SOCIETY AS A MEDIA**

From the previous chapter, it can be concluded that modern society is in fact a networked society. This society consists of information technology based networks. More specifically, networks are self-redefining, complex structures of communication that, at the same time, allow for the common purpose and flexibility of their actions, and through their capacity adapt the environment in which they operate.

The term social network emerges as a sociological-communicological term. They have existed since society existed and have been an important form of communication and cooperation from the time of ancient societies to the present. One of the key reasons why networked society becomes important since the end of the 20th century is the material limitations of existing hierarchical societies, where information technology enables the smooth development of networked societies. The network's ability to introduce new nodes and new content within the network has grown with increasing acceptance of technology, ie. with the evolution of communication technologies. Today, a networked organization is considered to be

the most effective form of organization because networked society allows for flexibility, scalability and the ability to survive through innovation.

Digital networks are ubiquitous today in the complete structure of the society in which we live. They transform different social segments such as economics, education, politics into separate sub-networks, which are interconnected and globally interconnected independently of touchpoints (whether financial markets, logistics channels).

As the networked society is based on a decentralized model, there is no center around which the sub-networks would gravitate, but the complete system is based on the composition of binary on / off logic. In other words, there are those who are part of the network and those who are offline.

Because the networks are intertwined, this logic can refer to a complete social structure that includes / excludes complete systems and throws out the established logic of population living and functioning out of context. Therefore, a well-organized terrorist act, through the coordination of members through the media in the networked system, creates great problems and a sure success for terrorists. However, as all parts of a networked society are autonomous, inclusion / exclusion may also be partial if connection monitoring systems work.

### **NETWORK SOCIETY AS A RISK SOCIETY**

Today's networked world is very turbulent and has almost no preferential feel to it when it comes to security. Until now, such a society has been called by various names, such as. "World risk society", "networked society", "digital nervous system age" and so on. One thing is clear from these terms, which is that today's society is digital and relies on digital technology (Doward 2016).

Today's society is certainly given the mark by global processes that fundamentally restructure established understandings of economics, politics, government, etc. From all this, the question arises, is globalization a new term or is it just an old topic transformed into a new context and supported by the development of information technology?

According to some authors, the concept of globalization can be traced back to the beginning of civilization and the invention of Scripture, or if one wants to trace recent history, the beginning can be traced back to the end of the 15th and the beginning of the 16th century, when the emergence of colonies by the then great powers such as are the United Kingdom or the Netherlands (Beck 2005, 35). Either way, the world today is that politics has points of contact with trade, that medicine depends on the movement of the capital market, and the like. Therefore, the world today is intertwined and every area of social activity influence other fields of social activity in one way or another.

This permeation is reflected in the existence and functioning of a worldwide network through which all parts of today's society complement each other, while globalization can now be found in all pores of society. So globalization is not defined only by the positive aspects, such as enabling anyone to find any information at any time and anywhere connected to the Internet (Beck 2005, 36).

Globalization brings with it many negative aspects, such as the creation of a network of criminal activities that very actively use everything that today's modern, networked world offers them.

When it comes to criminal groups, which usually include terrorist groups or single terrorists, such as Al-Qaeda, the Islamic State, Tahriru Sham, Boko Haram or any other terrorist organization, these and other organizations are emerging global and highly computer-educated. "institutions" which use the media, the Internet, and other social networks to fulfill their forbidden desires, such as trafficking in human organs or the sale of advanced weapons.

It is precisely because of these negative aspects that the dark side of globalization can be seen, as well as emerging organizations that oppose globalization, such as Greenpeace, the feminist movements, and other organizations that warn about the negative aspects of globalization.

The concept of "world risk society" by author Ulrich Beck laid the groundwork for thinking about the limits of the dangers of the scope of terrorist and activist activity. In theorising this notion, a constant analysis of the accelerated process of modernization, which goes beyond a certain space between the world of quantifiable risk and the world of non-quantifiable circumstances that we create almost daily, is needed. Thus, risk inherently contains the concept of control. Premodern perils have been attributed to nature, gods and demons, so risk is a modern concept. It involves decision making, and when we talk about the term 'risk' we are actually talking about calculating the impossible, colonizing the future"(Beck 2005,42).

The phenomenon of world risk society is not a product of increasing modernization, but of (not) limiting uncontrolled risk. Such a concept is, in principle, three-dimensional: in the spatial dimension, these risks lie beyond our national-state borders, but also borders in a broad sense. The second, time dimension, affects risk due to the long wait and fear of danger that goes beyond the period of actions that work to remedy the problem.

In the last, social dimension, it is difficult to determine, in a legally relevant way, what the "risk factor" is crucial to the resulting uncertainty, whether it is an individual or a combination of multiple effects of multiple individuals. Therefore, the world risk society is viewed from the above context through some three directions: environmental, financial and risk of global terrorist networks. While the first two go from the accumulation and distribution of the "bad" associated with the production of goods, the third risk is inherently "bad". It aims to produce the consequences that the other two crises inadvertently produce. Given that it is an important issue of trusting citizens in their own country that they will counter the risk of terrorist threats, the question arises as to who is actually calling someone else a terrorist enemy. The answer is, of course, the state, or rather, politics.

So every state has its own bin Laden, so we can derive the definition of a terrorist enemy from this very fact: it is a deterritorialized, denationalized state construction that legitimizes the global intervention of military powers as "self-defense"(Beck 2005, 47). The estimated risk of global terrorism has the exact opposite effect of terrorist intentions. It leads us to a new phase of globalization - the globalization of politics, that is, the transformation of society into transnational



cooperative networks. The special emphasis of the meaning of contemporary terrorism is in support of previous considerations and answers why such networked patterns in terrorist organizations affect the concept of risk society.

Specifically, the meanings of modern terrorism are:

- Globalization - terrorism can occur anywhere / country and its consequences are global. Modern terrorism is a threat to the whole world, humanity, material goods, or values of the human community, and so is the fear of terrorism.

- Universalisation and action by the logic of "the goal justifies the means" - reflected in the goals, means and methods, since there are no restrictions, so that whatever terrorist organizations find useful will be selected and used.

- High impact and dire consequences - select objects whose destruction will cause dire consequences and have a great impact with a global impact.

- The suffering of innocent people.

- Adaptation to changes and new conditions - Terrorist organizations constantly coordinate their activities with modern processes, achievements in science and technology, personally with Internet and communication technologies.

- The professionalisation of special agents and the fanaticization of individuals, groups and organizations, and the linking of terrorist organizations and groups - terrorist organizations are increasingly connecting to facilitate the training, preparation and implementation of actions (Jovorović 2001).

## **RISK CONTROL IN A NETWORKED SOCIETY**

Networked society has greatly influenced the policies and the way in which many states and organizations function. The networked society decomposed the classical society, which lasted until the mass popularization of information technologies since the 1970s and also influenced the dissolution of certain states. Information technology has created a new geopolitical situation. In this new geopolitical system, political parties, nations, or anything else that is an integral part of the geopolitical system have disappeared, but merely supplemented by network flows.

With the development of the media, the creation of social networks and, in general, a networked society, the borders of states are no longer an obstacle to communications or the movement of goods, people or new technologies. The old borders have been successfully removed thanks to a global networked society where it is no longer possible to organize anything in the old way, whether it is a political party or identifying itself as an organization. This is no longer possible because, on national premises, the creation of a new type of political identity organization is encouraged.

Interestingly, the communication base of the organization within the old paradigm, which was based on the space of a particular nation, allowed for great control of communication with an easy way to exclude those who did not behave in accordance with the norms of that paradigm. Today, in a networked society, it is very difficult or almost impossible to restrict communication, and it is easier to go against the general stream of thought. Local authorities have reduced the amount of authority over communication channels and any form of information can be sent through the media, the Internet or other social networks.

This change is possible for the sake of the networked society, but surveillance still exists. The current surveillance is more sophisticated and not based on the use of force as in the era of the Communist bloc in Europe. Because of the changes that have taken place in communication since the time when online communication has set standards, existing political structures are simply forced to establish themselves as new, supra-political structures that can control media traffic, the Internet and other social networks outside their geopolitical areas.

## **CONCLUSION**

The perspective of the "risk society" and the fact that global risk is the condition of humanity of the 21st century, entail doubts about national security activities. Namely, contemporary international terrorism as "violent NGOs" means non-territorial organizations operating simultaneously both locally and globally. Islamist terrorism in particular has the character of non-territorial political and social movements with local bureaucratic organizational structures (Bilandžić 2014). It follows from the foregoing that the notion of globalization is another feature of modern terrorism, posing a challenge to the security of the international order and justifying doubts about the political power of nation-states.

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## ALFRED ADLER'S THEORY EXPLAINS THE EXISTENCE OF VIOLENCE AND CRIME TODAY

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### **Abstract**

In Alfred Adler's opinion, the children's wrong social adjustments in the society where they live are caused by the feeling of less value and the pursuit of superiority. I put emphasis on the family where the child grows up. Unfortunately, family egoism rules in modern families today and special attention is paid to this type of upbringing. In today's modern culture, it is impossible to imagine a child who does not feel the desire for individualistic supremacy and superiority, where sense of community is lacked.

The aim of this paper is to highlight a lack of sense of community, which is why the activity of the child reaches the useless side of life, such a person is often afraid of loneliness. If she/he admitted it, it would work out that feeling of less value that would put her in a state of powerlessness, and that should be labeled cowardice. It is a failure of society. However, the really best means of preventing atrocities would be to convince any such person that this atrocity is actually nothing more than an expression of cowardice. A criminal lives in an egocentric world, in a world where vainness, self-confidence, a sense of community, or a sense of shared values are in vain. By discovering the particular kind of discouragement that manifests in his lifestyle, we encourage him at the point where he is abandoned by his confidence and such a person is able to join the community.

**Keywords:** Alfred Adler, feeling of less value, feeling of superiority, sense of community, family egoism, violence, crime

### **INTRODUCTION**

Violent behaving is not placed into the cell plasma, it does not flow through bloodstream, but it is created during the reciprocal actions between an individual and his surroundings. There is no doubt that current education within a family is in a favour of a tendency for power and vanity development. A family have surely indisputable advantages, and a man could hardly imagine an institution where the children, under the right guidance, would have raised better than in the family. Just in illnesses, the family is shown as the most suitable formation for maintaining the human race. And if only all parents could always be good educators as well, the ones who have sharp glance in order to recognise mental abuses in early phases and

to manage them with appropriate procedures, then we would gladly admit that in upbringing capable human beings, none of the institutions would be as proper as the family (Adler,2017). By this, I would like to emphasise how important it is to have parents educated in upbringing their own children, rather than taking it easily and so raise future bullies and criminals.

In last fifty years many things have become faster, better and more comfortable, however some of them do not help our children to become self-confident, kind and happy. Humans are social beings. We are the happiest when we help each other and when we depend on each other. Until mid-twentieth century, children mostly used to live in homes with three to ten children. They used to share their bedrooms with their siblings, had parents in the house, grandmothers and grandfathers. They often had their meals together, they sang, played some instruments, played board games and gathered round one radio or TV set. Children used to be surrounded by people and could not feel lonely and unsafe, and even if that happened, siblings, grandmothers, grandfathers and the others used to notice, feel that and were supports to the child who felt accepted and through that gained sense for community.

Nowadays in modern families, there are one to three children. They have their own separate rooms, computers, televisions and often their bathrooms. Parents work more, usually in more shifts, they have no time for each other, and least of all they can allocate time for their children. They eat separately, where they can. Grandmothers and grandfathers have moved and become the worst enemies to the new family. Family egoism which is ruling in our region these days causes submissive position of a parent compared to the other. The neglected parent either dedicates to society, herself, or favourite mobile phone and so neglects a child who starts being educated by video games usually consisted of murders with the aim to kill as many people as possible. Or, she or he exaggerates in dedication toward children, cuddling them and being ready to do anything in order to fulfil any wish they have and so tie the children to him or herself. In both cases, children do not develop the sense for community.

In only two generations everything has been changed. Not only homes full of children have disappeared turning into homes where children mainly grow up alone, but the level of bullying increased. Children, in order to awake someone's attention, bully the weaker ones and usually get some punishment instead of affection and attention. When the home is filled with brothers, sisters, grandmothers and grandfathers they have no other option but to argue, play, fight against each other and so socialise themselves and learn to share and to be in a community. That is the way children learn that they are not the centre of the world and that they cannot have everything they want. Living with real people teaches a child to have a head on their shoulders. (Metjuz, 2015).

The lack of sense for the community and increased feeling of lower value is clearly shown even from the third year of child's life. In most cases, they are even more expressive with character traits themselves in above mentioned hostile environment. In adolescence it just erupts, because child allows itself to express what it feels, and that is hypersensitivity, impatience, boasting affects, cowardly attitude toward life, prudence and greed, where the last one manifests as a request that

everything should belong to it. Difficult questions in life, dangers, troubles, disappointments, cares, losses, especially losses of loving people, social pressure of any type, can obviously be always seen in a picture of feeling of inferiority, mostly by generally recognised affects and moods which are known as fear, confusion, concern, despair, shame, timidity, disgust and so on. They are manifested in facial expression and body posture. The impression is made that by that muscle tone is lost or some form of moving appears usually as distancing from certain object or distancing from continuous life issue. The lack of sense for community is always a source for insufficient preparedness for all life problems. That insufficient preparedness is the one which in facing problems gives causes for multiple expressive forms of physical and mental less value and uncertainty (Adler,2017).

Such as a child lives within the family group because of its weakness, so weakness of an individual makes people join a community. In certain situations all people feel weak, feel that life's difficulties overcome them and they are not able to cope with them. Hence one of the strongest aspiration of a man to create groups in order to live as a member of a community or a society, and not as an individual isolated being. So, it is very important to socialise children in real and actual social groups, because just that social life was indubitably of great help in overcoming feelings of weakness and less value. Discouragement, which is shown in child's life style as a feeling of less value, is often hidden behind a feeling of superiority and serves as a compensation and such children have feeling of haughtiness, amplified affects as fury and vindictiveness, they are cheeky and often bully their peers. (Adler,2017). By encouraging a child in that point when its confidence leaves it, it is addressed into socially useful channels, while in the absence of sense for community it is led into wrong social adaptation and in propensity of transgression.

The absence of sense for a community even earlier causes the feeling of less value, of any type, although it is not shown clearly, but anyhow discloses within the character, moving and manner, in the way of thinking by induced feeling of less value and in misconduct. When spoiled and rejected children find themselves in more difficult situation than other children, there is a danger to keep that attitude later in their lives. A sense of less value is not the only reason for mistakes in leading picture, but there are living conditions of spoiled and rejected children. These types of children challenge within themselves ideals with less measure for sense for community. The ideal, of the one who is possessed with the feeling that nothing ever goes well, has a life attitude toward life problems and easily leads that a person develops in accordance to the useless side of life and becomes an offender. Groups of problematic children, criminals are recruited from the ranks of people who miss sense for community.

What is valid for a child is valid, to some extent, for the whole mankind. All of us, up to certain point, have feeling of less value because we are in a position which we would gladly improve. Nobody can stand feeling of less value for long. It can lead someone to the state of tension which imperiously requests something to be done. However, let's assume that a man is discouraged, let's assume that he cannot imagine being able to improve his position if he strains in an appropriate way. Unable to bear his feeling of less value, he will continue trying to get rid of them, but using ways which won't take him any further. His aim is still to be superior in

accordance to the difficulties, but instead overcoming these difficulties, he will try to deceive himself so long, or to turn to some ecstasy until feeling superior. Meanwhile his feelings of less value will accumulate due to the fact that situation which makes them stays unchanged. Challenge still exists, each step he makes forward takes him deeper into self-deception, and all his difficulties makes him under-pressure. Feeling weak, he will look for a situation where he can feel strong. He does not try to be stronger or more professional. He tries to be stronger in his own eyes. His intentions to cheat himself will only be partly fruitful. If he does not feel grown enough to solve problems, he will perhaps try to provide an importance to himself in a way that he will behave as a tyrant in his house, that is in his family, bullying the members of his family in every possible way, or he will start up doing criminal actions, and direct his life into the wrong side, avoiding to be defeated.

## **CONCLUSION**

If a practical issue is raised how to determine the level of development of sense for community within a child, the answer would be that we have to consider some expressions in behaving. That point when a child realises that it has a power over other child and that child has to obey and listen to him, then it develops the feeling of superiority which is a compensation for the feeling of less value. If some children fight to be the first in their pursuit toward superiority, not showing concern about the others, we can pretty much be sure that they have less developed sense for community than children who do not express such behaving. A child who tries to overcome the feeling of less value in a way that it behaves haughtily to its peers bullying them every day, is a bully. As time passes it grows up into a person who is prone to delinquency and criminal, and who thinks that his misdeeds are thoughtful and heroic. He believes that he approach certain level of superiority, that is he thinks that he is smarter than the police and that he can deceive other people. That is how he becomes a hero in his own eyes not noticing that his acts indicate at something else, something far away from heroism. Very important fact is that if fines are to be stricter, that will not make a criminal frightened, however his beliefs that he is a hero will increase. A criminal lives in a egocentric world, in a world where cordiality, self-confidence, sense for community or feeling for mutual values are looked for in vain. Such a person is not able to join the community. When we deal with children whose thoughts are messed up and who already have bad or criminal tendencies, we strive to improve their (children's) concrete goal. Because, if the goal stays the same, that same child if it had a headache in order to attract parents' attention, it will find some other pain which will attract parents' attention, because the goal is the same. The lack of sense for community, due to which their activity comes into an useless side of life. They are often afraid of loneliness. They would like to be with the others. However, if they admitted that, the feeling of less value would be activated again and it would take them into a state of weakness, and that could be marked as cowardice. Anyhow, the conclusion of this work is to do as much as possible on overcoming the feeling of less value, what can be achieved by simple approach to the right human society, and not through online ones. In order to have children who will not be bullies growing into criminals, the best way to do so,

as a mean of prevention, is to convince such men that any mischief they do is nothing else but expression of cowardice.

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## **HUMAN RIGHTS FOR EDUCATION OF PERSONS WITH DISABILITIES THROUGH INCLUSION**

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### **Abstract**

The right to education of all children and young people is universal and is guaranteed and prescribed in many international and national declarations and documents. The right to education of persons with disabilities in the Article 24 of the Convention on the Rights of Persons with Disabilities includes: intellectual and creative development of persons with disabilities, training for effective and independent life and inclusion. Inclusive education as a reform principle will respect and nurture diversity among all students, with particular emphasis on those who are at greater risk of marginalization and exclusion. The essence of inclusion is to get a sense of belonging that every person needs, which fosters a sense of tolerance, empathy among students, working together, eliminating discrimination and promoting equality. Inclusion is a series of strategies and practical ways of adapting people with disabilities to the environment and their connection to the world. Inclusive education in the modern living system provides the opportunity for all children to be treated as equals, in conditions where everyone can lead a decent life.

**Keywords: right to education, persons with disabilities, inclusion**

### **Introduction**

Education, without a doubt, is one of the basic postulates, a pillar of any society, without exception and indisputable is the fact that education results in students who tomorrow will become citizens of the state, bearers of all social trends, changes and values. The right to education of all children and young people is universal and it is guaranteed and prescribed in many international and national declarations and documents. Education should be available to all, under equal conditions, education for all through the provision of educational equality, increasing the possibility of participation, increasing educational, cultural and economic competence. International human rights instruments offer a common global understanding based on the recognition of the indivisible value and dignity of all human beings. The right to education of persons with disabilities is covered by Article 24 of the Convention on the Rights of Persons with Disabilities, which our



country ratified in 2011. According to the Convention, the upbringing and education of children and youth with disabilities should be an integral part of the single education system that removes barriers to equal access to quality education for persons with disabilities and provides adequate conditions for vocational inclusion in the education system. Inclusive education as a reformist principle will respect and nurture diversity among all students, with particular emphasis on those at greater risk of marginalization and exclusion. Overcoming marginalization involves developing policies, measures and programs that apply, especially in the field of education and employment, which will give the individual (regardless of personal abilities, background or socio-economic status) equal opportunities and encourage independent, personal development. and active life in all areas.

Inclusion in education is a process of mutual respect for the diversity of each student and his needs, where the student is the center of attention, and the education system must address the challenges facing all students and students with special educational needs. The essence of inclusion is to get the sense of belonging that every person needs, which encourages a sense of tolerance, empathy between students, working together, eliminating discrimination and promoting equality.

## **LEGAL ASPECTS IN THE LESSON OF INCLUSION OF STUDENTS WITH SPECIAL EDUCATIONAL NEEDS**

The tendency of most European Union countries is to develop policies to promote inclusion as an important developmental and dynamic process in democratic societies, which provides an opportunity for all and maximum flexibility in meeting the specific and social needs of the individual. Following the world trends and practices, the challenge of the countries of the Balkans, including our country, is to focus national policies on creating societies structurally based on the principle of equal rights for all, according to which every person has equal rights and opportunities. with respect to individual differences in building an inclusive society. The inclusive concept of education today has a high position in the world, as well as a significant place in numerous documents of many international organizations, especially the United Nations. At the 1994 UNESCO conference in Salamanca, it was stated that: Inclusion is a process of solving and responding to the diversity of the communities needs of all students by taking a greater part in learning, cultures and less exclusion within education and beyond.

The conceptual framework for human rights based on education for all (UNICEF, 2007) is also an important document that emphasizes the right to access to education, the right to quality education, and the right to respect within the learning environment.

The right to education of persons with disabilities is covered in Article 24 of the Convention on the Rights of Persons with Disabilities, which our country ratified in 2011 and includes: intellectual and creative development of persons with disabilities, training for effective and independent living and inclusion.

In our country, the current conceptual setting of upbringing and education of persons with special educational needs is regulated and integrated in the Law on Primary Education, the Law on Secondary Education, Law on Higher Education, the

Law on Educational Inspection and other strategic documents, and is based on the highest legal act the Constitution of the Republic of North Macedonia.

The Constitution of the Republic of North Macedonia also regulates the right to education in the field of economic, social and cultural rights, which states: "Everyone has the right to education. Education is available to everyone, on equal terms.

The Law on Secondary Education does not mention disability as a possible discrimination. Secondary education of students with disabilities bears all the hallmarks of existing primary education. In addition, Article 39 of this law offers opportunities in secondary education for students with special educational needs to educate students according to adapted programs for appropriate occupations or work skills, in special secondary schools for students with: impaired vision, hearing impairment, disability in mental development.

## **INCLUSION POINT IN EDUCATION AND PRINCIPLES FOR INCLUSIVE EDUCATION**

Inclusion is an opportunity to support and advance all diagnosed forms of education diversity - ethnic, gender, cultural, social, health, intellectual, special disabilities and developmental disabilities. Inclusion in education is the inclusion of all students, regardless of their abilities and backgrounds in the departments that suit their age and the schools that meet the needs of each student (Begeny, Martens, 2007). All students participate in school life, all achieve results within their potential and scope, and all are valued. Students involved in school life based on developmental disabilities will have an equal opportunity to develop their interests, gain knowledge and skills within their scope, develop social motives, control their own behavior and prepare for their employability in the labor market. and further independence. Inclusion, Odom et al. (2004) simply observe it as programs or groups in which children with disabilities and children with typical development participate together. Students with disabilities, involved with healthy children (children with typical development) in regular education, will enable them to progress socially, emotionally and intellectually within their scope. In students with disabilities, social mobility increases, there is an expansion of social relations with more members of the peer group (not only with certain selected persons - educational assistants or with persons with the same disability / handicap). Social acceptance of students with disabilities by the average / healthy population contributes to increasing the degree of adaptation and motivation for posture and confidence, strengthening speech skills and communication with the environment.

Inclusive education as an integral component of the overall education system that enables appropriate education for all, recognizes and respects different needs and abilities, including different learning strategies. The flexibility of the system reflects on the methods and materials used to provide children with disabilities with the most effective access to regular curricula. Worldwide, the goals of the inclusive education include: supporting and advising parents of children with special needs, improving the foundation for special needs, promoting inclusive

education, developing knowledge and skills and partnership in order to understand the special needs ( Jachova, Samardziska-Panova, Leskovski & Ivanovska, 2002).

Principles in inclusive education as a permanent orientation to act in a certain way and in a certain direction, in essence, and the aspect according to Suzic (Suzic, N.2008) are the following: 1. Principle of social acceptance and support; 2. Principle of early intervention and rehabilitation; 3. Principle of functional ability development and 4. Principle of stimulation and compensation.

The principle of social acceptance and support is very important for the life and progress of students with special educational needs, which means socialization, inclusion and interaction of students with special educational needs with their peers.

The principle of social early intervention and rehabilitation is of great importance for students with special needs and is based on early detection and coping with the problem / disability that the child has by the parent who together with the child should focus on solving all the problems that are related to individual activities as well as interaction with peers. Early intervention / support also includes rehabilitation. This principle will be satisfied when the child is given a healthy interaction with peers, by paying attention and subtle support through the procedures and methods of those activities in which the student shows the greatest abilities.

The principle of functional development of abilities refers to the development of the given abilities that the child possesses, by putting them in function of his further development and education. For the realization of this principle for the child with special needs, an individualized program should be developed. which will base its content on the individual needs of the student. Such an individualized program, which incorporates adequate methods and models of work, will allow the child to do what he can, and thus gradually develop his abilities. The functional development of skills is based more on practical work, application, practical activities than on theoretical learning, memory and reproduction.

The principle of stimulation and compensation is based on the motivation of students with special needs. Both external and internal motivation contributes to the efficiency of most activities of students with special educational needs, and therefore compensatory activities and tasks that will have a stimulating effect on students with special educational needs should be found.

## **WHICH STUDENTS WITH DISABILITIES ARE INCLUDED IN EDUCATIONAL PROCESS**

The Macedonian model of inclusive education, with the inclusion of people with disabilities in development, represents the **social model** for understanding disability where: the person will be a user (not a patient according to the medical model), will have his rights, will be included and not rehabilitated, will participate and not be divided, integrated in the society and not isolated, active and not dependent, that is persons who need assistance and not sick people who are cared for by someone.

People with disabilities according to (Ajdinski, Kiktanj, & Ajdinski 2007) are those who, due to illness, impairment, disability or developmental disabilities, have difficulty engaging in the social environment. Disability after (Aidinski, Kiktanj, & Ajdinski 2007) is a condition of the body in a person, which due to illness, injury or congenital defect, has a permanent, partial or complete reduction of the body's ability to function normally, social life and business.

The group of students with special educational needs includes ;  
**1. A person with a physical disability** / disability where motor difficulties may be expressed as major or minor motor difficulties that may affect a person's ability to walk, play, jump or move their fingers, use their palms or have hand deprivation and these individuals can use assistive devices to facilitate their movement and manipulation of the upper extremities and fingers.

**2. A person with intellectual disability** (mild, moderate, severe); According to (Chadlovski, Filipovska & Belevska 2004), mental retardation is a state of stopped or incomplete mental development, especially of those abilities that occur during the developmental period and that contribute for the general level of intelligence, such as cognitive, speech, motor, and social abilities. Its important feature is the below-average intellectual functioning, defined by the IQ, which is followed by significant limitations on the adaptive functioning of the following skills: communication, self-care, social / interpersonal skills, use of only backward skills, , ability to work, ability to organize. Reasons for the occurrence and development of mental retardation after (Chadlovski, Filipovska & Belevska, 2004), globally, they can be primary and acquired, biological, psychosocial or a combination between them.

Mental retardation after (Chadlovski, Filipovska & Belevska, 2004) is classified as: Mild mental retardation - the easiest degree of intellectual deficit with an IQ of 50 to 70 and the mental age of an 11-year-old healthy child. **These people "can learn" (educational category)**. They show a deficit in coping in situations that are characteristic of a certain degree of personality development as a result of mental deficit, ie lagging behind in the development of visual perception, limitation and indifference in the real perception of attitudes in the environment, more complex environmental relations, difficult abstraction. impoverished understanding of the meaning of phenomena and occurrences, problems in organizing attention, memory is poor, there is a quick and easy forgetting of content, with poor and so on reotipen speech, emotional instability, insecurity, irritability and increased suggestibility

Moderate mental retardation is characterized by delayed psychomotor development, poor speech, inability to abstract and generalize, physical stigma (motor insufficiency, physical abnormality, and congenital malformations), lethargy, apathy, and aggression. They have an intellectual deficit with an IQ of 35 to 49 and a mental age of 8 years of a healthy child. The educational process of these people is long-lasting, hard and systematic and corresponds to the **educational category "can perform"**.

**3. A person with hearing** impairment and depending on the degree of damage is divided into deaf who have hearing loss and they fully or completely understand verbal speech and deaf people are those who cannot fully perceive verbal speech and wear a hearing amplifier.

**4. Persons with speech disorders** (dyslalia, stuttering) Speech disorders are disorders of the ability to produce, understand and adopt sign systems that convey meaning. That is, it impairs the ability to speak, listen, write, read, and understand a language. Prerequisites for language / speech disorders can be: organic (biological), psychological and social.

**5. Visually impaired person;** Difficulties in the development of vision are manifested as a reduced or complete absence of sensitivity to light stimuli, which significantly complicates visual communication.

**6. Persons with learning difficulties,** ie a disorder of one or more psychological processes involved in the understanding and use of written language and speech. This group also includes people with brain injuries, with minimal brain dysfunction, with dysgraphia, dyscalculia, dyslexia, and with the breakdown of existing speech.

**7. People with autism and autism spectrum disorders.** People with autism show significant difficulties in three specific areas of their development: communication, social skills and rigid behavior, and a very limited range of interests and activities.

**8. People with combined difficulties** where a combination of different difficulties may be present, which may include speech, physical disability, reading difficulties, intellectual disability, visual impairment, damage to the spleen, brain injury, and some other disorders. Along with the combined difficulties, they may also have sensory impairment, maladaptive behavior, and / or social problems.

## RESOURCES OF THE EDUCATIONAL INCLUSION

Educational inclusion can be understood as a process in which educational institutions need to adapt to the needs of students with disabilities. The process of inclusion includes cultural reconstruction of the school system, changing the competencies of the teacher, social acceptance of the student with special needs and the formation of a sense of belonging. In the process of inclusion, a school should be created according to the child's measurement and not the child to adapt to the school. (Dimitrova-Radojic, & Cicevska-Jovanova, 2014).

The educational institution that includes students with disabilities in regular classes through the inclusion process should meet the required parameters:

- 1. The curriculum** should be tailored to the student's abilities to improve the student's independence, increase the possibility of community involvement, prepare the student for future work and help the transition to life as an adult.
- 2. The Individual Education Plan (IEP)** is a basic instrument and document that regulates and provides an adapted curriculum for students who cannot fit into the existing educational process for any reason. That is, the IEP is a written document of the institution that defines and contains all the components needed for quality education of a specific student with special educational needs, which will enable him better and easier learning and faster progress.
- 3. The teacher** undoubtedly has the most important role that organizes and indirectly leads the teaching process, ie the process of learning of students, and thus: didactically structures the process and content, encourages and directs interest and internal motivation of students, determines the pace of work in parallel, the group or individuals, directs the students' attention, supports and nurtures their illiteracy, creates a democratic atmosphere in the classroom, and

encourages them to cooperate with each other, listens and accepts students' ideas, respects the personality of each student, helps them form a positive image of themselves. The teacher plans and prepares the teaching and at the same time pays special attention to the requirements of the program to agree with the possibilities of each student, determines the goals and plans the activities (his own and the students) with which they will be achieved, plans the forms and methods at work, learning resources, time and means of work, as well as the manner of checking the degree of achievement of the objectives.

4. **The school and classroom space** should be a stimulating learning environment and all this provides more immediate experience: perceptual, mental, emotional and social, which makes learning easier and more lasting.
5. **A collaborative process with parents** and working with them is a very important part of school life
6. **Collaborative process with the local self-government, ie the Municipality** in the planning, realization and financing of the education of the students with special educational needs, as well as providing different forms of support (architectural conditions and physical conditions of the space).

## **REPRESENTATION AND INCLUSION OF STUDENTS WITH SPECIAL NEEDS IN SECONDARY (VOCATIONAL) EDUCATION**

Students with disabilities (intellectual, motor, sensory), secondary school (vocational education) acquire in: **1.** In the special schools for children with disabilities that are organized according to the type of disability. **2.** In special classes in high school and **3.** In regular high schools as well as their peers who do not have disabilities with inclusion. Students with disabilities are brought up, educated and professionally trained. Work training means that they know how to complete only one part of the work process and those who have a better IQ, are professionally trained so-called they only know how to complete the whole process.

1. A person with a physical disability / disability where motor difficulties may be expressed as major or minor motor difficulties may be successful in educational profiles where not much movement is required and the work is more of an office.

2. A person with intellectual disability is recommended to enroll these students in educational profiles from the three-year education in which they acquire competencies that contain routine things.

3. A person with hearing and speech impairment is recommended to enroll in educational profiles that do not require verbal skills and contact with clients.

4. A visually impaired person is advised to enroll in educational profiles that require manual skills.

The educational institution that includes students with disabilities in the regular teaching process through the inclusion process should take steps that should go in the direction on:

- Strengthening the capacities of the schools through trainings of the teachers, the professional service, as well as advised work with the students for

accepting the students who are different from them (reduction of stereotypes and prejudices), in order to achieve a positive climate and atmosphere in the school.

- Establishment of inclusion teams that will take care of identifying, registering and monitoring students with special educational needs in the process of graduating from the teaching material and will provide support to teachers to work with them.
- Providing cooperation with parents and cooperation with the local community.
- Providing technical and material conditions (architectural interventions) with which students with special educational needs will be able to use assistive technology according to the needs.

The educational institution that includes students with disabilities in regular classes should pay special attention to: communication with the student, social support, the environment and his daily routines, presentation of content, assessment of the weight of content and proper approach to greatly facilitate their mastering, as well as the teacher's approach - as a basic carrier of the educational process.

## **CONCLUSION**

Education, without a doubt, is one of the basic postulates, a pillar of every society. The right to education of all children and young people is universal and it is guaranteed and prescribed in many international and national declarations and documents. Education should be available to all, under equal conditions, education for all through the provision of educational equality, increasing the possibility of participation, increasing educational, cultural and economic competence.

According to Article 24 of the Convention on the Rights of Persons with Disabilities, the upbringing and education of children and youth with disabilities should be an integral part of the single education system that removes barriers to equal access to quality education for persons with disabilities and provides adequate conditions for their inclusion in the education system.

Inclusion is an opportunity to support and advance all diagnosed forms of education diversity - ethnic, gender, cultural, social, health, intellectual, special disabilities and developmental disabilities. Inclusion in education is the inclusion of all students, regardless of their abilities and backgrounds in the departments that suit their age and the schools that meet the needs of each student.

In the Macedonian model of inclusive education, the inclusion of people with disabilities represents the social model for understanding disability where: the person will be a user (and not a patient according to the medical model), will have his rights, will be included and not rehabilitated, will participate and not be divided, integrated in the society and not isolated, active and not dependent, that is, persons who need assistance and not sick people who are cared for by someone.

The process of inclusion includes cultural reconstruction of the school system, changing the competencies of the teacher, social acceptance of the student with special needs and the formation of a sense of belonging. In the process of inclusion, a school should be created according to the child's measurement and not the child to adapt to the school.

Students with disabilities, involved with healthy children (children with typical development) in regular education, will enable them to progress socially, emotionally and intellectually within their scope. In students with disabilities, social mobility increases and social relations expand with more members of the peer group. Social acceptance of students with disabilities by the average / healthy population contributes to increasing the degree of adaptation and motivation for posture and confidence, strengthening speech skills and communication with the environment.

Students involved in school life based on developmental disabilities will have an equal opportunity to develop their interests, gain knowledge and skills within their scope, develop social motives, control their own behavior and prepare for their employability in the labor market. and further independent living.

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## CHILDREN RIGHTS FROM THE ASPECTS OF INTERNATIONAL LAW

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### **Abstract**

The principles and concept of human rights generally apply to the entire human population. However, we must emphasize that they start with the rights of the child. The purpose of this paper is to elaborate on the principles of human rights of children, starting from the assumption that a society that respects the rights of the child in the future will become a society that respects human rights.

The need for a specific set of rights that would apply only to children as the subject of state care and responsibility arises from the specific characteristics that define child and childhood. The starting point for this is respect for the Universal Declaration of Human Rights adopted in 1948, followed by the 1959 Declaration of the Rights of the Child and the 1989 Convention on the Rights of the Child.

This Convention was also ratified by R Macedonia in 1993 and is the framework for the minimum standards needed to achieve the well-being of the youngest population in the country.

The paper will elaborate on the essential elements of documents dealing with child rights in international documents and domestic law.

**Keywords:** children's rights, standards, obligations, needs, obligations

### **INTRODUCTION**

Everyone has the right to a dignified and safe life free from poverty, fear and discrimination. Human rights are precisely that system of rules that this should provide and that people have agreed on internationally.

Human rights are based on internationally accepted principles and standards. It does not mean replacing the domestic protection of individuals, but strengthening and supporting the national system and that protection. States are fundamental actors in international law and they are responsible for the realization of human rights. States have an obligation to introduce, promote, respect and protect human rights at national level. The ratification of international human rights instruments permits the application of the monitoring and control mechanisms adopted by international organizations and bodies.

The starting point from the legal point of view of realizing the protection of the rights of the child is the UN Convention on the Rights of the Child, and as an extension of it, the Declaration of the Rights of the Child adopted by the UN General Assembly in 1989 and adopted by it. R. Macedonia ratified in 1992. Respecting the obligations of these international documents, children's rights and child protection are regulated in domestic law by the Child Protection Act of 2000 amended in 2004 and 2008.

According to these laws, child protection is an organized activity based on the rights of the child, as well as the rights and obligations of parents and the state to plan the family, provide conditions and standard of living appropriate to the physical, mental, emotional, moral and social development of the child. children as well as the obligations of the state in creating conditions for conducting a humane population policy, providing adequate material assistance to parents according to the state's opportunities for support, upbringing, care and child protection; organizing and providing development of child protection facilities and services.

### **CHILDREN RIGHTS ARE HUMAN RIGHTS**

When we talk about the rights of the child, we must be aware that childhood is a separate and independent period of life for every person. The principles of the concept of human rights also apply to the rights of the child. The need for a specific set of rights that would only apply to children and be subject to the special care and obligation of the state arises from the specific characteristics that define child and childhood.

The rights of the child are treated separately for several reasons:

1. Children are particularly sensitive in terms of their emotional, physical and psychological vulnerability. Depending on the age, children may be less able to protect themselves from violations of their rights, or may be at a disadvantage in seeking the protection available to them. Certain situations or conditions can be more dangerous for children than for adults. Some injuries are only related to children. At the same time, we must accept that certain events in childhood will affect the individual as an adult, and thus the society as a whole. This requires pragmatic tools to meet the special needs of such a vulnerable group.

2. Some children's rights are different from those associated with adults (children may be violated in other ways than those where they are abused). The disruption of the development process can have a much more serious impact on children than on adults. Because of this, they need greater protection and promotion of their rights. Children who survive the same situations as adults may never recover from the consequences and are therefore exposed to continuous suffering.

3. There may be a need for some children's rights to be respected, exercised and protected in a way different from that of general human rights (the need for special care and attention).

### **DEFINING CHILDREN'S RIGHTS**

In defining and applying the standards of the concept of the rights of the child, the defining and most important element should be the definition of the child.

We must go from the assumption that there is no universal definition of who a child, adolescent or young person is. Age is not a sufficient criterion for formulating an operational definition. According to the Convention, a child is every human being under the age of 18, unless the law relating to the child determines that he or she is old enough.

Childhood is understood in many different ways in different contexts. Childhood is a sociological and cultural construct, not just a step in the physical and mental development. In many cultures there is a difference between different levels of childhood. Many laws specify the age at which children are legally held accountable or partially responsible for their actions. In certain cultures, the determination of a child and adolescent depends on their social role, gender, marital status, and ability to make an economic contribution. This is also related to certain rituals and religious practices.

Being a boy or a girl - in certain societies can be a much more important differentiating factor than the age of a child. The convention is definitely oriented on how legitimate aspects of childhood recognize schooling and playing rather than work (employment). The child is not the object of action, but the subject of cooperation. Children and adolescents can be particularly vulnerable due to their immaturity and adult dependence, but it is also important to keep in mind their potential and resilience, as well as the specific capacities that vary for each child and each age.

## **CONVENTION ON THE RIGHTS OF THE CHILD**

Immediately after the adoption of the Universal Declaration of Human Rights (1948), the process of defining the specific rights of the child began. In 1959, the United Nations adopted a Declaration on the Rights of the Child, and in 1989 (after ten years of work on a separate body), the Convention on the Rights of the Child was adopted. This convention has been ratified by most states (191). Macedonia ratified it in 1991.

The Convention sets out a detailed framework for the minimum standards needed to achieve the well-being of children. Characteristic of the Convention is that more than any other human rights instrument, it incorporates a whole spectrum of human rights: civil, political, economic, social and cultural, and ensures the full development of the potentials of every child in an atmosphere of freedom, dignity and justice. The Convention defines the relationship between right holders (children) and holders (adults).

The establishment of the status of "holder of rights" and "holder of duties" and the application of this principle is at the heart of bringing about meaningful and sustainable changes in the lives and perspectives of children, and as such must be stated at any request made by , with, or on behalf of the children. It should always be borne in mind that the changes required are not an act of pity, charity, or benevolence, but a fulfillment of the obligation and duty to the children. A key moment in embarking on children's rights advocacy activities is to achieve this transition to children's perception of rights holders. The basic principles on which the entire structure of the Convention is built are defined in four articles of the

Convention. These articles build the framework in which the implementation of the Convention's provisions at national level is only possible.

**1. Non-discrimination (Article 2 of the Convention)**

All rights in the Convention apply to all children "... *without discrimination of any kind*". Special attention is given to the Convention on gender discrimination (specific discrimination of girls on the grounds of gender differences)

**2. The best interest of the child (Article 3 of the Convention)**

One of the main philosophical principles of the Convention is that children are as important as adults and are equal to them. From this setting begins the overall structure of children as rights holders. However, due to their specific vulnerability (sensitivity), children need special support to be able to fully exercise their rights. How can children be guaranteed equal rights and at the same time provided with the necessary protection? It is precisely the principle of what is in the best interest of the child that should resolve this seemingly contradictory relationship. ***"In all child-related activities, the child's interests are of primary importance, whether implemented by public or private social protection institutions, courts, administrative authorities, or legislatures."***

This principle is of prime importance and an absolute priority in policy making, decision making and taking action and actions that are relevant to children and are in their interest.

**3. Survival and development (Article 6 of the Convention)**

All of the principles outlined above should make it possible for a child to survive and develop as little more than a guarantee of the right to life and survival. According to the Convention, survival and development should be made possible ***"... to the highest possible degree ..."***. In this sense, the word survival refers to the dynamic aspect of the right to life. The term development is interpreted in a broader sense and adds a new quality, which includes the development of the child's personality, talents and abilities.

In this principle it is important to mention that it should include access to health care and health services at all levels, regular systematic reviews, ensuring a clean school environment, promotion of preventive strategies and health care plans. It also implies access to all the resources children need to activate their potential in terms of physical, mental, spiritual, moral and social development.

Apart from these basic principles, an important feature of the Convention is the holistic approach to children's rights. This means that the economic, social and cultural rights that are part of civil and political rights in human rights instruments are united in this Convention in an innovative way. It is assumed that all these rights are necessary for the full and harmonious development of the child's personality and are an inherent part of the human dignity of children. In addition, the rights enshrined in the Convention are mutually supportive and closely linked, without any particular hierarchy between them.

If some differences between certain types of rights are recognized, this is a result of the fact that some rights can only be implemented if and when appropriate means are available. For example: Article 4 defines the conditions for taking measures in relation to economic, social and cultural rights ***"... to the full extent of the resources available, and where necessary in the framework of international***

*co-operation*". However, this sentence should not be an excuse for poorer countries. It means that countries should prioritize their resources and focus their efforts and efforts on the implementation of the Convention. In addition, this formulation promotes international co-operation and opens the door to providing technical support.

The Convention contains a whole body of protection rights designed to protect children from all forms of neglect and abuse. The Convention recognizes the need to protect children from circumstances that may reduce their chances of survival and development. More specifically, the protection provided to children is related to the care and guidance children receive from their parents, other family members, legal counselors, and others, such as teachers and health professionals. Child protection also includes the need to care for children who are permanently or temporarily deprived of their family environment. The Convention also gives children special protection rights in particularly difficult circumstances.

*(Juvenile justice - children are treated differently from adults when they are charged or convicted of violations of the law - based on the assumption that children may not always be aware of the effects of their actions on others and are more susceptible to rehabilitation by adult offenders. Children in situations of exploitation - protection of children from child labor, sexual exploitation, sale, trafficking and use of narcotics. Children in situations of danger - protection of children from armed conflict, danger, whether they are caused by human conflict or natural disaster).*

The Convention on the Rights of the Child should not be just a list of obligations. It is important to understand that the articles we present are interdependent and need to be complementary. Starting from this, we elaborate two types of approaches that are essential. As can be seen in Table 1, there is an approach based on the needs of the children and an approach based on their rights.

Table 1.

<b>Needs-based approach</b>	<b>A rights-based approach</b>
Children deserve help	Children have the right to help
Governments need to do something, but no one has specific obligations	Governments have a legal obligation to do specific things
Children can participate in order to improve services	Children have the right to be active participants
Due to limited resources, some children may be left out	All children have an equal right to realize their potential
Each individual work has its own purpose, but there is no unified common purpose	There is a higher purpose to which the whole activity is directed
Certain groups have expertise that can meet the needs of children	All adults have a role to play in the realization of children's rights
Emergency cases are resolved upon their occurrence	The analysis reveals the reasons and offers lasting solutions

Both approaches have their own specificities. The promotion, practice and protection of children's rights can be provided in various and very informal and alternative ways. The principle that everything is forbidden by law leaves much room for creative and non-orthodox solutions that will most likely enable the best interests of children to be realized, developed, non-discriminated and actively involved.

## CONCLUSION

The fact that children are physically, mentally and emotionally immature is a sufficient indication that they need the care and protection of parents, the school community, and the state. The defined rights of the child with international documents should be reflected in domestic law and as such should be reflected unreservedly in all spheres of children's life.

Here, instead of concluding, we will list some of those rights:

- Every child has a natural life expectancy and states should ensure to the best possible extent the survival and development of the child;
- Every child at birth has the right to a name and citizenship;
- Every child has the right to know his / her rights;
- Every adult should always do what is best for the child;
- In all activities relating to children of primary importance are the interests of the child;
- The state should ensure that every child enjoys all rights without discrimination or discrimination of any kind;
- Children should have time for rest, play and equal opportunities for cultural and artistic activities.

These are just some of the rights that the community should provide for every child to have equal opportunities in society. It is not simple and easy to meet every child's needs in accordance with international and domestic legal standards. But every state, including ours, is obliged to start with their realization and with an action plan and programs to determine the dynamics in which the planned activities will be realized in the best interest of the child.

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# ESCAPE FROM PRIVACY THROUGH DIGITALIZATION: FREEDOM, THREAT OR TECHNOLOGICAL EMANCIPATION

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## **Abstract**

The many-sided and easy use of IT has created the complex of dependency on it and the feeling of self-sufficiency in the individual. Increasing the desire for personal transparency through social networks, causes the escape from privacy as an internal need for social life.

Scientific and technological development offers positive benefits and advantages for human life and society, as well as the possibility of misapplications use for serious crimes and terrorism. Man's dream of long-distance strikes and flying at altitude has become a reality; with IT, the personal drone and tomorrow with the spinal flight engine. This rapid development and change increases chaos and insecurity for society.

The only regulator left the state, privacy and human rights will be redefined in relation to order and security. With the consent of the society, protection of life will be required before privacy.

**Keywords:** privacy, cybercrime, IT, terrorism, drone, society, state.

## **INTRODUCTION**

The topic 'Escape from the privacy through digitalization: freedom, threat or technological emancipation' is of particular interest because it captures a broader and more complex scope of the study of the phenomenon of digitalization and privacy in relation to science and society. This specificity of the topic imposes interdisciplinary treatment in the field of philosophy, sociology, social psychology, public communication, justice, politics and security, all related to and interacting with information technology (IT) and its effects.

The paper is divided into chapters that are linked as organic structures that enable the study of the phenomenon as a whole. Apart from the introduction and conclusions, the treatise is structured as follows: Imposing dependence on digital technology and social life; Human rights, privacy and digitalization; Human rights and the challenge of digitalization; Technological development, privacy, crime, law and order; State as regulator and responsible for safe development; and, Technological emancipation has to be permanent.

The writing of the topic and the elaboration of the research subject is realized based on the historical, comparative, descriptive and analytical methods. Through these scientific instruments are deduced some conclusions about the tendencies of the phenomenon. Quotations have been used in writing as a minimum as a necessary scientific apparatus, giving priority to the presentation of the author's own views.

The paper was given the title of triptych due to the importance of connectivity and interdependent influences of three key factors, which explain the reports and the role of technological development, privacy and organized society in its highest form which is the state.

Each chapter has a short summary which is not repeated in the concluding summary of the paper. In the last chapter are given the summary conclusions not only for the actuality but also the predictions of the development tendencies of the phenomenon for the future. Of course, due to the limited space, this paper has not exhausted all the views that the author has on this topic, therefore the deeper elaboration in the future it remains a challenge and a topic of interest.

## **HUMAN RIGHTS, PRIVACY AND DIGITALIZATION**

### ***Imposing dependence on digital technology and social life***

At the beginning, digital technology was an attraction, once a need and later it became a necessity because it facilitates the performance of daily and professional work. With digital IT and the smart phone (SP), due to their versatility and ease of use, modern man has entered an even higher stage of his connection to technology, in the degree of dependence. "These intelligent devices have already become integral devices of human existence, serving as tools of information, communication, emergency calculations, health care, navigation, emergency, scientific research, etc., that has led to the creation of virtual communities, which seem to be taking the place of the natural, physical communities" (Abazi, 2018, p.33). The current level of science could not even be imagined 50 years ago. Today all the peak of scientific developments is related to the technological development of digitalization, computers and the Internet. From the in-depth study of one field, it can be indirectly concluded about the levels of developments of other specific fields and the impacts between them. "Without a dilemma, the internet and the world wide web transform the way we work, the way we shop, the way we have fun, the way we lead and communicate with each other. The Internet - phenomenon, simply put, was and is the revolution" (Seitel, 2013, p. 361). From those who are closely associated with this technology the nickname of the 'digital man' was born.

But seen from a different perspective, like the social one, it is noticeable the other side of the coin that of crimes and the greatest crime of IT and SP is the consumption of human life by spending the time it has given you to live it only once. So, as biological beings we are struck to the most precious thing in human life – as it is the time, whether we are conscious or not. "Everyone is grateful and feels debtor for small gifts that are worth almost nothing and can be easily repaid, but no one feels obligated for the time the other spends on him, i.e. for the only thing that no one can repay, be he even the most grateful man in the world". (Seneca, 1989, p. 11). A good opportunity to escape from "lonely freedom" and in order to



compensate for the social need is offered by the alternative of transition to the "virtual society" without end. But, despite modernity and technological development it has been proven that man remains a social being. "For many people, giving a good impression is a way of life. By constantly monitoring their behavior and observing how others react, they adjust their social appearance when there is no desired effect." (Myers, 2003, p. 142). Not only nowadays but in every age the social appreciation (was and) is very important to the individual.

The IT and SP have become to nowadays human being as anatomical additions to the body. Almost everyone is either looking at the SP's screen or walking with the headset listening the program selected according to one's interest. At first glance this human gives the impression that he does not need another human, being self-sufficient at home, on the street and in society. Indeed, the feeling of loneliness and isolation for the human being is unbearable even in extreme situations, and how strong the human social feelings are, became apparent openly during the COVID-19 pandemic when people protest against the measures of isolation (Yan, 2020; Protests, 2020).

### ***Human rights and the challenge of digitalization***

Throughout the history of mankind, the individual and the social have been constantly in conflict. According to sociology, in the human being lies the social. In the societies of liberal democracy in certain political and security circumstances, the need arose for the forcing of individualism and privacy. After World War II (WWII) with the emergence of monist socialist states led by the former USSR, Western democracies in opposition to the collective, social and socialist, pushed to the ideological war Human Rights and Freedoms (HRF), privacy and individualism. More than the quality of government, HRF were a new weapon to systematically fight the countries of monist socialism, during the period of the Cold War between the two superpowers.

To be more comprehensive and enforcing to all states that claimed Western democracy, the Council of Europe (CE) approved the special convention on human rights. "Right to respect for private and family life. 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others " (Council of Europe, 2013). Although guaranteed by an international convention by democratic states, the privacy of the citizen in relation to national security is secondary because the security of the state and its citizens is more important than privacy, therefore the citizen is guaranteed every right 'until' national security is not violated - here there is no dilemma that the determinant of the level of guarantee is the conjunctive 'until'.

But the political and ideological enforcing of the HRF has given its positive contribution to the installation of the new values of Western democracies, as a declared and binding standard for states that aim at these values. "For us, who belong to the first generation of post-literacy, privacy is either a luxury or a curse of

the past. The planet is like a big shopping mall where curious people deal with everyone else's business." (Griffin et al., 2016, p. 317). With the fall of the monist socialist system and the bipolar security system, with the fall of the Berlin Wall, change and access to this theme had to begin.

Addressing HRF and privacy requires substantive change and a new approach in line with the socio-political circumstances of globalization, integration and IT. There are two factors that make this topic even more relevant for liberal democracies, for which the HRF can no longer be used as a political and ideological tool.

The first factor is the political and social changes and developments at the global level, after the collapse of the bipolar security system, and the integration processes that the world has today.

The second factor is the IT which imposes virtual society on us, it cannot be stopped, because it has exceeded the power of control of the physical guardians of order even in the most authoritarian states. It is proven that in the laws of social development - the virtual (ideal and thought) precede the real and action.

Through a new approach should be brought new changes to existing legislation dealing with the phenomenon of digitalization, IT and privacy. Writer and software expert Richard Stallman wrote in a warning manner on this topic in 'The Guardian' in 2018. "The Electronic Frontier Foundation and other bodies propose a set of legal principles designed to prevent mass surveillance abuse. These principles include, key points here, explicit legal protections for leaks; consequently, they would be of the appropriate measure for the protection of democratic freedoms if they are fully adopted and implemented forever without exception" (Stallman, 2018). These changes in legislation should not only be in form, but as well in content based on the large change of IT and digitalization.

Laws can and should protect privacy only from the outside; by forces more powerful than the individual, which are the group and the state. Privacy cannot be protected from within the individual. In these positions is the privacy ratio from the temptation of IT, because there is no protection from self. Man is inclined to what is new, which facilitates life and enables us access and presence at very great distances. "In the process of dynamic adaptation to civilization some powerful impulses develop, which motivate the actions and feelings of the individual. The individual may or may not be aware of these impulses, but in any case, as soon as they appear, they are strong and seek to be fulfilled (From, 1998, p. 26). The desire for access, for appearance and display is seen to contradict the requirement for strict privacy.

In the age of digitalization, the approach and commitment of the state in relation to privacy will change. The state will no longer need to eavesdrop on citizens, the individual himself will publish his personal life and privacy, or individual X discloses the data of individual Y and distributes it. The state only had to collect, process, systematize and archive the displayed information. Privacy has a relative character, as does the truth which depends on social relations, technological development, the way of governing and the era in which we live. The biggest challenge to privacy is happening through IT and digitalization reaching the moment of change, which creates the division between the two eras. To protect privacy and

HRF, society does not need additional Conventions, it is enough for man and his life to be treated at all times as the ultimate value of the state and society.

### ***Technological development, privacy, crime, order and security***

The great inventions of mankind since the beginning of organized life on our planet, have had a very utilitarian purpose, to subdue nature, to facilitate life, to increase the productivity of products and the well-being of people. Although many inventions were made for good economic purposes, they were later transformed and adapted for military or criminal purposes. "Globalization and the information revolution provide many extraordinary new opportunities, but at the same time they have created many new threats - not only to the state but also to other security reference objects, including individuals (known as 'human security')" (Joseph, 2014, p. 537). The same phenomenon is happening with IT of the era of globalization.

The great use of IT, internet, wave communication, SP, has enabled us not to be the only owners of our devices and the information we have in them, valued as our privacy. The basic principle of operation of digitalization through connection and communication with the Internet, wave access, has enabled even malicious individuals to manipulate our data. "In a world that is becoming more interconnected and interdependent, a new theater of conflict has emerged. Governments will have a hard time identifying the source of a cyber-attack - whether it comes from a hostile state or a criminal group disguised as a foreign government." (Joseph, 2014, p. 543). To this extent, the issue of using and ensuring the functioning of this technology has been regulated by international law and individual states.

The great turning point that represents a distinct era in the field of IT and remote control, which has increased the possibilities of human action, is the invention of the drone. Possession of a personal drone has given man numerous opportunities to spy on the privacy of another; with the drone one sees the other from above, escorts him/her and keeps him/her in mind, because it is not hindered by the terrain, as it is not the bird flight. Residents who have lived on the upper floors have been sheltered from the heights, but not anymore, because the drone sticks horizontally to your bedroom window even on the 100th floor. Isolated villas with large spaces out of sight of people are no longer like that, they no longer protect the fences too far from the house or the private guards, so that unauthorized views not being taken. "Drones can be physical security risks when they record video of business or government facilities, violate personal privacy, and it's possible that malicious drones could be used to steal data from remote IoT sensors as well" (Vigliarolo, 2020). Today it is impossible to escape the observation of the bird's perspective used by man through the drone.

The Internet, SP with social networks are the biggest attackers of privacy through social networks and the very desire of people for appearance and communication. The drone is the biggest attacker of the involuntary privacy of the individual. Like any new invention, it has its positive and negative sides in its versatile and everyday use.

1. During the ban on free movement in the COVID-19 pandemic, in Albania the drone was used by the police to stop the citizens who broke the quarantine;

through the megaphone in the drone, the citizens were warned from above to stop being in violation. Also, in England the drone was used to supply hospitals with medical supplies during the pandemic. "Britain is testing the use of a car-sized drone to deliver medical supplies more quickly to hospitals and help ease pressure on the country's health system during the new coronavirus crisis." (Medicalxpress, 2020). The drone will be used both to deliver medicine and food and for climbers stranded in the highlands, which man does not reach easily. In the future, families will do daily shopping, pizza ordering and many other luxury services by drone. In this case, the good to people comes from the air – it is truly magnificent how high is raised the man with personal technological capacities.

2. We should remember that each coin has two sides. Also, the personal drone, although a very useful tool, can also be used as a tool of crime. Except to breaking privacy, the drone can bring on the balcony of your apartment, on the roof of the house or car also the load with enough explosives for a cruel destruction. In his past, the man as power from above had accepted only God, and now it is a simple man who can observe and punish us from above according to his interests and motives.

Technological development really increases the possibility of invasion of privacy, facilitates the execution of crimes from a distance and height, but at the same time also increases the possibility of their detection. Even in the digital future, the problem will not exist in crime and impossibility of detecting it, but in the lack of determination of the state to hit it. At the critical point when people will say: "in this way it can't longer go", at the point "to be or not be", society will seriously deal with the state and find a way to increase the efficiency of its functioning for the mission that has.

### ***The state as the regulator and responsible for safe development***

From the pressure of IT development, through multiple effects it has passed now to the degree of risk to the life of the individual. When the phenomenon is a force of magnitude that exceeds the managerial abilities of the autonomous and lonely individual, the individual feels the need to "voluntarily" transfer his right to privacy to the state as a regulator and guarantor of general security. In the book 'Social Psychology' the author David G. Myers has extensively addressed the relationship of the individual with society. "Like Westerners in many countries, many of the readers of this book enjoy the benefits of non-conformist individualism, but what people in the community believe matters to our well-being. We humans want to feel unique and in control of our lives, but we are also social creatures with a need for belonging" (Myers, 2003, p. 224). In these circumstances, the phenomenon of 'escape' from privacy appears, which seems very contradictory with the universal declaration of human rights and freedoms, guaranteed in principle and formally by all democratic states. This 'escape' phenomenon will continue in the future in direct proportion to the unstoppable development of technology and human society. "When high levels of social motivation are combined with distributed responsibilities, people can abandon their usual inhibitions and lose their sense of individuality" (Myers, 2003, p. 280). It has already been proven that the higher the

technological development is, the greater is the possibility of invasion of privacy too.

Increasing the powerful action skills of the individual in society through the use of IT is inversely related to social (state) control. The moment the individual and technology get out of control, chaos and uncertainty arise. At this critical point arises the additional need for order and security. Thomas Hobbes's philosophy is repeated in completely new circumstances, when man feels the need to transfer privacy to the state only to provide protection and order, where his life as part of the community also entered. "It is not enough just to appeal to the good will of the individual. Goodwill is free and not obligatory and sooner or later it is achieved by the system. [...] In order to be able to stifle the undesirable effects of the information society, social priorities are essential" (Eriksen, 2012, p. 7). From IT pollution the individual man will need new more advanced technology to be protected from uncontrolled technology. The first steps are being taken in this direction, without excluding the role of science, society and the state. Vigliarolo writes that, "AtHoc is designed to be integrated into other platforms through its APIs and SDK, which BlackBerry said DEDRONE has done to create "automated, highly targeted alerts based on a range of criteria, including flight zones, drone behavior, and user groups for a more efficient, focused response to the presence of an unauthorized drone". (Vigliarolo, 2020). Calls for order and control are not just statements of opinion, but more than a necessity.

The state should enact laws that enforce control over everything that moves in the air, like drones, flying engines, flying machines, etc. This control and surveillance scheme should start from the biometric ID card with digital chip, that with a special application it should be connected to the smartphone, and from SP with the other application the drone or personal flying object should be connected. The formula would look like: NN (citizen) + ID (ID card) + SP (smartphone) + PFO (personal flying object), thus establishing order and control, today and in the future. Increasing the speed and rate of detection of criminal offenses through IT, using data recorded from all sources and sectors, will increase the degree of security. We are going toward the point where the individual must choose the unlimited freedom or social order and discipline of the digital state, because extreme universal freedom leads to endangering the individual and his future. In this new reality of IT and digitalization, the state is order and security, so it should not be 'blocked' by bureaucracy and universal declarative conventions on HRF.

### ***Technological emancipation has to be permanent***

For horse-drawn carriages there were no laws on speeding, but such laws emerge after diesel and petrol cars were invented. This proves that legislation is preceded by technological development, i.e. legislation follows technology. Technology will be constantly evolving in the name of the progress and development of humanity, and it is always useful, challenging and attractive to humanity. "It is vital that scientists, through scientific research, move in the right direction, achieving and advancing scientific knowledge, increasing understanding, explanation and consistency so that what today seems mere fiction gradually turn into reality - always in the service of the good and the fulfillment of the needs of

humanity” (Abazi, 2018, p. 194). Scientific ethics clearly states that technological inventions must be used for humane purposes and the advancement of humanity, yet constant care is required to consciously limit as much as possible the misuse of technology and scientific inventions. "New technology can not be used for whatever comes to mind, but in many cases, it is not known in advance what it can be used for" (Eriksen, 2012, p. 108). History proves to us that technological development is unstoppable, despite the fact that a category of people will abuse freedom and new technology. Kitchen knives are used to cut apples and bread, but they can be used to kill man, however the knives continue to be used for thousands of years.

A degree of technological development creates conditions for jumping to an even higher level, this is the law of scientific development we know. "And yet, without seeing all the security that mastery gives man, people get excited with those who are able to see the new, who open a new path, with those who are not afraid to move forward" (From, 2001, p. 130). As long as humanity will exist, science will continue towards technological advances and new knowledge, for the genius mind of humanity will never rest. Certainly, there will be rumors from conspiracy theories that great technological development will be misused, that profit and technology will take precedence over human health, safety and life. Fear of using 5-G antennas and telephones that there will be control, total oversight, represented by unscientific bigotry and various non-governmental associations, cannot stop scientific and technological development.

The continuous harmful side effects of scientific and technological development can not be stopped and prevented, so much so that man can select breathing when the air is polluted. Science, technology and progress will never stop, despite the side effects and the possibility of misuse, but their creators - man and society, have a duty to guarantee its human mission while respecting the privacy and HRF of a certain era.

## **CONCLUSION**

Finally, from the treatment of the topic in the chapters after the analysis and synthesis of the written work, these conclusions resulted.

There is no HRF and privacy more valuable than human life, this also applies in relation to their risk from IT inventions and digitalization. The individual in the midst of chaos, debauchery and shared endangerment will help the country and society, giving priority to security over privacy. Transparency even when it is to the detriment of privacy as a mass phenomenon will not hinder people's lives, it along with technological development and social progress will increase, they will complement each other and coexist. In this dizzying speed of IT development, the commitment to maintaining privacy is a great challenge because, along with the lifestyle, society itself is changing and with it the character of privacy.

The development of IT itself gives greater opportunities to the state for control and order. Certainly, the engagement of police departments along with the study courses of police academies will change. The state must anticipate changes in legislation, regulation, development tracks and control mechanisms, along with security and punishment policies.

The phenomenon that involves the entire population at the same time and space, can not be a violation of privacy, from whatever factor it comes. Scientific and technological development with a wide range of uses, and exploitation, is not a threat to life and privacy but is the emancipation of society in a given era, the emancipation which has to be permanent.

In the end, to what was addressed in this paper, will be summarized as follows. In addition to the impact of digitalization, science, technology, IT, SP and artificial intelligence on society, every now and then, HRF, privacy and human life should be considered as the ultimate value, because science and development only make sense when they are in the service of man and human.

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# BEHAVIORAL ECONOMICS AND NEUROECONOMICS AS ECONOMIC CONCEPTS FOR THE BETTER FUTURE

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## **Abstract**

Standard economic theory is based on rational individuals called Homo Economicus. Practically, all forms of human behavior, according to the standard economic model, are considered to give an accurate and realistic description of the world. For example, the decision-making process and the various options that come with it, people first reduce them to a common value such as money, and then compare and choose the one with the highest estimated benefit. But in a reality, there are number of situations in which individuals do not adhere to the assumptions of optimal economic behavior. Behavioral economics and neuroeconomics have emerged as a result of such situations. In that context, this paper will consider the concepts of behavioral economics and neuroeconomics as relatively new, innovative and interdisciplinary areas that combine economics, psychology and neurology. These concepts are used better to understand the nature of people's suboptimal and irrational economic decisions.

**Key words:** behavioral economics, standard economic theory, homo economicus, neuroeconomics, neuromarketing.

## **INTRODUCTION**

Until recently, standard economic theory was dominated by models that assumed people make rational decisions. Many economists in the second half of the 20th century used the assumption that the whole system of economic theory was purely deductive and that everything in it could be derived from an essential rational axiom. This rational axiom says that the rational economic man (Homo Economicus) maximizes his utility as a consumer and economic profit as a producer.<sup>1</sup> Such an axiom has often been interpreted in such a way that pursuing

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<sup>1</sup> The term "Homo economicus" or "economic man" was used for the first time in the late nineteenth century by critics of John Stuart Mill's work on political economy (Persky Joseph, *Retrospectives: The*

self-interest has been the only thing that rational economic actors do and that everything else is irrational. In reality, almost every type of human behavior has a rational component, but there is also a lot of empirical evidence against the literal interpretation of the economic man as a universal model of human economic behavior.

## **BEHAVIORAL ECONOMICS**

In an ideal world, people would always make optimal decisions that provide them with the greatest benefit and satisfaction. People, given their preferences and constraints, are capable of making rational decisions by effectively weighing the costs and benefits of each option available to them. The final decision made will be the best choice for the individual. The economic man as a rational person has self-control and is unmoved by emotions and external factors and, hence, knows what is best for himself.

Specific assumptions about people's behavior in standard economic theory are: 1) individuals have stable and well-defined preferences and beliefs, 2) individuals make optimal choices based on these beliefs and preferences, meaning they have unlimited cognitive abilities and 3) the main motivation of individuals is always personal interest, although, they can act altruistically, especially to friends and family (Becker Gary, 1976).

On the other side, behavioral economics draws on psychology and economics to explore why people sometimes make irrational decisions, and why and how their behavior does not follow the predictions of standard economic models. The behavioral economics, unlike the standard economy, is based on the notion that the claim of Homo Economicus is incorrect and that there are many empirical and experimental evidences that have seriously challenged the accuracy and applicability of key assumptions based on standard economic theory. Instead of making assumptions about human behavior, the behavioral economics relies on scientific experiments on how people behave in different real situations. The focus of this branch of economics is the idea that bringing psychological foundations closer to economic analysis will improve standard economic theory in terms of generating theoretical knowledge, creating better predictions for observed phenomena, and creating better economic policies. The behavioral economics is a discipline that increases the explanatory power of the economy, combining it with more realistic psychological assumptions and it uses social, emotional, and cognitive factors to understand the economic decisions of individuals and enterprises. In essence, the behavioral economics is interested in how people's emotions and the structure of their mental structure affect their decision-making. The representatives of the behavioral economics show that people, in conditions of uncertainty, systematically, and thus predictably, make wrong conclusions and

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*Ethology of Homo Economicus*, The Journal of Economic Perspectives, Vol. 9, No. 2, 1995, pp. 221-231).

decisions, even in a situation where all relevant information is available to them (Kahneman Daniel, Tversky Amos, 1979, p. 263-291).<sup>2</sup> Simply put, the limitation of a person's cognitive capacity affects the making of irrational decisions about consumption, saving, buying or selling property etc. (Thaler Richard, 1999, p. 183-206).<sup>3</sup>

Hence, economic models based on mathematical laws and from which conclusions have been drawn about the behavior of economic actors should be complemented by descriptive models that take into consideration human imperfection due to the influence of incomplete information, emotions, context and form of problem situation, past experience, attitudes, beliefs, etc.<sup>4</sup>

## **NEUROECONOMICS AND NEUROMARKETING**

In reality, as it was already mentioned, there are many situations in which individuals do not adhere to the assumptions of optimal economic behavior. Neuroeconomics emerges as a consequence of these situations. Neuroeconomists study which parts of the brain are involved in making decisions so that they can better understand the nature of people's suboptimal and irrational decisions.

Neuroeconomics is an innovative and interdisciplinary field that studies human decision-making, the ability to process multiple alternatives and how to follow a course of action. It uses the research findings of economic behavior better to describe the human brain, and at the same time it uses the findings of neurology in order to form economic models. With other words, it studies how neuroscientific discoveries can constrain and guide economic models. There are several different techniques that are used to determine the biological basis of economic behavior.

Some of these techniques, such as Functional Magnetic Resonance Imaging (fMRI), are applied when a detailed image of the brain is needed.<sup>5</sup> This way, it can be seen which brain structures are active in performing a particular economic activity.

Other techniques, such as ERP (Event-Related Potential), are used to gain a better insight into the activation of different brain regions over a period of time.<sup>6</sup>

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<sup>2</sup> In 2002, psychologist Daniel Kahneman was awarded the Nobel Prize in Economic Sciences for “having integrated insights from psychological research into economic science, especially concerning human judgment and decision-making under uncertainty” (<https://www.nobelprize.org/prizes/economic-sciences/2002/summary>).

<sup>3</sup> In 2017, economist Richard Thaler was awarded the Nobel Prize in Economic Sciences for “his contributions to behavioral economics and his pioneering work in establishing that people are predictably irrational in ways that defy economic theory” (<https://www.nytimes.com/2017/10/09/business/nobel-economics-richard-thaler.html>).

<sup>4</sup> This does not mean rejecting the standard economic model based on maximizing the utility or balance and efficiency of markets. The standard economic model is useful because it provides a framework for economic theory that can be used for almost any form of economic and non-economic behavior.

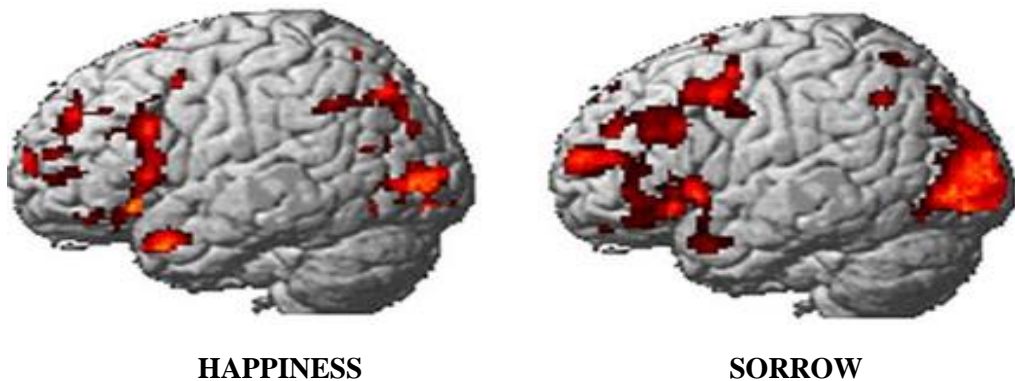
<sup>5</sup> fMRI measures brain activity by detecting changes in a blood flow. For example, when a brain region is in use, blood flow in that region increases and the machine detects this (<http://www.magnetic-resonance.org/ch/11-03.html>).

<sup>6</sup> An Event-Related Potential (ERP) is the measured brain response that is the direct result of a specific sensory, cognitive, or motor event. The study of the brain in this way provides a noninvasive means of evaluating brain functioning (Luck J. Steven, 2005).

Except studying different brain regions, some research projects have been focused on studying the link between chemical changes in the brain and different human behaviors.

Within neuroeconomics should be mentioned and the existence of neuromarketing, as a field of marketing that applies neuropsychology to marketing research, studying consumers' cognitive, affective and sensorimotor response to marketing messages (Lee Nick, Broderick J. Amanda, Chamberlain Laura, 2007, p. 199–204). Neuromarketing includes the direct use of brain imaging, scanning, or other brain activity measurement technology to measure a subject's response to specific products, packaging, advertising, or other marketing elements. Neuromarketing uses brain imaging techniques (fMRI) and physiological indicators such as heart pulse, respiration speed, blood pressure, dilated pupils, palm sweating, galvanic skin reaction etc., which gives insight into the human experiences caused by certain marketing stimuli. In this context, the figure below gives a visual example of a fMRI image of the brain showing what emotions are caused via marketing message.

**Figure 1. Example of fMRI image of a brain caused via marketing message**



Source:<https://www.nbcnews.com/healthmain/your-brain-happy-machine-can-read-your-emotions-6C10381924>

The marketing study that led to the growing popularity of this area of marketing was the study conducted by Read Montague from the Human Brain Scanning Department at Baylor College of Medicine in Houston, USA. This study was conducted in 2003 and it was known as the Pepsi Paradox because it was inspired by the Pepsi Challenge campaign. The participants in this study should have chosen the one “Cola” that tastes better when consuming “Pepsi-Cola” and “Coca-Cola”. Montague watched their neural activity with a functional MRI

machine. Without knowing what they were drinking, about half of them said they preferred Pepsi. But once Montague told them which samples were Coke, three-fourths said that Coca-Cola drink tasted better, and their brain activity changed too. The reason was the emotional attachment of the respondents to “Coca-Cola” as a result of this company stronger marketing campaign that was engraved and recognized in the brains of the participants in the study. The brain was simply recalling images and ideas from commercials, and the brand was overriding the actual quality of the product.<sup>7</sup>

Hence, the potential benefits to marketers from neuromarketing include more efficient and effective marketing campaigns and strategies, fewer product and campaign failures, and ultimately the “manipulation” of the real needs and wants of people to suit the needs and wants of marketing interests (Genco Stephen, Pohlmann Andrew, Steidl Peter, 2013).

## CONCLUSION

Behavioral economics arises as a result of the need to explain many discovered anomalies in the standard economic theory. It has accumulated many empirical and experimental evidences that have seriously called into question the accuracy and applicability of the key assumptions of the standard economic theory. In essence, behavioral economics is interested in how people’s emotions and their mental structure influence their economic decision-making.

Also, in this paper was introduced neuroeconomics as a science that combines neurology, experimental and behavioral economics, as well as cognitive and social psychology. Neuroeconomics can determine some of the processes that take place in the human brain when people make decisions. Today, it is not possible to know with certainty in which direction neurology will develop, and hence neuroeconomics or neuromarketing. However, it should be kept in mind that certain psychological processes have been identified through images of brain activity. This way, neuroeconomists try to find biologically supported explanations for the existence of suboptimal human economic behavior.

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# **SAFETY PROCEDURES, FUNCTIONS AND CHALLENGES FOR THE PROTECTION OF INDIVIDUAL SECURITY IN REPUBLIC OF NORTH MACEDONIA**

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## **Abstract**

Security is an increasingly form of many institutions and the system. In the history of human development, the terms that have been mentioned so much are very rare and they are not defined as much as the term of security. There are theoretical considerations on the use of the term itself and some different scientific views on safety, especially given that this term is used as a core value of relationships between people in all areas of life and work. Hence it appears the need for more layered use of this term, which has as its primary purpose the protection and security of the citizens. The basic function of the criminal law is to protect the individual and the society from attitudes that violate freedom and individual rights and the common function of life, or in other words, the protective function of the criminal law is to protect society from crime.

**Keywords:** Security, system, human development, several theoretical opinions, core value, individual security, systemic impact regulation,

## **THE MEANING AND ROLE OF HUMAN SECURITY THEORY**

For most of the twentieth century, security was exclusively conceived as national security and it was focused on the problems arising from threats, the use and control of military force in the context of international state-centric competition. But after the Cold War the concept of national interest underwent a visible transformation, moving from state security to meditation on the security and well-being of the individual. As a priority of security, concept analysis in this period has shifted to what is designated as Human Security. The paradigm of human security over these twenty years in the Republic of North Macedonia has shifted between traditional security concepts and efforts to define it differently. However, strategic national security staff si still facing dilemmas to include human security as an essential element of security policy. This paper seeks to make an analysis that opposes general theoretical human security personnel against the difficulties that emerge in a developing country such as Republic of North Macedonia to balance the internal security agenda as human security with their external security agenda engagements as a pretend candidate, as a NATO member. On the other hand, it seeks to approach the concepts of the security provider and the security practitioner,

representing the dividend income of human security as a result of the constant changing of the public policies related to the priorities of its various areas.<sup>1</sup>

### **HUMAN SECURITY HAS THE ROLE OF A CONCEPTUAL INSTRUMENT**

Human's security plays the role of a conceptual tool that seeks to provide a complete answer to contemporary questions: What does it mean to be safe? and when does it threaten the individual or human security? How much security? and so on. But the idea that people should be safe in their daily lives is nothing new or unexpected. It came about in the mid-1960s, when a group of underdeveloped countries used it as an argument in the interest of recurring their socio-economic interests. In the early 1990s, human protection as an object of analysis took its full form, reviewed in the works of a group of scientists, who now came not only from the field of international relations but also from other fields such as economics, environment, applied sciences etc.

### **THE FIRST ACCURATE DEFINITION OF HUMAN PROTECTION**

The first precise definition of human protection appeared in 1994, when the United Nations Development Program (UNDP), in a political declaration under the auspices of the United Nations, described human protection as: "... a position in which people are liberated from trauma that surrounds people's development, or where these traumas are completely lacking".<sup>2</sup> In first hand, the protection of people implies safety from chronic threats such as hunger, disease and repression. Secondly, it implies protection against unexpected harmful defects, harmful to the patterns of every day life such as home, on the edge, between communities, and so on.<sup>3</sup>

Thirdly, it implies a guarantor of physical security against violence, whether it is state or made by external actors of the state such as political violence, crime, death as a result of collision or domestic violence. The report goes on to confirm that the guarantee of human security requires a gradual and integrated approach to address economic security, nutrition, health, the environment, personal humanitarian and political surrounding. This notion of human security is characterized as one of the broader definitions and contains the basis of division over the notion of human security.

### **THE CONCEPT OF HUMAN SECURITY REPRESENTS A SUFFICIENT SECURITY ARGUMENT**

The concept of human security states that the realization of a central state is not a sufficient argument for security, as it does not necessarily refer to the protection of people in states with political violence. Human security, often referred to in academic analysis as human-centered protection or as human protection,

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<sup>1</sup> Башким Др.Селмани & Мевледин Др.Мустафи „Системи на заштита-sistema securitz”стр.49-53.Скопје, 2016

<sup>2</sup> (УНДП 1994).

<sup>3</sup> (УНДП 1994: 23).



focuses on the liberation from fear and poverty of human beings, moving away from state-level analysis and focusing on personal level analysis in international relations.<sup>4</sup> Thus, security is now more closely linked to the individual than to the state, asserting itself as a priority and orienting its academic analysis towards the human-centered goals of protection nowadays... But such an articulation would be incomplete if we did not mention that the analysis of human security is not carried out in the context of state security, but in addition to it. Protecting people as an internal area of study in international relations has proven to expand the concept of protection to include not only between state and international dimensions of human security but also within the state.

At the same time, the development of the concept of human protection also highlights the process of ascertaining and changing the threats to human beings and to state ethnics. These changes have clouded the debate over the meaning of protection and the arguments for enlargement and their deepening. Beside the violence within the country, there are some non-war threats such as environmental degradation, the effects of global warming, epidemics or the massive movements of people, such as refugees, migrants or individuals which are displaced within the state.<sup>5</sup> These transparent issues, as well as domestic violence, have a serious local, regional and global effect.<sup>6</sup>

## **PROBLEMS RELATED TO THE PROTECTION OF PEOPLE IN OUR COUNTRY**

Problems that are related to the protection of people in our country, as the analysis of the following scientific paper will prove, cover various areas such as economic protection, understood as guarantee of minimum individual income, nutrition protection, understood as guaranteeing a physical-economic access to essential nutrients of a given quality; health care as a basic guarantee for protection against diseases and unhealthy lifestyles; protection of the environment, such as short-term and long-term protection of persons against natural disasters, threats to human followed by nature and the protection of it; individual protection, such as the protection of the individual from physical violence, whether from the state or other states, from violent persons or actors outside the country, from various internal abuses, from political attacks, etc, communal protection, understood as protecting individuals from the loss of relationships of traditional values or their protection from ethnic and religious violence; and political protection as safeguards for people "to live in a society that respects fundamental human rights". The remainder will concentrate on exploring these dimensions or areas of human protection in the Republic of Northern Macedonia, based on our interviewed findings, with an earlier explanation of our conceptual engagement with the school's broad concept of human protection.

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<sup>4</sup> (Thakur & Nevman, 2004: 347),

<sup>5</sup> (Kerr, 2007: 93)

<sup>6</sup> Башким Др.Селмани & Мевледин Др.Мустафи „Системи на заштита-sistema securitz”стр.49-53.Скопје, 2016

## **INDIVIDUAL SECURITY**

In today's circumstances individual protection is viewed from the angle of the conditions and factors, whether physical or emotional, that need to exist for the individual to feel protected.

The response that a person has to the living conditions that he or she creates for himself or herself depends on the greater fear or certainty that he or she will have to live. The freedom to analyze such a thing exists in every individual, but the way it is measured is personal. That is, to be sure of himself, he begins with the personal attitude of the denying person, and ends up at the level of acceptance of his interlocutor, recognizing as a well-intentioned fact that they both share the same concept, judgment and interest in protection.

In this way William Blatts, the pioneer of individual protection theory, laid the groundwork for the treatment of personal protection from the 1960s. According to him, the idea of having a variety of threats around him increases the importance but also the perception of individual protection.<sup>7</sup> His treatment begins in an interesting way, to be sure of his childhood, and to change this concept along with another mentality, meanwhile that the individual himself grows and adapts to the society in which he lives, it becomes quite natural.<sup>8</sup>

Blitz's theory is not only a solid foundation but also stable over time. Today more than ever, individual protection is treated as a release from fear. If we define individual protection as protecting individuals from physical violence, either by the state itself or other states, by violent persons or non-state actors, by various internal abuses, by political attacks, and so on, and if we projected it in a socio-political environment, then the issue would very specifically result, delicately and at best, at least studied.<sup>9</sup>

## **IN THE MEANTIME WE HAVE GONE THROUGH PERIODS OF RISK OF WAR AND POLITICAL INSTABILITY IN THE BALKANS**

In the meanwhile we have overcome the dangerous periods of war and political instability in the Balkans, we are currently under pressure from a society in transformation in which individuals or various interest groups may be at risk for individual protection in direct or indirect forms. A good example that illustrates the gap between the threat and measures to combat this threat to individual protection, is the protection of the human factor and the environment. In these circumstances the concept of protection contains a denominator of all the factors that can be discussed in fear that accompany the uncertain individuals in Republic of North Macedonia as political, economic, social, psychological, physical, sexual, etc. violence, although in varying parameters, is always accompanied by a sense of fear as a consequence of insecurity which inevitably leads to anti-conformist behavior

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<sup>7</sup> (Вейсберг, 2001:6).

<sup>8</sup> (Вейсберг, 2001:6).

<sup>9</sup> Башким Др.Селмани & Мевледин Др.Мустафи „Системи на заштита-sistema securitz”стр.49-53. Скопје, 2016

for the community, isolates the individuals, consequently closes the possible way of solving problems related to protection, as long as the person refuses to participate in such a process.

Expectations, unambiguously as in any political theory or social approach, are directed to the state, which is obliged to defend the citizen in public places, to remove the danger and threats of violence against him by protecting him in two-dimensional way - the protection of the people, or the personality and success of the law that the Law offers and the rule that it decides. Being insecure does not necessarily imply the presence or participation in coercive act, threat, persecution or discrimination.<sup>10</sup>

## CONCLUSION

From the perspective of the scientific paper Processes of Protection and Challenges for the Protection of Individual Security in the Republic of Northern Macedonia, we can conclude that the majority of persons who do not feel personally secure in Republic of Northern Macedonia very rarely or never could find an individual solution in the relevant institutions. First, personal protection is a matter of quality factors; feelings and perceptions, making Republic of Northern Macedonia a place with serious problems in the context of human protection, despite the fact that strategic documents do not pay much attention. The normative and theoretical aspect of human security has now taken on a clear form although researchers in the field of protection, international relations, or other fields have turned human protection into an field of interdisciplinary studies where disciplines and classical theories are insufficient to explain completeness. on the challenges that individuals face

The transition from the classic concept of state security to human security is not excluded, but it does question the value of man as a major beneficiary of security policies related to his social, economic and political well-being.

But as long as personal security is a personal feeling, it is a matter of personal justification, each assessing the degree of his or her security welfare, considering the state or some other real or virtual force, depending on the belief or relationship it holds, as a catalyst. which facilitates and ideally protects man as secure. As a consequence, it turns out that today, rather than about the concept of being safe, we need to focus on the effectiveness of personal safety and debate about the key actors that influence its improvement. The state continues to be a major actor in maintaining a secure social and political order, where citizens feel that their basic rights are respected, where they have no fear of living, and that they need to appreciate that this security offered or provided by the state is functional. In any case, civil society remains an actor that monitors and raises awareness of people,

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<sup>10</sup> The theoretical and normative aspect of the concept of protection, already has a clear form, although researchers in the field of protection, international relations or other areas have pre-empted human protection in the field of interdisciplinary studies, where classical disciplines and theories of protection are insufficient to explain, in the totality of the challenges that individuals face. The transition from the classic concept of state protection to human protection is not excluded, but it questions the significance of man as the main beneficiary of protection policies that are in line with his social, economic and political well-being.

groups, individuals about this security. But the information that flows for the benefit of the secured party, that of the mediator ie civil society and the recipient party the human citizen in Republic of Northern Macedonia, remains the media certainly a civil society party but identified as a Government that assesses, and does not always have an objective diaspora. It is worth pointing out that the media can be a major source of information about violence that does not have a direct impact on people's perceptions and causes them uncertainty. But in the case of Republic of Northern Macedonia we can also see a tolerant trend of state institutions responsible for receiving alarming codes of crime, violence, clashes and more, avoiding them on the agenda of real security threats. Perhaps the time has come for the individual to declare himself or herself feeling safe or not, and to consider the possibility of finding a balance between releasing emotional fear and the physical and political factors that help eliminate uncertainty, which is material. and then generate the information over time across generations in space and outside the boundaries of security in Republic of Northern Macedonia and be safe as a citizen.

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## MISUSE OF CHILDREN'S PERSONAL DATA

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### **Abstract**

The digitalization has changed the world rapidly, and even more importantly, this process is still growing. The use of the Internet, especially the use of the social networks is increasing every day. The publication of personal data as photos and videos of children on the social networks violates their right to privacy which is protected, guaranteed and regulated with numerous international regulations. The most common forms of misuse of children's personal data are theft of a child's profile on the social networks, profile hacking, publishing child's personal data, his photos, videos without his consent or parental consent, as well as illegal collection and processing. These forms of misuse during the pandemic of COVID 19 and the domestic quarantine have increased worldwide. This paper's goal is to emphasize the need for children's privacy during the current situation, to point out the question about the child's consent to the processing of his personal data, as well as to provide an overview of the legal protection of children's personal data in the provisions of the General Data Protection Regulation of the EU 2016/679, and at the same time to point out the shortcomings of the Macedonian legislation regarding this issue.

**Key words:** Children's data, misuse of children's personal data, children's personal data protection, children's digital privacy, GDPR.

### **INTRODUCTION**

The rapid technological development in the last two decades has brought new challenges for the protection of the personal data in the digital sphere. Namely, the digitalization, in the form of emergence of social networks and numerous mobile applications, has accelerated the flow of information that also contains personal data. This has certainly made more complicated the numerous problems to which personal data subjects are forced to adapt quickly. The misuse of the privacy and the personal data is one of the alarming problems, where there are phenomenological different types of injuries in this area on a daily basis. This has in particular raised concerns about children's privacy and the use of their personal data for various purposes. It is very important how the children understand the digital world, their digital skills and their capacity for agreement in order to be created regulations for protection of their personal data. And now, as measures are taken to prevent the spread of the COVID-19 pandemic, hundreds of millions of children around the

world are likely to face a greater threat of misuse of the personal data they leave on the Internet on a daily basis.

The privacy concern intensifies with the introduction of the digital technologies and the Internet because of their capacity to gather big data with the files of more and more personal information about the Internet's users. The children are considered more vulnerable than the adults regarding the threats through the Internet because of the lack of digital skills or awareness about the privacy risks.<sup>1</sup>

Namely, the children's privacy differs both in scope and application from the privacy of adults. Regarding the informational privacy, there is a strong argument that the children should be subject to stricter privacy protection. Especially since the protection of the privacy of information is often circumvented by requiring users to agree to long terms for the collection and processing of personal information, more limited levels of literacy and comprehension in children will require increased control and vigilance.<sup>2</sup> Many parents also take actions that adversely impact their children's reputation online. While it is now commonplace for parents to share information about their children online, most children are not in a position to either scrutinize the information or object to its posting. As there is frequently no way for children to request that offending content be removed, even when they reach adulthood, parents may inadvertently be compromising their children's privacy far into the future.<sup>3</sup>

The children leave a large scope of personal data on the Internet, including blogs, personal websites, social media posts and electronic public records like exam results, health care data, sporting league results and school bulletins. Playing an online game, attending a public event, or commenting on a news article can indefinitely capture discrete moments in children's lives. Taken together, this information creates public online representations of children's lives about which they may neither know nor feel comfortable. This not only has clear and immediate implications for children's privacy and autonomy, but also extends well into adulthood as it may impact future employment, relationships and financial inclusion<sup>4</sup>.

Also, the younger children use smart toys connected online for play and learning, which are recording the children's voices through the interaction. Given the rapid evolution of technology, one can only expect that such connected or smart toys and devices will continue to develop and sell in the market in the coming years.<sup>5</sup> Today, children's personal data is collected and processed in unprecedented quantities from an early age.

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<sup>1</sup> Children's data and privacy online Growing up in a digital age , An evidence review , Sonia Livingstone, Mariya Stoilova, erRishita Nandagiri, Decemb 2018, p.4

<sup>2</sup> United Nations Children's Fund (UNICEF), March 2017, p.9

<sup>3</sup> Ibid

<sup>4</sup> Ibid, p.18

<sup>5</sup> Ingrida Milkaite & Eva Lievens Towards a better protection of children's personal data collected by connected toys and devices, page 3-4

However, it is worrying that this data is often of a sensitive nature, and thus collected allows the creation of profiles for child users. These profiles can then be used for many different purposes with potential misuse.

### **Misuse of children's personal data on social networks**

The use of social networks through creating personal profiles is the everyday life of every individual, no matter what age group it belongs. But as useful as they are, they are also a dangerous tool, especially for the unconscious individuals and the vulnerable groups such as the children. In recent years, there has been a new, rapidly growing global trend known as "sharenting"<sup>6</sup>, ie posting photos and videos by parents on social networks, especially the popular "Facebook", "Instagram", "YouTube" and "TikTok". It is not uncommon for these parents to create their own profiles for their children. The fact that these posts on social networks reach a large number of people, especially with the "hash tags", carries with it the risk of having an effect that increases privacy violations by abusing children's personal data. Namely, by publishing a photo of the child, the parent unknowingly publishes data about him. Thus, congratulating the birthday reveals information about his date and year of birth, publishes information about friends, address of residence or in which city they live. In fact, some parents do not take into account the risks that their children may face in the future while sharing their personal information. For example, most parents when posting photos of their children do not think that they can be taken by others and posted on a publicly available website and used by users of pedophilia websites. Namely, in the context of the pandemic that prevails in the world, Europol pointed out that the distribution of content with sexual abuse of children<sup>7</sup> has increased. It is an indisputable fact that the probability of such examples increasing day by day.

Namely, the children have no control over the spreading of the personal data by their parents, and these posts, whether with negative or positive details, can be available on the Internet for a long time, and this affects the child, not only in childhood, but also later in life. When parents share information, they do so without the consent of their children. These parents act as custodians of their children's personal information and as narrators of their children's personal stories. This dual role of parents in their children's online identity gives little protection to children as their identity develops through the Internet. There is a conflict of interest as children may one day complain about posts published by their parents.<sup>8</sup>

However, the parents are not always aware that publishing certain data can harm their children, no matter if it intentionally or not. The parent's own decision to share personal data about the child on the Internet is a potential misuse. The children not only have an interest in protecting information about themselves in

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<sup>6</sup> The word „sharenting“ was created by the Americans by joining the words sharing and parenting

<sup>7</sup><https://www.europol.europa.eu/covid-19/covid-19-child-sexual-exploitation>

<sup>8</sup><https://mia.mk/evropol-za-vreme-na-pandemi-ata-zgolema-distribuci-a-na-sodrzhini-so-seksualno-zlostavuva-e-deca/>

<sup>8</sup> Stacey B. Steinberg, SHARENTING: CHILDREN'S PRIVACY IN THE AGE OF SOCIAL MEDIA Section on Family & Juvenile Law 2016 , page 839



their parent's post, but may also disagree with the parent's decision to share any personal information about them.<sup>9</sup> Of course, this is a new legal issue related to the rapid development of social networks. Namely, once published on the Internet, they leave indelible digital traces.<sup>10</sup>

The most common forms of misuse of the children's personal data are creating a profile on the social networks, hacking the profile, publishing the child's personal data, his photos, videos without his consent, usually with the parent's will, as well as illegal collection and processing.

### **Risks of sharing children's personal data**

We often hear about misuse of personal data faced by adults as misuse of financial data, medical or biometric, to various sexting risks.<sup>11</sup> The same forms of misuse of the privacy of personal data apply to children and young people, who may suffer from online account theft.

The biggest threat to children and their personal data is child profile theft or digital hijacking. The compromising of the identity by stealing a profile is one of the most common risks on the social networks, which victimize the children and the beginners in the use of social networks. The profile theft is a form of identity theft that is particularly prevalent on the Internet, ie most social networks. In addition to being one of the most common risks on social media, the profile theft is often a prelude to others, most often criminal activities against children.<sup>12</sup>

Namely, the digital kidnapping is a technique which cybercriminals use when they create a false profile using photos and personal details published online by the minor or his/her friends or family; the profile is used to foster trust with other children or young people. The profile is used to foster trust with other children or young people. The damaged digital reputation can negatively affect the future personal or professional relationship of the minor<sup>13</sup>.

This is why it is so important to avoid sharing personal information in group discussions during video games, instant messaging, social networking, etc.<sup>14</sup> Namely, the most commonly shared personal data that pose a risk of misuse of personal data and their privacy are: a phone number that can be used by others to harass the children; home address or name of school, which reveals the physical location of the child; the current location of the child or the parent, to find out if the person is at home or the home is unprotected; compromising photos, which can be a threat to everyone's privacy; photographs of gifts, especially if they are expensive, showing the purchasing power of the person; comments on certain topics that may

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<sup>9</sup>Ibid, p.844

<sup>10</sup>Ibid

<sup>11</sup> Sexting is sending, receiving, or forwarding sexually explicit messages, photographs, or images.-

<https://en.wikipedia.org/wiki/Sexting>

<sup>12</sup>Александар Миладиновић, ма, БЕЗБЈЕДНОСНИ ИНЦИДЕНТИ ПРЕМА ДЈЕЦИ НА ДРУШТВЕНИМ МРЕЖАМА Криминалистички аспект, Бања Лука, 2018. године, стр.34

<sup>13</sup> <https://www.bbva.com/en/in-the-age-of-covid-19-protect-your-children-on-the-internet/>

<sup>14</sup> Ibid

be misinterpreted and give a false perception, which may damage the reputation; and passwords, ie the use of the same password on different social networks.<sup>15</sup>

### **The misuse of children's personal data and COVID 19**

The new corona virus, which swept the world for a short time, we were forced to restrict the movement outside, and especially certain age groups, and to stay at home in order to protect our health. The children were one of the groups that were forced to stay home and end the school year with online classes by government decisions banning movement. Thus, until the process of normalization, in this period there is a significant increase in the number of children - Internet users.

Namely, the personal data of millions of children who spend time on the Internet are at great risk. While the parents are at work, it is difficult for them to monitor their children's activities online. But, most often due to lack of parental awareness, these children under the supervision of the mother or father, play online games, create their own profiles on social networks and acquire usernames.

The COVID-19 pandemic highlighted the great benefits and risks of the modern data processing. On one hand, the data is essential to stopping the spread of the virus. Due to the characteristics of this disease that pose risks to the life and health of populations around the world, the need for personal data, assuming legal processing and use, to study scientific topics based on population characteristics, as well as data from laboratories and hospitals has increased. , in order to create effective measures for dealing with and preventing pandemics, including better diagnosis and rehabilitation of COVID-19 cases. But, on the other hand, after the data processing, there is a risk that they will continue to be stored or used after achieving the initial goals. And of course this includes the health data of the children.

In times of social isolation and closure, many schools use e-learning as an attempt to extend educational programs for children. In these circumstances, more than ever, the processing of children's data in education systems must be based on an appropriate legal basis and be as transparent as possible. The international community insists on the need to protect personal data even in the current situation and in the various areas where measures taken to combat the pandemic and maintain business and educational activities may put them at risk.<sup>16</sup>

UNICEF is already concerned about the need to protect digital footprints from children, and during the pandemic and unusually high Internet usage and increased surveillance, such concerns have intensified. The children are a particularly vulnerable category of data subjects and require extra care for their data. If children's data can lead to individual identification, they may be at physical risk or risk of stigmatization.<sup>17</sup>

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<sup>15</sup> Ibid

<sup>16</sup> <https://www.coe.int/en/web/children/-/protecting-children-s-data-in-prevention-and-control-covid-19-measures>

<sup>17</sup> <https://www.unicef.org/globalinsight/stories/covid-19-and-childrens-digital-privacy>

## **GDPR Regulation and the adjustment of the child's privacy in the digital world?**

The General Data Protection Regulation of the EU which entered into force in May 2018, replaced the Directive on protection of personal data from 1995, which did not contain provisions related to the mentioned problem of personal data protection of children. With the very evolution of personal data protection through human rights and the development of privacy, the GDPR is recognized as the culmination of data protection rights in Europe. The regulation has gone a step further, and for the first time in the history of the right to privacy in Europe, the right of the child is mentioned separately from the adult. For this reason, this paper has chosen to base its analysis on the GDPR framework.

Namely, in the regulation of the European Union, a condition for processing personal data is that the child is older than 16 years. However, it is stated that for children under the age of 16, such processing is legal only if and if such consent is given or permitted by the parent's holder of the child<sup>18</sup>, as children may not be aware of the risks or consequences of processing the child's personal data<sup>19</sup>. However, it is stated that Member States may provide for a law on the minimum age for the same purposes, provided that the lower age limit is not less than 13 years.<sup>20</sup>

As it can be seen in the Children's Personal Data Regulation, the child is protected from publishing his personal data only by third parties, but not from publishing by the parents/guardians, because for the processing of personal data children under a certain age require the consent of the person who is the legal representative of the minor. In this case, that person will be able to assess all the consequences of the processing of the child's personal data and give appropriate consent. Obviously, the legislator starts from the assumption that parents will not do anything to the detriment of their children. However, many parents can cause problems that may arise today and in the future by posting about their children on the Internet and especially on social media. However, the key question is whether the consent of the child is required if the children's personal data is processed or in other words shared on social networks by their parents.

As especially important elements is the "consent" of the data subject which according to the General Data Protection Regulation of the European Union is defined as any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or clearly affirmative action, signifies agreement to the processing of his related personal data.<sup>21</sup>

There are several conditions from which at least one should be fulfilled in order for data processing to be legal. One of them is that the data subject must give consent for the processing to be considered lawful.<sup>22</sup> A special provision is included regarding the processing of children's personal data. Accordingly, if the data subject is a child, interests seeking the protection of personal data or fundamental rights and

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<sup>18</sup> Art 8/1 of GDPR

<sup>19</sup> GDPR (38)

<sup>20</sup> Ibid

<sup>21</sup> Art 4/11 of GDPR

<sup>22</sup> Art 6/1-a of GDPR

freedoms that go beyond the legal interests pursued by the data controller or a third party<sup>23</sup> shall prevail. Obviously, the interests of protection of children's personal data prevail. Otherwise, the processing of the child's personal data will not be considered legal.

The rights that children have in case of processing of their personal data are subject to the general provisions stated in the regulation, ie they have the same rights as adults. In this context, if the child's personal data is processed and illegally, the child may exercise the right to correct the data<sup>24</sup> or the right to request its deletion ("right to be forgotten")<sup>25</sup>. According to Steinberg, this right may prove to be the most promising legal solution available to remedy parental harm by posting data on social media.<sup>26</sup> This right, according to the regulation, is important especially when the data subject has given consent as a child and was not fully aware of the risks associated with the processing and consequently wants to remove such personal data, especially when they are online. The data subject should be able to exercise this right regardless of the fact that he is no longer a child<sup>27</sup>. The person has a good reason to delete the data because as a child, at the time of consent, they may not have been fully aware of the risks involved in the processing. In that case, in accordance with the Regulation, "The controller must make reasonable efforts to verify that the consent in such cases has been given or approved by the parent with responsibility for the child, taking into account the technology<sup>28</sup> available." This applies in particular to the processing of medical data in e-health, where an important aspect is the written consent of the child.

### **The national legislation**

The Republic of Macedonia as a candidate for EU membership, ie a country waiting for a date for the start of accession negotiations for EU integration has an obligation to transpose the Regulation into national legislation and to implement it in practice<sup>29</sup>. Accordingly, the new Law on Personal Data Protection<sup>30</sup> was adopted where "in case the personal data subject has given consent for processing his personal data for one or more specific purposes, in relation to the direct provision of information society services to children, The processing of a child's personal data is legal if the child is at least 14 years old. If the child is under the age of 14, such processing is legal only if such consent is given or permitted by the child's legal representative. In these cases, the controller is obliged to make a reasonable effort to verify that the consent is given by the legal representative of the child, taking into account the available technology "(Law on Personal Data Protection, 2020). Thus,

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<sup>23</sup> Art 6/1-f of GDPR

<sup>24</sup> Art 16 GDPR

<sup>25</sup> Art 17 GDPR

<sup>26</sup> Stacey B. Steinberg, *SHARENTING: CHILDREN'S PRIVACY IN THE AGE OF SOCIAL MEDIA Section on Family & Juvenile Law 2016*, page 876

<sup>27</sup> GDPR (65)

<sup>28</sup> (GDPR, чл. 8 § 3)

<sup>29</sup> [www.dzlp.mk](http://www.dzlp.mk)

<sup>30</sup> Official Gazette of RNM No.42/20 from 16.02.2020

the new Law on Personal Data Protection is fully adapted to the current EU regulations.

Here, the legislator has set the age of 14, and the processing of personal data of children under 14 requires the consent of their parents or guardians. As can be seen, a debatable issue is the maturity of the juvenile at that age, ie the ability of the person from 14 to 18 years of age to act reasonably, ie to understand the consequences of his actions. However, in adopting this provision, the possibility of a procedure that parents can take to the detriment of a child under 14 years of age was not considered.

Regarding the criminal legal protection from the violations of the provisions of the criminal act for misuse of personal data from Article 149 of the current Criminal Code of RNM which regulates this issue, it can be concluded that there is a lack of provision that would strengthen the existing incrimination by emphasizing of protection of personal data of children. Namely, the act itself incriminates the collection, processing or use of the personal data of the citizen, without his consent and contrary to the conditions determined by law. Namely, there is an obvious need to strengthen the existing law by creating additional provisions that would clarify the issue of misuse of personal data of children, which is a vulnerable category.

## **CONCLUSION**

The digital technology and the Internet have changed the way of thinking about the children's right for privacy of their personal data. The threat to the privacy of the minors' personal data, by publishing their personal data like photographs and other information on Internet has increased in the last few years. Regardless of the legal regulations and despite the numerous warnings from the authorities about the possible misuse of it, as (digital) kidnapping, identity thefts, harassment, misuse of minors etc., the parents' irresponsibility for their children is terrifying. It is obvious that this problem has increased with the onset of the corona virus (COVID-19).

The misuse of the personal data on the social networks is certainly influenced by numerous vulnerabilities of the social networks themselves, but the ignorance and carelessness of the users of the social networks certainly contributes to that and most of all because they do not know how to protect themselves. It is therefore important to emphasize the preventive activities against children, in order to greatly reduce this ignorance and raise the awareness of this population about the need for protection and opportunities for disruption of their digital security at a higher level. It is also necessary to fully apply the international standards for processing personal data of children on the Internet.

The regulations are the only mechanism that can set boundaries for the processing of personal data by the public and private sector, even in a health crisis, in order negative consequences on this issue to be avoided.

The increase of the number of children Internet users, the increase of the number of mobile applications for numerous Internet-services and the social networks the younger children approach to, as well as the risks for the children, made the EU to change the current regulatory framework and to adopt a General Personal Data Regulation (GDPR). It was created to strengthen the rights of the

data subjects and to increase the data protection of the individuals, the child's right to protection of his personal data and privacy. In this sense, the personal data of the child can be processed in case the child is at least 16 years old, and for younger children only with the approval of the holder of parental responsibility over the child. In implementing the legislation in its domestic law, the Member States may provide for a law in which the minimum age is not less than 13 years. Obviously, the EU authorities could not agree on a single age limit (13 to 16 years). The Republic of Northern Macedonia has accepted the requirement for 14 years of age.

But apparently the legal solutions related to the privacy rights and the personal data protection do not exclude the use of personal data, especially in response to the emergence of a new pandemic caused by COVID-19, which emphasizes the need for new forms of children's personal data management, in order to promote fairer benefits for the children as part of society.

As a result, although it is accepted that the general provisions in the regulation and the new Law on Personal Data Protection will find an area of application in relation to the processing of personal data of children, our legislation lacks criminal law provisions that will directly impose criminal liability on the perpetrators of the crime of misuse of children's personal data.

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# THE CHALLENGES OF A SOCIAL CONTRACT AS A PREDICTION OF A SUCCESSFUL SOCIAL DIALOGUE AND SOCIAL CONSENSUS

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## **Abstract**

The challenges of social agreements as a presumption for a successful social dialogue and consensus.

The social dialog as an irreplaceable tool and mechanism in building democratic relationships and principles in labor and capital is faced with a series of challenges, especially today in context of capital globalization, new migration processes, digitalization and neo-liberal politics.

The social economic and social changes caused by the so called new industrial revolution necessarily influence the specific forms, institutions and practices of social dialog.

We connect the different concepts, institutional models, forms and systems of social dialog as an assumption for building social consensus more and more with social dialog created by its carriers, based upon the relations between capital and labor, government and social partners, government and citizens.

The aim of the paper is to point out the importance of the social contract as a social phenomenon and its impact with all the modifications that it must undergo to successfully ensure the necessary social consensus.

**Keywords:** social, dialog, consensus, labor, capital, industrial, relations, social, contract

The most recent developments in the so called fourth industrial revolution, along with a series of challenges caused by the digital paradigm have influenced a series of dynamical processes in the industrial relations, the labour market, social politics and generally the relations between social partners as creators of social dialog.

If we agree that the pillar of democracy, and by extent industrial democracy, is social dialog, then the challenges presented by the technological changes, the decrease of work places in society will force the need to build a new approach in creating social dialog.

We connect the essence of social dialog with the attempts to harmonize and align the social processes and relationships by interest groups organized in



specialized organizations with legitimate representative power of representation, creation and decision making.

Social dialog as an instrument of securing social peace and social consensus, as well as ensuring a balance and reconciliation of social interests is most often reflected through bipartite, tripartite or multiparty negotiations. Bipartite negotiation models and practices whether through employee participation in management or consulting bodies, worker participation or through classic collective bargaining in the context of digital and technological change, will face a number of challenges related to significant changes in the labour market and new jobs.

Moreover, the tripartite social dialog realized through representative trade unions and employers' organizations with the involvement of the state in the development of economic and social policy will be more in line with the digital and technological paradigm. The state as a creator and third social partner will have to create a new normative framework, but also a balanced economic and development policy, both economically and socially in context of new jobs, a changed labour market and new redistribution of benefits.

If the purpose of conducting social dialogue is to reach a compromise-social agreement on the content, the dynamics and social cost of economic and social changes, and if through institutionalized and developed social dialogue oriented towards the adoption and harmonization of social agreement reduces tensions and conflicts<sup>1</sup>, the question here is whether such a goal will be achieved today in the context of technological change and the industrial revolution and the future of labour. This is all the more so given the former neo liberal theories that have certainly had reserves towards the social contract and any regulation advocating the so called legal democracy that requires reduced bureaucratic regulation, reduced role for interest groups, lesser interference in the economy, a market without restrictions and alike. These that animate this ideology that the market is the basic mechanism of distribution, not the government and that the state only regulates the laws that protect life, property and freedom<sup>2</sup>, that is, the denial of distributive power, and this social justice, directly call into question the possibility that the technological paradigm will be a subject of new content of social dialog or social contract.

The new industrial revolution and the digital-technology paradigm will obviously require an appropriate parallel social strategy and social contract that will be a prerequisite for securing new structural legal political equality in view of the innovations that the labor market will bring, new work places, higher inequality, flexibility as well as informal forms of employment. Traditional forms of conducting social dialog, whether on a basic level within enterprises, negotiating and collective agreements with employers, participating in decision making bodies, either at a branch level or tripartite complicity of participants in Economic and Social councils must respond to the overall changes associated with the digitalization and the future of labor and the challenges of shaping a new social contract.

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<sup>1</sup> Scharrenbroich, Herbert, 2002., *Socijalna politika kroz dijalog*, u: *Socijalna politika I socijalni dijalog*, KAS I Institut G 17, Beograd, str.25 и 26

<sup>2</sup> Hayek, Fridruch, 1998., *Poredak slobode*, Novi Sad, Global book , str.231-245

The International Labor Organization (ILO) recognizes two approaches in defining social dialogue: First that the dialogue refers to all kinds of negotiations, consultations or exchange of views between government representatives, employer organizations and worker organization regarding economic and social questions of common interest. It can be a tripartite process or bipartisan process, and dialogue can take place at a national, regional or enterprise level<sup>3</sup>. Under the second approach, the ILO also lacks an accurate and precise definition of social dialogue, so it represents every form of bipartite and tripartite consultation and negotiation.

In regards to the legal instruments or norms and standards of the ILO basic convention promoting social dialogue at national levels is that of 1976, namely Convention No. 144 which refers to procedures and national practice after consultations with representative organizations (article 2.)<sup>4</sup> The next relevant norm is the ILO Recommendation No. 113 of 1960 on industry and national consultation, Recommendation 152 on tripartite consultation and promoting the application of international labour standards and national activity relating to the ILO's 1976 work and the 1966 ILO resolution on tripartite consultations at national level in economic and social policy.

One of the challenges of social dialogue and social agreement is whether existing standards, bodies, models and levels will be able to withstand the latest changes in the labor market and job segregation and ensure adequate participation and representation of workers and employers. From the workers' perspective, the challenge is how the social contract will include informal workers or those outside the usual established labor relations through coalitions with user interest groups, relevant cooperatives, CSOs and the like. From the perspective of employers, the challenge is whether the focus of the new relationships will be to a greater extent on national and multinational employer organizations.

For effective social dialogue and advocacy, the challenge of shaping a social contract is not only related to the challenge of building new national policies and institutions but also to other issues that in one way or another affect or undermine the social contract. In any case, they are associated with profound changes in the nature of labour relations, the labour market, and of course the globalization of the economy and economic integration. The increasing dependence of the economies on the financial sector or the so-called financialization in the economy also has an irreversible effect on shifting the positions of social contract actors.

Atypical forms of employment, underemployment, decline in union membership, shifted jobs, the impact of multinational companies are determinants that seriously affect labor market institutions, and especially trade unions and collective bargaining. The influence of these determinants on the nature of labor relations, and thus on collective bargaining as one of the essential instruments of social dialogue, is bound to have an impact on the social contract model as well. It is gratifying that certain experiences of the global economic crisis of 2008 and the experiences of some European countries, especially Germany, which have supported the process of inclusive collective bargaining, supported by a range of social

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<sup>3</sup> Славољуб Луковиќ (Социјални дијалог) U.G.S. "Nezavisnost, Beograd. 2004" стр.39

<sup>4</sup> ILO Convention No. 144 Article 2, Geneve 1976

measures for small and medium-sized enterprises, may be one of the roadmaps for a modified social inclusion contract. and questions about non-standard forms of employment and even migrants.

The democratic processes of an effective social contract are inconceivable without an adequate process of enforcing the rights, obligations, and responsibilities of the actors taking into account the pursuit of equity and equality as well as social justice in spite of the pervasive inequality and poverty produced by the underprivileged decent work and adequate social protection. That is why, when innovating labour institutions as part of social contract, the international standards of labour including Recommendation no. 152 can also serve, in which Article 3 points to the formation of committees and bodies with general competence in the field of economics, social and labour.<sup>5</sup>

Digitalization, technological changes and growing automations and so on, or the so called fourth industrial revolution undoubtedly affects both the composition of the actors, but also the models and concept of social contract, especially in the context of predictions by some theorists such as Ford who in his paper "Raising Robots" talks about future without jobs. It is a fact that the rights and obligations of the new atypical forms of employment and new jobs and the formation of new industrial relations will affect the forms and models of the new social contract, but it is essential that whatever the projection is concerned, the basic principles and ILO standards will have to be the cornerstone of resolving all dilemmas around these issues.

The next challenge facing the social contract as a process between actors defining relationships and principles, and establishing guiding principles and forms in building economic, social and political institutions will be the growing inequality, the variability of income and of course employment as a structural element of the social contract, in particular youth employment. These issues, and in particular the ubiquitous inequality, high rates of poverty among the population are increasingly supporting the basic principles of social contract that in turn require direct engagement of social contract actors to seek solutions appropriate to the new reality of labor and industrial relations.

### **In Conclusion:**

The goal of social dialogue is certainly aimed at securing social priorities that will ensure social development, economic prosperity, social justice, solidarity and building social stability. In fact, the very foundation of the social contract amongst its holders is a tendency towards social stability which, as we have seen, is particularly threatened by informality, new jobs, globalization, flexibility and the challenges of the technological revolution, digitalization and the like. Therefore, the social contract must:

1. Adapt to the new reality by including issues related to the most vulnerable groups in society;
2. The social contract must address the challenges posed by the globalization and financialization of the economy;

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<sup>5</sup> ILO, Recommendation No. 152, Article 3, Genève 1976

3. The social contract must also cover the new co-payment systems and the management relations between workers and employers;

4. The social contract must include forms of elimination of inequality and poverty;

5. The social contract will advocate for a more equitable tax and social security system;

6. The social contract must affirm new forms of employee representation from atypical forms of employment and the informal economy

7. The social contract will analyse and affirm a stronger system of inclusive collective bargaining at all levels

Sustainable social dialogue today and finding a common social agreement has no alternative and is the basis for building and achieving social consensus on the content, dynamics of social, economic and social change associated with and triggered by the technological digital fourth industrial revolution and new industrial relations.

Lastly, the harsh reality imposed by the health, demographic, social, and especially economic crisis of the Covid 19 Pandemic necessarily imposed the need to implement measures, strategies and models in social contract and social dialogue. Even more so, according to ILO estimates, unemployment would increase by 25 million people compared to global unemployment by 23 million during the 2008 crisis. The study estimates that total losses would be between \$ 860 billion and \$ 3.4 billion. All of this will result in an increase in labor poverty, which is projected to be between 8.8 and 35 million people. According to this study, two are the key tools for dealing with the crisis and its mitigation, namely social dialogue, ie the necessity of a social contract and international labour standards and their respect.

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## **UNDERMINING HUMAN RIGHTS IN MACEDONIA VIA CANNABIS CHARGES, AND HOW CANNABIS PROHIBITION FUELS ORGANIZED CRIME**

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### **Abstract**

The cover title has been an area of work and research in my broader activities in the last eight to ten years, including my masters thesis “Legalization as a method of targeting drug trade”. During my work as a criminal lawyer, one can conclude that cannabis charges in the Republic of Macedonia, in a specific section, are an explicit violation of the rule of law, the rule of law being one of the basic principles of the country’s constitution, thus violating basic human rights, right of a fair trial included.

The above is the result of, inter alia, the unlawful and unconstitutional Guidelines of the Public Prosecutor of Republic of Macedonia, by which any quantity above five grams of cannabis is automatically accused with felony charges of “intent to sale” even when no typical elements of sale are present, which Guidelines are accepted to the fullest by the Macedonian Judicial system, as if the Public Prosecutor is the legislator. Furthermore my work shall set the thesis that prolonged and unnecessary cannabis prohibition fuels organized crime and the black market.

In my scientific work I shall use the methods of empirical observation, objective approach and systematic observation. The conclusion’s drawn from this work shall be that in Macedonia there is an illegal practice of pressing felony charges for cannabis possession(which is not even forbidden on paper) and verdicts by the judicial system which are systematically stigmatizing and criminalizing cannabis users(not dealers), and that Criminal law amendments are paramount in order to determine by law which quantity of cannabis is personal use thus restoring rule of law and lawful procedure.

The significance of this work is that it will contribute to the prevention and stoppage of an unlawful practice, hopefully contributing to Criminal code amendments in the direction of restoring legal procedure.

## **GENESIS OF THE PROBLEM**

Up until the 1980's drug consumption, hence drug trade were not perceived as a major problem in the former Yugoslav federation, including the Republic of Macedonia. The Criminal Code of the Federation from 1976 does not even include a separate article penalising the production and trade of illicit drugs. The semi-closed state with a bully approach on drugs gave results, regardless of the accompanying violation's of human rights.

As Macedonia gained it's independence and moved forward with adopting it's own Criminal Code in 1996 introducing Article 215 that covers production, sale's, intention of sale's, processing, offering to sale, transport of narcotics, psychotropic substances and precursors, and also introducing Article 216 by which enabling the consumption of narcotics, psychotropic substances and precursors is stipulated as a punishable offense.

The Macedonian Criminal Code has been amended 26 times in a span of 25 years. In 2009 a new paragraph was added to Article 215 stipulating a lighter penalization for smaller quantities of narcotic drugs, psychotropic substances and precursors. Even as the intention's for introducing such a paragraph are righteous, this created major problems in implementing this new paragraph, as the paragraph itself did not define what quantities of drugs it shall consider as smaller, neither did Article 122, which explains the meaning of the phrases used in the Criminal Code.

In order to overcome this loophole, the Public Prosecutor's office issued a mandatory directive to all it's prosecutors throughout the country by which a smaller amount shall be considered up to five grams of cannabis, and any amount above the mentioned five grams shall by default result with a sales charges, even when there are no classic sales elements- scales with cannabis debris, small street packages, witnesses, special investigative measurres etc.

The Public Prosecutors office has the authority to issue mandatory directives to its prosecutors, however the problem emerges when all of the Macedonian Criminal Courts accepts that directive as a source of law, thus accepting that any amount of cannabis above five grams is intent to sale. My respected colleagues do not even engage in proving the intent, using only a sinister line- from the amount seized it is clear that the drugs are obtained for sale, even as the intent to sale is a deliberate action that needs to be proven in a court of law, and the Macedonian Criminal Code does not grade the sentences according to the seized quantities.

To further the paradocs, the mandatory directive is protected as confidential, under the Law on classified information, even as it does not meet the law's criteria's which stipulates that classified information with the degree "CONFIDENTIAL" is information created by state bodies, bodies of local self-government units and other institutions which is from importance for public safety, defense, foreign affairs and security and the intelligence activities of the state administration bodies of the Republic of Macedonia, and whose unauthorized disclosure would cause serious

damage to the important interests of the Republic Macedonia,<sup>1</sup> which is not the case with the mandatory directive.

The Public prosecutor is not an legislator for it's directives to be treated as law. Of course this is done unofficially as no verdict states the directive, but practical experiences clearly shows that the Prosecutor's are using their unlawfully privileged position as the country's communist legacy, to push through any seized amount above five grams of cannabis as intent to sale. This has led to numerous unlawfully verdicts where cannabis consumers are targeted as drug dealers with absolutely no evidence of the matter.

## **CURRENT SITUATION**

### ***Macedonia***

Ten years into the Criminal Code ammendments and the ilegal filing of the legal gap by the Public Prosecutor's office, the current situation in Macedonia considering the cannabis users is dire. Numerous cannabis consumers, nod dealers, have been targeted by the state's law enforcement agencies under the mandatory Directive. Small quantaties of cannabis, as low as 5.1 grams have brought intent to sale charges with our judicial system blindly accepting this, even as it is aware that this is a clear violation of one of the basic principals of our Constitution- the rule of law and basic human right, including a right to a fair trial.

The rule of law, guaranteed by the Macedonian constitution implies that one must have a right to a fair trial under the law's of the Republic, not under internal directives or guidelines of the state's prosecutor office. This is a clear violation as mentioned above as it undermines the Constitution and the right to a fair trial.<sup>2</sup>

For the needs of the scientific paper, I have I addressed several basic court's in Macedonia, namely the Basic criminal court in Skopje, the Basic court in Shtip, The basic court in Bitola, The basic court in Kochani, the Basic court in Gostivar requiring the information of how many citizens have been prosecuted and convicted for under 50 grams of cannabis. Up until the deadline only the Basic courts in Bitola and Gostivar have responded with partial answers only informing on the total number of cases tried under article 215 of the Criminal Code.

From the annual reports on the work of the Public Prosecutor we can easily establish a gradual decline of the convicted citizens under article 215, although there is no specific data on how many of the convicted are charges related to cannabis use. In the report for the year of 2014 there were 498 convicted citizens, in 2015 there were 457 citizens, the next 2016 the number fell to 322, the year 2017 saw a new decline in numbers to the decade's lowest 283 citizens, and the final reported 2018 is almost the same as the previous with 292 convicted citizens under Article 215. One can argue does the substantial fall between 2015 and 2017 coincides with the legalization of medical cannabis in 2015-16 period as many patients which illegally obtained cannabis oil transferred to the legal market, sadly with no specific divisions of convictions related to various drug, this cannot be confirmed with certainty.

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<sup>1</sup> Article 8, Law on classified information, Official Gazette No.9/2004

<sup>2</sup> Article 6, European Convention on Human Right's

Such an influx of unnecessary cases have burden the already overburden justice system. For a mere five grams of cannabis, the entire state oppressive system is included. The detection of criminal cases regarding narcotics is the responsibility of the special branch of the Macedonian police- the unit for Illegal trade and smuggling which, unlike the past, is now filled with highly educated inspectors. Instead of targeting, *inter alia*, serious and major drug dealers, the state and the Ministry of interior is stuck in an never-ending chase of citizens enjoying cannabis.

After the first stage of police intervention, this banal cases move forward to the public prosecutor's branch. Under the Directive any amount above five grams by default brings a charge under Article 215 with a not so naïve possible sentence of three to ten years in prison. At the end of the procedure our basic courts are willingly complying with the Public Prosecutors thus nullifying the principle of *aequalitas armis*.

The consummation of cannabis in public places is a misdemeanor in Macedonia under Article 20 of the Law on offences against the public order and peace. However with misdemeanor's there is also mishandling from the courts. Even though the Article is very clear when it states whoever indulges in the enjoyment of narcotic drugs, psychotropic substances and precursors will be fined in the amount of 200 to 500 euros in denar counter value, any Macedonian citizen apprehended with possession of cannabis, is being charged with the cited misdemeanor.

The wrong state policies and the hardline approach of the judicial and state oppressive apparatus have led to a paradoxical situation- in certain cities there is a ratio of sometimes fifty to one when in certain town in Macedonia a huge difference is noticeable between misdemeanors and drug-related crimes. In an analyzed period in Skopje, a misdemeanor judgment was stated to nine persons, while criminally convicted were more than five hundred persons. Also, Tetovo has only one person that has been sanction for the misdemeanor drug use, while sixty six proceedings were effectively completed in cases of drug-related crimes. This situation leads us to the conclusion that in certain towns, for example Skopje, Tetovo, Veles, there are more people who own drugs for sales than people who use drugs, or there's a tendency to criminalize the use of drugs and the possession of drugs for personal use.<sup>3</sup>

It is completely unthinkable, without any legal logic that in any city or state there is a ten to one ratio between cannabis/narcotics consumers and drug dealers. In my ten year practice as a Attorney at law I have witnessed and worked on numerous cases where the Directive has been enforced with extreme prejudice. An ongoing problem that criminal lawyers face , besides the Prosecutors' privileged position, is the misinterpretation of the country's Criminal Code. The Code stipulates that a penalty can be mitigated under the minimum if the law provides that the perpetrator may be punished more leniently or will find that there are particularly mitigating

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<sup>3</sup> Sentencing drug-related offenders, legislative policy and judicial practice, Natasha Boshkova, Nikola Tupancevki



circumstances that indicate that even with the mitigated punishment the purpose of the punishment can be achieved.<sup>4</sup>

However in practice, the mitigation of a penalty has been conditioned strictly by the defendant's admission of guilt. This, besides not being in accordance with the law, complicates the position of the defendants, as it sets the defendant in a precarious position where he/she is forced to choose between a minimum of three years in jail and an admission of guilt for intent to sale. One has to have in mind that in order to obtain an conditioned sentencing- probation, the penalty must not exceed two year in jail, *ergo* making the admmission of guilt paramount, in total contrast of the basic principles- rule of law, right to a fair trial, presumption of innocence etc.

Because of the limited space in this scientific paper I shall demonstrate this legal problem via four cases where I was defense attorney. The first case is that of defendant S.B. at the time 19 year old from Skopje. The drug department of the Macedonia's Ministry of the interior, enforcing a search warrant issued by a pre-trial judge, and made a home search at his house finding a mere nineteen grams of cannabis in a jar. The cannabis was for his own personal use, in one jar, not in small- street packages, no scales with cannabis debris, no witnesses for sale etc, all of this which are classic elements of narcotics sale.

Using the institute Evaluation of the indictment I protested in written demanding that the Evaluation judge rejects this indictment as intent to sale is a deliberate action that is to be proven in a court of law beyond reasonable doubt. Not to my surprise, the Evaluation judge rejected my protest, and sanctioned the indictment, entering the trial stage.

At S.B. trial I was faced with a familiar dilemma- protect my client from three to ten years in jail, or against my will and legal logic advising him to make an admission, using his young age and no prior sentencing in order to obtain a favorable judgment. As in many cases before, S.B. was reluctant to admit that the cannabis was obtained by him with intent to sale, but faced with the possibility to spend three years behind bars, he unwillingly complied. The judge handed out five years probation, advising him to stop this deviant behavior, as she was doing him a favor!<sup>5</sup>

Another glaring example of the unconstitutional judicial procedures involving cannabis consumers is that of Macedonian citizen V.R. from the capital city of Skopje. After a conducted house search with a legally obtained search warrant, the drug department unit found a mere eight grams of cannabis, again in a single package, with no other accompanying elements of sale as mentioned several times before. As the police procedure was completed, V.R. narrowly escaped prison custody. At the trial, the Prosecutor pushed for a prison sentence as V.R. now thirty three years of age, was previously sentenced for theft at the age of eighteen, barely of legal age even as the theft sentence fell under legal rehabilitation.<sup>6</sup> The basic court sentenced V.R. to a probation period of five years, but the Public Prosecutor

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<sup>4</sup> Article 40, Criminal Code, Official Gazette no. 37/96

<sup>5</sup> K. no. 117/18, Basic criminal court Skopje

<sup>6</sup> Article 104, Criminal Code, Official Gazette no. 37/96

hard approach led to an appeal to the appeal court in Skopje. At my request a public hearing was held at the Appeal court in Skopje in which V.R. narrowly escaped jail, as the Basic court's verdict was confirmed by the Appeal court in Skopje.<sup>7</sup>

I shall demonstrate the rigid Macedonian via a jail time case regarding cannabis consumer N.N. from Skopje who was apprehended on Petrovec-Skopje highway by traffic police. After a brief search of his car, a plastic bag containing sixty one grams of cannabis was found. Unlike the two previous cases, N.N. was reluctant to admit that he was trafficking cannabis, and held his ground that the cannabis was for his own personal use.

Even as the usual elements of sale were missing, and the Criminal Code does not grade sentencing according to the apprehended amount, because of his stand and refusal to admit guilt, the Basic court in Skopje handed him a sixteen months jail sentence, mitigating the sentence as a way to wash off guilt.<sup>8</sup> The appeal was fruitless as the Appeal court considered that from the seized amount it is clear that the cannabis was obtained for sale, this while lacking of a legally determined criteria.

The final case to be presented is that of B.E. from Tetovo, who emigrated abroad at the age of three, and only visit's Macedonia once a year for holiday. While in Tetovo he purchased for own use a negliagable twenty grams of cannabis. Stopped in a routine traffic checkpoint the cannabis was found on the car seats, as he was not hiding it. After brief stay at the police station, he was released and a year later slammed with an Article 215 indictment- intent to sale. As the same template was implemented, B.E. was handed a one year mitigated prison sentence. Before the sentence could be verified I protested strongly at the judge's bench in the basic court in Tetovo, and I managed to convince the court to see reason, after which the sentence was changed to a probation.

However, using it's ultra privileged position, the Public Prosecutor's office in Tetovo appealed, and the Appeal court in Gostivar reversed the judgment to the original one year jail sentence<sup>9</sup> neglecting the fact that B.E. was legally ignorant as cannabis consumption in the state where he resided has been decriminalized for decades, and also neglecting the fact that he and a old father with life threatening heart condition who he cared about, all backed up with proper documentation.

This are only four of many court cases where the courts and prosecutors violate some of the basic right of the citizens when on trial. To make matters worse, giving the circumstances, the majority of the defendants choose to admit guilt rather than face certain jail time, denying defense Attorney's the possibility to effective appeal or use all domesistic legal means in order to be able to appeal to the European court for human rights in Strazbur, where with certainty a violation of Article six of the Convention shall be established in any of this cases, efectivly ending the illegal practice as the legal practice of the Court in Strazbur is binding for Macedonia as a country signatory.

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<sup>7</sup> K. no. 214/18, Basic criminal court Skopje

<sup>8</sup> K.no. 97/14, Basic criminal court Skopje

<sup>9</sup> K.no. 187/18 Basic court Tetovo

## ILLEGAL CANNABIS TRADE

For the last eight decades there's an ongoing criminalization and stigmatization of the cannabis plant and its consumers, mainly based on propaganda like evidence rather than real scientific work. The provisions of the Single convention on narcotic drugs of 1961 have made it obligatory for the signatory party to make it punishable when committed intentionally the ,cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of the Convention.<sup>10</sup>

The criminalization of the cannabis use and trade has turned the illegal cannabis trade lucrative enough for the organized international drug cartels, even when cocaine trade profit's quadruple those of the cannabis illegal market .<sup>11</sup> Still it brings a respectable amount of profit to make it lucrative and murderous. The illegal cannabis sales topped 46.4 billion dollars in 2016 alone.<sup>12</sup>

Instead of integrating vast amount of wealth in the legal market, the majority of the state signatories of the major UN Drug Convention are spending resources, otherwise scarce, in order to fight an uphill battle against a plant that all new scientific reports show, has more medical potential than it does harm, if it does harm at all. A much bigger problem than resources down the drain, is the unnecessary persecution of the cannabis consumers especially in Macedonia where they are targeted as dealers as a result of the legal vacuum occurred in 2009 and still in place today, following the implementation of the Directive.

We as a state, and all UN members have the option to spend money on a lost war to public enemy number one<sup>13</sup> and put billions of dollars in crime groups, rather than obtaining valuable resources via taxation of the plant. The war on drugs cost the USA staggering 51 billion dollars annually<sup>14</sup> a substantial portion of which are spend on fighting the illegal cannabis trade.

Prohibition has been proven not to work. The homicide rate in the US reached it's highest figure in the final year of Prohibition, with 9.7 homicides per 100,000 people in 1933, before falling to roughly half of this rate over the next ten years.<sup>15</sup>

Not to be misunderstood, I do not advocate legalization to all drugs, as unlike cannabis, the other illegal substances stated in UN Convention schedules are highly addictive and are harmful to the human health. *Ergo*, we must concentrate on decriminalization and legalization of cannabis ensuring over seventy billion dollars

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<sup>10</sup> Single Convention on narcotic drugs, Article 36

<sup>11</sup> Abt Associates Inc., What America's Users Spend on Illegal Drugs, 1988-98

<sup>12</sup> <https://www.inc.com/will-yakowicz/marijuana-sales-2016-50-billion.html>

<sup>13</sup> Richard Nixon War on drugs press conference, 1971

<sup>14</sup> Drug policy alliance report

<sup>15</sup> <https://www.statista.com/statistics/1088644/homicide-suicide-rate-during-prohibition/>

in profits by 2027<sup>16</sup> fund's that can be allocated in drug harm reduction and re-socialization programs.

## **SOLUTION**

### ***International***

A whole set of actions regarding cannabis, including its possession is to be made punishable by the country signatory, under the Single Convention on narcotic drugs. Macedonia, as a country signatory has followed these guidelines to the point. Under the Criminal Code and under the Law on misdemeanors against public order and peace are targeting cannabis trade, transportation, intent to sale, offering to sale and cannabis use on public places.

In the past decade as more and more scientific work sees the light of the day, there are world tendencies to legalize/decriminalize cannabis use/trade. Full cannabis legalization however is still impossible due to the provisions of the 1961 Convention by which the country's are obliged to criminalize cannabis. Still, the Convention itself has provisions that allow for a more liberal approach to this matter.

Denunciation of the Convention is a possibility after two years of coming into force of this Convention by informing of the Secretary General. A more reasonable approach would be proposing Amendments to the Convention. Any party may propose amendments which shall be communicated with the Parties by the Secretary General and the Council.<sup>17</sup>

By now only one state has legalized cannabis, the state being Uruguay. Canada is another one, but Canada is not the best examples of cannabis legalization as it has multiple restraints on growing cannabis at home. Denouncing a Convention might seem as a step too far, but it is not as a country would denounce the Convention on human rights or the Geneva convention.

Many countries have bypassed the provisions of the Convention by implementing decriminalization/ de-penalization of cannabis use, still enforcing the Convention via penalties for cannabis trade and misdemeanor's for cannabis use in public. Some countries have retained the legal penal provisions, but taken an unofficial politics of not prosecuting cannabis users.

Third countries are implementing an intermediate solution on legalizing cannabis in certain areas. There is a misunderstanding that the Netherlands have legalized cannabis in 1977. The fact is that cannabis use and limited sale is only legal in the so called coffeshop's, up to five grams of cannabis per person. But the semi-legalization itself has led police to have a more relaxed approach towards cannabis.

The current state of affairs is much different than of 1961 when the Convention was adopted, and even more from 1937 when the Marijuana Tax Act was adopted and implemented in the US.<sup>18</sup> Almost all of the US country's legalized

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<sup>16</sup> <https://www.grandviewresearch.com/industry-analysis/legal-marijuana-market>

<sup>17</sup> Single Convention on narcotic drugs, Article 47

<sup>18</sup> Marijuana Tax Act, An act of congress no.75-238

medical cannabis, and a dozen legalized recreational cannabis. One cannot ignore the health benefits of the plant and the low, if any harm to the human health from cannabis consumption. The use and trade of cannabis must be distinct from the other drugs as it has zero chance of addiction and low, or none harm to the health, unlike the so called hard drugs.

Cannabis users, even traders are people of low criminal liability, and still facing severe criminal penalties. The time for a new UN convention or amendments of the existing one is ripe. This must be spearheaded by much bigger and powerful countries, as The Republic of Macedonia is a small country with very limited political influence.

### ***Macedonia***

The lawlessness of the Macedonian Article 215 procedures can be corrected with simple amendments of the Macedonian Criminal Code. In order to decriminalize cannabis, an acceptable, legally prescribed amount of cannabis that the state accept's as personal use should be determined. This can be easily done through adding a new paragraph in Article 215, or a new paragraph in Article 122, article that explains the terms used in the Code.

This is the bare minimum that can be done in order to return to a state of law, where the citizens, when prosecuted, shall have a fair trial, based on law, Constitution and international convention's ratified according to the Constitution, and not according to intern obligatory Directive's issued by the Public Prosecutors' office, and willingly obliged by our basic courts in the Republic.

In an effort to broaden the economic benefits of the Republic, I strongly support full cannabis legalization, which shall require amendments to several law beside the Criminal Code such as The law on control of narcotic drug's and psychotropic substances, trade law's, The law on higher education in order to integrate high education Institute of cannabis in the educational system etc.

Probably the best expediently solution would be a *lex specialis* cannabis law in order to implement the many areas that need to be affected- penal provisions, lawfully determined personal use quantities, licensing for medical and recreational purposes, the foundation, functioning and administration of a separate Cannabis Agency and the foundation, financing and functioning of a Institution of cannabis, all this according to *lex specialis derogate legi generali* legal maxim.

It's a notorious fact that Macedonia is a poor country with no *mel et lac*. Even if the political elites do not have the political will to go as far as legalizing cannabis, at the bare minimum cannabis decriminalization must take place immediately in order to re-install the rule of law, the right to a fair trial guaranteed as basic human rights by the Macedonian Constitution and the Convention on human rights.

From another, economic angle, the resources allocated to the Macedonia's public prosecutor's and police is scarce and shrinking every year. It's completely unprofitable in economic and legal sense to spend this scarce resources(police, Public Prosecutors, Judges, Attorney's) on prosecuting cannabis consumers when there is no proof of a sale, or intent to sale is made or to be made.

## CONCLUSION

Legalizing/decriminalizing cannabis besides restituting the rule of law, shall help the dire economic situation in the country. Furthermore the scope of control and measures must shift from the penal institutions to the harm reduction and social one's. Because of bad state politics thousands of Macedonian citizens are wrongfully and illegally convicted as dealers without proper procedure or evidence.

Even when the penalty is only probation it effectively destroys the convicted citizen life, as in many cases employer's require proof of non-conviction in order to employ someone, making it very difficult for citizens or ex-prisoners to reintegrate in society. Why should we allow for all those profit's. which are in the billions worldwide end up in the pockets of criminals, when we can tax those and use the very same taxes in order to fund harm reduction and re-socialization programs.

At the very end, legalizing cannabis is not just about cannabis, it's about protecting citizens from bad cops who use cannabis as a gateway drug to violating human rights.

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