International Scientific Conference

“Towards a Better Future: Visions of Justice, Equality, and Politics”

Conference Proceedings

Faculty of Law - Kicevo, University “St. Kliment Ohridski” - Bitola

Bitola, 2022

CIP - Каталогизација во публикација Национална и универзитетска библиотека "Св. Климент Охридски", Скопје 340.114(062) INTERNATIONAL scientific conference (2022 ; Bitola) International scientific conference “Towards a better future: visions of justice, equality, and politics” : Bitola, 14 October, 2022 : conference proceedings / [editors Goran Ilik, Angelina Stanojoska]. - Bitola : "St. Kliment Ohridski" University, Faculty of law - Kicevo, 2022. - 292 стр. : граф. прикази ; 23 см Фусноти кон трудовите. - Библиографија кон трудовите ISBN 978-608-4670-23-0 а) Право -- Собири б) Правичност -- Собири COBISS.MK-ID 59038725

International Scientific Conference

“Towards a Better Future: Visions of Justice, Equality, and Politic”

Bitola

14 October, 2022

Conference Proceedings

Publisher
Faculty of Law - Kicevo, University "St. Kliment Ohridski" - Bitola
Center for Scientific Research at the Faculty of Law - Kicevo

For the Publisher
Prof. Dr.sc Aleksandra Patoska, Dean of the Faculty of Law – Kicevo

Address of the Publisher
Rudnicka BB
6250 Kicevo, Republic of North Macedonia
+ 389 45 220 267
http://pfk.uklo.edu.mk

Editors
Prof. Dr.sc Goran Ilik
Assoc. Prof. Dr.sc Angelina Stanojoska

Circulation
80 copies

International Programme Committee

Artur Adamczyk, PhD, Centre for Europe, University of Warsaw, Poland
Angelo Viglianisi Ferraro, PhD, Mediterranea University of Reggio Calabria, Italy
Hans-JuergenZahorka, LIBERTAS - European Institute GmbH, Germany
Goran Bandov, PhD, Dag Hammarskjold University, Croatia
Oxana Karnaukhova, PhD, Southern Federal University, Russian Federation
Mehmet Sahin, PhD, Canakkale Onsekiz Mart University, Turkey
Dimitar Eftimovski, PhD, University "St. Kliment Ohridski" in Bitola, North Macedonia
Aleksandra Patoska, PhD, University "St. Kliment Ohridski" in Bitola, North Macedonia
Blagoj Gjorgjievski, PhD, University "St. Kliment Ohridski" in Bitola, North Macedonia
Helmut Kury, PhD, University of Freiburg, Germany
Miomira Kostic, PhD, University of Nis, Serbia
Darko Dimovski, PhD, University of Nis, Serbia
Ivan Ilic, PhD, University of Nis, Serbia
Christian Ruggiero, PhD, Sapienza University, Italy
Zoran Lutovac, PhD, Institute of Social Sciences, Serbia
Marko Babic, PhD, Institute of European Studies, University of Warsaw, Poland
Przemyslaw Biskup, PhD, Polish Institute of International Affairs, Poland
Gloria Esteban de la Rosa, PhD, University of Jaen, Spain
Habib Kazzi, PhD, Lebanese University, Lebanon
Valeri Modebadze, PhD, Caucasus International University, Georgia
Eloi Martins Senhoras, PhD, Federal University of Roraima (UFRR), Brazil
Polonca Kovac, PhD, University of Ljubljana, Slovenia
Viorel Paska, PhD, West University of Timisoara, Romania
Lucian Bercea, PhD, West University of Timisoara, Romania
Laura Stanila, PhD, West University of Timisoara, Romania
Zoran Pavlovic, PhD, University of Novi Sad, Serbia
Goran Ilic, PhD, University of Belgrade, Serbia
Istvan Gal, PhD, University of Pecs, Hungary
Marija Lucic - Catic, PhD, University of Sarajevo, BiH
Dina Bajrakterevic, PhD, University of Sarajevo, BiH
Nedzad Koraljic, PhD, University of Sarajevo, BiH
Tanja Kesic, PhD, University of Criminal Investigation and Police Studies, Belgrade, Serbia
Milan Zarkovic, PhD University of Criminal Investigation and Police Studies, Belgrade, Serbia
Milica Kolakovic, PhD, Institute of criminological and sociological research, Belgrade, Serbia
Alba Kreka,PhD, Faculty of Education and Philology, Albania
Sergiu Popovici, PhD, West University of Timisoara, Romania
Florentina Mutiu, PhD, West University of Timisoara, Romania
Veljko Turanjanin, PhD, University of Kragujevac, Serbia
Judithanne Scourfield McLauchlan, PhD, The University of South Florida St. Petersburg, USA

Organizing Committee

Goran Ilik, PhD - Chairman
Angelina Stanojoska, PhD - Vice-Chairwoman
Ice Ilijevski, PhD – Secretary
Mirjana Ristovska, PhD
Elena Tilovska - Kechegi, PhD
Elena Temelkovska - Anevska, PhD
Elizabeta Tosheva, PhD
Mladen Karadzoski, PhD
Ivona Shushak, PhD
Pakiza Tufekci, PhD
Laze Jakimoski, PhD

Technical Editor and IT Consultant:
Blagojce Nenovski, PhD

ISBN
608-4670-23-7
978-608-4670-23-0
9786084670230

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 come to the realization of the fifth international scientific conference "Towards a Better Future: Visions of Justice, Equality, and Politics", 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 profound contribution to the scientific thought both in the Republic of North Macedonia and on a broader context, especially in the time of the post-Covid-19 pandemic, the war in Ukraine, global economic crisis and stagflation, and so on.

This is also reflected by the high interest of home and foreign authors and participants who applied for our Conference, as evidenced by the submitted articles. The inspiration for the main topic for our Conference arose from the need to define and understand the visions of justice, equality, and politics from a multidisciplinary perspective, considering their internal and external processes, their actions, and their relationship with the legal, political, economic and security systems in the modern world.

It is sometimes said that John Rawls's "A theory of justice" revitalized political philosophy. It should be no surprise, then, that concerns of justice unite all the segments of the Conference's title. However, it is clear that those concerns manifest themselves in interesting and new directions (sometimes, in forgotten old ones). Politically, we confront urgent problems of equality, democracy, and community and how to respond to potentially changing global order and even catastrophic climate change. However, the response to these problems cannot only be pragmatic and piecemeal. It needs to be coherent and, most of all, just.

In the end, I must express my deep gratitude to the Organizational Committee members who worked tirelessly in the direction of the successful realization of this international scientific Conference, to our partners who strongly supported the organization of this event, to the colleagues from our faculty who unselfishly endorsed this project 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 continue the path we started to trace together with a single purpose – ***Towards a better future!***

Vice rector for science
Prof. Dr.sc Goran Ilik

Bitola, 2022

TABLE OF CONTENTS

Scientific Article
UDK 343.261(497.11)
343.24(497.11)

CONTEMPORARY CHALLENGES, RISKS AND THREATS TO SECURITY

Prof. Dr.sc Marjan Gjurovski

Institute for Security, Defense and Peace at Faculty od Philosophy-Skopje
Saint Cyril and Methodius University-
marjan.gjurovski@fzf.ukim.edu.mk

Abstract

The fast development of science, technology, new global processes and types of international cooperation has set new standards and values. The fast pace of changes has led to international security – and, as a consequence, national security – being exposed to new types of serious threats. Discussing the dangers and risks of the new millennium, we can state that, today, we are facing fewer risks which were typical of the last century, such as war, aggression, etc. The threats to national security, values and interest are becoming more complex and multiple and less predictable, coming from different directions, which makes them harder to analyse and control. The state community has always been exposed to threats, however, their form and intensity have changed. The severity of the threats of the 21st century lies in the use of the information infrastructure for attacking values. These threats make it impossible to guarantee citizens' life and health, seriously affecting their values and interests. The threats of the new millennium can only be addressed and responded to by means of an internationally devised security policy which the national security policies are based upon[1].1

The aim of the Republic of North Macedonia's security policy is to provide protection and security to its citizens regarding many kinds of external as well as internal influences and threats, including the area of security, economy, politics, environment, culture, etc. The main threats to security are the tensions and antagonisms that result from inter-ethnic conflicts, extreme nationalism, faulty reforms and economic inefficiency, huge and frequent

[1] National security policy is understood as a complex and interdependent system of measures, plans and programmes which the Republic of North Macedonia will undertake for the protection, maintenance and improvement of the state's and its citizens' security in accordance with political, economic, defence, interior, security, social, ecological and other resources.

environmental and/or technological disasters which have a great impact on society. Besides the weak economy and the political, social and ethnic situation, we would like to point out the new types of threats, such as international terrorism, organised crime (human, drugs and arms trafficking, money laundering, illegal migration), militant nationalism, fundamentalism, etc.

These threats can directly or indirectly affect the state and its security, as well as undermine a society's security and its democratic and economic foundations by weakening the state authorities and thus making people lose their trust in the rule of law.

Key words: *security risks, threats, handling, phenomenology, mapping*

INTRODUCTION

Predominant security challenges, risks and threats in the West are changing with time, depending on a variety of factors, the most important ones being technology, psychology, and politics. In the Middle Ages, apart from assaults by foreign military and mercenaries, people were most afraid of the plague, witches, the inquisition, and doomsday (Žan Delimo, 2003). During the 20th century, the importance of traditional military threats did not decrease – on the contrary, they became the main threat. The invention of nuclear weapons capable of destroying all human life on Earth made all other security threats seem insignificant for the first time. After the end of the Cold War, when the danger from a nuclear holocaust faded, the world went back to normality, and people started slightly fearing many things again. Some of those things had been present before, but not at the top, such as terrorism, migration, pandemics and civil wars, others started to intensify, such as climate change, and yet others appeared for the first time in history due to new technologies, such as cyber threats.

States generally try to lay down their security challenges, risks and threats in official documents, such as the national security strategy, the defence strategy, etc. Those documents also contain a list of values, i.e. objects of reference for security, as well as strategies for their protection. Up to the 1980s, those documents were classified (Global book, 1995). In the USA, the National Security Strategy has been a public document since 1987. It has been revised 11 times (in 1988, 1989, 1990, 1991, 1993, 1994, 1996, 1997, 2000, 2002 and 2006). The document as of 2006 begins with the words: "America is at war. This is a wartime national security strategy required by the grave challenge we face – the rise of terrorism fuelled by an aggressive ideology of hatred and murder, fully revealed to the American people on September 11, 2001" (White

House, 2006). Are the main challenges the USA are facing, such as terrorism, tyranny, the proliferation of weapons of mass destruction, regional conflicts, as well as threats originating in the process of globalisation, such as pandemics, illegal trafficking and climate change, addressed by this document? On the other side of the Atlantic Ocean, the USA's main ally is experiencing fairly different strategic priorities. The European Security Strategy as of 2003 (the first document of this type at EU level) starts off with an entirely different assessment: Europe has never been as advanced, secure and free.

The violence in the first half of the 20th century has given way to peace and stability unprecedented in the history of Europe. Unlike the USA, which experiences the world in a Hobbesian way, as an arena for gladiators, a jungle in which numerous dangerous enemies are lying in ambush, Europe adheres to Kantian ideals, which have led it into a "postmodern paradise". Due to these different perceptions, Robert Kagan has ironically stated that the USA and Europe are living on two different planets: the USA on Mars, and Europe on Venus (Robert Kejgan, 2003). However, besides the differences in their Weltanschauung, we can easily see that the USA and Europe are not living in so drastically different worlds. Thus, the European Security Strategy lists five basic threats to the EU's security: terrorism, proliferation of weapons of mass destruction, regional conflicts, failed states, and organised crime (Bezbedna Evropa u boljem svetu: evropska strategija bezbednosti, ISAC fond, Beograd, 2006).

MAPPING OF CHALLENGES, RISKS AND THREATS TO SECURITY

The risks and dangers to security in the Republic of North Macedonia are: potential manifestations of extreme nationalism, racial and religious intolerance, phenomena and activities related to international terrorism, organised crime, illegal migration, human trafficking, trafficking in drugs, weapons and dual use goods and technologies, consequences of using weapons of mass destruction, possessing large amounts of illegal weapons, transitional problems such as corruption, urban terrorism, felonies such as blackmail, extortion, homicide, robbery, economic crimes, tax evasion, underdeveloped democratic institutions, dysfunctional judiciary, social issues, unemployment, activities of foreign intelligence services to deteriorate the security situation and slow down processes of democratisation and integration into NATO and EU, consequences of conflicts of interest regarding the use of strategic energy sources and power lines, hampering and blocking energy exports, environmental and other disasters, technical and technological disasters, contagious diseases of humans and animals evoked by internal or external factors, cybercrime, piracy, misuse of information technology, especially

concerning citizen's personal data, business secrets and state secrets, environmental degradation and destruction (Mojanoski Cane, Domovski Zlate, Gjurovski Marjan, Ilijevski Ice (2015).

Furthermore, we could add the inadequate system of secondary and tertiary education that trains professionals that do not fit business requirements, a system that produces many (formally) highly qualified professionals which can be considered a "social time bomb" on the labour market.

The constant strategic goal of the Republic of North Macedonia is NATO and EU membership, in order to improve and consolidate security and minimise threats and risks. Now that the name dispute with Greece has been solved by signing the Prespa Agreement, and also the Treaty on Friendship, Good Neighbourly Relations and Cooperation with Bulgaria has been signed, from a political point of view, the Republic of North Macedonia's bilateral issues with its neighbours are settled. Thereby, the conditions for deblocking the EU and NATO integration of the state have been established, Macedonian statehood is recognised, a new framework for building and developing neighbourly relations has been set up, and new prospects regarding infrastructural, energetic, economic and cultural integration have been opened. The Republic of North Macedonia positions itself as belonging to the NATO and EU sphere, and as a constructive partner in solving unsettled issues with neighbours, thus contributing to a decrease of tension and to the stabilisation of the region. As a NATO member, the Republic of North Macedonia will be a stronger security partner, as cooperation on migration, religious radicalism the in struggle against terrorism will improve. The direct neighbours of North Macedonia are already NATO and/or EU members, which has significant impact on its national security. Regional cooperation and good neighbourly relations have a positive impact on regional security. Nevertheless, the Western Balkans is still facing unsettled political and historical issues which have the potential to provoke instability. The great powers' clash of interest has international, regional and national impact, with a potential to cause instability, crises and threats to the security of North Macedonia. The regional processes are particularly interesting, with features such as political instability, the permanent state of an electoral campaign, strong populism, citizen and social discontent, religious and ethnic intolerance, rising nationalist rhetoric, and cooling bilateral relations.

On the other hand, dynamic changes are taking place at a global and regional level, and power is redistributed. The EU is facing the final phase of Brexit, and right- wing and populist movements are gaining momentum in the member states, which could lead to significant alterations in the Union's political profile in the medium and long run. Security issues directly caused by the migration crisis represent an additional challenge, with radical change to

Europe's religious and cultural landscape taking place, but also direct threats such as terrorism and religious radicalism arising.

The conflicts in the Middle East (Iraq, Syria), South Asia (Afghanistan) and North Africa (Libya) have a direct impact on security, caused by the return of foreign fighters and the transit of migrants and extremists. The Republic of North Macedonia is vulnerable to subversive actions by state and non-state protagonists. The greatest threat to the sovereignty and territorial integrity of the state lies in potential provocation of the still fragile inter-ethnic relations by feigning a conflict situation. The risk of escalating inter- ethnic disputes is directly linked to the state's capacity to overcome internal conflicts and respond to external destructive influence.

The risk of a direct conventional threat to the independence, sovereignty, territorial integrity and the unitary character of the Republic of North Macedonia is very small. The threat from non-state protagonists who, independently or supported by state stakeholders, create opportunities for realising political goals is greater. The state is still vulnerable to planned (contract) armed incidents aimed at provoking a major operation by the security forces. Although different types of groups could be behind such incidents (criminals, contract killers, terrorists, returnees, extremists, rebels), their motivation is expected to be financial, and ideology only be used as a political tool. If such incidents are not fought fast and efficiently, the risk of an escalation leading to a broader crisis is high, and then, the ideological background would become more important. The worst scenario would mean crossing the line of mutual tolerance and bringing about an armed ethnic conflict.

Because of its commitment to EU and NATO integration and in the context of NATO enlargement, the Republic of North Macedonia is one of the operational targets in the framework of the great powers' clash of interests. After the new government came into power and while the Prespa Agreement was politically implemented, especially during the time of the referendum, the Republic of North Macedonia was a target for hybrid threats, with a huge wave of disinformation. Propaganda was used, fake news was spread, and by means of provocation and disinformation, the atmosphere of crisis and danger was created.

The goal of this informational operation was to have an impact on the citizens' consciousness over social networks, media, NGOs, politicians, clerics, well-known persons, marginal groups, etc. Now that the Republic of North Macedonia is moving forward on its path to NATO and the EU, we must expect even more aggressive hybrid activities, aiming at provoking intra- and inter-ethnic polarisation which can easily be taken advantage of for creating tension and triggering incidents.

RATHER THAN A CONCLUSION

Today, we are living in a world of globalised, postmodern societies. The times of linear development dynamics are over. Instead, we are witnessing ambivalent processes, such as the paradigm change concerning security and freedom as core values, which might even be key. Conditions within societies create an atmosphere and culture of life in which people strive to maximise their freedom, and the realisation of individual liberty is seen as a social, cultural and societal achievement.

Nevertheless, in times of globalisation, the complex network of social relations and interdependence, which has greatly contributed to the breakthrough of freedom, has at the same time led to a security boost, in particular to a worriedness concerning security risks. The latter have become, so to say, the basic research paradigm of security studies, which is due to the following factors:

1. **Today, security risks dominate risk theory and practice, and the understanding and definition of risks is shifting from neutral to negative (linked to security).**
2. **Security risks can all the rarer be locally determined. Instead, we are dealing with consequences of complex interdependent relations in a globalised society in which risks are becoming increasingly unpredictable, growing in number, and their potential effects are becoming more severe.**
3. **Security risks are closely linked to prevention, which is the main response to the new extent and structure of today's security risks.**
4. **Strategies and ways of coping with, managing and assessing security risks have become the basis for the modern way to handle security risks.**
5. **The change of the very structure and the types of security risks has become obvious. External security risks are becoming more frequent than internal security risks.**

The Republic of North Macedonia does not and cannot remain unaffected by this complex network of social and socialised relations, within which the character of today's security risks is changing. The state has to react in some way to these tectonic shifts in the field of security, in particular concerning security risks. Hence, and because so far, there has not been a similar scientific research and study of security risks in the Republic of North Macedonia, we decided to fill this gap in our security studies and practice.

Basically, it is necessary to find out to what extent and in what way the general changes in the character of security risks influence the scope, the structure and the appearance of security risks in the Macedonian society and state today, in order to recognise the character of modern security risks and

thus find the most appropriate approaches to prevention, response, management and assessment for those who create and decide on security policies in the Republic of North Macedonia(SECURITY RISKS AND THREATS - HANDLING, PHENOMENOLOGY, MAPPING -2020).

An unfavourable political and security situation requires a detailed analysis and addressing all parts of society in order for everybody to contribute to a timely detection of potential security risks and threats and for the responsible institutions to take appropriate measures in due time, so that possible risks can be prevented before they turn into larger-scale security threats.

REFERENCES

1. Adams, John (1995), Risk, London & New York: Routledge.
2. Armao, Rosemary, 2010, Center for International Media Assistance.
3. Bauman, Zygmunt (2016), Fluidni vreminja: Zivot vo doba na nesigurnost, Skopje: Slovo.
4. Bauman, Zygmunt (2005), Postmoderna etika, Skopje: Templum.
5. Bek, Ulrih (2001), Rizično društvo, Beograd: Filip Višnjič.
6. Boškoviћ M. Organizovani kriminalitet i korupcija, Banja Luka, Visoka škola unutrašnih poslova, 2004.
7. Vaughan, Emmett J. (2014), Upravuvanje so rizici, Skopje: Ars Lamina.
8. Waters, Malcolm (2003), Globalizacija, Skopje: Institut za demokratija, solidarnost i
9. civilno opstestvo.
10. Clarke, R.V. (2000). Situational Crime Prevention, Criminology and Social Values. U: Von Hirsch, A., Garland, D. и Wakefield, A. (ur.), Ethical and Social Perspectives on Situational Crime Prevention. Oxford: Hart Publishing
11. Gemović, Biljana (2011), Upravljanje rizicima kao elemenat integrisanog sistema
12. menadžmenta preduzeća, (neobjavljeni doktorski rad, iz arhiva autora), Beograd: Fakultet tehnickih nauka.
13. Gerasimoski, Saše (2018), Application of Methods of Risk Assessment in Private Security in the XXI-st century: Experiences and Challenges, Skopje: Chamber of Republic of Macedonia for Private Security, pp: 327-338.
14. Gerasimoski Saše, Nikolovski Marjan, Gjurovski Marjan (2018), International Scientific Conference Security Concepts and Policies-New Generation of Risks and Threats, Skopje: Faculty of Security, pp: 1-8.

15. Gerasimoski, Saše (2016), The Character of the Contemporary Security Risks in the Republic of Macedonia, Political Thought, Vol. 16, No, 55, pp: 5-18.
16. Gerasimoski Saše, Mojsoska Snežana, Trajkovska Vesna (2013), Theories of Risk as Contemporary Sociological Paradigma in the Era of Globalization, Proceedings from the International Scientific Conference Sociology and the Challenges of the Global Age, Faculty of Philosophy, Institute of Sociology, Skopje, pp: 214-225.
17. Giddens, Anthony and Hutton, Will (2003), Nove mogučnosti ili kontinuitet rizika, u Giddens, Anthony and Hutton, Will (urednici), Na ivici: živeti sa globalnim kapitalizmom, Beograd: Plato, ss. 14-21.
18. Giddens, Anthony (2002), Zabegan svet: Kako globalizacijata gi preoblikuva nasite zivoti, Skopje: Filozofski fakultet.
19. Godard Olivier, Henry Claude, Lagadec Patrick et Michel-Kerjan Erwann (2002), Traité des nouveaux risques, Paris: Gallimard
20. Kekovik Zoran, Bakreski Oliver, Stefanovski Stevko, Pavlovik Slavica (2016), Planiranje i procena na rizik: vo funkcija na zastita na lica, imot i rabotenje, Skopje: Komora na Republika Makedonija za privatno osiguruvanje
21. Jean-François (2007), Postmoderna sostojba: izvestaj za znaenjeto, Skopje: AZ-BUKI
22. Mojanoski C., Malis M., Nikolovski M., Krstevska K., Gragjanite na Republika Makedonija za korupcijata, Istrazuvacki izvestaj 2013-2017, Fakultet za bezbednost, Skopje 2018
23. Nikolovski Marjan, Gerasimoski Sase, Gjurovski Marjan (2018), Upravuvanje so bezbednosnite rizici vo nadleznite institucii vo Republika Makedonija, Zbornik 40 godini visoko obrazovanie od oblasta na bezbednosta (koncepti i praktiki), Skopje: Fakultet za bezbednost, p. 35-48
24. Peter Golding & Graham Murdock, Culture, Communications and Political Economy, published in Mass Media and Society, 2012
25. Rosemary Armao, 2010, Center for International Media Assistance
26. Clarke, R.V. (2000). Situational Crime Prevention, Criminology and Social Values. U: Von Hirsch, A., Garland, D. и Wakefield, A. (ur.), Ethical and Social Perspectives on Situational Crime Prevention. Oxford: Hart Publishing
27. Spaseski J., Aslimoski P., Defendologija, Pedagoski fakultet, Bitola, 2016
28. Svendsen, Lars (2010), Filozofija na stravot, Skopje: ViG Zenica
29. Scholte, Jan Art. (2008), Globalizacija: kriticki voved, Skopje: Akademski pecat
30. Vaughan, Emmett J. (2014), Upravuvanje so rizici. Skopje: Ars Lamina

Scientific Article
UDK 338.12(510)"2019/2021"
339.56(510:4-672ЕУ)"2019/2021"

THE BELT AND ROAD INITIATIVE AND THE GLOBAL GATEWAY STRATEGY: THE POST-PANDEMIC FUTURE OF SINO-EUROPEAN RELATIONS

Vesna Shapkoski, PhD(c)
Faculty of Law, University "St. Kliment Ohridski" – Bitola
ORCID iD: https://orcid.org/0000-0002-7705-2808
vesna.shapkoski@uklo.edu.mk

Goran Ilik, PhD
Faculty of Law, University "St. Kliment Ohridski" – Bitola
ORCID iD: https://orcid.org/0000-0003-3501-1386
goran.ilik@uklo.edu.mk

Abstract
In the course of the past two decades, China has presented itself as a very skillful player in managing major crises, so the Covid-19 crisis came as a very neat opportunity for strengthening its international position. The Belt and Road Initiative promoting trade, infrastructure, and commercial associations worldwide, continued to mark China's positioning in the international context. The EU at the same time had faced initial difficulties in responding to the crisis, but it managed to consolidate and offer an alternative for strengthening its position in the region, presenting The Global Gateway infrastructure and connectivity plan. Being aimed at similar directions with the BRI, the question is: Are these two initiatives competing or complementing each other and where should we expect their main focus in the period to come?

Keywords: BRI, Global Gateway, China, EU, crisis, strategy.

INTRODUCTION

Since 2013, China has taken serious and firm steps toward increasing its presence in the international stage, with The Belt and Road initiative (BRI) being one of the key pillars to this activity. The BRI is an initiative aimed at promoting trade, infrastructure, and commercial associations with countries in Asia, Africa, and Europe, announced as the "road of peace, and prosperity", and since its initiation it marks China's positioning in the international context. Some analysts see the project as an unsettling extension of China's rising power (Chatzky and McBride, 2020). The BRI comprises a Silk Road

Economic Belt – a trans-continental passage that links China with south east Asia, south Asia, Central Asia, Russia and Europe by land – and a 21st century Maritime Silk Road, a sea route connecting China's coastal regions with south east and south Asia, the South Pacific, the Middle East and Eastern Africa, all the way to Europe (EBRD, 2020).

The BRI is also very often referred to as the New Silk Road, connecting it to the ancient Chinese trade route The Silk Road. Namely, the original Silk Road arose during the westward expansion of China's Han Dynasty (206 BCE–220 CE), which forged trade networks throughout what are today the Central Asian countries of Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, as well as modern-day India and Pakistan to the south; Those routes extended more than four thousand miles to Europe (Chatzky and McBride, 2020). The BRI therefore, is a project aimed at re-inventing China's ancient position as a central trade point thus tracing its path for economic and political expansion in the international context. As of March 2022, the number of countries that have joined the Belt and Road Initiative (BRI) by signing a Memorandum of Understanding (MoU) with China is 146 (Nedopil, 2022).

The BRI framework operates through commercial loans that the Chinese government is providing to recipient countries where projects are to be implemented. The construction of infrastructure in BRI projects is usually outsourced to Chinese firms using Chinese labor and suppliers. However, although announced as purely infrastructural-based, the central goal of the BRI is not only economic but also political and strategic; through cross-border infrastructure, China aims to increase its influence in the rest of the world. In a situation where the global context is filled with complex challenges, the BRI initiative is becoming even more significant in terms of boosting bilateral investment between China and countries along the route, promoting regional economic development.

Since the pandemic outbreak, China has shown to be a skillful crisis manager, with a clear vision of the need to give context to its overall strategy and international positioning. Therefore, in January 2021 it published a White Paper on its international development cooperation in "The New Era", confirming it would push forward the Belt and Road Initiative as its main platform, further support developing countries, and contribute to tackling international humanitarian challenges (Xinhua, 2021). With this document, China reaffirms its open position towards international cooperation, support for multilateralism, and willingness to participate in the reform and creation of the global governance structure.

At the same time, many accusations went on the account of the European Union for not being able to timely respond to the pandemic-provoked crisis, in that way self-undermining its geopolitical position and

importance. Despite that, the EU managed to consolidate and offer an alternative for strengthening its position in the region as a response, particularly to China's presence – The Global Gateway infrastructure and connectivity plan, aimed at providing support for infrastructural development around the world. As the European Commission President Ursula von der Layen described it:

> *We will support smart investments in quality infrastructure, respecting the highest social and environmental standards, in line with the EU's democratic values and international norms and standards. The Global Gateway Strategy is a template for how Europe can build more resilient connections with the world* (EC, 2021).

However, the sole announcement of the plan is not a job finished on its own. There are suspicious comments and predictions regarding the potential of this plan and whether EU is able to implement it, bureaucratic and slow as it is. The question arises, will it be a proper alternative or is it even aimed at competing with BRI and how is that going to shape future development of Sino-European relations?

BRI IN TIMES OF PANDEMIC AND BEYOND

The year 2020 was unlike any previous the humanity had experienced in at least a century. Both political and economic plans and projections went downhills as governments desperately tried to avoid disaster. China was the first country to experience the consequences of COVID-19. As the biggest cities were put under strict lockdown one by one, both foreign and domestic businesses were severely affected, transport was hampered and investments were delayed. As the country was struggling to control the spread of the disease it was obvious that some of the biggest plans will have to be postponed. Very soon, it was a scenario faced by most of the countries worldwide as controlling the health crisis became a priority above anything else. In this circumstances, a lot of projects around the world have been delayed or cancelled since physical contact was enabled or restricted and many of the financial means were allocated elsewhere.

Somewhere in the middle of this pandemic-provoked chaos, stands China's Belt and Road Initiative (BRI), the gigantic project that was not aimed to be crisis responding solution, but that somehow was forced to at least try to become so.

Before the pandemic, BRI stood out as one of China's strongest pillars of its foreign policy. For the sake of providing clear context, it is noteworthy that the project itself had faced several challenges throughout its development, even before the pandemic. Its huge expansion brought into question the respect of human rights and the rising authoritarianism in the countries where it was

implemented. It has generated further weakening of judicial systems, more repression of dissent, more curbs on freedom of expression under China-inspired cyber security laws — all paving the way for government leaders to show allegiance to the Chinese governance model (Faiz, 2019). Namely, a report published in 2021, stated that "between 2013 and 2020, there were 679 allegations of human rights abuses involving Chinese companies operating abroad" (BHRRC, 2021, 4). This abuses range from violation of land rights to a lack of disclosure regarding environmental impact assessments and so on. Furthermore, there were a lot of shortcomings due to unsustainable projects, contracts, and loans, the so called "debt-trap" diplomacy. Namely, BRI spending in developing countries has raised serious concerns about debt sustainability; As some reports found, several BRI recipient countries were facing rising debt-to-GDP ratios beyond 50 percent, with at least 40 percent of external debt owed to China once BRI lending is complete (Gerstel, 2018).

With the COVID-19 outbreak, the BRI ambitions were significantly threatened. Namely, overall investments in the BRI in 2020 were about US$47 billion; a decline of 54% to investments in 2019 and about US$78 billion less than in the peak year of BRI investments in 2015 (IIGF, 2021, 4). Possibly due to the COVID-19 pandemic, BRI investments were at their slowest pace since China's overseas investment strategy was coined "Belt and Road Initiative" in 2013 (Ibid.). However, China is obviously not giving up but in contrary, it is strongly pushing toward offering the BRI as a solution to the crisis. Therefore, Chinese engagement through financial investments and contractual cooperation for the year 2021 in the (then) 144 countries of the Belt and Road Initiative was about US$59.5 billion; of this engagement, about US$13.9 billion was through investment, and US$45.6 billion through contracts (Wang, 2022, 5).

The inclusion of health component in the BRI in 2015 allowed China to reorganize global public health mechanisms in a way that fits its geopolitical interests. Thus, China got involved in direct assistance for other countries, taking the lead in handling the medical emergency and demonstrate that it can carry the burden by itself. The crisis was used by China to impose its own narrative and present itself as a much needed partner.

And then again, the issue of the debt crisis appeared stronger than ever, especially in the developing and underdeveloped countries. This time the problem is even bigger, having in mind the financial burden that the pandemic had brought to the weaker countries, increasing both public external debt and the debt owed to China. Many countries are now relying on China for a debt relief as their domestic resources are lowering, in a desperate attempt to bring the pandemic under control.

EU'S OWN INVESTMENT INITIATIVE - COULD IT REALLY BE A "GATEWAY" TO EXIT THE CRISIS?

The European Union did not respond to the crisis in a manner that will bring urgent relief and ease the burden on the national systems neither for its member states nor for the partner countries that were relaying to its aid. It took several months for the complicated bureaucracy to start adopting proper measures, a period in which thousands of lives were lost on a daily basis and the health and economic systems of the countries were devastated. This situation opened up space for rising euro-skepticism within EU borders, as well as a rising anti-Europeanism outside of its borders, casting a shadow over the EU's position in the international context. At this point, it was more than obvious that the Union needs to offer a concrete and precise plan, if it plans to gain back the trust among its partners and provide sustainable solution for re-building and further developing cooperation and connection.

The first announcement of these alternative came in July 2021, when Council of the EU adopted Conclusions (10629/21) that define a new geostrategic and global approach to connectivity for the EU and call on the European Commission and the High Representative to work on a joint EU global connectivity strategy by spring 2022 at the latest. This document, above all, reflected a desire of EU member states for a coherent and coordinated connectivity agenda that brings together the bloc's institutions with that of the national governments (Heimburger, 2022).

Following this directions, on December 1st, 2021 the European Union launched its new Global Gateway plan, an initiative that will mobilize up to €300 billion in investments between 2021 and 2027 aimed at boosting smart, clean and secure links in digital, energy and transport and strengthen health, education and research systems across the world (EC, 2021). Weather it is constructed as an answer to China's BRI or as an attempt for gaining more power worldwide, many would agree it was about time for such a bold move from the EU and that this initiative could finally bring stronger consolidation inside the block.

Aimed at advancing transport, creating smarter, greener and sustainable energy and digital networks, the Global Gateway Plan covers a broad range of areas. EU has realized that in order to properly implement its policies, the critical areas where strengthening of funds and collaboration are needed are infrastructure and connectivity, at the same time investing in health, education and research. Through a Team Europe approach, Global Gateway will bring together the EU, Member States with their financial and development institutions, including the European Investment Bank (EIB), and the European Bank for Reconstruction and Development (EBRD) and seek to mobilize the private sector in order to leverage investments for a transformational impact (EC, 2021).

The plan was met with certain critics regarding lack of innovation, stating that it is only "a smart rebranding of what the EU had planned to do already (Bilal *et al*., 2021)", pointing mainly at the EU's Neighborhood, Development and International Cooperation Instrument (NDICI)-Global Europe for 2021-2027 and the European Fund for Sustainable Development (EFSD+). The lack of introducing of new and additional financial resources, however, is not a weakness of this plan and it does not properly explain its potential for success. The Global Gateway is an addition to the above stated instruments, focused mainly in infrastructure and connectivity development using and systemically appointing the already available resources. The EU and EU countries are already the world's leading providers of official development assistance (ODA); in grant equivalent (a methodology in which only the grant elements of loans are reported, instead of their full-face values), Europe disbursed € 66.8 billion in 2020, 46% of world's total (Tagliapietra, 2021). This is a sign that the lack of EU's proper support and investment abroad is not about the lack of finances but rather, the lack of strategy in allocation and that is particularly what the Global Gateway deals with.

THE SOUTHEAST ASIA AND THE WESTERN BALKANS: TWO CRITICAL REGIONS FOR COLLABORATING OR COMPETING?

Regardless of the terminology used, there are two main points that connect the Global Gateway and the BRI are:

1. They are both aimed at providing finances for infrastructure development.
2. They are both aimed internationally.

Having in mind previous practice, two of the most important regions for both of these initiatives are the Southeast Asia and the Western Balkans.

The South East Asia, being geographically close to China, is one of the most important regions in the realization of BRI projects, with increased numbers of trade and financial investment year after year. Despite a sharp drop in total BRI investments in 2020, Southeast Asia with a total of US$16.9 billion, became the BRI's largest investment destination, accounting for 36% of the total investment (Yu, 2021). Being that important, this region is also becoming critical for China, particularly with the latest developments of the South China Sea conflict. Namely, the year-long dispute over claiming the various islands located in the South China Sea, is lately developing in some hard moves from China, that pulled increased efforts to reclaim land in the South China Sea by physically increasing the size of islands or artificially creating new islands. In addition, China continued its activity by building ports, military installations and airstrips in these areas in that way showing strong determination to concretize and physically display its claims over most of the sea. This assertiveness is slowly pushing some of the countries of the

region away, looking for alternatives for economic collaboration and in that way lowering the economic dependence of China.

When it comes to Western Balkans, EU being geographically connected to the region, continuously tends to strengthen and maintain not only peace and stability among the six WB countries, but also economic and political prosperity transposing its norms and values, and providing significant financial assistance and investment. The Union is strongly devoted to investment and support in the WB and is by far the biggest provider of financial support for the region. For the period 2009-2020, the European Investment Bank Group (EIB), the bank of the European Union, has invested €8.6 billion in the WB region (EIB, 2021, 4). Only in 2021 the EIB invested €853 million overall across the Western Balkans for sustainable development, the green transition, digitalization and support for small businesses (EIB, 2022). The form that EIB is operating in the region is through loans, grants and expertise in four areas: innovation, small businesses, infrastructure and climate. These activities will continue in the following period, in line with the Global Gateway Plan. Since the beginning of the pandemic, the EU was the biggest provider of financial assistance as well as medical supplies for the Western Balkans, and the regi9on was included in all the plans and strategies for recovery that followed.

China is also present in the region, providing finance loans mainly for infrastructure projects. Namely, under the auspices of the 17+1 Cooperation Framework and the Belt and Road Initiative, China has lent more than US$6.7 billion to the Western Balkans for infrastructure projects in the period 2010-2020, with Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia already received loans from China (Crawford, 2020).

At the same time, the EU enlargement toward Western Balkan countries seems to last longer that it should have. Different crises EU has been dealing with, along with the Covid-19 crisis, have led to serious misunderstandings and unequal decisions of member states, regarding several issues including enlargement. That led to EU sending mixed signals to WB countries thus leaving space for different interpretations and skepticism, which threatens to push away certain structures and governments to increase their reliance to other directions, such as China and the BRI.

This situation is presented bellow in the Figure 1, in the form of Matrix of interdependence between China's BRI and Southeast Asia and EU's Global Gateway and Western Balkans.

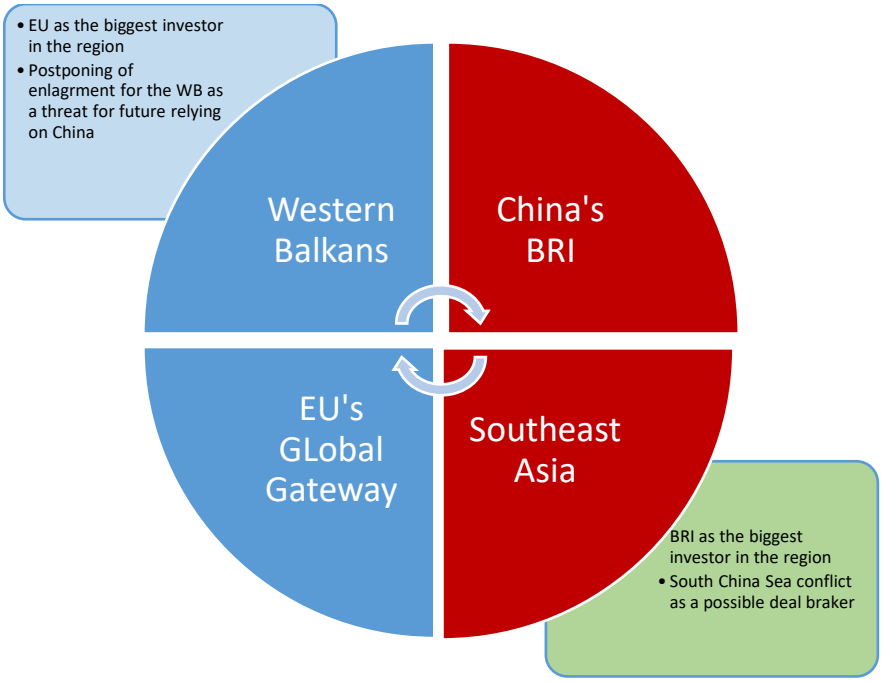


Figure 1: Matrix of interdependence between China's BRI and Southeast Asia and EU's Global Gateway and Western Balkans (own depiction)

CONCLUSION

Although in 2019 the EU announced a stricter course towards China, the pandemic hit hard and re-affirmed that Sino-European relationship is a complex issue to handle, and it requires a firmly settled multi-level approach. Having in mind the clumsiness of the European Union in dealing with emergencies, the situation got more complicated in the first year of the pandemic. China, at the meantime, has shown to be a clever and sharp crisis manager, thus continued its foreign policy strategies and investment despite the crisis and all the challenges it brought.

Although it cannot be confirmed that EU's intention with introducing the Global Gateway was to compete with the BRI, at some level it was definitely an intention to offer an alternative for less developed countries, where they will have the opportunity to choose between several sources of investment and financing. The Global Gateway Plan is an implementation of the values-based soft power that promotes democracy, human rights and fundamental freedoms, good governance, transparency and protection of the environment. This are advantages that by all means make this plan stronger than any other. The threat is, of course, that no such requirements from other initiatives, (such as BRI) can be seen as the easier way to go for some weaker

democracies, but this conflicts are not new and EU should however continue to project its transformative power through this and any other policy in the future since it is in its core foundation. Finally, we should not consider the Global Gateway as a mere response to the Belt and Road initiative (BRI) but rather "from a broader perspective, as a sign of the EU reacting to a changing world…reviewing its strategy and tactics in light of clashing capitalisms (mostly between the EU's market-based and China's state-guided systems) and global geopolitical power shifts" (Heijmans-Okano, 2022).

The launch of the Global Gateway could play a role in how much emphasis China puts on its BRI project.

Although both initiatives are aimed internationally, the regions of Southeast Asia and the Western Balkans are the ones to spot on the attention for the following period, since they share parallel geopolitical and geo-economic connections as well as challenges. The Southeast Asia shares strong ties with China's BRI but is challenged with the latest development of the South China Sea conflict. At the same time, Western Balkans countries, connected and supported by EU on various different levels, are starting to develop some negative feelings toward the Union, having in mind the out-of-proportion delayed enlargement. This is the reason countries of both these regions could be more open to alternative support different to what they have been preferring by now, as it is the reason why both the Global Gateway as well as BRI will be focused on developing and investing particularly in these regions.

The good thing is the Global Gateway may provide an opportunity for both the EU and China's BRI to complement each other by providing an alternative framework and offering a choice for development of partner countries. However, too many rivaling among different initiatives that lie strongly on geopolitical interests rather than only transport and infrastructure basis, can create a practice of increased costs and other harmful practices. Therefore, it is of critical importance that this parallel initiative reaches a certain extent of mutual coordination and cooperation rather than a pure rivalry.

REFERENCES:

1. Bilal S., Medinilla A., Karkare P., Tondel F., Ahairwe Eunice P., Sherriff A., (2021), *The EU's Global Gateway: Groundbreaking initiative or smart rebranding?-commentary*, ECDPM, December 2021, available at: https://ecdpm.org/talking-points/eu-global-gateway-groundbreaking-initiative-smart-rebranding/ [accessed March 2022],
2. Bussiness and Human Rights Research Center (2021), *"Going out" responsibly - The human rights impact of China's global investments*, report, https://media.business-

humanrights.org/media/documents/2021_BHRRC_China_Briefing.pdf , pg. 4 [accessed January 2022],
3. Chatzky A., McBride J. (2020), *China's Massive Belt and Road Initiative*, Council on Foreign Relations, January 2020, available at: https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative [accessed Marc, 2022],
4. Council of the European Union, (2021), *A Globally Connected Europe*
- *Council Conclusions [outcome of proceedings]*, Council conclusion No. 10629/21, https://data.consilium.europa.eu/doc/document/ST-10629-2021-INIT/en/pdf [accessed January 2022],
5. Crawford N. (2020), Growing public debt isn't the only problem with Chinese lending to the Balkans, analysis, International Institute for Strategic Studies, March 2020, available at: https://www.iiss.org/blogs/analysis/2020/03/gstrat-bri-in-the-balkans [accessed March 2022],
6. European Bank for Reconstruction and Development (2020), *Belt and Road Initiative (BRI)*, Available at: https://www.ebrd.com/what-we-do/belt-and-road/overview.html , [accessed March 2022],
7. European Commission (2021), *Global Gateway: up to €300 billion for the European Union's strategy to boost sustainable links around the world [press release], December 1, 2021*, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6433 [accessed January 2022],
8. European Investment Bank (2022), *Western Balkans: EIB investments reached €853 million in the Western Balkans in 2021, increasing support for green and digital projects*, available at: https://www.eib.org/en/press/all/2022-077-eib-investments-reached-eur853-million-in-the-western-balkans-in-2021-increasing-support-for-green-and-digital-projects [accessed March 2022],
9. European Investment Bank (2021), *The European Investment Bank in The Western Balkans, report*, available at: https://www.eib.org/attachments/country/the_eib_in_the_western_balkans_2021_en.pdf , pg. 4, [accessed March 2022],
10. Gerstel D, (2021), *It's a (Debt) Trap! Managing China-IMF Cooperation Across the Belt and Road*, New Perspectives in Foreign Policy Iss. 16, Center for Strategic and International studies, https://www.csis.org/npfp/its-debt-trap-managing-china-imf-cooperation-across-belt-and-road [accessed January 2022],
11. Nedopil, Christoph (2022), *Countries of the Belt and Road Initiative*, Shanghai, Green Finance & Development Center, FISF Fudan University, www.greenfdc.org

12. Heijmans-Okano M. (2022), Global Gateway: Positioning Europe for a Sustainable Future, interview, Institute Montaigne, February 2022, available at: https://www.institutmontaigne.org/en/blog/global-gateway-positioning-europe-sustainable-future [accessed February 2022],
13. Heimburger N. (2022), *The EU's 'Global Gateway': from Brussels to Bishkek and beyond [online article]*, cofe-MEET-2022-01-111079, https://futureu.europa.eu/processes/EUInTheWorld/f/17/meetings/111079?locale=en [accessed January 2022],
14. International Institute of Green Finance (2021), *China's Investments in the Belt and Road Initiative (BRI) in 2020, [report]*, https://greenfdc.org/wp-content/uploads/2021/01/China-BRI-Investment-Report-2020.pdf , pg.4 [accessed January 2022],
15. Tagliapietra S. (2021), The Global Gateway: a real step towards a stronger Europe in the world? - blog post, The Bruegel Newsletter, December 2021, available at:
16. https://www.bruegel.org/2021/12/the-global-gateway-a-real-step-towards-a-stronger-europe-in-the-world/ [accessed March 2022],
17. Wang N.Ch. (2022), *China Belt and Road Initiative (BRI) Investment Report 2021*, Green Finance & Development Center, FISF Fudan University - Shanghai, January 2022, pg.5 available at: https://greenfdc.org/wp-content/uploads/2022/02/Nedopil-2022_BRI-Investment-Report-2021.pdf [accessed February 2022],
18. Xinhua (2021), Full text: China's International Development Cooperation in the New Era, available at: http://english.www.gov.cn/archive/whitepaper/202101/10/content_WS5ffa6bbbc6d0f72576943922.html [accessed January 2022],
19. Yu Kaho (2021), *"The Belt and Road Initiative in Southeast Asia after COVID-19: China's Energy and Infrastructure Investments in Myanmar",* ISEAS Perspective 2021/39, 6 April 2021, https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-39-the-belt-and-road-initiative-in-southeast-asia-after-covid-19-chinas-energy-and-infrastructure-investments-in-myanmar-by-kaho-yu/ , [accessed March 2022].

Scientific Article
UDK 343.261(497.11)
343.24(497.11)

CRIMINAL SANCTIONS AND ALTERNATIVE MEASURES OF GOVERNMENT REACTION TO MINOR OFFENSES

Ass. Prof. Dr.sc Emil Turković PhD candidate
Educons University of Novi Sad
emilturkovic@hotmail.com

Prof. Dr.sc Slavica Dinić
Educons University of Novi Sad
slavicadinic@yahoo.com

Msc. iur. Ankica Stanković
ankica87@live.com

Abstract

Criminal policy of the Republic of Serbia is primarily relating to the criminal law, criminal procedural segment and penological theory and practice. Essentially, criminal policy objectives of Serbia is not significantly different of the objectives of all countries in the region, Europe and around the world. This is primarily because Serbia is faced with the similar, if not with the same challenges and problems that carry modern civilization achievements in terms of rights and freedoms, and the development of society as a whole. There are many socio-political issues that promote the increase of crime in the world and in our country. The increase of criminal activities in the society inevitably leads to an increase in the number of prisoners, consequently to increasing the prison population, as the only criminal sanctions which withstood the ravages of time, condemning of the history, and all of changes and criticism. Retributive character of the prison sentence is unquestionable. However, having analyzed statistically segment being convicted of criminal sanctions in Serbia in the last two decades, we see that the prison is used too much as a sentence for crimes of easier type, or for the insignificant crime, ie. extremely low crime, essentially the criminal act of a small character. In Serbia, the crime can be brought under one criminal offenses punishable by a fine or imprisonment up to five years, under other conditions prescribed by law, that the degree of culpability of the offender is low, that the harmful consequences of the crime of minor or absent, and the general purpose of criminal sanctions does not require the imposition of criminal sanctions

(Article 18. CCRS). What we want to explore with this paper is one punitive approach to reducing the prison population rate, through the application of the principle of opportunity and imposing alternative measures, primarily for criminal acts of minor significance, since the imposition of short-term prison sentences for offenses of minor significance, which until recently was the case with us primarily considered the offender, then it costs the state budget, and its application to the treatment of the convicted person in such a short duration is almost impossible. On the other hand, alternative measures give criminal sanctions, especially imprisonment, the best chance for a successful fight against petty crime, and enhances the influence of society, and in the best way helps resocialization and reintegration of convicts into a free society.

Key words: Criminal policy, minor offense, imprisonment, alternative measures, social reintegration.

INTRODUCTORY CONSIDERATIONS

The increase in crime, both in our country and in the whole world, leads to an even greater burden on prisons, and at the same time shows that imprisonment, a sanction that is expensive for society, does not achieve the expected effects. On the other hand, the widespread use of probation, especially against "low-risk" offenders, has often been criticized for its relative mildness, lack of oversight and inability to bridge the wide gap that separates it from imprisonment. The issue of sanctions is certainly one of the most important issues of criminal law and criminal policy, because by its nature it is directly related to defining the basic goals of criminal law and the means by which they should be achieved. Although the system of sanctions in our legislation includes four types of criminal sanctions: penalties, security measures, warning measures and educational measures, structurally and functionally it is a dualistic system based on penalties and security measures (Stojanović 2011, 7).

In the given context, it is indisputable that punishment was and remains the most important criminal sanction, which is a repressive measure provided by law, which is applied to the perpetrator in order to combat crime, based on a court decision and after a criminal procedure. The necessary precondition for the application of punishment is the committed criminal offense in the objective - subjective sense, ie the realized objective wrongdoing and guilt of the perpetrator, without which there is no punishment. Although punishment has retained retributivity as one of its characteristics from its inception until today, it is still in constant evolution, which is reflected in changing the understanding of what is the basis of its justification and what its purpose is, and in changing the types of punishment and manner their execution. What is especially characteristic for punishment, and not for other types of criminal

sanctions, is that it also means a social and ethical rebuke that society directs to the perpetrator of the crime. In addition, punishment is at the same time an incentive and an invitation to everyone to act in accordance with the demands of society. However, only the punishment, which is determined with respect to the principle of justice and the principle of proportionality, can be accepted by the perpetrator as a justified social and ethical rebuke (Šešić 1963, 293-321).

In other words, only such a punishment can have an educational effect, both on the perpetrator and on other citizens not to commit crimes, which further shows that in modern society the retributive component of punishment is enriched in content through the principle of justice and proportionality. inextricably linked to prevention.

CRIMINAL CODE OF SERBIA

The Criminal Code of Serbia (CCS) accepts a system of relatively specific punishments as a way of prescribing punishments, which means that for every criminal offense, punishment is prescribed within certain limits / ranges, ie. its lower and upper limits are determined, the so-called special minimum and special maximum and leaves the court to determine the sentence within those legal limits. This system of prescribing sentences is considered the most expedient because it gives the court the opportunity to determine the sentence in a given case in accordance with the specific circumstances as well as the principle of legality[2].

When prescribing relative penalties, the legislator may act in one of the following ways when determining the lower and upper limits of punishment for certain criminal offenses: to prescribe a special minimum and a special maximum of punishment; to prescribe only a special maximum penalty and in that case the general legal minimum penalty is applied as a lower limit; to prescribe only a special minimum penalty, which means that the general legal maximum of the penalty will be applied as the upper limit, and finally, in this case not to prescribe a special maximum and a special minimum penalty but only its type, in which case the penalty would be measured within the limits. general maximum and general minimum (Stojanović 1991, 63).

The main characteristic of such a penal system is that the court has very broad powers in sentencing, which is a consequence of both relatively broad penal frameworks and the existence of a number of general institutes whose application allows the court to modify the prescribed sentence, and one of these institutes is mitigation. . The justification for such a wide range of court

[2] Article 54 of the Criminal Code of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014).

powers lies in the fact that this is certainly the best way in which the court is given the opportunity to determine the sentence taking into account all the circumstances of the case and to practically implement legal provisions on the purpose of punishment. Judicial sentencing is, as a rule, related to the individualization of the sentence. According to Professor Zoran Stojanović, this term can be understood in a broader and narrower sense. In a broader sense, it is a process that takes place from the election of the sentence to its imposition, and even during its execution, which means that it includes the sentencing. In a narrower sense, individualization is one of the principles on the basis of which punishment is measured, and which primarily implies getting to know the perpetrator's personality, and the individualization of punishment understood in this way is rightly criticized today.

In this context, special attention is paid to the presentation and analysis of the provision of Article 14 of the Law on Amendments to the Criminal Code, which was passed in 2009, which provides for a ban on mitigation of punishment for a number of crimes (eight crimes). Mitigation of punishment is an institute of criminal law which, if the conditions prescribed by law are met, gives the court the opportunity to impose a sentence below its lower limit, ie. below the prescribed special minimum of punishment or (only in one case) the possibility of imposing a milder type of punishment. The existence of this institute is an expression of the need to harmonize the legal, abstract punishment with the circumstances of the specific case. Article 62 of the Criminal Code - General Part of 4 December 1947 also provided for the power of the court to mitigate the sentence (Delić 2010, 230).

Unlike the Law on Types of Punishments, this provision defined the mitigation of punishment much more broadly, as the law provided that the punishment in a specific case can be reduced not only by measure, but also by imposing a milder type of punishment. According to some authors, it follows from the given legal provision that in one conditional sense we could talk about the so-called legal and so-called judicial mitigation of sentence. Legal mitigation (items 1 and 2) exists in those cases when the sentence is mitigated in the presence of some of the general grounds for mitigation or release from punishment and then the court is more bound by law than in the case of judicial mitigation (item 3) when the mitigation of punishment depends to a much greater extent on the court's assessment (which of course does not mean that the court is not bound by law at all) (Lazarević 2006, 25).

OVERCROWDING IN PENITENTIARY INSTITUTIONS

Overcrowding in prisons is one of the biggest problems of the modern system of execution of criminal sanctions, which has been dominated by imprisonment for several centuries. The problem of overcrowding in prisons

exists all over the world, regardless of the continent and specific countries. Imprisonment has become a popular way of tackling crime.

Public opinion in most countries supports the frequent imposition of prison sentences, probably believing that this is the best possible way to combat various forms of crime. Continuous media reporting on crime also contributes to that, and thus the image has been created that the commission of criminal acts is on the rise. This situation is a consequence of the general retributive policy that believes in imprisonment as the most important, and tacitly the only measure that can stop crime. That is why it is important to look at this problem from two angles. The first would refer to imprisonment, which is the execution of a criminal sanction of a prison character, with an emphasis on imprisonment, given that the share of other such sanctions in the overall structure of all criminal sanctions imposed is very small. The second would concern detention, which is the execution of a detention measure (Ilić 2011, 246).

Prison overcrowding as a global problem

As imprisonment has become a common way of solving the problem of crime all over the world, the number of prisoners has been constantly increasing. The sudden increase in the prison population can, on the one hand, be explained by the fact that in modern society, the prevailing idea is that people are sent to prison primarily to be punished, not to make themselves better. Overcrowding occurs when there are more prisoners in prisons than the capacities allow. However, statistics on the total number of prisoners and their structure conducted by various international organizations for most countries of the world can serve as a framework for understanding this phenomenon.

Statistics on the number of prisoners in prisons around the world only confirm that this is a global problem. Since 1980, there has been a steady increase in the so-called prison population. Unlike countries from other continents, European countries were characterized by a relatively low closure rate (expressed by the ratio of the number of prisoners to the total number of citizens of a country) (Mrvić-Petrović 2007, 133).

However, in recent years, there has been a trend in Europe to increase this rate and increase the prison population, with a gradual equalization of the prison rate among different European countries. Thus, when it comes to Great Britain, the constant growth of the prison population has been recorded since the 1950s, but it reached its culmination in the 1980s, more precisely in 1988/1989. years, so that in the following years there would be a decline first, and then an increase in the prison population again. In February 2008, a record 81,861 prisoners were reached. The constant increase in the prison population is not in line with the declining crime rate that has been present since the mid-1990s. The importance of the problem of prison overcrowding and the growing

number of prisoners on the European continent is evidenced by the relevant Council of Europe Recommendation, which states that these are phenomena that pose a challenge to prison administrations and the judiciary, both in terms of human rights and effective prison management. .

The latest eighth edition of the World Prison Population List, published periodically by the International Center for Prison Studies, only confirms the decades-long trend of steady increases in the number of prisoners. It is estimated that over 9.8 million people worldwide are in prisons, most of them detainees or convicted prisoners. The United States has the largest prison population quota in the world, 756 per 100,000 inhabitants. Prison overcrowding is the number one problem when it comes to the US prison system, regardless of the fact that new prisons are constantly being built (Clear, Schranz 2011, 139).

Increase in the number of convicted persons in the Republic of Serbia

Overcrowding in prisons is certainly a problem in the Republic of Serbia as well. The global trend of increasing the prison population in the last few decades has affected Serbia as well. The increase in the imprisonment rate has been registered in Serbia since 1991, with the greatest contribution to that being the imposition of a prison sentence of up to six months, ie. imposing prison sentences for minor crimes, the so-called criminal offenses of petty crime. On the other hand, the problem of a large number of detainees should not be overlooked.

The structure of detainees and persons with alternative measures imposed in the past two years

Closed persons	20.05.2019.	20.05.2022.	% Decreases/Increases
Detained	2.373	2.941	+ 23,93%
Sentenced to prison	13.026	8.820	- 32,29%
Educational measure	91	68	- 25,27%
Juvenile prison	6	9	+ 50%
Work in the public interest	371	353	- 4,85%
Probation	18.307	19.290	+ 5,37%
Total	34.210	31.515	- 7,88%

What we can conclude from the table above is that as the implementation of alternative measures against the application of punishment began in Serbia, especially in the segment of opportunities for prosecution, especially in minor cases, we have an increase in the number of detainees of 23.93%. can be attributed to the increase in crime in general, while on the other

hand we have, in the last two years, a decrease in prison sentences by 32.29%, as well as a decrease in imposed educational measures by 25.27%, and approximately the same sentences of juvenile imprisonment and suspended sentences. While on the other hand, we have the constant imposition of criminal sanctions for work in the public interest by judicial bodies in the last two years, and even longer, which is essentially an alternative criminal sanction, which, in our Criminal Code, is provided as a criminal sanction. sentence, but in terms of purpose, manner of execution, and goals to be achieved, it is more similar to alternative measures, where it is used as an alternative measure in many other modern legislations, undeniably caused a reduction in the number of convicts, which is essentially the only goal[3].

SYSTEM OF ALTERNATIVE SANCTIONS AND PROBATION IN THE REPUBLIC OF SERBIA

Alternative sanctions can take many forms. They can be applied in pre-trial proceedings, in the stages of trial and sentencing or after sentencing. Alternative sanctions include penalties in the public interest, which hold offenders accountable for their actions, and may include fines, probation, and a wide range of pre-trial, pre-appeal, and post-liturgical alternatives to prison. Currently in Serbia, the emphasis is on introducing new types of alternative sanctions - unpaid work in the public interest and time of inspection - and on mediation, reconciliation and settlement with the injured party, and on conditional release.

Particularly positive cooperation has been established in connection with the implementation of the Law on Juvenile Delinquents, which provides a good basis for building cooperation related to the implementation of alternative sanctions. In the case of alternative sanctions, it is clear, for example, that the role of the Institutional Administration is crucial for the development of strong links with social services (Kostić 2005, 180).

The absence of a clearly focused implementation plan can be somewhat linked to the Law on the Execution of Criminal Sanctions, which does not regulate in detail the processes involved in implementing alternative sanctions or prescribe specific measures to reduce the prison population (eg early release from prison). supported by electronic surveillance and home curfew). However, if the goals of introducing alternative sanctions are to be achieved, they need to be clearly defined and understood by all those involved in their implementation.

Where prison sentences are imposed for minor offenses and petty crime, and where the number of prisoners is growing, prison authorities are

[3] Republic Bureau of Statistics, *Convicted adults according to criminal sanctions*, Belgrade, 2015.

unable to provide the additional resources - neither material nor human - necessary to successfully combat rising prisons, resulting in prison overcrowding. In that case, states realize that they are unable to perform their duty to take care of those they have imprisoned, and the ability of prison authorities to guarantee basic human rights to prisoners is violated, to work to rehabilitate prisoners, preparing them for reintegration into society. Where perpetrators of less serious crimes (minor or so-called petty crime) are given alternative sanctions, prison authorities' resources can be freed up and they can work more efficiently with those for whom prison is the only option. This is in line with Council of Europe Recommendation R (1999) on prison overcrowding and prison population increase, which recommends that deprivation of liberty should be seen as a sanction to be resorted to only as a last resort, when the seriousness of the crime would be any other sanction. or made the measure inadequate[4].

Certain Serbian laws and bylaws, above all the Serbian Penal Code Reform Strategy, the Criminal Procedure Code, provide a context within Council of Europe standards, in particular the revised European Prison Rules: Recommendation Rec (2006), ("EPR"), Recommendation Rec (1992) on sanctions and measures related to the public interest (hereinafter R (1992), Recommendation Rec (1997) on staff in charge of implementing sanctions and measures (hereinafter R (1997) and Recommendation Rec (2000) on improving enforcement European Rules on Sanctions and Measures of Public Interest (hereinafter R) (2000) In addition, the implementation and improvement of the system for the execution of criminal sanctions and the application of alternative measures and criminal sanctions to alternative prison sentences is based on the principles set out in international instruments. Convention on Human Rights, Council of Europe Recommendation Rec (1999) on prison overcrowding and increasing the prison population (hereinafter R (1999)), United Nations Standard Minimum Rules on Non-Imprisonment Measures (Tokyo Rules) and Practice in Other European Countries. Overall, there is an understanding in Serbia and its system of execution of criminal sanctions of what is needed to develop an effective system of execution of criminal sanctions and thus apply a system of alternative sanctions for criminal offenses, where the application of imprisonment would not be expedient and adequate. criminal case. Also, there is good cooperation between the ministries of Serbia and some of the key agencies that will be involved in the processes of implementation and implementation of changes in the system of execution of criminal sanctions and implementation of alternative sanctions, primarily the Directorate for

[4] Council of Europe Recommendation on Prison Overcrowding and Increasing Prison Population No. R (1999).

Execution of Institutional Sanctions. Labor, Employment and Social Policy, the Judicial Training Center, the Open Society Fund and UNICEF (Pavlović 2006, 9).

Between the two opposing options - imprisonment and probation - today there is a whole range of sanctions and measures that can be maximally adapted to each individual. These measures are united under the name of alternative sanctions and represent the concept of sanctions and measures under the auspices of the social community, based on the assumption that the goals of punishment can be largely achieved in conditions that are less restrictive than imprisonment. The reasons for striving for a preventive, not a retributive component of the sentence, among other things, lie in the negative effects of the prison sentence on the convict, his family and the community. The negative effects of imprisonment for a convict are, above all:

• Permanent marking as a criminal;

• Separation from family;

• Dissolution of schooling, and job loss, as well as difficult finding a new job;

• Within penitentiary institutions, problematic prisoners are very badly affected;

• All of the above increases the chances of committing a crime again - recidivism (Vasiljević-Prodanović 2011, 511).

The introduction of alternative sanctions in our criminal system is therefore fully in line with modern European trends in the field of penal policy and the need to establish common principles on criminal policy among the member states of the Council of Europe. The precondition for the practical application of alternative sanctions was the adoption of adequate legal regulations, which was done in Serbia in 2006 with the adoption of the Criminal Code and the Law on the Execution of Criminal Sanctions. In order for alternative sanctions to be adequately applied in court practice, appropriate organizational preconditions are necessary. That is why the Ministry of Justice, in cooperation with the OSCE Mission to Serbia and the Council of Europe Office in Belgrade, worked first on drafting and now implementing the Strategy for Reforming the Institutional Sanctions Enforcement System and Implementing Alternative Sanctions, the main points of which are: training of commissioners and creation of conditions for their work, professional training of judges and prosecutors, formation of a coordination body and creation of material conditions for full implementation of alternative sanctions and sensitization of public opinion.

Positive effects of effective implementation of alternative sanctions:

• Negative effects of imprisonment are avoided (separation from family, dropping out of school, loss of job, negative impact of other prisoners);

• The community is given a more active role in the criminal justice system;

• The community receives immediate benefits in the form of free labor for convicts;

• Reintegration of convicted persons into a free society is carried out efficiently and publicly;

• Conditions are created for eliminating or mitigating the damage caused to the victim of a criminal offense or his / her reconciliation with the convict;

• Social stigma of convicts is reduced;

• The prison population is declining, resulting in lower costs and segregation from the community.

After the amendment of the Law on Execution of Criminal Sanctions, key acts were adopted that further define the implementation of alternative sanctions, including:

• Rulebook on Execution of Probation with Protective Supervision;

• Rulebook on Execution of Labor Penalties in the Public Interest.

The principles defined by the Rules of Procedure in the public interest and suspended sentences with protective supervision are as follows:

• Guaranteeing respect for the human dignity, rights, freedoms and privacy of the convict and his family;

• Prohibition of discrimination based on race, color, sex, language, religion, political or other beliefs, national and social origin, property status, birth, education, social status or other personal characteristics (Konstantinović-Vilić, Soković 2007, 3).

WORK IN THE PUBLIC INTEREST

Punishment of work in the public interest means free socially useful work, which does not serve to make a profit, with the aim that the convict develops a more responsible attitude towards society and the consequences of his actions. Work in the public interest has been included in our Criminal Code due to numerous positive experiences of other countries, as well as due to the position of our theory that it is justified to introduce this sanction in our legislation as well. Working in the public interest in Serbia can only be imposed as the main punishment, but that does not change its basic meaning - to be an alternative to imprisonment. The court may impose a sentence of community service in the case of a criminal offense punishable by up to 5 years in prison or a fine, which in our criminal law is essentially a minor offense, although in our Criminal Code there is no division into lesser and more serious criminal offenses, but it is determined that more serious criminal offenses are those illegal offenses for which a prison sentence of a longer duration, from five years and longer, is prescribed. Reciprocally, they would conclude that all

crimes punishable by less than 5 years in prison or a lesser criminal sanction, such as a fine, work in the public interest or revocation of a driver's license, are less serious crimes. It is also necessary for the perpetrator to accept this sanction, because according to relevant international acts, forced labor is prohibited as a criminal sanction (Tolefson 2012, 252).

Work in the public interest must meet 3 conditions:

- That it is useful for society;
- That it does not offend human dignity;
- Not to be done for profit.

The type and duration of work in the public interest is determined by the court, and the specific type of work and the manner of its performance are determined by the commissioner, taking into account the abilities, professional knowledge and health condition of the convicted person. The minimum sentence of work in the public interest is 60 hours, and the maximum is 360, and the time for execution of the determined number of hours is from one to six months, with a maximum of 60 hours in one month. The penalty of work in the public interest can be applied to both employed and unemployed persons. Employees work during their free time, and the unemployed at any time (Vasiljević-Prodanović 2012, 35).

PROBATION WITH PROTECTIVE SUPERVISION

Probation with protective supervision, means monitoring the behavior of the convict at large during the probation period with the provision of necessary assistance and protection to achieve the purpose of this sanction. Conditional sentence with protective supervision is a combination of elements of the continental and Anglo-Saxon type of conditional sentence. In the basic form of a suspended sentence, the attitude towards the convict is passive and static. Through protective supervision, active actions are taken, which provide assistance and protection to the convict, and at the same time he is supervised in order not to commit a new crime. Probation with protective supervision is imposed in cases where there is a certain suspicion of the perpetrator and his ability to refrain from committing criminal offenses, if he were left to himself as in ordinary probation. That is why the active action of the commissioner is necessary in the realization of protective supervision.

The Criminal Code provides for a diverse register of obligations, and that is why protective supervision is a measure that also includes the protection of the convicted person and supervision over him. The employer has the right, in accordance with general regulations, to obtain compensation for damage caused by the work of the convicted person. If the convict does not fulfill his work obligations or grossly neglects them (he is late for work, leaves it, is unjustifiably absent, intentionally puts himself in a state of reduced working capacity, intentionally damages his means of work, does not respect the

organization and manner of work, other employees and users), the employer's representative must inform the trustee (Tumz, Svenenhojs, Gandini 2006, 4).

The security surveillance defined in the following 10 points would look like this:

• Reporting to the body responsible for performing supervision within the deadlines set by that body;

• Training of perpetrators for a certain profession;

• Accepting employment that corresponds to the abilities of the perpetrator;

• Fulfilling the obligations of family support, custody and upbringing of children and other family obligations;

• Refraining from visiting certain places, bars or events, if this may be an opportunity or incentive to re-offend;

• Timely notification of change of residence, address or place of work;

• Abstinence from drugs or alcohol;

• Treatment in an appropriate health institution;

• Visiting certain professional and other counseling centers or institutions and following their instructions;

• Elimination or mitigation of the damage caused by the crime, and especially reconciliation with the victim of the crime (Ignjatović 2011, 41).

In choosing the obligations that the convict should fulfill within the protective supervision and determining their duration, the court will take into account especially the circumstances related to the perpetrator's personality (his age, health condition, inclinations, habits, motives, motives, conduct, after the crime, previous life, personal and family circumstances, conditions for fulfilling the imposed obligations, etc.). In addition to the length of protective supervision, the court also determines the probation time of the convict, or the time of probation. Depending on the court's decision, these two decisions may have the same duration, and it is possible that the supervision lasts shorter than the review. The court may shorten or revoke protective supervision if it finds that its purpose has been fulfilled, regardless of the fact that the time of verification is still ongoing. Also, the court may cancel certain obligations of the convict and may replace certain obligations with others. In case the conditionally convicted person does not fulfill the imposed obligations, the court may warn him, replace the imposed obligation with another, extend the duration of the obligation or revoke the conditional sentence (Soković 2011, 215).

TRUST SERVICE

The execution of sanctions, imposed as an alternative to prison sentences, is performed by the Commissioner's Office in Serbia. It operates within the Department for Treatment and Alternative Sanctions at the Directorate for the Execution of Institutional Sanctions of the Ministry of Justice. The ordinances on protective supervision and work in the public interest regulate in detail the actions of the commissioner in monitoring the execution of the convicted person's obligations. The Trust Service will become an independent service within the Ministry of Justice with stable trust of judicial bodies in its work, it will be able to increase the security of the social community and the degree of successful reintegration of convicts.

The Commissioner is appointed by the Director of the Administration for the Execution of Institutional Sanctions on the proposal of the Head of the Department for Treatment and Alternative Sanctions, who takes into account the personal characteristics and needs of the convict. The powers of the commissioner provide for the establishment and maintenance of contact with the convict, while respecting the principle whose essence is to limit the rights of the convict only to the extent necessary to achieve the purpose of the sentence. He cooperates with the competent court, internal affairs body, employer and other institutions, organizations and associations, has the right to request data and inspect official records and other documents relevant to the execution of a suspended sentence with protective supervision, or to perform work in the public interest. . After the execution of the sentence, the Commissioner is obliged to submit the file on the execution of the sentence to the Department for Treatment and Alternative Sanctions, and then the Department for Treatment and Alternative Sanctions submits the notification on the execution of the sentence to the court. Records are kept and kept in the Department of Treatment and Alternative Sanctions, and consist of:

• Registry book (contains basic formal information on the verdict, the convict and the sentence itself);

• Dossiers kept individually for each convict (in addition to formal data, it also contains a program of protective supervision / work, a finding of the commissioner, a list of monitoring the execution of the sentence and prescribed reports).

Supervision over the execution of alternative sanctions and the work of the Trust Service is performed by the Department for Supervision at the Directorate for the Execution of Institutional Sanctions of the Ministry of Justice. Control over the execution of alternative sanctions is performed by the Commission formed by the Committee on Justice and Administration of the Assembly of Serbia and the Protector of Citizens (Soković 2011, 215).

The trust service should be developed through:

1. Improving personnel, organizational and program bases;

2. New normative framework, namely:

• Amendments to the Criminal Procedure Code, the Criminal Code and the Law on Execution of Criminal Sanctions;

• Adoption of a special law on the competencies and work of the Commissioner's Office with accompanying bylaws, which was done in 2014 with the adoption of the Law on Execution of Extrajudicial Sanctions and Measures.

These changes will enable the Trustee Service to provide professional assistance to the competent state bodies, such as:

• In pre-trial proceedings - at the request of the prosecution or the court in the proceedings of supervision and reporting on the execution of measures or obligations imposed by the prosecutor on the suspect as a condition on the fulfillment of which the suspension of criminal proceedings depends;

• In criminal proceedings - at the request of the court, makes the so-called. a pre-sanction report, which should help the court determine an adequate criminal sanction for the defendant. The report contains data on the family, health, education, work and property status of the defendant, as well as the so-called assessment of the defendant's risk, ie assessment of the degree of danger that the defendant poses to the community and assessment of the degree of danger that the defendant will repeat / continue to commit criminal offenses;

• In summary proceedings and proceedings for the imposition of criminal sanctions without a main trial - preparation of a report before the imposition of sanctions in proceedings for minor crimes and for which it is possible to impose alternative sanctions;

• In the procedure of execution of existing sanctions - cooperation with treatment services in institutions for execution of institutional sanctions in the application of conditional release, preparation of the convict for release from punishment and in post-penal reception of the convict;

• In the process of executing new alternative sanctions and measures - supervision over the fulfillment of obligations from the court decision ordering house arrest, stay in a "halfway house", electronic monitoring (Mrvić-Petrović 2010, 89).

CONCLUSION

In some judicial systems, the application and enforcement of alternative sanctions is the responsibility of separate probation services. In other systems, as was the case in Serbia until 2014 (although the long-term goal was to establish a separate independent service), prison authorities were in charge of both imprisonment and the application of alternative sanctions. However, with the adoption of the Law on Execution of Extra-Institutional Sanctions and Measures, the issue of execution of alternative measures and

extra-institutional sanctions was resolved in a good way, and the above-mentioned service was constituted, the so-called The trustee service, for the implementation of the mentioned law, and the implementation and execution of measures to alternative prisons in the best possible way. First of all, it is a good way to eliminate the inequalities that existed, where we had that in such circumstances, where senior prison officials are tasked with applying prison and alternative sanctions, they can use their knowledge of prison conditions and design the work and development of non-prison. sector. Senior officials have a special role to play in ensuring that the prison is never overused. For example, they may draw the attention of the public and parliament to the consequences of prison overcrowding and a lack of resources to care for large numbers of prisoners. It is therefore a key responsibility of prison authorities to make it known to legislators, the judiciary and the public that prison is a place to be used only as a last resort, in cases where there is no other reasonable solution. In all other cases, it should be possible to apply alternatives to imprisonment, especially when it comes to crimes that are exhaustively provided in the Criminal Code as minor crimes, for crimes of negligence, primary perpetrators of crimes, situational perpetrators of crimes, and perpetrators of trivial crimes.

In the last few years, approximately 53,000 prison sentences have been imposed in the Republic of Serbia, of which 65.3% are for one year. Given how many more prison sentences have been imposed in the range of 1-3 years, it can be assumed that over 70% of prison sentences could have been replaced by some of the alternative sanctions. Unfortunately, that was obviously not done. In the end, we hope that this work will influence the consideration of such penal policy, especially for criminal offenses, and accelerate new research and new types of alternative sanctions and measures, and improve the ways and methods of their application, and improve implementation in our new penal policy.

REFERENCES

1. Clear T. R. (Cler T. R.), Schrantz D. (Schranz D.), Strategies for Reducing Prison Population, The Prison Journal, London, 2011, 139;
2. Nataša Delić, “Prohibition-Exclusion of Mitigation of Sentence in Certain Cases”, Faculty of Law, University of Belgrade, 2010, 230;
3. Ignjatović Đorđe, "Newspapers in the law of execution of criminal sanctions of Serbia", Criminal Reaction in Serbia, Faculty of Law, University of Belgrade, Belgrade, 2011, 41;
4. Ilić Aleksandra, "Overcrowding of Prisons", Faculty of Security, University of Belgrade, 2011, 246;

5. Prof. dr Konstantinović Vilić Slobodanka, Prof. Dr. Soković Snežana, "Regulations on the Execution of Criminal Sanctions of Serbia from the Angle of Gender Equality: Potential Discrimination against Convicts", Niš, 2007, 3;
6. Kostić Miomira, "Some modern forms of criminal sanctions instead of imprisonment (other forms of imprisonment)", Proceedings of the Faculty of Law in Nis, XLVI, Faculty of Law, Publications Center, Nis, 2005, 180;
7. Lazarević Ljubiša, Commentary on the Criminal Code of Serbia, Belgrade, 2006, 25;
8. Mrvić-Petrović Nataša, "Alternative Criminal Sanctions and Procedures", Media Center Odbrana, Belgrade, 2010, 89;
9. Mrvić-Petrović Nataša, Prison Crisis, Belgrade, 2007, 133;
10. Council of Europe Recommendation on Prison Overcrowding and Increasing Prison Population No. R (1999);
11. Pavlović M., Prekobrojnost zatvorske populacije, Pravni život, Beograd, 2006. godine, 9;
12. Republic Bureau of Statistics, Convicted adults according to criminal sanctions, Belgrade, 2015;
13. Soković Snežana, New Punitivism, Faculty of Law, University of Kragujevac, 2011, 215;
14. Stojanović Zoran, "Politics of Crime Suppression", Novi Sad, 1991, 63;
15. Stojanović Zoran, "Preventive function of criminal law", Faculty of Law, University of Belgrade, 2011, 7;
16. Bogdan Šešić, Necessity and Freedom, Belgrade, 1963, 293, 321;
17. Tolefson E., "Community Service as a Possible Sanction in the United States, Canada, and the European Union," Alternatives to Imprisonment, op. cit., cited in: Konstantinović Vilić, S., Kostić, M. 252;
18. Prof. Tombs Jacqueline, University of Stirling, Scotland, Mr. Swennenhuis Raymond, The Netherlands, Dutch Parole Service, Ms. Gandini Luisa, Italy, Regional Parole Office, Expert Reports Council of Europe, Strasbourg, 2006, 4;
19. Vasiljević-Prodanović Danica, "Theories of Punishment and Their Penological Implications", Faculty of Special Education and Rehabilitation, University of Belgrade, 2011, 511;
20. Vasiljević-Prodanović Danica, Special Education and Rehabilitation, Faculty of Special Education and Rehabilitation, University of Belgrade, 2012, 35;
21. Article 54 of the Criminal Code of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012, 104 / 2013 and 108/2014).

Scientific Article
UDK 347.27/.28:340.13(497.7)
347.27/.28:340.13(497.115)
347.27/.28:340.13(497.16)

MEANS OF SECURING CLAIMS – COMPARATIVE ASPECTS

LL.M Aneta Boskovska

Phd Candidate, "Ss. Cyril and Methodius" University in Skopje,
Faculty of Law "Iustinianus Primus" – Skopje
aneta_boskovska@hotmail.com

Abstract
In the scientific paper subject of analysis are the types of funds for securing claims, comparatively in the legal systems of North Macedonia, Kosovo and Montenegro. For that purpose, the following types of means for securing the claims are considered: lien on real estate, lien on movables, preliminary measures, temporary measures and transfer of ownership and transfer of rights - fiduciary transfer of the right of ownership. The means for securing the claims are actions determined by law of the court, the parties and other subjects in the security procedure that aim to ensure the fulfillment of the creditor's claim in a certain legal relationship. Regarding the type of means for securing claims, the rule *numerus clausus* applies, which means that only means determined by law can be determined. In the three legal orders under consideration there is an identity of the types of means of securing claims.

Key words: securing claims, preliminary measures, interim measures, fiduciary transfer of ownership, lien on real estate.

INTRODUCTION

The means for securing the claims are systems of actions of the court determined by law (and in certain cases of the notary public and the enforcement agent), the parties and other subjects in the procedure for securing the claims which forcibly or voluntarily provide legal protection of the claims, or other rights or legal relations of the creditor towards the debtor, which in their content are more limited than the protection that is realized in the procedure for enforcement and whose purpose is to create conditions for the future realization of the claims.

In the security procedure, the court can determine only one of the means determined by law. This legal rule is the specificity of the means of securing the claims, ie their exclusivity.

The means of securing claims are usually enforced because they are determined and enforced independently of the debtor's will. As an exception, certain means of securing claims are voluntary means of securing, such as securing by transfer of ownership of objects and transfer of rights.[5]

In the civil doctrine there is a division of the means for securing the claims of personal legal means for securing the claims, real legal means for securing the claims and executive means for securing the claims. Personal legal remedies for securing claims are also called personal or obligation legal remedies for securing claims and strengthen the existing claim in the sense that the debtor's obligation is strengthened or its obligation is extended to other persons. These security measures actually create an additional obligation that is a function of the obligation being secured. The role of this obligation is secondary and depends on the legal fate of the basic obligation (the obligation that is provided).

Real legal remedies for securing claims are characterized by establishing a real right on a certain item of the debtor or a third party. They are also called real means of securing claims, because they constitute a real right so that the creditor can be charged from a certain item.

Enforcement legal remedies for securing claims are securities that have the capacity of an enforceable title or a final decision for enforcement. An enforceable title or an enforced document is an individual legal act, a public document, which as a rule is the result of a previous cognitive procedure (litigation, non-litigation, administrative, criminal procedure, etc.) which authoritatively and unequivocally determines the existence of the creditor's claim, his arrival and the identification of the parties in the enforcement procedure.[6]

MEANS OF SECURING CLAIMS IN LEGAL SYSTEM OF REPUBLIC OF NORTH MACEDONIA

In Macedonian law, the rule numerus clausus applies to the type of means of securing claims, which means that only means of securing determined by law can be determined.

The Law on Securing Claims defines several types of means for securing claims, as follows:

- Pledge of real estate;
- Lien on movables;
- Preliminary measures;

[5] Јаневски, Арсен и Зороска – Камиловска, Татјана. 2011. *Граѓанско процесно право, книга трета, Извршно право.* Скопје: Правен факултет Јустинијан Први – Скопје, 195-197.

[6] Дабовиќ – Анастасовска, Јадранка и Гавриловиќ Ненад. 2008. „Лично правни и стварно правни средства за обезбедување на побарувањата“: Деловно право, мај, 2008: 136-166.

- Temporary measures and
- Transfer of ownership and transfer of rights.

The Law on Securing Claims provides the possibility for certain security measures to be prescribed by another law. In that sense, for example, the Law on Copyright and Related Rights prescribes special temporary measures for securing copyright and related rights that are adapted to the nature of these rights and the specifics of the needs for their provision. Thus, for example, at the proposal of the right holder, temporary security measures may be determined, and in particular: to seize, to exclude from circulation and to keep samples, means, equipment and documents related to them; to prohibit actions of possible injuries or their continuation and to adopt other similar measures.

The same is the case with the Law on Industrial Property. Thus, according to Article 313 of this Law, the person who can file a lawsuit for violation of his rights determined by this Law, if he submits evidence that will make it probable that his right has been violated or will be violated, the court may determine temporary measures to secure its requirements, namely: to prohibit all acts of injury and their continuation, to seize, to exclude from circulation and to keep samples, means, equipment and documents related to them and to bring other similar measures.

The Family Law also provides for temporary measures to provide for the maintenance of joint children and to entrust them with custody and upbringing, as well as for the maintenance of the spouse, which may be determined during the divorce or annulment proceedings, as well as in paternity and maternity disputes. This law also provides for special temporary measures for protection from domestic violence and regulates a special procedure for imposing a temporary measure for protection from domestic violence.

Mortgage collateral is one of the most effective and commonly used means of securing a creditor's monetary claims. The court pledge of real estate is used as a means of securing a monetary claim of a creditor who has an enforcement document which in an unquestionable and authoritative way has determined the existence of his claim. Given that the creditor has an enforcement document that establishes the existence of his monetary claim, he can immediately request enforcement to collect his claim.

The court lien on securing a monetary claim can also be based on movable items. In this case, too, the security procedure is initiated by the creditor with a security proposal.

The previous measures are legally determined means for time-limited security of the creditor's claim in a period when there is already a qualified document that determines the claim, but which has not yet become final or enforceable, and the danger that it will be frustrated or will significantly

complicate the realization of the claim. With a precautionary measure, only a monetary, but not a non-monetary claim of the creditor can be secured.

Interim measures are means for securing a time-limited effect (until the final settlement of the relationship between the parties with a final and enforceable decision) which, as a rule, are determined if the existence of the claim becomes probable, as well as if the danger becomes unlikely that without such a measure the debtor will thwart or significantly impede the collection of the claim, or that the measure is necessary to prevent the use of force or the occurrence of irreparable damage that is imminent. Interim measures can provide monetary and non-monetary claims.[7]

Securing claims by transferring ownership of objects and transferring rights is legally regulated in the Law on Securing Claims (Articles 43-64). With this means of securing claims, both monetary and non-monetary claims, i.e., liabilities can be secured. The security is realized in a way that one or both parties, i.e., the creditor and the debtor can request from the court to determine a hearing at which they will enter in the minutes the agreement of the parties for securing the creditor's claims, whereby the debtor transfers the ownership of a case. of the creditor, so that the object, unless otherwise agreed, remains in the possession of the debtor *(constitutum possessorium),* or for that purpose the debtor transfers some right to the creditor. It should be noted that such security instead of the debtor can be given by a third party who is not a debtor of the claim that is secured, ie collateral can be provided to settle another's debt.[8]

This way of securing the claims, by transferring ownership of the objects or by transferring ownership of the rights creates a relationship of trust between the creditor and the debtor. In the case of the transfer of ownership of the objects, the creditor acquires the right of ownership, and in the case of the transfer of a right, he acquires in full the right transferred to him on the basis of an agreement concluded with the debtor.[9] Unless otherwise specified in the agreement, the debtor is authorized to continue using the object whose ownership has been transferred to the creditor, and the creditor must not alienate or encumber the object. In the obligatory-legal sense, the position of the creditor as an owner to whom the property has been transferred, ie as a

[7] Јаневски, Арсен и Зороска – Камиловска, Татјана. 2011. Граѓанско процесно право, книга трета, Извршно право. Скопје: Правен факултет Јустинијан Први – Скопје, 195-224.
[8] Јаневски, Арсен: „Обезбедување на побарувањата со пренос на сопственост на предмети и пренос на права според Законот за обезбедување на побарувањата“: 1-23. https://www.akademik.mk/wp-content/uploads/2014/06/Prof.d-r-Arsen-Janevski-Obezbeduvane-na-pobaruvanata-so-prenos-na-sopstvenost-na-predmeti-i-prenos-na-prava-spored-Zakonot-za-obezbeduvaene-na-pobaruvanata.pdf.
[9] Јаневски, Арсен. 2000. „Фидуцијарниот пренос на правото на сопственост како средство за обезбедување на побарувањата на доверителите“. Деловно право, број 1, Часопис за теорија и практика на правото, Скопје, 107-134.

holder of a right that has been transferred to him for security, is related to the agreement (court settlement). If the creditor alienates or encumberes the object even though he was not allowed to do so, such alienation or encumbrance does not produce legal effect and he will be liable to the debtor for the damage caused to him.[10]

MEANS OF SECURING CLAIMS IN THE LEGAL SYSTEM OF KOSOVO

The rules for securing the claim in civil proceedings in the legal system of Kosovo are enshrined in the provisions of the Law on Contested Procedure (art. 296 – 318; henceforth "LCP"). The LCP contains provisions that regulate two types of measures for securing the claim in three distinct types of civil proceedings. Therefore, as we will elaborate infra, these two legal measures for securing the claim are:

- Security measures and
- Interim measures (art. 296(1) and 306(1) LCP).

Prior to the LCP, these measures were included in the provisions of the former Law on Executive Procedure (Official Gazette of SFRY, No. 20/1978) which was replaced by the new Law on Enforcement Procedure in 2008 (Official Gazette, No. 33/15 July 2008). In 2012, the new Law on Enforcement Procedure (Official Gazette, No. 3/31 January 2013, (henceforth: "LEP") was enacted, which repealed the previous legal acts in this field, including the Law on Executive Procedure (Official Gazette, No. 33/15 July 2008). With the entry into force of the LCP, the legislature has introduced some novelty by recognizing that the Interim measures for securing the claim in civil proceedings application for securing the claim should be done in the contested procedure by the court which acts according to the claim in the first instance. The intention of the law is, however, to equip those who apply for security measures with the legal mechanisms against the other party (defendant) whose intention is to make recognition of the rights of the plaintiff impossible.[11]

The following security measures may be imposed for securing the demand for money:

- The prohibition of the opponent of the insurance to alienate,
- Conceal, encumber, or dispose of the certain property of sufficient value to secure the claim of the insurance proposer. This prohibition has to be registered in the relevant public register,

[10] Riabchynska Anastasia. 2020. „ Fiduciary Transfer of Ownership for Security Purposes & Retention of Ownership by a Seller". Krakowskie Studia Małopolskie, no. 3 (27), 107-124. https://czasopisma.marszalek.com.pl/images/pliki/ksm/27/ksm2708.pdf.

[11] Haxhi, Xhemajli. 2020. "Internim measures for securing the claim in civil proceedings in Kosovo". Balkan Social Science Review Vol.16, December 2020, 21-39. file:///C:/Users/Aneta/Downloads/3977-Article%20Text-6624-1-10-20201223%20(2).pdf.

- The preservation of the property to which the prohibition from the point above-mentioned concerns the court in its deposit, when there is a possibility for such a thing, or by giving possession to the insurance proposer or a third person,
- Prohibiting the debtor of the insurance opponent from fulfilling the request or handing over the item, as well as forbidding the insurance opponent from accepting the item, realizing the request, or disposing of it,
- Foreshadowing the right of pledge on the immovable property of the insurance opponent, or on the right registered in the immovable property, up to the value of the main claim, with procedural and interest expenses, for which the judgment has been given which is still has not been made executable. The ruling imposing the security measure is sent to the insurance opponent, the debtor of the insurance opponent, and when the case is the relevant public register. The security measure is considered applied at the moment when the ruling is delivered to the insurance opponent or his debtor, if it has been delivered to the latter, or to the relevant public register, depending on which of these three delivery dates is earlier in terms of time. (Law on Contested Procedure of Republic of Kosovo, no.03/L-006, article 299).

Regarding the security of claims which are directed towards a certain thing or towards a part of it, point c of this paragraph has foreseen the imposition of a measure of prohibition for the opponent of the security to perform any action, which may damage the part of the property to which the claim is directed, and also the security opponent may be assigned the security measure to be ordered to demonstrate specific actions necessary to preserve the thing or property or to maintain the actual situation of such circumstances.[12]

The court may determine the measure through which it authorizes the security proposer to carry out certain activities against the object of the opponent or his certain property, in order to maintain the existing situation or to prevent the damage of the objects or property of the opposing party to the insurance. Thus, as a security measure has provided the prohibition of the insurance opponent to perform certain activities, the same order to perform such activities, in order to maintain the existing situation or prevent damage of the opposing party.[13]

[12] Bionda Rexhepi, 2021 „Civil procedure on securing a claim in the Republic of Kosovo“, SEEU Review Volume 16 Issue 1: 124-138, https://www.sciendo.com/article/10.2478/seeur-2021-0010.
[13] Zogaj, Albert., Leku, Zenel., Totaj, Valon., Hasanpapaj, Bardhyl., & Cunniff, Michael, Manual për Zbatim të Procedurës Kontestimore. Gjetur në Këshilli Gjyqësor i Kosovës, 2019, https://www.gjyqesori-rks.org/wp

MEANS OF SECURING CLAIMS IN THE LEGAL SYSTEM OF MONTENEGRO

Securing of claims ruling in legal system of Montenegro shall be adopted by the court, and securing of claims shall be enforced, depending on the type and character of a dispute, by the court or public enforcement officer.

Securing of claims ruling shall include the decision on collateral, a brief description of legal reasons for adoption of the petition for securing of claims and notice whether a complaint withholds the enforcement of the ruling and legal remedy notice.

The following may be used as collateral:

- Security interest on immovable property on the basis of an enforceable document;
- Security interest on immovable property and movable assets on the basis of the agreement of the parties;
- Previous measures and
- Interim reliefs.

Securing of claims shall not be allowed against assets and rights that in accordance with this Law or other law cannot be subject to enforcement.

A court that is competent based on a petition of the security petitioner shall be competent for ordering of securing of claims ex officio, unless otherwise prescribed by the law.

According to law in security interest on immovable property on the basis of enforceable document, a court at the territory of which an immovable property that security interest is to be registered on is located shall be competent to decide on the petition for securing a monetary claim by creating a security interest on immovable property. The administration authority competent for registration in the immovable property cadaster shall be competent to enforce securing of claims.

On the basis of an enforceable document concerning a monetary claim, a security petitioner shall be entitled to request securing of that claim by creation of security interest on immovable property of the security contester. Security interest on immovables shall be created by registration in the immovable property cadaster. When registering a security interest in the immovable property cadaster, enforceability of a claim for which a security

---

content/uploads/reports/72001_MANUAL_PER_ZBATIM_TE_PROCEDURES_KONTESTIMORE.pdf.

interest is allowed for shall be stated. If a security petitioner, prior to enforceability of the claim, has already acquired a security interest for that claim in the same immovable property on the basis of a contract or if pre-registration is allowed, the court shall, at the petition of a security petitioner, order the registration of enforceability of the claim in the immovable property cadaster. If a security contester is not registered in the immovable property cadaster as the owner of immovable property, a security petitioner shall be obliged to submit together with the petition for securing of claim a proof that he initiated before the administration authority competent for registration of rights in the immovable property cadaster the procedure for registration of the change of the ownership right on the basis of a document regarding ownership of security contester.

According to law in security interest on immovable property and movable assets on the basis of agreement between parties, court at the territory of which the immovable property is located shall be competent to decide on the petition for securing a monetary claim by creating security interest in immovable property on the basis of agreement between parties. The administration authority competent for immovable property cadaster shall be competent to enforce securing of claims. A court at the territory of which a movable asset is located shall be competent to decide on the petition for securing a monetary claim by creating security interest in movable asset on the basis of agreement between parties.

In law of Montenegro to determine previous measures, a court that would be competent for enforcement on asset over which the securing of claim is proposed shall have territorial jurisdiction to decide on the petition for securing of claims by previous measure.

A previous measure shall be ordered on the basis of a decision concerning the monetary claim, which has not become final and non-appealable or has not become enforceable, if the security petitioner makes probable a danger that without such a security the satisfaction of the claim would be prevented or significantly hampered. Previous measure may be ordered on the basis of a payment order issued on the basis of a bill of exchange or cheque.

The court shall order the following as previous measures:

- Taking inventory of movable assets and
- Prohibition imposed on a debtor of the security contester to satisfy the security contester's claim or to deliver the assets, as well as prohibition imposed on the security contester to collect the claim, to receive the assets and to dispose of them.

Prohibition imposed on a bank to pay out from the security contester's account to the security contester or third person, based on the order of the security contester, the monetary amount that a previous measure has been

determined for. Pre-registration of security interest in the immovable property of the security contester or in the right registered in the immovable property. The court may, at the proposal of the security petitioner, order, taking into consideration circumstances of the case, two or more previous measures, if necessary to do so.

Interim relief for securing a monetary claim may be ordered if the security petitioner made the existence of claim probable and the danger that without such a measure the security contester shall prevent or significantly hamper the collection of claims, by divesting of, concealing, or disposing of his property or assets. Security petitioner does not have to prove the danger if he makes probable that by the proposed measure the security contester would suffer only insignificant damage. It shall be considered that danger exists, if a claim should be satisfied abroad.

For the purpose of securing a monetary claim, any measure that achieves the purpose of such a security may be ordered, and especially:

- Prohibition imposed on the security contester to dispose of movable assets, as well as safekeeping of such assets;
- Prohibition to dispose of and encumber shares or holdings in a business organization, with the registration of prohibition in the relevant registry;
- Prohibition imposed on the security contester to divest of or encumber his immovable property or property rights registered on the immovable property in the immovable property cadaster for his benefit, with the registration of prohibition in the immovable property cadaster;
- Prohibition imposed on a debtor of the security contester to satisfy the security contester's claim or to deliver the assets, as well as prohibition imposed on the security contester to receive the assets, to collect the claim, and to dispose of them;
- Order to a bank not to make payments from the security contester's account to the security contester or third person, based on the order of the security contester, the monetary amount that an interim relief has been ordered for.

For the purpose of securing a non-monetary claim, an interim relief may be ordered, if the security petitioner made probable the existence of claim and danger that the satisfaction of claim shall be otherwise prevented or be significantly hampered. Interim relief may be ordered also when a security petitioner makes probable that the measure is needed in order to prevent the use of force or occurrence of irreparable damage.

For the purpose of securing a non-monetary claim, any measure that achieves the purpose of such security may be ordered, and especially:

- Prohibition to divest of and encumber movable assets that the claim relates to, as well as safekeeping of such assets;
- Prohibition to divest of and encumber shares or holdings in a business organization that the claim relates to, with the registration of the prohibition in the competent public records;
- Prohibition to divest of and encumber immovable property that the claim relates to, with the registration of prohibition in the immovable property cadasters;
- Prohibition to the security contester to take activities that may incur damage to the security petitioner, as well as prohibition to make changes on assets that the claim relates to;
- Prohibition imposed on a debtor of the security contester to deliver to the security contester the assets that the claim relates to;
- Payment of wage compensation to an employee during the dispute regarding illegality of the decision on termination of employment, if it is necessary to do so for his subsistence and subsistence of persons he is obliged to support in accordance with law. [14]

The Montenegrin legal system also regulates the fiduciary transfer of property rights. [15]

CONCLUSION

According to the elaboration in this scientific paper, it can be concluded that the legal systems of the Republic of North Macedonia, Kosovo and Montenegro are legal systems in which there are identical types of means for securing the claims of creditors. This is primarily due to the similarity and closeness of the three legal systems.

Specifically, the lien on real estate, the lien on movables, previous measures, interim measures and the fiduciary transfer of ownership, ie the transfer of ownership of objects and the transfer of rights as types of means of securing claims exist in the three legal systems which are elaborated in this paper. Their content is identical in the three legal orders.

In the three legal systems, the means of securing claims are not regulated in a single law, but are regulated in several laws in national law. They are prescribed in detail, ie their content, the manner of application, the documents that need to be provided for them, etc., are concisely edited. This is quite logical if we take into account that the means of securing claims

[14] Law on enforcement and securing of claims (Official Gazette of Montenegro, 36/2011 of 27 July 2011), https://wipolex.wipo.int/en/text/288661.

[15] Google. 2022. „Montenegro – Fiduciary transfer of ownership as a means of securing receivables“. Last modified June 5, 2022. https://doklestic.law/2019/06/18/montenegro-fiduciary-transfer-of-ownership-as-a-means-of-securing-receivables/.

encroach on the property of debtors. Therefore, it is logical to prescribe them in detail, because they play an important role in the functioning of any legal order.

REFERENCES

1. Јаневски А., Зороска - Камиловска Т. (2011): *Граѓанско процесно право, книга трета, Извршно право, Скопје.*
2. Јаневски А., Зороска – Камиловска Т. (2010): *Обезбедување на побарувањата според Законот за обезбедување на побарувањата, Скопје.*
3. Јаневски А. (2001). *„Постапка за засновање на залог според Законот за залог на подвижни предмети и права“ Зборник во чест на Арсен Групче, Правен факултет, Скопје.*
4. Јаневски А. (2002), *„Обезбедување на побарувањата на доверителите со пренос на сопственост на предмети и пренос на права според Законот за изменување и дополнување на Законот за извршната постапка“, Зборник на трудови, Ниш, XLII/2002, UDK 347.952. 75-105,* http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z42/04z42.pdf.
5. Јаневски А. (2001). *„Постапка за засновање на залог според Законот за залог на подвижни предмети и права“, Зборник во чест на Арсен Групче, Правен факултет, Скопје.*
6. Јаневски, А. (2001). *„Фидуцијарниот пренос на правото на сопственост како средство за обезбедување на побарувањата на доверителите“. Деловно право, Часопис за теорија и практика на правото, Скопје, 2001, број 1.*
7. Дабовиќ – Анастасовска Ј., Гавриловиќ Н. (2008) *„Личноправни и стварноправни средства за обезбедување на побарувањата“ Деловно право, Скопје.*
8. Riabchynska Anastasia, (2020) *„Fiduciary Transfer of Ownership for Security Purposes & Retention of Ownership by a Seller“,Krakowskie Studia Małopolskie 2020, nr 3 (27), стр. 107-124*, https://czasopisma.marszalek.com.pl/images/pliki/ksm/27/ksm2708.pdf.
9. Haxhi, Xhemajli. (2020). *“Internim measures for securing the claim in civil proceedings in Kosovo”. Balkan Social Science Review Vol.16, December 2020, 21-39.*file:///C:/Users/Aneta/Downloads/3977-Article%20Text-6624-1-10-20201223%20(2).pdf.
10. Bionda Rexhepi, (2021) *„Civil procedure on securing a claim in the Republic of Kosovo“, SEEU Review Volume 16 Issue 1: 124-138.* https://www.sciendo.com/article/10.2478/seeur-2021-0010.
11. Zogaj, Albert., Leku,, Zenel., Totaj, Valon., Hasanpapaj, Bardhyl., & Cunniff, (2019) „*Michael, Manual për Zbatim të Procedurës*

Kontestimore. Gjetur në Këshilli Gjyqësor i Kosovës". https://www.gjyqesori-rks.org/wp-content/uploads/reports/72001_MANUAL_PER_ZBATIM_TE_PROCEDURES_KONTESTIMORE.pdf.
12. Law on enforcement and securing of claims (Official Gazette of Montenegro, 36/2011 of 27 July 2011), https://wipolex.wipo.int/en/text/288661.
13. Google. 2022. „Montenegro – Fiduciary transfer of ownership as a means of securing receivables".https://doklestic.law/2019/06/18/montenegro-fiduciary-transfer-of-ownership-as-a-means-of-securing-receivables/.
14. https://www.researchgate.net/publication/334358539_Fiduciary_transfer_of_ownership_One_or_more_ownerships.
15. Law on Securing the Claims of the Republic of Northern Macedonia (Official Gazette no. 87/07 and 31/16).
16. Law No. 03/L-006 on Contested Procedure, Official Gazette of the Republic of Kosova/Pristina: Year III/No. 38/20 September 2008. https://gzk.rks-gov.net/ActDetail.aspx?ActID=2583
17. Law No. 03/L-008 on Executive Procedure, Official Gazette of the Republic of Kosova/Pristina: Year III/No. 33/15 July 2008. https://gzk.rks-gov.net/ActDetail.ActID=2870
18. Law No. 04/L139 on Enforcement Procedure, Official Gazette of the Republic of Kosova/No. 3/31 January 2013, Pristina. https://gzk.rks-gov.net/ActDetail.aspx?ActID=2870

Scientific Article
UDK 343.4:364.642.6]:341.24
343.132: [343.4:364.642.6

ENDING IMPUNITY OF ENFORCED DISAPPEARANCES IN TRANSNATIONAL CONTEXT: DEVELOPING MECHANISMS AND ENFORCING INVESTIGATIONS

Vesna Stefanovska, PhD
Legal researcher, Institute for Human Rights
Associate Editor of Legal Dialogue

Abstract
Enforced disappearances are not isolated phenomena. Although the right not to be subjected to enforced disappearance is recognized by international conventions, still there is a lack of their implementation and lack of proper mechanisms for systematic efforts towards eradicating enforced disappearances. This paper will elaborate the never ending issue for developing successful mechanisms and enforcing investigations in cases of disappearances in transnational context. Ratification of international conventions are not enough for combating enforced disappearances having in mind the new sophisticated forms and the pandemic which significantly slowed the investigations and searches for disappeared persons. Furthermore, the paper will support the arguments that raising awareness about enforced disappearances, implementation of international mechanisms as well as enhancing national legislation in ending impunity and conducting proper investigations will provide for due process of law and obtaining the 'right to truth' to the victims of enforced disappearances and their families.

INTRODUCTION

In order to eliminate the acts of enforced disappearances, the United Nations wanted to create an effective mechanism for monitoring of these cases in form of the Committee for Enforced Disappearances and the UN Working Group on Enforced or Involuntary Disappearances (WGEID). For the purposes of this papers, only the reports of the WGEID were analyzed through the mechanism which the Group proposes for successful dealing with the sophisticated cases of enforced disappearances in context of transnational transfers which often include extraterritorial abductions and renditions.

This paper mainly focuses on the impunity as a main obstacle for dealing with the cases of enforced disappearance. The WGEID in many occasions has reiterated that impunity can have a multiplying effect, which

causes additional suffering and anguish to the victims and their families. This means that the international community should not stand neutral in the face of such suffering.

Additionally, the paper presents the arguments that the successfulness of these mechanisms depend in great deal in the cooperation of states and their will to change national legislation in order to combat against enforced disappearances.

HISTORICAL OVERVIEW OF ENFORCED DISAPPEARANCES

Enforced disappearances are not unknown phenomena in the international human rights law. The term 'enforced disappearances' (desapararición forzada) was introduced by Latin American NGOs to encapsulate a phenomenon that occurred in South America in the second half of the 20th century (ECOSOC 2002). For some authors this term is 'a euphemism' for describing a series of severe human rights violations. The first documented use of enforced disappearance was pursuant to the Nacht und Nebel (Night and Fog) Decree declared by the Nazi regime in 1941. Under the Decree, perceived members of resistance movements in occupied territories were arrested and secretly transferred to Germany 'in the blackness of night'. Persons arrested and transferred to Germany were held incommunicado in cruel and inhuman conditions, prosecuted without due process and were frequently sentenced to death and executed (Anderson 2006). In those cases, Adolf Hitler ordered the transfer of people who were deemed dangerous for the security of the Third Reich to the concentration camps in Germany. Vanishing without leaving a trace and providing information was thought to be an appropriate measure for the intimidation of the potential enemies of the Reich.

Enforced disappearances were later used as a systematic policy of State repression starting in Guatemala and Brazil in the 1960s and 1970s. They came to be practiced extensively throughout Latin America in the 1970s and 1980s, affecting tens of thousands of people. More specifically, during the 1960s and the 1970s, and especially within the political context of the Cold War, military juntas seized power in most Latin American countries. The majority of those military juntas were serving the establishment and preservation of a capitalist system based upon foreign investments. These dictatorships are usually referred to as 'bureaucratic – authoritarian' regimes. This term emphasizes the fact that the Latin American dictators did not aim to dissolve public institutions, but on the contrary to use them in favour of their regime. Consequently, at some level the term 'enforced disappearances' is a synonym for the incessant use of military force to obliterate any form of opposition and to ensure public order (Pervour 2012). In this setting, enforced disappearances proved to be an effective measure for the sustainability of the military juntas.

The Brazilian cases of enforced disappearance were occurred in 1960, mostly with the use of such mechanism to political opposition where the public authorities could systematically kidnap people, lock them in secret jails, torture them, and even assassinate them without justice. After several decades, precisely 9/11 and the 'War on Terror', other sophisticated methods of enforced disappearances such as extraterritorial abductions, incommunicado detentions and extraordinary renditions combined with torture techniques amounted to a human rights violations in context of international law.

Legal framework for prevention of enforced disappearances

For a long time, the lack of a specific mechanism to protect victims encouraged impunity for perpetrators. While the Geneva conventions and their protocols govern enforced disappearances in wartime, these international humanitarian law provisions did not regulated enforced disappearances.

In 1980 the United Nations created the Working Group on Enforced or Involuntary Disappearances (WGEID). Within this framework, resolutions on enforced disappearance and arbitrary detention were adopted at the Human Rights Council and the United Nations General Assembly. In 1992, it was adopted the Declaration on the Protection of All Persons from Enforced Disappearance which classified enforced disappearances as crimes against humanity when committed as a part of widespread or systematic attack against civilian population. Subsequently, in 2006 the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) was adopted by the United Nations General Assembly.

The Convention is a genuine instrument for combatting enforced disappearances. As such, it provides a legal definition of enforced disappearance which it considers to be a crime both in times of peace and war, thus filling the legal loophole which existed. No circumstances whatsoever may be invoked to justify enforced disappearances. The Convention addresses both individual cases of enforced disappearance and systematic practices of enforced disappearance thanks to proactive investigation and response measures. It thus criminalizes the act of a State conducting or organizing the enforced disappearance of a person, with no information ever on what happened. It classifies the widespread or systematic practice of enforced disappearance as a "crime against humanity". It prohibits secret places of detention and strengthens the procedural safeguards surrounding detention. Most important, in Article 2 it gives a thorough definition of enforced disappearance and its elements which need to be satisfied so the act to be considered as enforced disappearance. Those elements are: (a) deprivation of liberty against the will of the detainee; (b) direct or indirect involvement of government officials; (c) refusal to acknowledge the detention or to disclose

the fate and whereabouts of the person concerned; and (d) the removal of the detainee from the protection of the law.

Beside these two main documents directly related to enforced disappearances (the Declaration and the ICPPED), there are other international documents which criminalize enforced disappearances. According to the Rome Statute of the International Criminal Court, the systematic or massive practice of disappearances can constitute a crime against humanity. From these provisions derives the criminalization of systematic disappearances as crimes against humanity in the ICPPED. Additionally, the Inter-American Convention on Forced Disappearance of Persons adopted in 1994 defines forced disappearance of persons as the act of depriving a person or persons of his or her freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

When enforced disappearances are regulated and criminalized in accordance with the international human rights law, the only question remaining to be answered is whether these international instruments work, how they are implemented in practice and are there any flows that should be resolved in order to decrease the number of enforced disappearances. In addition, this article will discuss that impunity is the major problem in implementation of these instruments and together with other factors contributes towards inventing sophisticated methods of enforced disappearances where the perpetrators are not punished in accordance with the law.

ENFORCED DISAPPEARANCES IN CONTEXT OF TRANSNATIONAL TRANSFERS

Enforced disappearances do not occur only during armed conflicts or wars. Enforced disappearances cannot be only widespread and systematic, especially when nowadays individual cases of enforced disappearances in context of transnational transfers raise deep concerns about the whereabouts of the victims. The newly sophisticated forms of extraterritorial abductions are causing serious concern due to several circumstances such as: (a) the unknown fate of the missing person; (b) possibility of his torture or other forms of ill-treatment; (c) the long path in obtaining the right to the truth and the most important (d) the issue about impunity of perpetrators.

Serious allegations of gross human rights violations including enforced disappearances, were reported to the WGEID in 2021, during or in the immediate aftermath of alleged transnational transfers from Afghanistan,

Albanian, Azerbaijan, Cambodia, Gabon, Kazakhstan, Kenya, Lebanon, Malaysia, Pakistan, Panama and Uzbekistan, as well as from Kosovo to Turkey. These cases are a snapshot of what appears to be the increasing practice of forcible repatriations or involuntary returns by States acting on national security grounds at the expense of the fundmanetal rights and freedoms of the alleged victims. Some of these cases of enforced disappearances occurred within the context or at the margins of regular expulsion procedures, while others were carried out as part of covert extraterritorial operations, including so-called extraordinary renditions (WGEID A/HRC/48/57). In order to carry out some of the illegal actions, number of States have allegedly sought to sign bilateral security cooperation agreements, which often contain broad and vague references to combating terrorism and transnational crime. During the investigating period, in 2021, the WGEID concluded that targeted individual were reportedly often subject to torture and other forms of illegal treatment aimed at obtaining their consent to voluntary return and at extracting confessions that would inform criminal prosecution upon arrival in their country of origin (ibid, § 45).

Under the European Convention on Human Rights (ECHR, or the Convention), enforced disappearances are mostly elaborated concerning Article 2 (right to life) and in some occasions when enforced disappearance amounts to torture, under Article 3(prohibition of torture). In some cases the European Court of Human Rights (ECtHR or the Court), declared violation under Article 5 (deprivation of liberty) and Article 8 (right to respect for private and family life). The jurisprudence of the ECtHR establishes a procedural obligation that obliges States to undertake an effective investigation into alleged breaches of the ECHR. For example, in the case of Kurt v. Turkey (App.no. 15/1997/799/1002), the Court stated that Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since. In relation to obtain the right to the truth in a case of enforced disappearance, the Inter-American Court found for the first time in the Castillo-Páez Case (IACrtHR, 1996) that a failure to investigate corresponds to a violation of the right to truth. In this context, the right to truth refers to both, determining the factual circumstances of a disappearance and identifying alleged perpetrators responsible for it.

IMPUNITY FOR ENFORCED DISAPPEARANCES AND ENFORCEMENT OF LAW

States around the world must act urgently in order to prevent and investigate enforced disappearances especially during the Covid-19 pandemic when there are significant delays in the search for victims and suspension of

visits that in some cases led to a complete absence of contact between the detainees and their relatives or with the authorities. Although strictly prohibited under international law, enforced disappearances continue to be used as a methods of repression, terror and under the countering crime of terrorism.

Each state is responsible for human rights violations occurring in its own territory. In contrast, state responsibilities with regard to citizens of other states are vague and weak. According to Gibney, Tomagevski and Vedsted-Hansen (1999), one reason for this record is that human rights enforcement measures are nowhere near developments in the law. As a consequence, states are still able to commit human rights abuses with near impunity. While international law has tended to recognize how one state can directly harm another state, it has been slow in understanding how one state can indirectly harm, not so much another state, but the citizens of another state.

The impunity for enforced disappearances is due to several circumstances which brought together significantly enables the perpetrators to commit crimes without punishment. One of reasons is the fact that not so many countries have ratified the ICPPED. Only 68 out of 193 UN member states have ratified the Convention. Many challenges remain unsolved at the highest level of policymaking. Key issues revolve around achieving universal ratification, adopting guiding principles for the search of the disappeared, enforcing exchange mechanism under other treaties, most notably human rights protection and coherence in jurisprudence and implementation worldwide (Solar 2021). In general, there are certain gaps in the legal framework prohibiting enforced disappearances especially the main instrument - the ICPPED. The Convention does maintain a distinction between per se acts of enforced disappearance and those acts amounting to a crime against humanity. Article 5 ICPPED provides that *'the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law'*. Maybe the gravity of committing enforced disappearances as a systematic practice it is understandable to be classified as a crime against humanity, but the life of each person subject to enforced disappearance matters to his family especially if the circumstances of enforced disappearance are particular cruel combined with torture. In that case the psychological suffering for the victim and his family is immense. It is not possible to measure the suffering between different cases of enforced disappearances if they are committed during war or on individual base as part of covert operations in the name of national security and combatting terrorism.

Additionally, the ICPPED does not provide punishment for enforced disappearances committed by non-state actors. Article 2 from the ICPPED

stipulates that '*enforced disappearance is considered to be… form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State…*'. These are the general flows of the legal framework expressed in the ICPPED. This article will elaborate the reasons for impunity in cases of enforced disappearances in the context of transnational transfers.

Undoubtedly, everyone agree that impunity is perhaps the most significant factor contributing to the phenomenon of enforced disappearances. The ICPPED places an obligation on each state party to criminalize enforced disappearance in its domestic law and to assert its jurisprudence over acts of enforced disappearances where the offence is committed in any territory under its jurisdiction where the alleged perpetrator is one of its nationals, or where the disappeared is one of its nationals and the state party considers it appropriate.

In line with Article 9 of the Declaration on the Protection of All Persons from Enforced Disappearance, it is the victim's right and the State's obligation to grant them access, under all circumstances, to a prompt and effective judicial remedy as a means of determining the whereabouts and welfare of persons deprived of their liberty, and to disclose the identity of the authorities who ordered or carried out the act of deprivation of liberty. This judicial remedy, often called habeas corpus, is aimed at ending and preventing enforced disappearances, but it is also a means of guaranteeing an efficient investigation.

The WGEID in their Report on standards and public policies for an effective investigations of enforced disappearances from 2020, explain that in some context, enforced disappearances may have a transnational component. In those circumstances, additional challenges requires states to respond and to honour their obligation to fully cooperate in criminal proceedings by producing all the evidence in their possession (WGEID A/HRC/45/13). This means that states must establish mutual cooperation mechanisms focused on fully assisting victims. Another segment which can help in eradicating of impunity is to criminalize enforced disappearances autonomously. This obligation derives from Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance. The qualification enables the authorities in charge to understand the specific nature of the offence and to initiate a prompt and proper investigation.

Several reasons are in favour of impunity for enforced disappearances such as: (a) no effective investigation is being conducted; (b) no one has been held accountable for the reported human rights violations; (c) the right to the truth for the victim and his family are being denied and (d) there is a massive denial of access to justice, legal representation or medical care. The right to the truth is especially triggered in cases of enforced disappearances having in

mind the mystery surrounding the fate and whereabouts of the victim. Moreover the right to the truth is enshrined in the preamble of the ICPPED as well as the Article 24.

Having in mind the above mentioned, human rights should be at the top of the iceberg and none justification in the name of national security or combating terrorism and organized crime should be used to avoid impunity for gross human rights violations. To do so, States must take radical steps in order to changes the perception about impunity for enforced disappearances. Just as the WGEID in their last report discusses that several steps and reforms should be done in order to change the mindset that enforced disappearances in transnational context can be practiced without adequate punishment by law. First of all, States should review and repeal laws and agreements that contravene the international human rights obligations. Then, they should provide that the concluded bilateral security agreements should be in full compliance with the human rights obligations of states. Finally, states should fully implement procedural safeguards and guarantees upon arrest and during the first hours of deprivation of liberty (WGEID A/HRC/48/57). If these principles, as well as other important conditions are fulfilled, then the number of enforced disappearances and the impunity for perpetrators will be decreased.

CONCLUDING OBSERVATIONS

Acts of enforced disappearance subject persons to psychological suffering, deliberately deny them knowledge of their fate and usually result in their secret torture and death. Family members also suffer the psychological torment of being denied any knowledge of the fate of their loved ones and may never be given access to this information.

Enforced disappearances are deliberately executed such as to ensure the impunity of those who commit them, and it is this impunity that has helped perpetuate and exacerbate instances of enforced disappearance. It is there of utmost importance for the international community to ensure that individual perpetrators are effectively brought to justice for committing acts of enforced disappearance. Previously, individuals could be held criminally responsible when the committed acts of enforced disappearance falls within the scope of crime against humanity, or torture in accordance with the UN Convention against Torture. This has left gaps in the legal redress afforded to the victims of enforced disappearance. The ICPPED managed to fill these gaps, although the question of impunity remains major issue to be effectively tackled by the States. Recommendation given from the WGEID should be implemented and successful mechanisms should be created if we want to achieve punishment for enforced disappearances, condemning perpetrators of those acts and

providing victims and their families with the right to the truth. Everything else is just not acceptable in the name of human rights protection.

REFERENCES

1. Anderson, Kirsten. 2006. "How effective is the International Convention for the Protection of all Persons from Enforced Disappearance likely to be in Holding Individuals Criminally Responsible for Acts of Enforced Disappearance". *Melbourne Journal of International Law* 17/2006. https://law.unimelb.edu.au/__data/assets/pdf_file/0004/1681213/Anderson.pdf
2. Castillo-Páez v. Peru, Inter-American Court of Human Rights (IACrtHR), 30 January 1996.
3. ECOSOC. 2002. "Civil and Political Rights, Including Questions of Disappearances and Summary Executions" UN Doc E/CN.4/2002/71, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/100/26/PDF/G0210026.pdf?OpenElement
4. Gibney, Mark, Tomasevski, Katarina and Vedsted-Hansen, Jens. "Transnational State Responsibility for Violations of Human Rights". *Harvard Human Rights Journal 12/ 1999*: 267-295.https://harvardhrj.com/wp-content/uploads/sites/14/2020/06/12_Gibney_Transnational-State-Responsibility-for-Violations-of-Human-Rights.pdf
5. Kurt v. Turkey, European Court of Human Rights (ECtHR) App.no. 15/1997/799/1002
6. Pervou, Ioanna. 2012. "The Convention for the Protection of All Persons from Enforced Disappearance: Moving Human Rights Protection". *European Journal of Legal Studies 5/1:145-171.* http://hdl.handle.net/1814/24820
7. Solar, Karlos. 2021. "Forced Disappearances and the Inequalities of a Global Crime". *Alternatives: Global, Local, Political* 46/1: 17–22 https://doi.org/10.1177/03043754211021270
8. United Nations. 2006. International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), General Assembly resolution A/RES/61/177
9. United Nations. 2020. "Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances". A/HRC/45/13/Add 3.
10. United Nations. 2021. Report of the Working Group on Enforced or Involuntary Disappearances AHRC/48/57

Scientific Article
UDK 347.9:004.738.5
342.7:347.962.6]:341.24

INTERNATIONAL STANDARDS FOR LONG DISTANCE JUDGING

Svetlana Veljanovska PhD
Faculty of law - Kicevo
svetlana.veljanoska@uklo.edu.mk

Abstract
During this period, the work of the courts was reduced to a minimum, and in some situations a remote trial, colloquially called a Skype trial, was made possible. This has caused numerous doubts regarding the constitutionality and legality of this practice, but also the potential violation of the human rights of suspects and convicted persons.
Bearing in mind that the situation with the pandemic has indicated the need to further specify and regulate this area, and assuming that this method of trial will be used more and more in the future, the author wants to point out the relevant principles and standards that should be followed in the case further advancing distance trials in regular circumstances.

Keywords: international standards, distance trial, legal framework.

INTRODUCTION

One of the main demands of modern society is the realization of the rule of law, which, among other things, implies respect for guaranteed human and minority rights and the independence of the judiciary. In this sense, the exercise of the rule of law in court proceedings should be viewed at two levels:
1. as protection of human rights during court proceedings (rights guaranteed to procedural subjects during court proceedings);
2. as the exercise of rights in court proceedings (effective provision of legal protection in connection with the subject of a particular proceeding).

This implies that a distance trial must not in any way jeopardize the rights that belong to the parties during the trial itself, nor thwart the rights and interests for which the court proceedings were initiated. However, the situation with the pandemic has shown that a remote trial can be necessary, and even useful in certain situations, when it can contribute to the effective work of the court. However, in such situations, it is indisputable that a balance must always be struck between the benefits it provides and the enjoyment of basic human rights, so that the right to a fair trial is always respected.

In other words, all principles and standards relating to the right to a fair trial must be met, while the very decision to conduct a trial at trial and during the proceedings must be made in compliance with certain standards arising from relevant international law.

INTERNATIONAL STANDARDS IN THE FIELD OF DISTANCE TRIAL

The remote trial is a component of the right to a fair trial, guaranteed by numerous international instruments, which have been accepted by the Republic of North Macedonia, and the most important of which is those mentioned under the auspices of the UN and the Council of Europe.

UNIVERSAL SYSTEM OF HUMAN RIGHT PROTECTION

The Universal Declaration of Human Rights in Article 10 guarantees everyone the right to an equal right to a fair public trial, and in Article 11, paragraph 1, the right to a public hearing, which provides all the guarantees necessary for his defense.

The Civil and Political Rights Covenant (PGP) of 1966,[16] in Article 9, paragraph 3, guarantees that any person arrested or imprisoned for a criminal offense will be brought before a judge or other official authorized by law to perform as soon as possible judicial functions. A person deprived of liberty is treated humanely and with respect for innate dignity.[17]

Article 9 of the ICCPR, ie the part concerning the right of a person deprived of liberty to be brought before a judge, has been interpreted by several States as allowing the use of videoconferencing tools in exchange for physical presence. However, the Human Rights Committee, the body that oversees the execution of PGP obligations, emphasizes that physical presence is often required to determine the condition of an arrested person, which would make it dangerous to replace it with a video link.[18]

Thus, the Committee's position is that the person must be automatically and physically brought before the judiciary, which provides an opportunity to examine possible exposure to torture and other forms of ill-treatment.[19]

---

[16] Official Gazette of SFRY - International Agreements, no. 7/71. After renouncing continuity with the SFRY and giving a successor declaration, the Republic of Macedonia has accepted the validity of the Covenant.

[17] Article 10, paragraph 1 of the ICCPR

[18] The Human Rights Committee continues discussion on draft general comment on the right to liberty and security of persons, 24 July 2014. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14901&LangID=E. (May 10)
2021).

[19] Human Rights Committee, General Comment no 35 on Article 9 (Liberty and security of person) (2014), para
34.

The Human Rights Committee emphasizes that rights and freedoms that can be revoked, as in the case of Article 9, are subject to the principle of the rule of law and the rule of law, and that these principles require respect for the right to a fair trial during a state of emergency.[20]

The Committee especially emphasized that deviations from human rights must be such that they do not exceed those that strictly require the urgency of the situation.

The Covenant further contains Article 14, which guarantees the right to a fair trial. This article emphasizes in particular the right to equality of arms and the right of a person to have his or her case heard fairly and in public. The public ensures the transparency of the procedure and provides important security in the interest of the individual and society as a whole.[21]

The public may be excluded during all or part of the trial, and only in the interests of morality, public order or national security in a democratic society, or when the interests of the parties' private life so require, or the court deems it absolutely necessary when the public harms the interests of justice. However, any judgment must be public, unless the interest of the minor requires otherwise, or if the proceedings concern marital disputes or custody of children. The Accused should, inter alia, be given sufficient time and opportunity to prepare his defense and to communicate with counsel of his own choosing, to be present at trial and to defend himself, to examine or have examined Prosecution witnesses, and to appear before court and witnesses will be heard in his favor, as well as to receive free assistance from an interpreter. The right to equality before the courts and the right to a fair trial are key elements in the protection of human rights and are procedural means for ensuring the rule of law and for the adequate administration of justice.[22]

The right of access to justice must be effective and guaranteed in all situations, and implies that the party participates in the proceedings in a meaningful manner.[23]

It is especially important to ensure a fair and public trial. Fair trial implies the absence of any direct or indirect influence, pressure or intimidation, such as when a defendant in criminal proceedings is confronted with an expression of hostile public attitude or support for one party in a courtroom tolerated, thereby violating the right to defense or being exposed to other manifestations hostilities with similar effects.[24]

---

[20] HRC, General Comment no. 29 on States of Emergency (article 4) (2001), paras. 15-16.

[21] ICJ, Videoconferencing, Courts and the Covid-19, Recommendations Based on International Standards, November 2020, p. 7.

[22] Human Rights Committee, General comment no. 32, Article 14: Right to equality before courts and tribunals
and to a fair trial, 23 August 2007, para. 2.

[23] Same para.10

[24] See, for example, Gridin v. Russian Federation, communication no. 770/1997, paragraph 8.2

On the other hand, the publicity of the trial has the task of ensuring the transparency of the proceedings, thus making an important guarantee of the protection of the individual and society. Courts must provide information on the place and time of the public trial and must provide adequate facilities for the presence of interested parties, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing.[25] The request for a public hearing does not necessarily apply to all appellate proceedings that may take place on the basis of written statements,[26] or to pre-trial decisions made by prosecutors and other public bodies.[27]

Therefore, it is important to ensure public participation, including the presence of the media. On the other hand, the public can be excluded for precisely stated reasons, and only when necessary, but even then it is necessary that the basic findings, evidence and legal reasoning be public, except for the protection of minors, or the dispute concerns marital disputes and guardianship over children.[28]

Also, the right to communicate with counsel in conditions that fully respect confidentiality is an essential element of the guarantee of a fair trial and the application of the principle of equality of arms.[29]

In view of the practice of States during the pandemic, the Human Rights Committee in July 2020 adopted a Resolution calling on States to ensure that the judiciary has the necessary resources and capacity to ensure its functionality, accountability, transparency and integrity, fair trial and effective access justice. States are particularly encouraged to provide information and communication technologies and innovative online solutions, to ensure access to justice and respect for the right to a fair trial and procedural rights even in times of emergency.[30]

It is important to mention the Convention on the Rights of the Child,[31] which in Article 37 paragraph c, guarantees persons under 18 years of humane treatment, in case of deprivation of liberty and in paragraph d, the right to be immediately granted access to legal and other appropriate assistance.

Article 40 further guarantees the right to a fair trial, consistent with the child's sense of dignity and values, based on respect for human rights and taking into account the child's age and the fact that it is desirable to advocate for his or her

[25] Van Meurs v. The Netherlands, communication no. 215/1986, paragraph 6.2.
[26] R.M. v. Finland, communication no. 301/1988, paragraph 6.4.
[27] Kavanagh v. Ireland, communication no. 819/1998, paragraph 10.4.
[28] General comment no. 32, para. 10.
[29] Ibid., Paragraphs 32, 34. See also UN Basic Principles on the Role of Lawyers, Principles 7, 8 and 22. https: //www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx. (May 10, 2021).
[30] Resolution 44/9, "Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers" h (16 July 2020), paras. 17-18. Https://undocs.org/en/A/HRC/RES / 44/9. (May 10)
2021).
[31] Convention on the Rights of the Child., Resolution 44/25, 20 November 1989

reintegration and constructive role in society. The child is guaranteed a number of procedural rights, including legal and other assistance in the preparation and presentation of the defense, the presence of a legal or other appropriate representative and his or her parents or legal guardians, unless it is in his or her best interests. It has the right to be examined or to be examined by witnesses of the other party and to ensure the participation and examination of its witnesses on equal terms. Also, the child has the right to have his privacy respected at all stages of the proceedings.

General Comment no. 24 of the Committee on the Rights of the Child, which refers to the rights of children in the judicial system, and which further elaborates the position of children in proceedings.[32] The Committee emphasizes in particular the need to establish continuous and systematic training of professionals in order to effectively guarantee the right to a fair trial of children.[33] The Committee also refers to General Comment no. 12 of 2009 on the right of the child to be heard, especially in the context of justice. This right should be direct, not just through a representative, at all stages of the proceedings.[34]

EUROPEAN SYSTEM OF HUMAN RIGHTS PROTECTION

European Convention On Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, European Convention)[35] also guarantees the freedom and security of the person (Article 5), as well as the right to a fair trial (Article 6).

Freedom and security of the person provides guarantees to a person deprived of liberty, and Article 5 paragraph 3 guarantees every arrested person the right to be brought before a judge or other official, determined by law to perform judicial functions, without delay. In another case against Russia, the European Court of Human Rights (ECtHR, Court), distance trial, ie the absence of the defendant from one of the hearings in criminal proceedings, brought in connection with Article 5 of the ECHR.[36] Namely, the applicant complained that he had not been allowed to physically attend the hearing at which it was decided to extend his detention against him, but had participated in the proceedings via video link.[37]

---

[32] Committee on the Rights of the Child, General comment no. 24 (2019) on children's rights in the child
justice system, 18 September 2019.
[33] Ibid.,p.39.
[34] Ibid .,p.45
[35] https://www.echr.coe.int/Documents/Convention_MKD.pdf
[36] Trepashkin v Russia, application no. 14248/05, judgment of 20.06.2011.
[37] Ibid.,p.139.

The European Court first confirmed that a detainee has the right to decide on the lawfulness of his deprivation of liberty quickly, I e without delay, but emphasized that in procedural terms the guarantees under Article 5 of the ECHR are not identical to the guarantees under Article 6.[38] The guarantees defined in Article 6 may also apply to situations primarily governed by Article 5 of the ECHR, but Article 5 always takes precedence, as it relates to the specific characteristics of the procedure of deprivation of liberty, restriction of freedom of movement and detention.[39] Thus, the European Court of Human Rights has concluded that distance trials are treated differently under Article 6 and Article 5 of the ECHR, but that distance trials in national law, under certain conditions, are not contrary to Article 5 of the Convention.

Procedural and legal preconditions for a fair trial guaranteed by Article 6 include, inter alia, the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, established by law. The verdict must be pronounced in public, but the press and the public may be excluded from all or part of the trial, in the interests of morality, public order or national security in a democratic society, when required by the interests of minors or the protection of parties' privacy. In the opinion of the court, necessary in special circumstances, when the public could harm the interests of justice. The accused must have the right to sufficient time and opportunity to prepare his defense; to defend himself in person or through legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to obtain a lawyer ex officio free of charge, when the interests of justice so require; to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf, under the same conditions as witnesses against him; as well as to receive the free assistance of an interpreter if he does not understand or speak the language used in court.

The European Court has dealt with all segments of the right to a fair trial, but since 2006 it has also ruled on remote trials. The essence of its jurisprudence is that states must ensure that the circumstances of each case are carefully considered, in order to find the best way to ensure access to justice, even when it is physically limited. Also, all aspects of the article 6 of the ECHR, must be considered in order to strike a balance between the requirement that a hearing be provided within a reasonable time, and the presence of the accused, which may take the form of a distance trial. Therefore, Article 6 of the ECHR does not prohibit a distance trial, if it is organized in such a way that the accused enjoys all the rights from the said article.

[38] Ibid.,p.141.
[39] Ibid., p.148.

In the verdict of Marcello Viola against Italy,[40] the defendant was allowed to participate in the criminal proceedings on two occasions with the help of a video link, ie electronic transmission of images and tones in real time. This practice was in accordance with the Italian Criminal Procedure Code, which provided for such a possibility in the above situations. However, the defendant considered that his right to a fair trial had been violated because he attended the session via video link in the appeal procedure. The ECHR found that the trial in criminal proceedings via video link was generally in accordance with Article 6 of the ECHR.[41]

The Court first found that the right to a fair trial implies a balance between the interests of the defense, but also the interests of witnesses and victims who testify in that criminal proceeding. The European Court also made a clear distinction between criminal proceedings in the first and second instance, in the appellate proceedings. Thus, the physical presence of the defendant cannot have the same significance in the first instance proceedings, when all evidence is presented at the main trial and they most often consider legal issues. Thus, the ECHR makes a distinction in relation to proceedings in which facts and legal issues are discussed, and in relation to the necessity of the physical presence of the defendant at the main trial.[42] This view is particularly pronounced if it is known that the appellate court moves exclusively within the limits of the appellate allegations of the parties to the proceedings.

It follows from this judgment that Article 6 of the ECHR did not define the manner in which the defendant's right to attend the main trial is exercised are effective and practically achievable. Finally, the fact that the Court pointed out the necessity of applying a distance trial, in relation to all defendants who find themselves in the same or similar situation, is also significant, because the opposite would lead to discrimination.[43]

In several cases against Russia, the European Court of Human Rights dealt with the principle of publicity, the principle of orality at the main trial. Thus, in the judgment of Jevdokimov and Others v. Russia,[44] the Court concluded that the principle of orality is not necessary when discussing a legal issue, because it is discussed in a different way from the (non) existence of a fact.[45] Thus, the legal issue can also be discussed on the basis of the submissions of the parties to the proceedings.

---

[40] Marcello Viola v. Italy, application no. 45106/04, judgment of 5 January 2007
[41] Ibid., p. 35.
[42] Ibid., p.38,51,54,55.
[43] Ibid., p.68.
[44] Yevdokimov and others in Russia, application no. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11,
76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12, judgment of 16 May 2016.
[45] Ibid., p.23

Also, the ECHR reiterates that a somewhat milder standard and the possibility of deviating from the principle of the presence of the defendant at the main trial is possible in the appellate procedure because sometimes his absence is justified by the legal nature of the appellate procedure. In this judgment, the European Court explained in some detail the principle of proportionality, in the sense that for the domestic court the first and basic legal question is whether the necessity of the defendant's presence in criminal proceedings is logically and vitally compatible with the legal nature and elements and circumstances. The criminal offense was committed, as well as whether there are justified reasons to deny the defendant the right to attend the main trial.

Thus, the ECHR finds that if the defendant's contention is not based on his personal experience, then his absence from the main trial is not contrary to Article 6 of the ECHR. However, even then, the courts must take into account the defendant's wish to attend the main trial in person, and if they reject such a request, they must explain their decision, clearly stating the reasons indicating that the defendant's absence will not jeopardize his basic right to attend the main trial. It follows that the question of the defendant's presence at the main trial is in fact a practical question which depends, inter alia, on whether the defendant's allegation is based on his personal experience, as well as on the facts and circumstances in which the criminal proceedings are conducted and equipment in a specific court, where the criminal proceedings are being conducted, but also the facility in which the defendant is located.[46]

The court also points out that the domestic court must timely deliver to the defendant its decision that the main trial will be held without the physical presence of the defendant in the courtroom, via video link. However, even in these situations, the obligation of the court not to deviate from the principle of publicity, that the public has an appropriate insight into the criminal procedure, does not cease. It is important to emphasize that the absence of the defendant from the main trial, according to the court decision, does not mean that he does not have the right to a formal defense in the courtroom and the right to an effective defense. In that sense, the court still makes a certain gradation between the two extremes, the presence of the defendant and his absence from the main trial.

So, if the defendant wants to attend the main trial, the court should first ensure his presence in another way, and even by moving the trial to the facility where the defendant is, and only if such a possibility cannot be realized, then the main trial has to take place without the presence of the defendant.[47]

[46] Ibid., p.23,33,34,36,41.
[47] Ibid.,p.44.48.51.

The issue of remote trial and effective defense was also expressed in the Sakhinovsky v. Russia verdict,[48] in which the defendant was not able to participate in the hearing on the appeal before the Court of Appeals in criminal proceedings, except via video link. However, he felt that he would not be able to defend his interests at full capacity through a video link. The Court of Appeals informed the applicant that he would attend the session via video link, as the conditions for a video call were provided in the detention unit, and the applicant sent a request to the same court to attend the session in person. Also, the applicant had a confidential conversation with his defense counsel via video link, without the presence of third parties, and did not complain about the quality of the video communication. It is also important to emphasize that legal issues were discussed on appeal. Taking into account all these facts, the European Court found that there was no violation of Article 6 of the European Convention because in the specific case all the conditions for a distance trial were met. However, the ECHR considered that the right to a fair trial had been violated, in relation to the communication between the defendant and his defense counsel.[49] The European Court found that the 15-minute video link was not sufficient to prepare the defense, given the complexity and seriousness of the allegations in the indictment, which certainly led to the confirmation of the first instance decision, to the detriment of the defendant.

Similarly, the European Court has pointed out that it is necessary for the national court to always consider how to ensure the effective participation of the accused in criminal proceedings, in a situation where he is being tried via video link.[50] It is especially important to emphasize that in it self, a video link is not sufficient if the nature of the proceedings and the circumstances indicate that the presence of the defendant in the courtroom is necessary.

Finally, in another case against Russia, Gorbunov and Gorbachev, the applicants considered that their right to a fair trial had been violated, given that the defense of the defendants in the proceedings had not been effective because they had not had sufficient time to prepare via video link defense with counsel.[51] They also complained that the sound and image of the video link in the appeal proceedings were of poor quality. The European Court applied the previously established standards and found a violation of Article 6 of the ECHR, given that the applicant and his defense counsel were ex officio in the same city, so the court did not find justifiable reasons for the defendant and his defense counsel not to meet in person and agree defense on appeal, nor to sit in the same room during the appeal proceedings before the court.

[48] Sakhnovskiy v Russia, application no. 21272/03, judgment of 2 November 2010
[49] Ibid.21,22,28,56,103
[50] Vladimir Vasilyev in Russia, application no. 28370/05, Judgment of 9 July 2012, para. 86.
[51] Gorbunov and Gorbachev v Russia, application no. 43183/06 and 27412/07, judgment of 1 June 2016

The court has emphasized in other cases that access to a lawyer includes the right to a private interview, prior to any questioning. Otherwise, the legal aid provided to the applicant during the examination, without such a prior opportunity, would not have been effective.[52] Thus, the ECHR once again points out that the possibility of a trial via video link does not deviate from the European Convention, but that the appropriate conditions arising from its practice must be met.

It follows from all that has been said that even when trials are organized at a distance, Article 6 of the ECHR must be applied, allowing the accused to participate effectively in the hearing,[53] which means that his position can be heard and the trial monitored. The decision should always be made taking into account specific circumstances, such as technological capabilities, sensitivity of the witness, whether the person has a disability, whether his credibility is in question, etc. Bad sound may prevent the accused from hearing and participating in the proceedings, and may raise the issue of a violation of Article 6 of the ECHR. Also, the Court considers that the video link examination can ensure the effective participation of the parties in the proceedings. However, in order for this right to be respected, it is necessary to ensure effective and confidential communication between the accused and the defense counsel.

GUIDELINES OF THE COMMITTEE OF MINISTERS ON MEHANISMS FOR THE SETTLEMENT OF DISPUTES AT A DISTANCE IN CIVIL AND ADMINISTRATIVE PROCEEDINGS

In June 2021, the Committee of Ministers of the Council of Europe adopted the Guidelines on mechanisms for resolving disputes at a distance in civil and administrative proceedings. [54]The guidelines were adopted because the Committee of Ministers expressed concern about the frequent absence of human rights protection measures during the use of remote dispute resolution mechanisms. The Committee emphasizes the importance of respecting the key principles of a fair trial, ensuring an effective remedy, including the principle of oral hearing and respect for equality of arms. The guidelines adopted should serve as a guide for adapting existing dispute settlement mechanisms in accordance with Articles 6 and 13 of the European Convention.

---

[52] For example, A.T. v. Luxembourg, application no. 30460/13, judgment of 9 April 2015.

[53] Murtazaliyeva v. Russia, (Grand Chamber), application no. 36658/05, judgment of 18 December 2018, para
18

[54] Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings, European Committee on Legal Co-operation (CDCJ),
1407th meeting, 16 June 2021. The guidelines are accompanied by a memorandum giving their explanation. See Explanatory Memorandum, CM (2021) 36 - add5 - final, 1407 meeting, 16 June 2021.

The guidelines do not apply to the internal management of electronic case files in courts, not to alternative dispute resolution mechanisms, such as mediation and conciliation.

The Guidelines emphasize the importance of fundamental principles, which are reflected in the following:

1. States should ensure confidence in the resolution of disputes at a distance;
2. A remote trial must not be an obstacle to ensuring access to justice;
3. The rules of procedure applicable to court proceedings should also apply to remote court proceedings, unless the specific nature of a particular mechanism requires otherwise;
4. The parties to the proceedings should have access to secure mechanisms.

In order to ensure access to justice, a remote trial must be provided in a way that is easy to understand, as well as accessible and easy to use, so that as many people as possible can use it without hindrance. The parties to the proceedings should be informed how the remote trial is conducted, how to file submissions, how to monitor the progress of the proceedings and how to access the decisions. Their use should not be to the detriment of the parties, nor should it give an advantage to one of the parties.

The parties should be informed when there is an intention to conduct their proceedings at a distance. Participation in distance trials should not jeopardize the right of an individual to participate effectively in the proceedings, or his right to an effective remedy, and the proceedings themselves should be independent and impartial. The parties to the proceedings should be familiar with the materials from the case file, including those submitted by other parties, should have access to these materials and sufficient time and resources to become acquainted with their contents.

Fairness requires that the parties to the proceedings must be allowed to present evidence in a manner that does not place them at a disadvantage vis-à-vis the other party, to have the opportunity to present their case and to challenge the evidence provided by the other party. The distance trial must ensure the principle of legal certainty and the protection of the principle of the legitimate expectations of the parties.

The parties should not be denied the right to request an oral hearing. The application of these procedures should aim to improve the efficiency of the procedure, by enabling the parties to participate without a physical presence in court and to rationalize the whole process as much as possible. Technical difficulties should not prevent courts from examining cases in this way. Also, the costs of such court proceedings should not be higher than regular ones. The outcome of the procedure should be transparent. Any final decision should have been published in accordance with the case law of the European Court of Human Rights. A decision made on the basis of a distance trial should be reasoned and enforceable. An appropriate level of security must

be provided to meet the requirements of Articles 6 and 13 of the European Convention.

Security includes protection against:

a) Unauthorized access to confidential data;

b) Unwanted changes or deletions of data;

c) Technical inability to access the system and the data contained in it for those who should have access;

g) Uncertainties regarding the identity of the judge and other experts involved in the proceedings; i

e) Fraud of the identity of the parties.

Remote trials must not infringe the right to data protection, including the right to information, the right to access data, the right to object to data processing and the right to erasure. Personal data should be protected through the application, in particular, of anonymisation or pseudonymisation techniques, as well as the introduction of restrictions on access and re-use by the competent authorities maintaining data control. The transfer of the technology used should not lead to the processing of personal data for commercial purposes.

States should invest in the development of mechanisms to be used in remote court proceedings. The ease of use of the mechanisms should be sufficiently tested before their application. The judiciary itself should involve the judiciary, lawyers and other relevant stakeholders. Their continuous monitoring and timely upgrading of the system should be ensured, and all those involved in court proceedings should be familiar with the benefits and values of remote trial mechanisms. This includes conducting appropriate training, which is as practical and tailored to the needs of specific target groups. In particular, judges should be trained to identify and eliminate risks that may arise from the use of technology.

CONCLUSION

The right to a fair trial is a fundamental human right that serves as a basis for the enjoyment of many other rights and freedoms. During the pandemic, many countries resorted to various measures to limit the enjoyment of basic rights, in order to protect the population from infectious diseases. Thus, the question of the justification of the distance trial was raised, which was resorted to by a large number of countries.

Distance trial is not prohibited by international law, but relevant international standards indicate that even in the case of a distance trial, the procedural and legal preconditions for a fair trial should be fully respected. This primarily implies that the accused should be allowed to participate effectively in the hearing.

Enabling a remote trial is assessed in each specific case, guided by the assessment of technological possibilities, characteristics and sensitivity of a specific person, possibilities for effective and confidential communication with a lawyer, etc.

The organization of a remote trial must ensure the privacy of the participants in the proceedings, while enabling the public to follow the trial and with quality sound and monitoring of the trial itself, all participants in the proceedings. Bad sound can prevent the accused from hearing and participating in the proceedings, and can raise the issue of violation of the right to a fair trial.

The remote trial requires an explanation from the judge on how the technical difficulties will be resolved, as well as the involvement of IT experts, if available, to ensure the smooth running of the trial.

The judge should ensure that the distance trial is fair and that all litigants are involved. When it comes to the examination of a witness, the judge should take special care that the witness is not influenced or interfered with by another person. In this regard, the judge should take all measures to prevent the witness from reading the pre-prepared text, or to prohibit another person from being in the room from which he / she is testifying. It is especially important to help witnesses who belong to vulnerable categories in society and who have language barriers or psychological or mental difficulties, in order to obtain adequate testimony from them during a distance trial.

If this is not possible, the online trial should be abandoned.

REFERENCES:

Domestic and international documents and sources

1.Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings, European Committee on Legal Co-operation (CDCJ),1407th meeting, 16 June 2021.

2. UN Basic Principles on the Role of Lawyers, Principles 7, 8 and 22.

3.Resolution 44/9, "Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers" h (16 July 2020), paras. 17-18.

4.ICJ, Videoconferencing, Courts and the Covid-19, Recommendations Based on International Standards, November 2020, p. 7.

5. Human Rights Committee, General comment no. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 2.

6.Convention on the Rights of the Child., Resolution 44/25, 20 November 1989

7. Committee on the Rights of the Child, General comment no. 24 (2019) on children's rights in the child justice system, 18 September 2019.

8.The Human Rights Committee continues discussion on draft general comment on the right to liberty and security of persons, 24 July 2014. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID= 14901&LangID=E. (May 102021).
9.Human Rights Committee, General Comment no 35 on Article 9 (Liberty and security of person) (2014), para34.
10. HRC, General Comment no. 29 on States of Emergency (article 4) (2001), paras. 15-16.

CASE – STUDY

1. A.T. v. Luxembourg, application no. 30460/13, judgment of 9 April 2015.
2. Murtazaliyeva v. Russia, (Grand Chamber), application no. 36658/05, judgment of 18 December 2018,
3. Vladimir Vasilyev in Russia, application no. 28370/05, Judgment of 9 July 2012, para. 86.
4. Sakhnovskiy v Russia, application no. 21272/03, judgment of 2 November 2010
5. Gorbunov and Gorbachev v Russia, application no. 43183/06 and 27412/07, judgment of 1 June 2016
6.Yevdokimov and others in Russia, application no. 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12, judgment of 16 May 2016
7.Marcello Viola v. Italy, application no. 45106/04, judgment of 5 January 2007
8.Trepashkin v Russia, application no. 14248/05, judgment of 20.06.2011.
9. Gridin v. Russian Federation, communication no. 770/1997, paragraph 8.2
10.Van Meurs v. The Netherlands, communication no. 215/1986, paragraph 6.2.
11. R.M. v. Finland, communication no. 301/1988, paragraph 6.4.
12.Kavanagh v. Ireland, communication no. 819/1998, paragraph 10.4.

Links

1.https://www.echr.coe.int/Documents/Convention_MKD.pdf
2.https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx .(May10, 2021).
3. https://undocs.org/en/A/HRC/RES / 44/9. (May 10 ,2021).

Scientific Article
UDK 342.721:343.126.1]:341.24
343.126.1:351.74]:340.13(497.11)

POLICE DETENTION AS A LIMITATION OF PERSONAL FREEDOM[55]

Saša Knežević, PhD, full professor

University of Nis, Law faculty, knez@prafak.ni.ac.rs

Ivan Ilić, assistant professor

University of Nis, Law faculty, ivan@prafak.ni.ac.rs

Abstract

The right of personal freedom is one of the most important right from the set of basic human rights and freedoms, contained in the most important acts of international legal character, and the constitutions of states based on the rule of law. This right is directly related to the very human existence, and, therefore, it is necessary to make its legal articulation. Personal freedom means the right to security of the citizen, that he will not be arrested and detained in prison by the state authorities, as well as the right to be free to move and inhabit. However, from the very nature of criminal law protection of social values, arises the need to limit the right to personal freedom in exceptional circumstances, including the detention of the suspect. Keeping the suspect is a measure of procedural compulsion, by which, through the police decision, detained prison is temporarily imprisoned, for gathering information and hearing. The basic principles of humanity require that the detained suspect retains all the rights, derived from the principle of personal liberty. The authors of the paper deal with an analysis of national legislation, with regard to detain a suspect, according to the Criminal Procedure Code from 2011. In the paper the achieved international standards, through the presentation of comparative law legislation, and the relevant jurisprudence of the European Court of Human Rights were also presented.

Key words: personal freedom; detention; suspected; police; procedural compulsion

[55] *The paper was created as a result of research on the project "Responsibility in a legal and social context", which is being implemented at the Faculty of Law in Niš.*

INTRODUCTORY REMARKS

The right to liberty is one of the most important rights in the catalog of basic human rights and freedoms, contained in the most important international legal acts, and the constitutions of the states, which are based on the rule of law. This is due to the fact that the right to liberty, by the right to life, is the most important human right. This right is directly related to the very human existence and, therefore, its legal articulation seems necessary.

Personal freedom means the right of citizens to safety, they will not be arrested by government authorities, and detained in prison, as well as the right to move freely and to inhabit (Grubac, 1998, 463). However, from the very nature of the criminal protection of social values arises a need to limit the right of personal freedom, in exceptional situations. The effectiveness of illegal behavior sanctioning, that violates criminal law norms, requires the existence of legal options for restricting the freedom of movement of suspected persons for committing criminal offenses, even if the right to freedom of movement is the quintessence of personal freedom. Restrictions of movement freedom of, by apprehension of the suspect and his detention in prison conditions, sometimes appears as an imperative of institutionalized social reaction success against persons suspected for committing criminal offenses.

Civilized standards, contained in the most important international legal acts and constitutions of democratic states, require that personal freedom can be restricted only for the purpose of criminal proceedings, under strictly defined conditions. Restriction of personal freedom by detention of suspects is possible, primarily, by a court decision. However, from the legal position of the police, as the first link in the chain of social reaction to unlawful conduct, it seems logical power of this governing body of the short-term detention of a suspect in prison conditions, prior to its implementation of the judicial authorities. Sometimes it seems necessary and temporary restriction of movement of persons, who were found at the crime scene, as well as potential witnesses in the upcoming criminal proceedings.

Basic principles of human rights protection require a strict legality of the police conduct in limiting the personal freedom of individuals, which are relevant for the initiation of criminal proceedings, as well as to build its factual construction. Therefore, the international law, constitutional law, comparative law and the positive dimension of limiting personal freedoms of citizens by the repressive actions of the police authorities, undertaken prior to the implementation of the suspect judiciary was analyzed.

INTERNATIONAL GUARANTIES OF RIGHT TO LIBERTY PROTECTION

Due to the general globalization of international relations, human rights become subject to supranational regulation. By the international legal

instruments, in the field of human rights, standardization of law has been carried out, which at the present level of the development of civilization, are indicators of the democratic legitimacy of each state. In order to prevent the negative illegal and arbitrary behavior of government agencies, the in the international documents, among others, the rights of persons deprived of their liberty are provided.

In Universal Declaration on Human Rights, the right to life, liberty and security, as well as the prohibition of torture and other inhumane treatment, and the right to protection from unauthorized deprivation of liberty are proclaimed (Article 3, 5 and 9). Guarantees for the exercise of the rights of persons deprived of their liberty are also contained in the *International Pact on Civil and Political Rights.* According to this international document, the grounds and procedures for deprivation of liberty can only be prescribed by law (Article 9), and the deprivation of liberty caused by non-fulfillment of contractual obligations is explicitly prohibited (Art. 11).

In The European Convention for the Protection of Human Rights and Fundamental Freedoms provided that "everyone has the right to liberty and security of person" No one shall be deprived of his liberty except "in the following cases and in accordance with the procedure prescribed by law". Restriction of liberty and security of person is possible in cases of lawful deprivation of libety, after conviction by a competent court; the lawful arrest or detention of a person for non-compliance with the lawful order of a court, or with a view to ensuring the fulfillment of any obligation prescribed by law; the lawful arrest or detention of a person, for the purpose of bringing to the competent legal authority on reasonable suspicion that the person has committed a criminal offense, or when it is reasonably considered necessary to prevent committing an offense, or after the commission of the crime escape; detention of minors, by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing to the competent authorities; the lawful detention of persons for the prevention of the spreading of infectious diseases, the detention of the mentally ill, alcoholics, drug addicts or vagrants; the lawful arrest or detention of a person in order to prevent illegal entry into the country, or of a person against whom action is being taken with a view to deportation or extradition (Art. 5).

The provisions of this article of the Convention, otherwise, provides a wide range of rights of persons, deprived of their liberty. Persons deprived of their liberty under the provisions of this Convention, shall be entitled, immediately, in a language they understand, be informed about the reasons for their arrest and about the charges against them (art. 5, par. 2). Catalog of these individuals' rights is completed with the right to be promptly brought before a court and the right to trial within a reasonable time (art. 5 par. 3). An integral part of the corpus of person's deprived of liberty human rights, is the right to challenge

the legality of his detention, and the right to compensation for the deprivation of liberty, undertaken in contravention of the Convention provisions (art. 5 par. 4 and 5).

A wide range of persons deprived of liberty is provided by the *Draft Principles for the Protection of unauthorized detention*. By these principles, it is envisaged that persons deprived of their liberty have the right to be informed about the reasons for his arrest (in particular, it focuses on custody), to be promptly brought before a judge, to be tried as soon as possible and within a reasonable time be allowed to freedom.[56] Essentials of rules, that protect right and freedom of unauthorized deprivation of liberty, are the restrictions on actions of government bodies in the arrest of the defendant. Detention can not be determined without a written order, signed by an authorized judge (art. 6). The period from the time of arrest to the contact with the judge, must not be longer than 48 hours, a period of detention can not be longer than four weeks, with the possibility of extension in special circumstances (art.14). Judicial authorities have an obligation to periodical review of the detention reasons (art. 15). A person deprived of liberty shall be informed about the charge content, the right to defense and the right to communicate freely with counsel. The use of torture and other inhumane impact on the personality of detainees is prohibited. *Draft Principles for the Protection of unauthorized deprivation of liberty*, as the act of the UN, particularly emphasizes the need to protect persons deprived of their liberty, in a state of emergency. [57]

Protecting of the detainees and convicted human rights is regulated by *"A set of minimum rules for treatment of prisoners"*, adopted in Geneva in 1955., and confirmed by the Economic and Social Council of the United Nations in 1967.[58] These rules made the standardization of right of prisoners, but also foresees the rights of arrested persons and detained persons (paragraphs 84-91), representing civilized standards in the treatment of persons deprived of their liberty. The provisions of “Minimum rules” paragraph 84. anticipates, that the person deprived of liberty is a person who is arrested, detained in police custody or in prison, but not yet convicted, and, therefore, can not be treated as a prisoner.

Provisions of "Minimum rules" provides a wide range of rights of detainees. Detainees have the ability to communicate with his lawyer and family members, no auditory monitoring by prison staff, the right to use medical services, the ability to feed its own expense, to carry their own stuff, etc. (Obradovic, 2003, 164).

---

[56] See: Human rights - UN activities in the field of criminal justice and crime prevention, JRKK, no. 3-4/79 p. 5

[57] Ibid, p.6.

[58] These rules are confirmed by the Resolution of the Economic and Social Council of the UN number. 663 C (XXIV) from 31. 07. 1957.

Summa summarum, guarantees to protect the rights of persons deprived of their liberty under international documents on human rights, related to the exercise of freedoms and rights, which may be compromised in the process of deprivation of liberty, which are a) prohibition of arbitrary deprivation of liberty, b) the right of a prisoner to the court decides on the legality of his arrest and c) the right to a reasonable length of detention before the main trial, d) the right to humane treatment during detention (Lazin, 1995, 161).

CONSTITUTIONAL PROTECTION OF PERSONAL LIBERTY

Human rights and freedoms can be limited by acts of public authorities, aimed at achieving criminal protection of social values. Constitution of Serbia lays down the procedure for the exercise of fundamental freedoms and human rights. From constitutional provisions follows that the rights and freedoms of the citizens may be limited in scope and purpose that is permitted by the Constitution, without interference into the substance of the rights guaranteed (art. 20 of the Constitution). Proclaimed inviolability of freedom may be restricted by deprivation of liberty, in the cases and in the procedure established by law (art. 27, par. 1 of the Constitution). Thereby, person deprived of liberty shall have rights, which are the essence of the protection of personal freedom principle. These are: right to be immediately, in a language which he understands informed about the reasons for arrest, about the reason that he was charged, and about his rights, and the right to notify choosen person, about his/her deprivation of liberty, without delay (art. 27, par. 2). An arrested person has the right to a court decision about the legality of his detention, on the basis of appeal (art. 27, para. 3).

The Constitution proclaims the humane treatment of deprived of liberty persons, the prohibition of violence and extortion of statements (art. 28). The constitutional proclamation lays particular emphasis on additional rights of persons deprived of liberty without a court order. These persons have the right to remain silent, the right to expert assistance of counsel, and so. called the rights of the poor. The person deprived of liberty without a court decision, must, without delay, and no later than 48 hours be submitted to court or released (art. 29).

DEPRIVATION OF LIBERTY – TERM AND TYPES

Under the deprivation of liberty is considered "any involuntary restriction of the free movement right of a person, along with the simultaneous obligation to stay at a certain place, and to ensure proper and smooth conduct and completion of the criminal proceedings, which is sanctioned in some way" (Petric, 1987, 40).

From the provisions of the Criminal Procedure Code[59] indicates that the rights and freedoms of the accused (and other entities - primarily witnesses) may be limited by the following aspects: police arrest, arrest a person caught while committing a crime, keeping people on the crime scene, apprehension, detention, minor detention, temporary housing of juveniles in institutions, and placing the defendant in an appropriate medical facility for psychiatric observation. At this point the essence of suspected detention, by police activity, undertaken prior to submission to the judiciary authorities will be exposed.

POLICE CUSTODY

In order to exercise criminal protection of society, the authorities can apply repressive measures before the formal criminal proceedings. It is the task of the so-called. preliminary investigation to create the conditions for initiating criminal proceedings. For this purpose, the police can keep certain people. The Criminal Procedure Code provides for two types of detention - detention of the suspected and retention of potential witnesses.

Keeping the suspect is a measure of procedural coercion, which, by the decision of the police, the arrested person for a short period close, for questioning or interrogation. This measure is a substitute for the former police custody. Its purpose is to create procedural requirements for initiating criminal proceedings. Therefore, the police provide short-term closure of the suspected, in order to establish the existence of normative requirements for the initiation of criminal proceedings. By additional time-out the police allow to keep the person in custody (for which exists some of the reasons for detention) and to obtain information, needed to initiate criminal proceedings.

To this powers of the police, it can be argued from a conceptual and nomotechical point of view. It is conceptually inconsistent to authorize the police to take action, which, phenomenologically speaking, is a form of detention of certain persons (albeit brief). The basic postulates of democracy and humanity require that such measures can only determine by the actions of the court. On the other hand, nomotechnical disadvantage lies in the fact that in order to determine the detention grounds for suspicion that a person has committed an offense are sufficient, while for custody degree of reasonable suspicion is necessary. However, the need for effective criminal prosecution prompted lawmakers in many states, to authorize the police to taking measures from the arsenal of repressive instruments of personal freedom limitation.

[59] "Off. Gazette of RS", no. 72/2011, 101/2011, 121/2012, 32/2013 and 45 / 2013, 55/2014, 35/2019, 27/2021 - odluka US i 62/2021 – decision of Constitutional Court.

POLICE CUSTODY ACCORDING TO LAW OF SERBIA

Provisions of art. 294 CPC provides for the establishment of detention, arrested by the police, if exists a custody reason, of persons deprived of their liberty during the commission of the offense and the suspected. It is important to note that this measure can be applied to a person, which was called for questioning as a suspected, but to a person who is still in the process of collecting information, acquired the status of a suspected (art. 289 para. 2 of the CPC). The duration of the repressive measures is limited to 48 hours from the time of arrest, or responding to a call. The police must, within two hours to deliver a decision to detainee, which specifies: the offense for which the suspected is charged, grounds for suspicion, the day and hour of arrest or summons responding, as well as the start time keeping (art. 294 para. 2. of the CPC). Against this decision the suspected and the defense counsel may file an appeal to the judge for preliminary proceedings, that within four hours has to decide on the merits about the appeal (art. 229, para. 2 and 3 of the CPC). Protection of human rights of the suspected would certainly be contributed by predicting the obligation for the police to questioning the justification of the decision to detain a suspected every twelve hours, *ex officio*.

Detained suspect has rights which are the essence of the protection of personal freedom principle. It is the right of people to, in a language which he understands to be informed about the reasons for detention, the right to silence, and the expert assistance of an attorney, and to notify their immediate family members of the act of detention. Detained suspected must have an attorney "as soon as the police make the decision about detention." It is, therefore, a mandatory defense, by which the defendant or suspected, lose his exclusive right to be holder of the right to defense. If the suspected does not make his own attorney, the police have an obligation to appoint defense counsel ex officio, and questioning of the suspected must be delayed until the arrival of counsel, but up to four hours.

Respect for international legal standards on the treatment of persons deprived of liberty is manifested in the right of a person deprived of liberty to initiate proceedings questioning the legality of his detention (habeas corpus act) before the competent investigating judge (art. 5. para. 3. CPC). Postulates of humane treatment to deprived of liberty persons also respect the rights of persons to a medical examination. The authority, who arrested and retained the suspected, has an obligation to treat them humanely, in accordance with the basic postulates of respect for human dignity.

Corpus of detainees' rights in Serbian law (including a person who has some retention) is expanded by the sanctioning not only of unlawful, but also unjustified deprivation of of liberty (art. 27. para. 4. of Serbian Constitution and art. 584 CPC). By this the compatibility of the CPC Serbia on the treatment of persons deprived of liberty, with the provisions of the most important

international legal documents on human rights protection, with the extension of the scope of these individuals, is manifested.

According to the CPC, arrest is unfounded, among other things, if, at the end of the retention, criminal proceedings is not initiated (art. 584 para. 1 CPC). The deprivation of liberty is also unfounded, when the body of the criminal proceedings erroneously or illegally treated, by applying procedural coercion. C*ondicio sine qua non* of the right to compensation based on this is wrong or unlawful operation of government bodies. Retention is considered unlawful certain: if there were no conditions for the determination of these measures of procedural coercion; if it is unlawfully prolonged detention; if the determination of retention has been abusing powers of authority, which determined this measure (the police).

The retention of defendant, as a security measure of this subject, is also envisaged by the Law on Misdemeanors of the Republic of Serbia.[60] In the misdemeanor's procedure, the court may order retention: if the identity of the accused or the domicile or residence can not be determined, and if reasonable suspicion that he will run away exists, if he go abroad to avoid responsibility for the offense, which is punishable by imprisonment, if caught in the performance of the minor offense, and the detention is necessary in order to prevent further commission of offenses (art. 166). Retention is determined by a court order, stating the date and hour of detention, as well as the basis for determining these measures (art. 167).

To this measure of procedural coercion may be subjected a person who is under the influence of alcohol or drugs, caught in the act of misdemeanor performing. However, in contrast to the retention, according to the particular art. 166 of the Law on Misdemeanors, order the detention of those persons, except the court may order and authorized police officer (art. 168)! Retention is mandatory if the driver of the vehicle has a 1.2 or more promils of alhohol in blood, or he is under the influence of intoxicating substances (art. 168 para. 3). The retention is also required, if the person refuses to submit to testing for the presence of alcohol or intoxicating substances in the blood (art. 168 para. 49.). Ability to retain persons, caught in the act of breaching, under the influence of opiates, at the discretion of the police officer, as well as relativism an obligation to inform his family about the detention (art. 168 para. 5), is a departure from standards, set forth in the most important international documents on the human rights protection.

RETENTION IN THE COMPARATIVE LAW

Retaining of the suspected is provided in many other legislative. In French law, there is an institution *garde à vue* (keeping an eye on), which

[60]"Official Gazette of RS", no. 101/2005, 116/2008 and 111 / 2009.

allows the retention of a suspected up to 24 hours, while the time limit may be extended for another 24-hour, by order of the public prosecutor. The continued existence of police custody is possible, for another 48 hours, if there is suspicion of committing of drug trafficking offense (art. 706-29 of French CPC). The decision to extend the detention of a suspected, in this situation, brings a judge of freedom and detention. The judge of freedom and detention (le juge des libertés et de la detention) may also extend the retention, specified by the police for 72 hours (Pradel, 2001), if the suspected is charged with the criminal offense of terrorism (art. 706-23 of the CPC).

French Code of Criminal Procedure (CPC) respects the basic postulates of the protection of individual freedoms principle, contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 5-2). In accordance with French CPC (art. 63-1), a police officer is obliged to inform the detained person about the criminal offense for which he is charged. This obligation applies not only to the legal qualification of the offense, but also to the facts known to the police, giving rise to suspicion of committing a criminal offense of detained suspected. However, the police information about the new criminal offense of detained suspected does not have to be presented. If, however, the knowledge, related to the commission of the drug trafficking or terrorism crime, it must presented to the detained suspected. This is due to the possibility of changing the regime of detention in these situations (Tomic-Malic 2001, 231*).*

The suspected, placed under detention, has right to be informed about the basis of retention on understandable language (art. 63-1). This right includes the possibility of using a translator, and an interpreter for deaf and illiterate persons. In addition, the nearest relatives have the right to, without delay, be promptly notified, about the detention the suspected (art. 63-2). Similarly, French law allows the realization of the right to legal defense, already from the beginning of police custody (art. 63-4 of the CPC). This right belongs to the detained by the extension of the detention, and after twelve hours from decision about the extension of the detention (art. 63-4 par. 6). However, the right to communicate of detained suspected with counsel was reduced, if it comes to organized crime, terrorism and drug trafficking. In these cases, communication with a lawyer can be achieved starting from 36 hours from determining of the detention (for organized crime), or after 72 hours (for terrorism and drug trafficking). Catalog of detained suspected rights in French law is complemented by a right to information about the progress of the criminal proceedings (art. 77-2 of the CPC), the right to silence (art. 63-19, the right to health protection (art. 63-5), and the right on getting a meal in a clearly defined time (art. 64 and 65 of the CPC). The legality of the detention regime in French law is strengthened by the obligation to legal control of the court and

the public prosecutor, and by the parliamentarians ability to visit police stations.

Retaining of the suspected as a form of liberty deprivation, also exists in the law of England and Wales. Although this is case law, adopting the Law on the Police and Criminal Evidence Procedure (Police and Criminl Evidence Act) from 1984., a systematic normative basis for criminal prosecution of perpetrators was created. In accordance with the provisions of the law, the police are authorized to detain a suspected. Retaining can lasts for 24 hours, starting from the moment of transfer of the suspected to the first police station in the territory of England and Wales. The extension of the police custody (police detention) is possible for another twelve hours, by the decision of the chief inspector of police, if there is reasonable belief of the detention necessity, in order to secure an evidence, or to obtain an evidence, by questioning of suspected, and it is also necessary to be serious crime (serious arrestable officence). Before making a decision about the extension of detention, the suspected and his lawyer have the right to an oral or written communication.

If detained person is not charged within 36 hours, it must be released. Any further retention is only possible on the basis of the magistrate court order for further retention (warrant of further detention), initiated by the request of police. It can take up to 48 hours. Thus, the total duration of the suspected detention, prior to indictment, may last up to 96 hours. By raising the charges, the suspect will be released, with the guarantee or without it, except if his name and address is unknown, or there is reasonable suspicion that they are inaccurate; If it is reasonable to believe that retention is necessary for the safety of the suspected or others, or to prevent damage to property; if there are reasonable grounds to believe that the suspected will not appear in court, or he/she must be protected from the intervention of the court administration, or from investigations for any particular offense (Iller, Goodwin, 1985, 57*)*. Otherwise, in English law periodical validation of detention by the police is provided (six hours by determining the detention, and nine hours after the previous revision of detention). When deciding about the survival of certain detention, the suspected and his lawyer can point out your opinion. (art. 15.1-15.5 of Criminal Police and Evidence Act).

Italian law provides for ability to retain the suspected, as a measure of the State Prosecutor's Office primary jurisdiction. It can be determined if there is unable to determine the identity of suspected, or because of the risk of flight, and the suspicion is related to the commission of offenses for which the law provides for life imprisonment, a fine or a prison sentence of two to six years, or the case of crimes relating to weapons and explosives (art. 384 para. 1. LCP). However, under these conditions, the retention of suspected may be determined by judicial police (art. 384 para. 2). This power can be realized due to the police emergency (art. 384 para. 3). The

police can hold suspected no longer than 24 hours, with an obligation to urgently carry out of suspected to state prosecutor.. The judicial police shall notify the defense counsel of suspected about the act of his detention.. Likewise, about detention of a suspected, judicial police shall immediately notify to the closest relatives (art. 387 of the Italian CPC). Detention of a suspected, based on the autonomous decisions of the public prosecutor, may last 48 hours (including 24 hours, on the basis of Judicial Police decision). At that time, the public prosecutor may interrogate the suspected. Eventual continuation of the suspected detention can be based on the decision of the judge for preliminary proceedings, enacted at a special hearing about the confirmation of retention.

In German law, there is the possibility of preventive closure of suspected, before initiating a formal criminal proceedings. This power have the Attorney General and the police, in which detention may last 24 hours. (§ 127 StPO). After this period, the suspected must be submitted to the court. The court may take suspected no later than the next day (§ 115). If the court finds that retention is not established, suspected makes available to the state prosecutor. If, within one day, the charge is not brought, the suspected be released (§ 129). In Austrian law, detain of the suspected, prior to submission to judicial authorities, may last up to 48 hours (Article 172 StPO). The court may detain of the suspected, replace with the custody or with some of the precautions.

DETENTION IN THE PRACTICE OF EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights has been decided on the legality of police detention of suspected. The Court in several judgments was on the opinion that detention the suspected is not in conflict with the right of the suspected to be promptly brought before a court.

Referring to art. 5 The Convention, the Court takes the view that the purpose of arrest and police detention must be: bringing of people, for which there is a reasonable suspicion of committing a offense, or who is about to commit a offense, or who attempts to evade the law, after the commission of the offense. However, the European Court pleaded that the suspect's release, without charge, and without bringing to the competent legal authority, after the police custody, by itself, does not constitute a violation of art. 5 of European Convention! The right to liberty and security is violated if the arrested person is released, before making of any kind of judicial review about his detention was possible (Brogan and Others v. United Kingdom, 1998*).*

From the practice of the European Court of Human Rights arises the necessity of an immediate appearance of the person deprived of liberty

before the Court. The Court, in the case of *Brogan v. United Kingdom*, found that the duration of police detention in duration of four days and six hours, which did not resulted in bringing to trial, is not in accordance with art. 5 para. 3 of ECHR. Likewise, the arrested person shall, immediately upon detention, be in a position to initiate judicial review procedure by which his personal freedom has been limited. An urgent judicial review of his detention is an important guarantee against the abuse of the person, who was detained (Aksoy v. Turkey, 1998). In accordance with the decisions of the European Court, the judicial control of deprivation of liberty must be "automatic", ie. it should not depend on the prior submission of person deprived of liberty (Ditertr, 2006, 129*).*

From the Court's practice, it follows that the need for initiating of criminal proceedings, or to prevent the commission of the offense, may represent the initial justification for the detention of the suspected. However, the continued restriction of personal liberty of the suspected shall be subject to immediate judicial review, which will not consider only the legality and the justification of deprivation of freedom undertaken, but its later appropriateness. The existence of reasonable suspicion of crime comitting itself, may not be a basis for further detention of the suspected up to trial. In addition to the existence of reasonable suspicion that the detainee has committed a crime, according to the jurisprudence of the European Court, there has to be some of the reasons for the extension of deprivation of liberty, namely: risk of flight, the risk of interference with the judiciary, the need to prevent crime or need to preserve public order (McBride, Macovei, 2004, 57*).*

By the judgments of the European Court of Human Rights the criteria relevant to the extension of detention, before the surrender of the suspect to the judicial authority have been concretized. Thus, there is a risk of flight if the suspect fled after the earlier criminal charge, if requested his extradition, or was clearly shown to be terrified of custody if there is a clear plan for the escape of the suspect connection with a state that can help him on the run , and the like. The risk of interference with the judiciary exists: if there are indications that the suspected could put pressure on witnesses, if he will provide an information to other persons, under investigation, if he will destroy the documents and other physical evidences, and so one. All of these circumstances can not be in bstracto, but must be factually substantiated. The fact that the suspected was previously convicted for similar offenses, may indicate a need for extending the detention of a person for the purposes of crime prevention. On the other hand, the need to maintain public order, as a basis for the extension of the detention of a suspect does not have to exist, and if the nature of the crime points to the possibility of a more severe punishment.

The relevant period for assessing the admissibility of life imprisonment, undertaken prior to execution of the suspected before the court, begins to run from the time of arrest. Therefore, the relevant date of taking into custody, and not a later date, when the judge ordered the custody (Miller v. France, 1997*).* On the other hand, the period of deprivation of liberty ends on the day when the decision on guilt is made, even if it is the first instance (Labita against Italy, 2000, and Vemhof against Germany, 1968*).* In doing so, a period between the date of conviction and the date of its abolition was irrelevant, when and the case is back to retrial. Consequently to the attitude of the European Court, a person found guilty at trial can not be considered detained, because of "the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense." Therefore, this person does not fall under the protection of the provisions of art. 5 para. 3 of ECHR, but the legal situation of the person regulated under art.. 5 para. 1a, which permits detention "after the conviction pronounced by a court of competent jurisdiction“ (Kudla v. Poland, 2000*).*

Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for the right to an enforceable benefit of persons who are arrested or detained, contrary to the provisions of the Convention (article 5 para. 5). Therefore, a violation of the European Convention is a deprivation of liberty, taken in accordance with domestic law, but contrary to the provisions of art. 5 para. 5 of the Convention. This undoubtedly arises from the already mentioned case of *Brogan v United Kingdom.*

CONCLUDING REMARKS

A short-term closure of the suspected, prior to judicial authority delivery, sometimes appears as an imperative of effective community responses to persons, for which there is a relevant degree of assurance, that they committed a crime. Power of the police to detain a suspect determined, although conceptually and nomotechnical insufficiently grounded, is one of the possibilities for securing the presence of the person deprived of liberty, with the aim of collecting information, for the purpose of creating the normative requirements for the initiation of criminal proceedings.

Strict legality in determining detention is provided by supervision of the investigating judge's implementation of these measures. On the one hand, the investigating judge, at any time, may request bringing of the suspected, and, on the other hand, he is empowered to decide about the appeal of the measure determination. In addition, the guarantee on the basis of the protection of individual freedoms principle (especially the right to legal defense) complete

mechanism of normative barrier against possible arbitrary and willfully treatment of the police. Optimal level of detained suspected protection, contributed to the legal obligation of periodic review of the justification for further implementation of these measures, as well as legislative changes solutions, contained in certain systemic laws, that allow certain relativization safeguards to protect a personal liberty.

REFERENCES

Iller, A., Goodwin, M. S., Criminal Litigation, London, 1985;
McBride, Jeremy, Macovei, Monica, Right to liberty and security of person, the Guide for the application of Art. 5 European Convention on Human Rights, Manual on Human Rights no. 5, the Council of Europe, Belgrade, 2004;
Pradel, Jean, Prolégomenènes, Revue pénitentaire et de droit penal, No. 1, avril, 2001.
Grubač, Momcilo, Procedural and legal guarantees of personal liberty of citizens, Legal life, 1998, no. 9;
Ditertr, Gil, Excerpts from the most important decisions of the European Court of Human Rights, Belgrade, 2006;
Lazin, Djordje, Custody in the Yugoslav criminal procedure and international human rights standards, Proceedings of Serbian Association of Criminal Justice, Kopaonik, 1995;
Obradovic, Dragan, ratified international treaties and generally accepted rules of international law and criminal procedure legislation of the State Union of Serbia and Montenegro, the paper with a set of criminal legislation, organization and functioning of the judiciary in the State Union of Serbia and Montenegro, Zlatibor, 18-20. 09 , 2003;
Petric, Branko, detention in criminal proceedings, Novi Sad, right, br.12/87;
Tomic-Malic, M., Police custody and detention in French law, Yugoslav Journal of Criminology and Criminal Justice, Belgrade, 2001, no. 2-3;

Scientific Article
UDK 343.232:656.1(497.7)"2020/2021"
656.13.071.1:613.8]:347.992(497.711)"2020/2021"

DRIVING UNDER ALCOHOL - MISDEMEANORS ON THE TERRITORY OF THE SKOPJE COURT APPEAL FOR THE YEAR 2020 AND 2021

Antigona Jovanovska, MA
Primary Court Bitola, Republic of North Macedonia
antia2000@hotmail.com

Nikola Tuntevski, PhD
Assoc.Prof. Dr.sc.
Faculty of Law Kicevo
University "St. Clement Ohridski "Bitola, North Macedonia
nikola.tuntevski@uklo.edu.mk

Abstract
Driving under alcohol is among the top reasons for traffic accidents and loss of human lives in many countries. Republic of North Macedonia as many legislations in the world has incriminated driving under alcohol in various ways. To get some perspective of how often are committed these misdemeanors on the territory that covers the area of Skopje Court of Appeal for the years od 2020 and 2021, this research has been made to present how high is the number of misdemeanors that have been registered by the authorities in each municipality, for how many of them are submitted requests for misdemeanor procedure to the Courts and how did the Courts end those procedures, whether by sanction and what kind of sanction.

Key words: misdemeanor law, driving under alcohol, safety in the traffic and roads.

INTRODUCTION

Drinking and driving as one of the top reasons for traffic accidents and loss of human lives is punishable by law almost in every country. Still, this act is not taken so seriously by the drivers, that thinking that they can control the vehicle under a “little” consumption of alcohol. It is well known that when a person is under alcohol, one of the many effects is that the ability of the driver to react slows down than in normal circumstances, which is clearly stated by medical science. Driving a motor vehicle requires a full attention, focus and predicament, knowledge of the traffic rules and signs, traffic culture, good eye

sight, ability to react in a matter of a second and other driver's skills. This is impossible with consumption of alcohol that interferes with the brain functions changing the way the body reacts when everything is happening in the matter of a seconds. For example - when driving with speed of 100 km per hour in one second driver is passing 27, 7 meters. So it is not only a question of reaction within a second, but a part of a second, because in a second of time a certain distance has been passed.

In the Republic of North Macedonia (RNM) driving a motor vehicle on the traffic roads under alcohol is incriminated as misdemeanor in article 228 from the Law for safety in the traffic and the roads (LSTR). This research is focused on these misdemeanors on the territory of the Skopje Court of Appeal (SCA). This research contains an explanatory part, which informs about what is predicted by law for this misdemeanor and there is a part with a data for the results from the conducted research of how many misdemeanor charges are submitted by the police to the SCA in each municipality separate and for the period from January 2020 to December 2021. Also in this paper we will explain how those charges ended in front of the Courts mentioned above.

TRAFFIC MISDEMEANORS IN THE MISDEMEANOR LAW OF THE REPUBLIC OF NORTH MACEDONIA

In the RNM, the general conditions for regulating the misdemeanors and the sanctions, as well as the general conditions for the responsibility for the misdemeanors, sanctioning and executing the sanctions and the whole procedure are stipulated in the Misdemeanor Law (ML). For misdemeanors and misdemeanor responsibility which are not regulated with the ML, the regulations from the general part of the Criminal law are applicable.

The traffic offences as misdemeanors as stipulated in the LSTR and by article 1 of this law are arranged several important issues: the safety and the protection on the roads; the basic principles and interactions between the participants and other subjects in the traffic on the roads; traffic signs system; equipment and road signalization; duties in case of a traffic accident etc.

In paragraph 1 of the article 228 of the LSTR it is stated that the driver must not control (drive) a vehicle on the traffic road, nor to start to drive a vehicle if it is under alcohol.

Paragraph 2 of this article explains when the person is considered to be "under alcohol" and in this case it is stated that the person is under alcohol when the contents of the alcohol in the blood is higher than 0.50g/kg. The measurement of the alcohol contents in the blood is made with blood analysis, blood and urine analysis, or by other method for measuring the quantity of alcohol in the organism. As a method of examination of alcohol in blood is acceptable also with other appropriate instrument or device for measuring the state of alcohol in a person (Alco meter or something else), which fits with the

amounts above 0.50g/kg or in which irrelevant of the contents of the alcohol in the blood, with professional exam will be confirmed that the person is showing signs of alcoholic disorder.

Paragraph 3 of this article has more points and it is stated that if the driver is experienced (has more than 2 year's drivers' license) he cannot drive if he has more than 0.50g/kg alcohol in his organism. If the driver is not experienced (under 2 years of drivers' license) he cannot drive if he has more than 0.09g/kg alcohol in his organism or if he manifests signs of alcoholic disorder. In this category are: beginner driver; driver of a motor vehicle of the following categories – "BE", "C1", "C1E", "C", "CE", "D1", "D1E", "D" and "DE" while driving a vehicle of that category; driver who operates a vehicle for a public transportation while doing a public transportation; driver who's operating a vehicle is his basic occupation while driving the vehicle executing the tasks of that occupation; driver instructor and candidate driver while doing a practical assignments for learning the driving of the vehicle; the president and other members of the exam committee during the process of the practical part of the drivers' exam; and driver without drivers' license.

Paragraph 4 of the same article states that this is also punishable for a legal entity which gives an order to, or allows operating a vehicle, oppose to all 3 abovementioned paragraphs. To that legal entity the fine is 3.000 Euros (€) in denar counter value. Also, for the person in charge of that legal entity (responsible person) a fine of 500€ in denar counter value is predicted in paragraph 5 of this article for those same circumstances.

Paragraph 6 of this article states that the fine for a driver who violates paragraph 1 and 3 from this article is 225€ in denar counter value. This applies to a driver who will be found to have alcohol in the blood from 0,51g/kg to 1,00g/kg. In addition, the driver will be sanctioned with Ban for driving a motor vehicle from 3 to 6 months under the conditions and procedure stated by law.

Paragraph 7 of this article states that the fine for a driver who violates paragraph 1 and 3 from this article is 275€ in denar counter value, and this applies for a driver who has alcohol in the blood from 1,01g/kg to 1,50g/kg. In addition, the driver will be sanctioned with Ban for driving a motor vehicle from 6 to 9 months under the conditions and procedure stated by law.

Paragraph 8 of this article states that the fine for a driver who violates paragraph 1 and 3 from this article is 325€ in denar counter value, and this applies to a driver who has alcohol in the blood from 1,51g/kg to 2,00g/kg. In addition, the driver will be sanctioned with Ban for driving a motor vehicle from 9 to 12 months under the conditions and procedure stated by law.

Paragraph 9 of this article states that the fine for a driver who violates paragraph 1 and 3 from this article is 375€ in denar counter value, applicable to a driver who has alcohol in the blood of 2,01g/kg or higher. In addition, the

driver will be sanctioned with Ban for driving a motor vehicle in duration of 12 months under the conditions and procedure stated by law.

Paragraph 10 of this article states that the fine for a driver who violates paragraph 3 from this article is 200€ in denar counter value, and this is applicable for a driver who has alcohol in the blood from 1,10g/kg to 0,50g/kg. In addition the driver will be sanctioned with Ban for driving a motor vehicle in duration of 3 months under the conditions and procedure stated by law.

And the last paragraph of this article, paragraph 11 states that for the driver that doesn't own a driver's license and violates par. 1, 2 or 3 of this article for which is predicted a fine and a sanction Ban for driving a motor vehicle, in addition to the fine it will be sanctioned with a Ban for getting a driver's license for the same duration as predicted in above mentioned perhaps from this article.

When police issues the fine to the offender, the offender has a deadline of 8 days from the issued fine to pay it in half amount. In example, if a driver violated paragraph 6, the fine is 225€, but if the offender pays that fine in the next 8 days of the issuing, he only has to pay 112.5€. With that payment, the offender has been sanctioned with a fine, but because this article predicts mandatory sanction - Ban for driving a motor vehicle alongside with the fine, the police have to conduct the procedure further to the Court with the jurisdiction. Only the Court can proclaim that Ban. So, in cases when the offender paid the fine, he will go to Court only for the Ban, but if the offender has not paid the fine, the Court will issue the fine in full amount (unless other circumstances of economic reasons is proved) alongside with the Ban.

There is another thing to be point out that is considering the fine issuing for the violation of the articles which predict a fine of more than 250 € and that is the article 26 of the ML. Namely, in paragraph 1 of this article it is stated that the fine for a natural person cannot be lower than 15€, nor above 250€ in denar counter value, except if it is predicted otherwise with the EU legislation. In par.2 of this article, it is stated that the fine for the responsible person in legal entity and authorized official person cannot be lower than 15€, nor above 500€ in denar counter value. This means that in example if the offender violated article 228, paragraph 8 and the offender is a natural person, the police will issue a fine of 325€ in order to give an opportunity to be paid in half amount. But, if the offender doesn't pay the fine, the Court can give a fine of maximum 250€, not 325€.

The Law for changes and adding of the LSTR was brought on 16.12.2020 in force from 26.12.2020. Before the changes were made in the LSTR, the police had the option instead of issuing a fine, to register negative points in the drivers' book, so in the previous Law in article 228 it was predicted that it could be issued a fine of writing a certain number of negative points for the same predicted circumstances as in the new Law. With earned

over 100 negative points the police official was submitting a request for a misdemeanor procedure to the Court with jurisdiction for issuing the sanction – stopping of the validity of the drivers' license in the category of the motor vehicle for which those 100 points were registered. The drivers who faced this sanction were able to gain the right to drive a vehicle after they pass the drivers' license exam again, but not before 6 months from the sanction (LSTR, 2015).

VIOLATIONS OF ARTICLE 228 OF THE LAW FOR SAFETY IN THE TRAFFIC AND THE ROADS IN THE AREA OF THE JURISDICTION OF THE SKOPJE COURT APPEAL FOR THE PERIOD FROM JANUARY 2020 TO DECEMBER 2021

In order to make comparison between the numbers of registered violations of the article 228 of the LSTR in the municipalities under the jurisdiction of the SCA, we collected the data from all the Courts in this jurisdiction, for the period of two years from January 2020 to December 2021, which are presented in the continuance. These data was collected about violations on all paragraphs of the article 228 of the LSTR.

First, the data from the Ministry of Interior (MOI) - Police Department were collected, about registered violations of article 228 of the LSTR for above mentioned period in 7 municipalities and city of Skopje, which are under the jurisdiction of the SCA.

On the territory of the MOI Skopje, by the Police Department Unit for safety of the road traffic in 2020 were conducted 1898 controls for "Driving a vehicle under alcohol". Through conducted alcohol tests and blood and urine analysis it was confirmed that 620 people were participating in the traffic with a vehicle under alcohol, and to all of them police issued fines.

In the year 2021 were conducted 7290 controls for "Driving a vehicle under alcohol". Through conducted alcohol tests and blood and urine analysis it was confirmed that 1696 people were participating in the traffic with a vehicle under alcohol, and to all of them police issued fines.

In the table 1, the numbers of registered violations by the police of the article 228 of LSTR are presented, in each municipality on the territory under the jurisdiction of the SCA.

In this table is visible that in every municipality in year 2020 were registered less violations of article 228 of the LSTR, then in year 2021 in which are registered much more, and the numbers are more than doubled.

Table 1 – Registered violations of article 228 of LSTR in each municipality on the territory under the jurisdiction of the SCA for year 2020 and 2021; Police Station

PS	Violations of article 228 in 2020	Violations of article 228 in 2021
Veles	127	391
Negotino	50	175
Kavadarci	98	245
Kumanovo	12	580
Kriva Palanka	28	123
Kratovo	11	37
Gevgelija	8	202
Skopje	620	1696
TOTAL	954	3449

In continuance are presented the number of submitted requests by the police to the Primary Courts (PC) for misdemeanor procedure in every municipality, and the results of the procedures, whether it was ended by sanctioning of the offenders, rejecting of the request, or freeing the offenders.

THE PROCEDURE FOR REGISTERED VIOLATIONS OD ARTICLE 228 OF THE LAW FOR SAFETY IN THE TRAFFIC AND THE ROADS IN REPUBLIC OF NORTH MACEDONIA

When a violation of article 228 of the LSTR is registered by the police officials, they issue a fine to offender and if necessary they will temporarily take the drivers' license of the driver. The license is given back to the driver in the next day and regardless if the fine is being paid or not, a request for misdemeanor procedure is submitted to the Court with jurisdiction.

When the Court receives this request, a Court procedure is taking place. If all legal conditions are fulfilled, the Court will open a case and send an invitation to the offender and to the representative of the MOI from the municipality that issued the request to participate to a scheduled Court session. Both parties can tell their own sides and present their evidence and suggest a witnesses if needed to prove the guilt or innocence. Then the Court will bring a verdict, based on the facts and the situation that will be proved. The verdict can be in favor of the offender – verdict that takes off the charges and sets the offender free, or in favor of the MOI which submitted the request – guilty verdict with which the offender is sanctioned by fine (if not paid), and Ban for driving the category of vehicle that the offender drove when making the violation. These two sanctions are going together and in cases when the offender already paid the fine, only a Ban will be issued. Extend of the sanction

is determined by LSTR. In some cases, the fine can be lowered or allowed to be paid in installments. In some cases it is possible for the Court to not sanction the offender, but that is if the violation was made by negligence and the effects of the violation hits the offender so hard, that the sanction wouldn't have an effect as it should have. This can happen if the violation was made under conditions that make the violation light, in cases that are determined by the ML. Also, the Court can bring a verdict with only a Warning for the offender, but only in specific cases determined by law.

DATA FOR EVERY MUNICIPALITY UNDER THE JURISDICTION OF THE SKOPJE COURT OF APPEAL

For municipality of Kumanovo the data for the year 2020 from the PC of Kumanovo were: 412 requests submitted by the MOI to the PC of Kumanovo and 400 are closed with sanction Ban of driving a motor vehicle, 150 with fines and 12 requests were rejected.

In 2021 were 657 requests submitted by the MOI to the PC of Kumanovo and 539 are closed from which 529 ended with sanction Ban of driving a motor vehicle, 164 with fines and 10 requests were rejected.

For municipality of Negotino the data for the year 2020 from the PC of Negotino were: 87 cases were formed in the PC of Negotino and 87 are closed. One of them ended with verdict that free the offender, 1 ended with Warning, 85 with sanction Ban of driving a motor vehicle and 30 with fines.

In 2021 were formed 160 cases in the PC of Negotino and 99 were closed. One of them ended with verdict that frees the offender, 2 ended with Warning, 96 with sanction Ban of driving a motor vehicle and 58 with fines.

For municipality of Kavadarci the data for the year 2020 from the PC of Kavadarci were: 202 cases were submitted and formed in the PC of Kavadarci and all were closed with verdict sanction Ban of driving a motor vehicle and fines.

The data for the year 2021 from the PC of Kavadarci were: 403 cases were submitted and formed in the PC of Kavadarci and all were closed with verdict sanction Ban of driving a motor vehicle and fines.

For municipality of Veles the data for the year 2020 from the PC of Veles were: 135 cases were submitted and formed in the PC of Veles and 118 were closed. One was stopped, 1 was rejected, 1 ended with free verdict and 115 ended with guilty verdict from which 46 were with sanction Ban of driving a motor vehicle and 69 with fine.

The data for the year 2021 from the PC of Veles were: 521 cases were submitted and formed in the PC of Veles and 198 are closed. One was rejected, 2 ended with free verdict and 195 ended with guilty verdict from which 150 were with sanction Ban of driving a motor vehicle and 45 with fine.

For municipality of Gevgelija the data for the year 2020 from the PC of Gevgelija were: 67 cases were submitted and formed in the PC of Gevgelija. One was rejected, 1 ended with verdict with Warning and 51 ended with sanction Ban of driving a motor vehicle and 13 with fine.

The data for the year 2021 from the PC of Gevgelija were: 98 cases were submitted and formed in the PC of Gevgelija. Seven were rejected, 1 was stopped, 2 ended with verdict with Warning, 5 with confiscating the drivers' license, 59 ended with sanction Ban of driving a motor vehicle and 19 with fine.

For municipality of Kratovo the data for the year 2020 from the PC of Kratovo were: 18 cases were submitted and formed in the PC of Kratovo and all are closed. Three ended with verdict with Warning and 15 ended with sanction Ban of driving a motor vehicle and 9 with fine.

The data for the year 2021 from the PC of Kratovo were: 22 cases were submitted and formed in the PC of Kratovo and all are closed. Four ended with verdict with Warning, 18 Ban of driving a motor vehicle and 13 with fine.

For municipality of Kriva Palanka the data for the year 2020 from the PC of Kriva Palanka were: 48 cases were submitted and formed in the PC of Kriva Palanka and all are closed. Twenty five of them was rejected, and 23 ended with sanction Ban of driving a motor vehicle.

For municipality of Kriva Palanka the data for the year 2021 from the PC of Kriva Palanka were: 131 cases were submitted and formed in the PC of Kriva Palanka and all are closed. Three of them were rejected, 127 ended with sanction Ban of driving a motor vehicle and 24 ended with fine.

For the city of Skopje the data for the year 2020 from the PC of Skopje were: 1946 cases were submitted and formed in the PC of Skopje and 1757 were closed. Twenty seven ended with a freeing verdict, 1241 ended with sanction Ban of driving a motor vehicle, 21 with Ban to perform a profession, certain activity or duty, for 3 the procedure was stopped, 6 were old cases, 321 with fine, for 6 this Court had no jurisdiction, 1 was freed from sanction, 96 were rejected and 7 were ended with a Warning verdict.

For City of Skopje the data for the year 2021 from the PC of Skopje were: 1257 cases were submitted and formed in the PC of Skopje and 718 were closed. Fifty seven ended with a freeing verdict, 186 ended with sanction Ban of driving a motor vehicle, 1 with Ban to perform a profession, certain activity or duty, for 5 the procedure was stopped, 332 with fine, for 12 this Court had no jurisdiction, 1 was freed from sanction, 115 were rejected, 8 were ended with a Warning verdict and one with prison.

RESULTS FROM THE RESEARCH AND DISCUSSION

From the presented results it is visible that in every municipality police issued a request for a misdemeanor procedure to the PC with jurisdiction and in every municipality the numbers of received requests in 2020 is lower than in 2021. It is also visible that most of the PCs solved and closed all the cases, mostly by sanction and rarely by free verdict. In Table 2 are presented these numbers by every municipality. This table shows received requests from the MOI to the PCs for a misdemeanor procedure in all 7 municipalities and City of Skopje in 2020 and 2021 year. Bolded numbers in the column "Received" are indicating that all the received cases were solved and closed. It is visible that the Courts rarely bring the free verdict and mostly these cases end up with a guilty verdict sanctioning the offender by Ban and fine. The City of Skopje as the most populated of all has most registered misdemeanors of the article 228 from the LSTR, and municipality of Kratovo has the lowest number of registered and received misdemeanors of this article.

Table 2 - Results from all 8 municipalities/city for solved PC cases on misdemeanors of article 228 of the LSTR

Municipality/city	Year	Received	Guilty verdict	Free verdict	Rejected	Stopped
Kumanovo	2020	**412**	400	0	12	0
	2021	**539**	529	0	10	0
Negotino	2020	**87**	86	1	0	0
	2021	160	98	1	0	0
Kavadarci	2020	**202**	202	0	0	0
	2021	**403**	403	0	0	0
Veles	2020	135	115	1	1	1
	2021	521	195	2	1	0
Gevgelija	2020	67	65	0	1	0
	2021	98	66	0	7	1
Kratovo	2020	**18**	18	0	0	0
	2021	**22**	22	0	0	0
Kriva Palanka	2020	**48**	23	0	25	0
	2021	**131**	128	0	3	0
Skopje	2020	1946	1619	27	96	3
	2021	1257	529	57	115	5

Using an online percentage calculator[61] and the data from table 2 about the received misdemeanor requests of the article subject to this paper, the following results were calculated:

[61] https://www.calculator.net/percent-calculator

For the municipality of Kumanovo in the year of 2021 had an increase of 30.8% compared to the year of 2020 for a submitted requests to the PC of Kumanovo.

For the City of Skopje in the year of 2021 had a decrease of 35.4% compared to the year of 2020 for a submitted requests to the PC of Skopje.

All the results of the other municipalities are as presented in the Table 2.

This shows that municipality of Veles had the greatest increase in registered violations of article 228 of the LSTR or the greatest increase of submitted requests for a Court procedure to the PC in the year of 2021 compared to 2020, and that increase was for 285.9%. The city of Skopje is the only region in the area of the CSA jurisdiction that has decrease in the year 2021 compared to 2020, and the decrease is by 35.4%. In Table 3 are presented all 7 municipalities and the city of Skopje in order from highest increase to lowest and the city of Skopje with decrease.

Table 3-List from highest to lowest increase and one decrease for registered misdemeanors of article 228 of LSTR in 7 municipalities and the City of Skopje for the year 2021 compared to 2020

Municipality/city	Percentage
Veles	285.9% ↑
Kriva Palanka	172.9% ↑
Kavadarci	99.5% ↑
Negotino	83.9% ↑
Gevgelija	46.2% ↑
Kumanovo	30.8% ↑
Kratovo	22.2% ↑
Skopje	35.4% ↓

COMPARISON WITH NEIGHBORING COUNTRIES

In this part of the paper, we will make a comparison of how it is regulated driving under alcohol in few neighboring countries - Greece, Bulgaria, Serbia and Albania.

In *Greece* it is permitted to drive under alcohol with limit of 0.2% and the fines are starting from 200 € to 2000€. The fine is allowed to be paid in half amount if paid in the next 10 days from the issuing. The Ban for driving a motor vehicle in Greece is issued for repeated drinking offences and the repetition can lead even to imprisonment for up to 6 months. (https://www.internationaldriversassociation.com/greece-driving-guide).

In Bulgaria the legal limit on drivers' blood alcohol content is 0.05%. The sanctions are fine and suspension of driving license for up to 6 months. Driving under alcohol between 0.08% to 0.12% is punishable with fine and license suspension for up to a year and operating a vehicle with alcohol above 0.12% is a crime punishable with imprisonment from 1-3 years and fine from 200 to 1000 Levas (World Science, 2018).

In Serbia the legal limit of alcohol when driving is 29mg/100ml of blood, so when the concentration is higher severe penalties include fine, imprisonment and/or suspension of driving licence (https://www.theaa.com/drinking+and+driving+law+in+serbia).

In Albania the maximum permitted level of alcohol in the bloodstream when driving is 0.1%, so if the level exceeds the allowable, a fine will be imposed from 40USD–190USD and suspend driving license (https://www.internationaldriversassociation.com/ albania-driving-guide).

Many countries have a 0.05% limit for alcohol in the blood while driving like Israel, Egypt, Malaysia, Thailand, South Africa, Argentina, Austria, Denmark, Portugal and France. In Hong Kong if the driver reaches that limit it can be sanctioned by fine and up to three years in jail. In the United Kingdom the limit is 0.08% and the sanctions start with a minimum of 12 months' driving Ban and a maximum penalty of six months' imprisonment with a fine of up to £5,000. In USA alcohol limit when driving is also 0.08% and there are variances on the laws from state to state. Canada has the same limit. (Alcohol Limits - Guide to Alcohol Limits for Driving by County (rhinocarhire.com).

Just as a fact, the law for drinking and driving in Dubai – a city in United Arab Emirates which are known as one of the most strict countries when it comes to laws and punishment their Federal law governs United Arab Emirates Traffic Law specifies the penalties for traffic crimes and the procedures for the violations of the law and it is stated that the drivers must abstain from driving a vehicle under the influence of alcohol, and there is a zero tolerance for driving under alcohol in their practice. In their Traffic Law it is stated that the punishment for drunk driver includes imprisonment and a

minimum fine of AED 25,000. The Court may impose additional penalties as suspension of driver's license for a period not less than three months and not exceeding two years. (https://www.lawyersuae.com/Drinking-and-Driving-Laws-in-Dubai)

CONCLUSIONS

The conducted research brought many results for the violation of article 228 of the LSTR for the period of two years on the area under the jurisdiction of the SCA. It is of great importance to know in which direction these violations are headed and these results showed that in all municipalities under the jurisdiction of the SCA, except for the City of Skopje, the violation of the article 228 from the LSTR is in enormous increase.

The results also showed that the offenders are most often sanctioned with the predicted sanctions – Fine and Ban for driving a motor vehicle, and in rare cases with only a Warning. If the number of these violations continues to grow, then it should be an issue to be resolved and a question to be answered if the sanctions are too low or the police is not performing enough traffic controls on the roads.

Lowering these numbers will mean safer roads, safer streets, safer driving and participating in the traffic. Decrease of these violations may save a lives and it is of crucial significance to act in order to lower this violations as much as it is possible. It is certain that the more often the police traffic controls are, the fewer drivers will consider driving under alcohol. Also, finding more ways to increase the awareness of the drivers to not seat behind the wheel when drinking alcohol will also affect the decrease of these violations.

However, the police conducted more traffic controls in the year of 2021 compared to 2020 (1898 controls in 2020 and 7290 controls in 2021) and if these controls continue to grow, there should be a positive result with lesser violations of this article. In the year 2020 the law allowed the officials not to sanction the offenders with a fine, but with a registering a negative points, but since the changes in the law in 2021 the negative points are no longer an option, so the fine and Ban for driving a motor vehicle are mandatory sanctions for the violation of this article, which is a good thing, because the drivers are finding hard to face the Ban, especially for the ones whose job is requesting driving a motor vehicle.

Our neighboring countries have similar sanctions for driving under alcohol, but imprisonment is not predicted in RNM for this misdemeanor. The hope to lower these violations in our country stays high and it is of great use to continue to monitor and know if these violations continue to grow, so the officials can act in a proper way to protect the participants in the traffic from accidents caused by drunk drivers.

REFERENCES

1. Criminal Code, Official Gazette of the Republic of North Macedonia No.80/99, 4/2002, 81/2005, 60/06, 13/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 & 248/2018
2. Misdemeanor Law, Official Gazette of the Republic of North Macedonia No.96/19
3. The Law for safety in the traffic and on the roads, Official Gazette of the Republic of North Macedonia, No. 169/15, 226/15, 55/16, 11/18, 83/18, 191/18, 70/19, 98/19, 302/20, 122/21)
5. World Science, 2018, "Drunk driving Laws Bulgaria and European Union". doi:10.31435/RSGLOBAL_WS/12062018/5894

INTERNET SOURCES

1. www.pravo.org.mk
2. https://percentagecalculator.net/
3. https://www.lawyersuae.com/Drinking-and-Driving-Laws-in-Dubai
4. https://www.internationaldriversassociation.com/greece-driving-guide
5. https://www.theaa.com/drinking+and+driving+law+in+serbia
6. https://www.internationaldriversassociation.com/albania-driving-guide
7. https://www.rhinocarhire.com

Scientific Article
UDK 316.774:342.727]:321.7
316.774:342.727(497.4)

INDEPENDENT MEDIA – A PILLAR OF DEMOCRACY

Mojca Rep

Associate judge at the District Court Celje, Mediator in criminal cases at the High Court in Ljubljana, mojca_rep@yahoo.com

Abstract
The independence of media represents the absence of external control and influence over the media institution or individual company. It is a measure of the ability to "make decisions and act according to one's own logic," which distinguishes independent media from state media. The concept of media independence has often been challenged as a normative principle in media policy and journalism. Nick Couldry believes that digital transformation together with the technological, political, and social dynamics it brings, diminishes the importance of press as a public good (e.g., by blurring the distinction between journalism and advertising). For this reason, writers such as Daniel Hallin (2006), Kelly McBride and Tom Rosenstiel (2013) believe that other norms (e.g. transparency and participation) are more relevant. Karppinen and Moe (2016) state that therefore, what we talk about as media independence are characteristics of relations between, on the one hand, individual entities, ranging from media institutions through journalistic cultures to individual speakers, on the other hand, their social environment, including the state and the prevailing political culture.
Keywords: media independence, democracy, legislation, European Union.

INTRODUCTION

Today, media freedom is one of the most endangered values of modern societies. Authoritarian leaders are convinced that the media is an instrument of the state and power. However, as the organization Reporters Without Borders notes, hostility towards journalists has become constant in many countries that are considered democratic, and this also applies to Slovenia (Splichal 2020). At the beginning of 2020, the third Janša government took power during the outbreak of an epidemic of the new coronavirus disease in Slovenia. The period between and after the takeover was marked by a large number of controversial actions by the new government. The Ministry of Foreign Affairs sent a letter to the Council of Europe claiming that most of

Slovenia's media space is controlled by the media from the former communist regime, while the Minister of the Interior wrote on Twitter that he also informed the interior ministers about the media struggle and left political pole against a government that successfully curbs the epidemic. When it sent a letter to the Council of Europe and published the article War with the Media on its official website, the government distorted not only the image of the Slovenian media environment, but also the importance of journalism as a public responsibility activity (Gantar 2020). Government politicians and people close to the government were already publicly discrediting and attacking a larger number of journalists and journalist organizations, which led to several warnings from Slovenian and international journalist organizations promoted by politicians (Rep 2020).

HOW TO STRENGTHEN EUROPEAN DEMOCRACY FIRST?

The question arose as to what needs to be regulated at the level of the entire European Union in order to ensure the independence of media. On 10 January, the Commission launched a public consultation on the forthc) oming European Act on Media Freedom, a historic initiative to safeguard media pluralism and independence in the EU's internal market, announced by President Ursula von der Leyen in 2021 in a speech on the situation in the Union. Prior to the consultation, a call for evidence was published on 21 December 2021, outlining the main objectives as well as options and effects of the initiative. Vice-President for Values and Transparency Věra Jourová is of the opinion that the media is the pillar of democracy and that this pillar is, as of late, crumbling as governments and private groups try to put pressure on the media. The Commission has therefore proposed common rules and safeguards to safeguard the independence and pluralism of the media. Journalists should be able to carry out their work impartially and without fear, inform citizens and insist on the responsibilities of leaders. European Commissioner for the Internal Market, Thierry Breton, added that it is necessary to ensure that European media remain independent, innovative and sustainable, and operate without undue interference with their private or public activities, as this is the only way to ensure transparency and independence. The European Union's proposal will be presented in the third quarter of 2022. It will be in line with the EU's efforts to promote democratic participation, combat misinformation and support a free and pluralistic media, as set out in the European Democracy Action Plan. In particular, it will complement the adopted Recommendation on the Protection, Security and Empowerment of Journalists, the proposed Digital Services Package and the forthcoming initiative to protect journalists and human rights defenders from abuse of litigation (i.e. strategic lawsuits to prevent public participation) (European Commission 2022). The European Act on Media Freedom will also be closely

linked to the measures on economic capacity, resilience and digital transformation of the media sector implemented under the Media and Audiovisual Sector Action Plan (European Commission -1 2022).

THE CASE OF THE REPUBLIC OF SLOVENIA

For thirty years – since the establishment of the independent state of Slovenia – media policy and especially the development of Radio and Televison of Slovenia (hereandafter RTV) Slovenia as the most important public media has not been the subject of in-depth professional public discussion based on careful investigation, clear definition of (public) media objectives and confronting key players and alternative development opportunities, especially in the case of public service broadcasting.. Even worse than the absence of critical reflection on the role of the media and public service broadcasting in democratic societies of the modern world and in Slovenia is the ideologisation of debates on the media in general and public service broadcasting in particular and their reduction on media financing and control issues:

- Director of the Slovenian Press Agency (hereandafter STA), Igor Kadunc, and now former director of the Government Communication Office, Uroš Urbanija, signed a contract on 1 February 2022 after more than 300 days of non-financing of the STA on financing the public service provided by the agency. This happened after numerous complications and appeals of both EU representatives and at the end of the Supreme Court ruling I U 1071/2021 (Supreme Coourt 2021), which emphasizes in the explanation, among other things, that the financing of the public service of the STA under the STA Act (2021) is obliged to provide its founder, the Republic of Slovenia.
- On April 24, 2020, the Ministry of Culture announced that it could not provide money for the already concluded tender for co-financing media programs, which was justified by the now former Prime Minister, who posted on the Internet social networks stating that public radio and television were “too many” and that they were “too well paid”, and thus disseminating publications imagining the abolition of the RTV article, and insulting editors and journalists in particular, but also showing tendencies to subjugate and transform the public media service. During the epidemic, it was confirmed that professional journalism is key to informing citizens about matters of vital importance and revealing irregularities that political and economic power seekers have tried to cover up (Mladina 2021).

At the beginning of July 2020, the Ministry of Culture presented proposals for amendments to four key media laws, which confirm the fear of interfering with the authorities in journalistic and media autonomy and freedom of expression. Amendments to these laws are inappropriate, harmful and dangerous:

- By redistributing the RTV contribution and eliminating the activities of transmitters and communications, the Radiotelevison Slovenija Act (2014) would reduce funds for the public RTV institution, weaken it and force it into increased commercialization and expansion of advertising space, to the detriment of the public. Overall, the bills do not offer solutions to the dilemmas and problems that public service broadcasters are already facing today and will be even more challenging in the future.
- The STA Act (2021)would establish direct government control and power over the appointment of key personnel in this central news agency in the country, thereby reducing its independence.
- The Media Act (2021)and the Audiovisual Media Services Act 2021)do not offer solutions for the operation of media and journalism in the modern digital and global environment and the changed economic circumstances during the covid-19 crisis. On the one hand, it would cause economic damage to some central television media and shut down commercial radio networks, and on the other hand, special taxation of cable operators, which would of course affect subscribers, would create the largest state media fund under the direct control of importance that could serve to finance party-affiliated media. As the amendments to the four media laws were poorly and damagingly drafted, all political parties were urged not to support the proposed amendments.

Some of the proposed amendments to the four media laws (Media Act, RTV Slovenia Act, STA Act and Audiovisual Media Services Act) would significantly affect the position of certain media and their independence and ability to carry out their journalistic mission, and thus the right of citizens to information and the functioning of democracy in society. it would lead to the financial weakening of public service broadcasting, reduction of the autonomy of the STA, endangering the operation of some key commercial media and establishing a system of financing tailored to very specific "media", dominated by those affiliated or in the hands of the former largest coalition party. The proposer of laws must act responsibly towards the public, i.e. in the public interest. What consequences can the financial exhaustion of public service broadcasting, the curtailed independence of the STA and the taxpayer-supported flourishing of party newspapers, which offer only propaganda instead of journalism, have for citizens and democracy? The importance of freedom of expression was pointed out by the European Court of Human Rights, which considers freedom of expression as one of the foundations of a democratic society and one of the fundamental conditions for the progress of society and the development of each individual (ECtHR, 1976). States parties to the European Convention on Human Rights have both negative and positive

obligations in the protection of human rights and freedoms (Harris 2014); their negative obligation is to respect human rights, and their positive obligation is to actively ensure the protection of their rights. The state also has positive obligations in protecting freedom of expression (Mowbray 2004), due to the essential importance of freedom of expression as one of the first conditions for the functioning of democracy (EctHR 2011). Thus, it is not enough for state authorities to simply refrain from violating freedom of expression – not to censor the media or to prosecute journalists – but to protect freedom of expression through active conduct (Čeferin et al. 2017).

The European Court of Human Rights has substantiated this position in several judgments, and it can also be traced in the case law of the Constitutional Court of the Republic of Slovenia, for example in case U-I-106/01 (2004), when it found that all branches of government in a democratic society ensure the freedom of the press and of each journalist individually. It follows from Article 39 of the Constitution of the Republic of Slovenia (2021) stipulating that the state must not inadmissibly interfere with the freedom of the press, but also that it must adopt appropriate regulations to ensure that public media can perform their tasks independently, where the positive duties of the state apply especially to the media established by the state. We have two public media in Slovenia, but all media work in the public interest, a fact that both the owners and the politicians or the state should be aware of and which should provide a systemic environment for the development of professional and quality journalism. The state can support the creation of content that is in the public interest and promotes active citizenship in many ways. In any case, stable and quality public services are the basic pillar that provides content outside of commercial production and for audiences for whom there is no interest in the market. A state that dismantles the public media finds it difficult to maintain the status of a democratic state. What has been happening in Slovenia in the field of media for the last year and a half is an attempt to destabilize key media in order to subordinate editorial policies. Independent journalism is in the public interest, whether it is in the public or private media. Stable funding for the public media, however, ensured its editorial independence.

WORLD PRESS FREEDOM INDEX

The index is a snapshot of the situation in 180 countries and territories in the calendar year (January–December) before publication. Nevertheless, it is intended to be considered as an accurate reflection of the situation at the time of publication. Thus, when the state of press freedom in the country changes dramatically between the end of the estimated year and the publication, the data is updated to take into account the latest possible developments. This may be linked to a new war, a coup, a major attack on

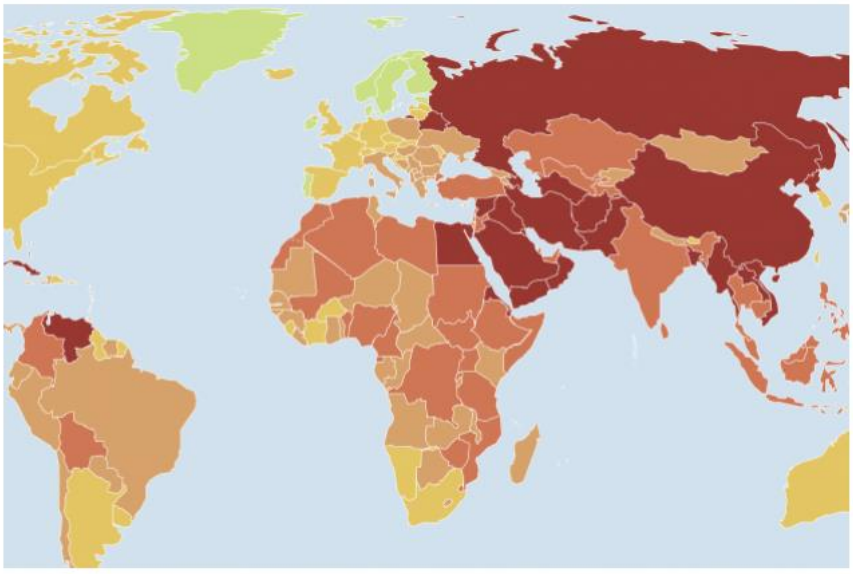
unprecedented journalists, or a very unusual or sudden introduction of extreme repressive policies. For the 2022 index, this exceptional procedure was used with Russia, Ukraine and Mali. The rankings in the index are based on the results from 0 to 100 assigned to each country or territory, with 100 being the best possible result (highest possible level of freedom of the press) and 0 being the worst. This estimate is calculated on the basis of two components (Reportes without Borders Methodology 2022):

• The quantitative sum of abuses against journalists in relation to their work and media outlets;

• A qualitative analysis of the situation in each country or territory based on the responses of press freedom experts (including journalists, researchers, academics and human rights defenders) to the RSF questionnaire, available in 23 languages. The Freedom of the Press Map provides a visual overview of the results of all countries in the index. Colors and classifications are assigned as follows:

• [85–100 points] good (green)
• [70–85 points] satisfactory (yellow)
• [55–70 points] problematic (light orange)
• [40–55 points] hard (dark orange)
• [0–40 points] very serious (dark red)

Figure 1: RSF's 2022 World Press Freedom Index: a new era of polarisation



REPORT

RSF's 2022 World Press Freedom Index

Evaluation criteria: five contextual indicators the assessment of each country or territory is assessed using five contextual indicators that reflect the state of freedom of the press in all its complexity: political context, legal framework, economic context, socio-cultural context and security. An auxiliary score in the range of 0 to 100 is calculated for each indicator. All sub-scores contribute equally to the global score. In each indicator, all questions and sub-questions have the same weight. The political context has 33 questions and sub-questions. Their aim is to assess (Reportes without Borders Methodology 2022):

• The level of support and respect for media autonomy compared to political pressure from the state or other political actors;

• The degree of acceptance of different journalistic approaches that meet professional standards, including politically coordinated approaches and independent approaches;

• The level of support for the media in their role to hold politicians and governments accountable in the public interest.

The legal framework has 25 questions and sub-questions. They relate to the legislative and regulatory environment for journalists, in particular:

• The extent to which journalists and the media are free to work without censorship or judicial sanctions or excessive restrictions on their freedom of expression;

• The possibility of access to information without discrimination between journalists and the possibility of protecting resources;

• The presence or absence of impunity for those responsible for acts of violence against journalists.

The economic context has 25 questions and sub-questions:

• Economic constraints related to government policies (including difficulties in creating media, favoring state subsidies and corruption);

• Economic constraints related to non-state actors (advertisers and business partners);

• Economic constraints related to media owners who want to promote or defend their business interests.

Sociocultural context contains 22 questions and sub-questions. In particular, they want to assess:

• Social constraints resulting from belittling and attacks on the press on issues such as gender, class, ethnicity and religion;

• Cultural constraints, including pressure on journalists, not to question certain bastions of power or influence or to cover certain issues, as this would run counter to the prevailing culture in the country or territory.

The hostile atmosphere towards journalists, encouraged by Former Prime Minister Janez Janša, has led to physical and online attacks, the RSF

report states. Although the legal framework protecting freedom of the press is still strong, the media is subject to political pressure and strategic SLAPP lawsuits. The RSF also points out in the report that the government has arbitrarily stopped the financing of the Slovenian Press Agency for several months and appointed political allies to the management of RTV and supervisory bodies. In addition, media outlets controlled by those close to Prime Minister Janša's SDS party are receiving investments from Hungarian oligarchs loyal to Viktor Orban. However, the lack of transparency in media ownership and the legacy of poorly regulated privatization threaten the independence of some media organizations, the report warns. Journalists investigating corruption or pandemic management have been harassed online by supporters of the Prime Minister, and journalists in particular have received threats. During the COVID-19 pandemic, government-critical journalists pointed to discrimination in access to public information. On the other hand, citizens showed solidarity with journalists and contributed en masse to the STA crowdfunding initiative after the government stopped funding it, the report said. Many governments around the world have used the COVID-19 pandemic to increase repression, and journalism has been blocked in more than 130 countries, according to the annual report Reporters Without Borders (RSF). The report draws attention to the "dangerous path for media freedom" in Slovenia, which fell eighteen places in terms of the media freedom index. Slovenia has indeed fallen from the group of countries with satisfactory media freedom to the problematic countries. (Reporters without borders: Europe - Central Asia Slovenia 2022, Delo 2022). Slovenia's fall in the media freedom index is the result of attacks on journalists and the dismantling of the media space.

CONCLUSION

Until recently, the former state policy subjugated journalism and humiliated journalists in accordance with the interests and perceptions of those in power. Reducing funding means less in-depth reporting and investigative journalism and makes it extremely difficult for journalists to work in the public interest. Investigative journalism, as the most demanding and at the same time the most expensive type of journalistic communication, has an irreplaceable role in democracy, as it exposes failures in society's regulatory systems and ways in which these systems can be deceived by the rich, powerful and corrupt by exposing illegal and / or unethical actions. It is hard to imagine that in the face of declining funding for public service broadcasting and other forms of pressure on journalistic and media independence predicted by the proposed laws, journalists could consistently monitor power and expose how it is abused by those who manage taxpayers' money on behalf of citizens. Today, we need the public media as a public service more than ever in order to provide people

with credible information (not pro et contra, but credible), to give a voice to those excluded from the public communication space, to protect fundamental human rights in public debate, to set program standards and establish functioning internal mechanisms to verify their compliance and carefully nurture the attitude towards its listeners and viewers as citizens and not as consumers, in order to serve the public, i.e. the whole community, and not to themselves or to individual groups. Serving the public is by no means an easy job. Serving the public has taken on a negative connotation in relation to making money. If we are not successful in this struggle as a society, it will be disastrous – not only for journalism, but also for public life. Therefore, it is time for democratic action. For, as George Orwell wrote, "Freedom of the press means freedom of criticism and opposition." It is almost superfluous to repeat that in a democratic society, journalists, as guardians of democracy and guardians of the public interest, play a key role, which can only be successfully performed by those who are independent and responsible at the same time. Only a strong public medium as a sign of a healthy, democratic society.

REFERENCES

1. Audiovisual Media Services Act. Official Gazette no. 87/11, 84/15 and 204/21)
2. Constitutional Court (2004) Judgement (U-I-106/01 from 27. 5. 2. 2004. Retrieved June 5 on https://www.us-rs.si/odlocitev/?q=U-I-106%2F01+%282004&caseId=&df=&dt=&af=&at=&pri=1&vd=U-I&vo=1&vv=V20&vs=&ui=&va=A03&page=1&sort=&order=&id=103093
3. Constitution f the Republic of Slovenia. Official Gazzette no. 33/91.
4. Čeferin, Rok, Melita Poler, Marko Milosavljević .2017. Prekarno delo novinarjev kot grožnja svobodi izražanja/ Precarious work of journalists as a threat to freedom of expression.. Javnost/The Public 24: 47–63.
5. Delo. 3. 5. 2022. »RSF: Slovenija na indeksu medijske svobode padla za 18 mest/ RSF: Slovenia dropped 18 places on the media freedom index«. Retrieved on https://www.delo.si/novice/slovenija/rsf-slovenija-na-indeksu-medijske-svobode-padla-za-18-mest/
6. ECtHR (1976): Case of Handyside v. the United Kingdom, Judgement, Application no. 5493/72. Retrieved Retrievede May 26 on www.echr.coe.int .
7. ECtHR (2011): Positive Obligations on Member States under Article 10 to Protect Journalists and Prevent Impunity Retrievede May 26 ohttp://www.echr.coe. int/Documents/Research_report_article_10_ENG.pdf (.
8. Gantar, Meta. 13. 4. 2020.«Odziv Svetu Evrope ni depeša/The Council of Europe's response is not a dispatch«. Oštro. Retrieved May 26 th 2022 *on* https://www.ostro.si/si/razkrinkavanje/objave/odziv-svetu-evrope-ni-depesa

9. European Commission. 10. 1.2022. »European Media Freedom Act: Commission launches public consultation«. Retrieved May 21 th 2022 *on* https://ec.europa.eu/commission/presscorner/detail/sl/IP_22_85
10. European Commission -1, Revision of the Audiovisual Media Services Directive (AVMSD), Directive (EU) 2018/1808) Press release | Publication 19 May 2022 Retrieved May 24 th 2022 *on* https://digital-strategy.ec.europa.eu/en/policies/revision-avmsd
11. Hallin, Daniel C. 2006. "*The Passing of the 'High Modernism' of American Journalism Revisited*." Political Communication Report 16 (1).
12. *Karppinen, Kari; Moe, Hallvard .2016. "What We Talk About When Talk About "Media Independence": Javnost - The Public. Journal of the European Institute for Communication and Culture". 23 (2): 105–119.*
13. Mass Media Act . Official Gazzette. no. 110/06.
14. McBride, Kelly, and Tom Rosenstiel. 2013. "*Introduction: New Guiding Principles for a New Era of Journalism*." In The New Ethics of Journalism. Principles for the 21st Century, edited by KellyMcBride and Tom Rosenstiel, 1–6. London: Sage
15. Mladina (2021). »Svoboda tiska pomeni svobodo kritike in nasprotovanja/ Freedom of the press means freedom of criticism and opposition«- Statement of the Department of Journalism at the Faculty of Social Sciences (FDV) on current political statements on media and journalism..đ Retrieved June 5 onhttps://www.mladina.si/198334/svoboda-tiska-pomeni-svobodo-kritike-in-nasprotovanja/
16. Mowbray, Alastair. 2004. »The Development of Positive Obligations under the
17. European Convention on Human Rights by the European Court of Human Rights«.
18. Oxford: Hart Publishing.
19. Radiotelevizija Slovenija Act. Official Gazzete nm. 96/05, 109/05, 105/06 ,26/09, 9/14
20. »Reportes without borders, Metodology 2022.Retrieved June 3: https://rsf.org/en/index-methodologie-2022?year=2022&data_type=
21. Rep, Mojca. 2020. »Protest - Part of fundamental human Freedoms". *X International Scientific Conference.* University of Criminal Investigation and Police Studies Belgrade, 2020. ARCHIBALD REISS DAYS 18-19 NOVEMBER 2020. 89, 98
22. Slovenian Press Agency Act. Official Gazzete nm.. 50/11 and 36/21.
23. RSF's 2022 World Press Freedom Index : a new era of polarisation«. 2022. Retrieved June 4 on : https://rsf.org/en/rsf%E2%80%99s-2022-world-press-freedom-index-new-era-polarisation?year=2022&data_type=general.
24. »Reporters without borders: Europe - Central Asia-Slovenia« . 2022. Retrieved June 5 2 on https://rsf.org/en/country/slovenia.

25. *Splichal, Slavko ed.. 2020. »PREMISLEKI o prihodnosti javnih medijev/*CONSIDERATIONS in the future of public media«. Faculty of Social Sciences:Publishing House FDV. Retrieved May 27 th 2022 *on* https://www.fdv.uni-lj.si/docs/default-source/zalozba/premisleki-o-prihodnosti-javnih-medijev---za-web.pdf
26. Supreme Court Decision I U 1071/2021. 2021. Retrieved June 6 th 2022 on https://www.sodnapraksa.si/?q=%20I%20U%201071/2021&database[SOVS]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111450376

Scientific Article
UDK 336.71.055.2:504.06(100)

DEVELOPMENT FINANCE INSTITUTIONS, ENVIRONMENTAL INEQUALITIES AND JUST GREEN TRANSITION[62]

Ivana Ostojić, PhD, Special Consultant
Institute of Social Sciences, Belgrade, ivanaostojic27@yahoo.com
Predrag Jovanović, PhD, Principal Research Fellow
Institute of Social Sciences, Belgrade, avepedja@gmail.com
Branka Matijević, MSc, Research Assistant
Institute of Social Sciences, Belgrade, bmatijevic@idn.org.rs

Abstract
The pandemic has caused an extremely negative socio-economic impact on employment, poverty, and inequality, but also on private sector investment necessary for sustainable development. Numerous studies have confirmed that the growth of inequalities is negatively correlated with the gross domestic product growth, prolongs the duration of the recession, and undermines the effectiveness of the fight against poverty. High and growing inequality inhibits society's progress towards the goals of sustainable development. The subject of analysis are environmental inequalities and their impact on poverty, economic growth, just green transition process, and sustainable development. The role of development finance institutions in supporting sustainable development and raising awareness of a green economy concept is also discussed.

Key words: *development finance institutions, environmental inequalities, green economy, green investments, sustainable development, just transition*

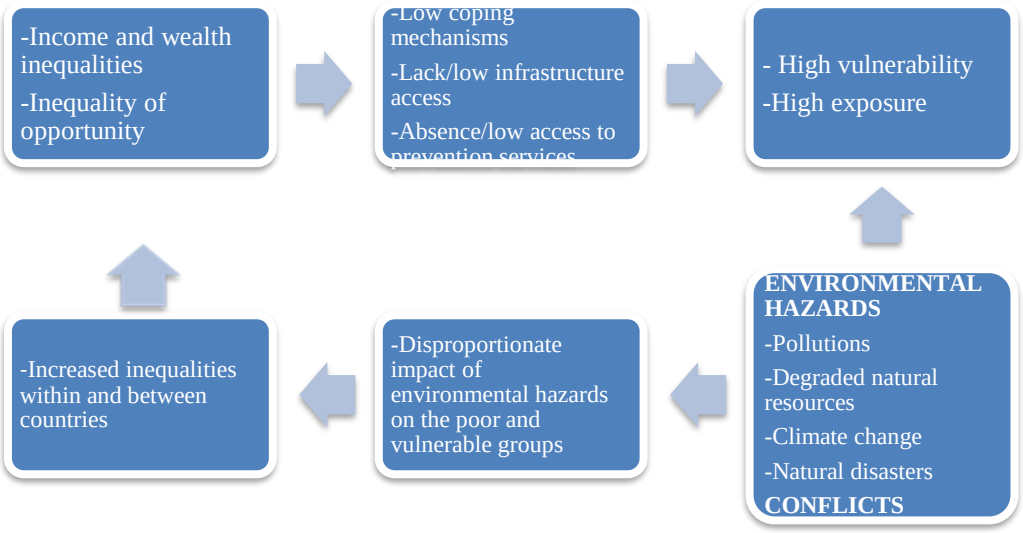
INTRODUCTION

Sustainability of the macroeconomic system, while ensuring economic growth, implies the focus of public policymakers not only on the area of constant profit maximization measured by the gross domestic product growth rate, and represented by the dominant capitalist and neoliberal concept of production and business in general but also, reduction of poverty and social

[62]This paper was written as part of the 2022 Research Program of the Institute of Social Sciences with the support of the Ministry of Education, Science and Technological Development of the Republic of Serbia

disparities, i.e., inequalities, as well as environmental protection. Green transition and transformation of the economic system from the aspect of sustainability implies the establishment of a new model of production and business which, in addition to achieving purely economic goals of profit maximization, does not exclude the social component of development based on inclusive and equitable inclusion of different social groups (Ostojić 2022, 126).

Green economy is the opposed to today's dominant economic model, which generates and promotes widespread environmental and health risks, encourages wasteful consumption and production, and results in resource deficits and inequalities (World Bank 2012). Negative consequences caused by air pollution, which include impacts on labour productivity, health expenditures and agricultural crop yields, are projected to lead to global economic costs that gradually increase to 1% of global gross domestic product by 2060 (OECD, 2016). Also, water pollution and economic growth are intrinsically linked. When rivers become highly polluted, regions lose 0.8%-2% of economic growth. These losses imply that the costs of environmental degradation are severely under-estimated (World Bank Group 2019).



Graph 1: Inequalities and environmental hazards

Source: ESCAP, https://www.unescap.org/sites/default/d8files/knowledge-products/ThemeStudyOnInequality.pdf

Inequalities have many negative implications for the economy. In recent decades, the level of global income inequality has always been high. The share of the richest 10% of the population in global income fluctuated between 50% and 60%. Global wealth inequalities are even more pronounced than income inequalities. The poorest half of the world's population owes almost no wealth, while 10% of the population owns 76% of the total wealth (World Inequality Lab 2021). Inequality of opportunity references unequal access to fundamental rights and services-education, health care, water, energy, information and communications technology, finance, credit. The inequality of income, wealth, education, healthcare, financial resources leads to the formation of disadvantaged groups of people that are highly vulnerable and disproportionately exposed to environmental hazards (Graph 1). The devastated environment endangers the health, existence, and well-being of the mentioned groups, and this further accelerates the growth of inequality, creating a vicious circle (ESCAP 2018). In the following, the relation between the business activities of development finance institutions focused on achieving sustainable development goals and the concept of a green economy, and the impact of environmental inequalities on the process of just green transition will be presented.

THE ROLE OF DEVELOPMENT FINANCE INSTITUTIONS IN FOSTERING GREEN GROWTH AND BUILDING AWARENESS OF THE GREEN ECONOMY CONCEPT

Development Finance Institutions (DFIs) are legally independent, state-supported institutions that foster sustainable development through private sector investments in underdeveloped countries. Their role is not only financial and investment, but this type of institution is also focused on achieving sustainable development goals (SDGs) such as job creation, poverty reduction, financing of micro, small and medium enterprises and entrepreneurs (MSMEs), growth of public revenues due to investment growth in the private sector, environmental protection, energy efficiency, renewable energy sources, climate finance to support actions that should be taken to adapt to climate change and effectively mitigate the negative consequences (Savoy, Carter and Lemma 2016, 8). The development goal of their existence is reflected in bridging the gap between aid agencies and commercial investments and providing support in ensuring stable, sustainable, and inclusive economic development. The financial goal is reflected in the fact that these institutions as investors or co-investors, through project activities, provide companies and financial institutions with

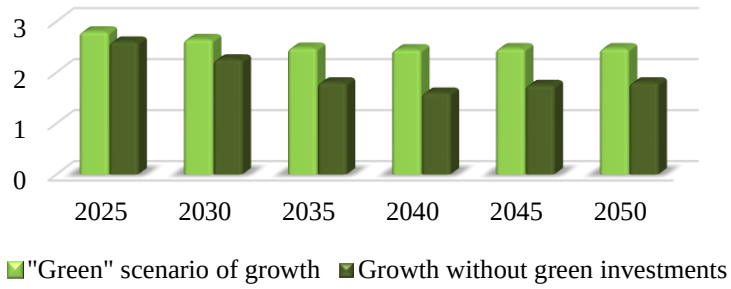
commercial financing and thus support the growth of their business and development performance (Dalberg 2009, 8). Considering that many private investors are not willing to take on risky investments, development finance institutions provide financial support in undercapitalized business areas with high risk (clean energy, healthcare, urban resilience, sustainable land-use).

According to World Bank research, 9 out of 10 new jobs in developing countries are generated by the private sector, so it can be concluded that the private sector plays a key role in promoting sustainable economic development and one of the important questions is how to most effectively stimulate its growth (IFC 2013). Development finance institutions promote investments, not only through financial support, but also through improving the business environment and environmental corporate social responsibility which is the focus of the green economy concept. Since the growth of population, gross domestic product per capita and energy intensity cause an increase in CO_2 emissions, one of the key issues is how to reach a compromise between economic development and good environmental quality (Petrović, Nikolić, and Ostojić 2018, 73-74).

The green economy is recognized as a means to achieve sustainable development. The United Nations has developed a definition of a green economy that implies improving human well-being, social equality, and development with a significant reduction in environmental risks (Sarangi 2019, 45). The green economy is the way to achieve the Sustainable Development Goals - 2030 Agenda and eradicate extreme poverty, ensure human health, well-being, and economic development. Green growth emphasizes natural resources efficiency and minimizes environmental pollution. Economic growth drives poverty reduction, but this effect depends on the levels of inequality (World Bank 2012). The pandemic has affected employment and income inequality in developed and less developed countries in various ways. With significantly more negative consequences, it affected less-educated workers with lower-paid jobs than the educated categories of the able-bodied population. In developed countries, highly educated employees with better-paid jobs switch to a specific form of work during the pandemic - work from home. In that way, the pandemic did not reduce the income of this category of employees. In contrast, the pandemic has affected the income of workers with low levels of education and qualifications, but in developed countries, this decline has been offset by government aid programs (Milanović 2021). Therefore, it can be concluded that in developed countries, the pandemic not only did not affect the growth of income inequality but also reduced it to a certain extent (NBER 2021). In underdeveloped countries, the limited possibility of switching to remote work in cooperation with the lack of government

financial support for vulnerable categories of society, led to the growth of income inequality, mostly affecting employees with low levels of education and low incomes (Watts and Fiala 2020).

Economic growth has to be inclusive to ensure sustainable jobs, equality, and the wellbeing of the entire population. Development finance institutions contribute to the green economy transition financing the projects in the field of renewable energy sources and energy efficiency that mitigate CO_2 and CO_2 equivalent emissions. Socially and environmentally responsible management, transparent company structures and standards help ensure accountable business practices. Commercially viable investments in underdeveloped countries attract private investors, which significantly supports the mobilization of domestic resources (EDFI, 2016).

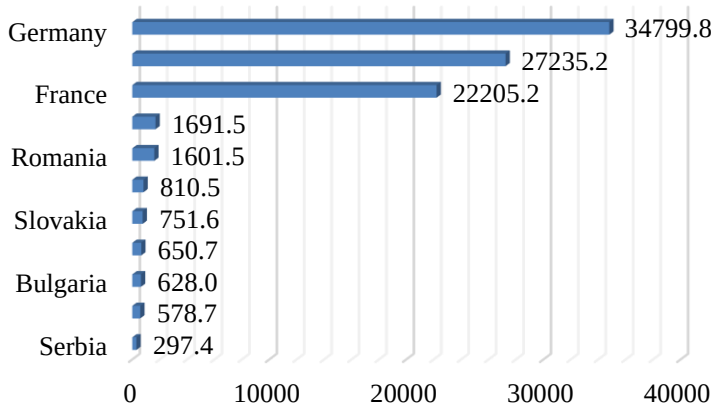


Graph 2: Gross domestic product growth projections by 2050.

Source: PwC, https://www.pwc.com/gx/en/world-2050/assets/pwc-the-world-in-2050-full-report-feb-2017.pdf

Green growth is based on taking advantage of the economic opportunities presented by the large investments required for a low-carbon transformation (Deichmann and Zhang, 8). Green investments cause a number of positive economic effects such as growth of gross domestic product, growth of the renewable energy in total energy consumption, as well as reduction of greenhouse gas emissions (Lyeonov, Pimonenko, Bilan, Štreimikienė, and Mentel 2019, 5-7). At the global level, half of green investments are related to energy efficiency and renewable energy sources, while the other half focuses on reducing waste and improving waste management, public transport infrastructure and natural capital-related sectors such as agriculture, fisheries, water and forestry. The circular economy has the potential to contribute to the development of a sustainable, low-carbon, resource-efficient, competitive economy. Innovations and green investments (in eco design, secondary raw materials,

recycling processes and industrial symbiosis) are the main channels of transition from a linear to a circular economy (Mitrović and Pešalj 2021). The most advanced European country in the transformation towards a circular economy is Germany, thus achieving a reduction in negative environmental impacts, revenue growth, reducing resource dependence, reducing waste production and creating green jobs (Graph 3).



Graph 3: Private investments, jobs and gross value added related to circular economy sectors in million euro, 2018.

Source: EUROSTAT, https://ec.europa.eu/eurostat/databrowser/view/cei_cie010/default/table?lang=en

Blended finance is an important mechanism for stimulating the growth of private sector investments through sustainable development projects where development finance institutions play a significant role. Over the past few decades, there has been a gradual shift in development finance. Public sector is no longer the primary financial resource and interest in the private sector investments is intensified (Savoy and Milner 2018, 1-2). Blended finance is "the use of catalytic funding (e.g., grants and concessional capital) from public and philanthropic sources to mobilize additional private sector investment to realize the sustainable development goals" (Convergence 2021). An approach that mixes different forms of capital (concessional finance sourced from governments or other public sources with commercial finance from the private sector) in support of development becomes an important solution to an inclusive green economy that ensures equality of opportunities.

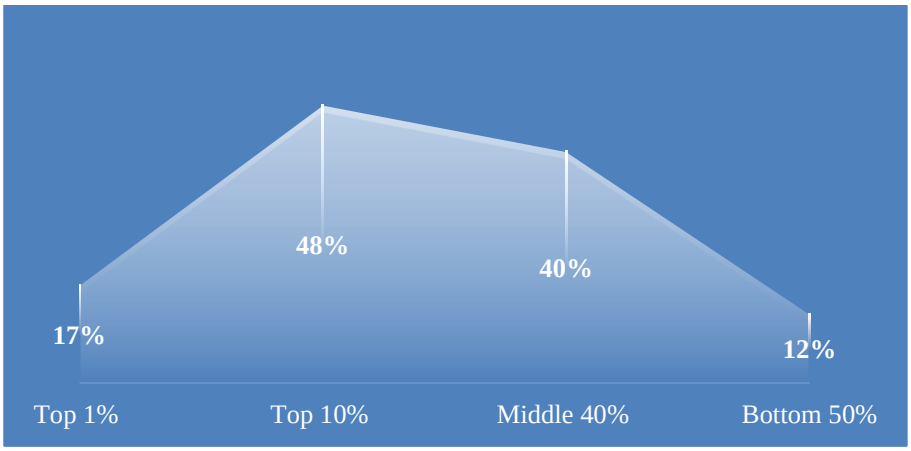
Funding for sustainable development goals is a significant undertaking. Annual deficit of 2.5-3 trillion dollars for financing sustainable development goals should be offset by investments. The potential of blended finance to fill the investment gap and accelerate development unlocking and scaling up private investments has been recognized. Goals most targeted by blended finance funds and facilities are those focusing on jobs and economic growth (SDG 8), infrastructure (SDG 6, 7, 9, 11), climate change (SDG 13), and goals that cut across most others (SDG 1, 2, 17) (OECD 2018). As a tool on the pathway to net zero goal, development finance institutions have a significant contribution to the climate finance flows. Half of the climate finance (51%) is provided by the public sector. The dominant share is held by development financial institutions, which finance 69% of public flows (219 billion dollars), while the rest is provided by state-owned financial institutions (14%) and governments (17%) (Climate Policy Initiative 2021).

ENVIRONMENTAL INEQUALITIES AND JUST GREEN TRANSITION

Income distribution and environmental disruption are increasingly pointed out as obstacles in securing sustainable development goals and environmental preservation. Analyzing the relationship between income inequalities and ecological footprint, it is suggested that inequality promotes environmental pollution. Further financial development also escalates carbon emissions (Idrees and Majeed 2022, 10-13; DESA 2015). The just green transition, and the deep transformation of economic systems and societies, can also alleviate existing inequalities in well-being outcomes, due to the interconnected nature of economic, social, and environmental challenges is reflected in SDGs (OECD 2021). The greening of economies can enhance ability to manage natural resources sustainably, increase energy efficiency and reduce waste, while also promoting social justice and addressing poverty and inequality in a way that is as fair and inclusive as possible to everyone concerned (ILO 2018).

Ecological inequality are defined as “any imbalance or disparity among inhabitants of the same living environment deemed inappropriate, unjust or detrimental to that environment's integrity” (EEA 2022). Environmental inequality includes inequality in access to natural resources, exposure to pollution, contributions to environmental degradation, and disasters due to unsustainable use of natural resources (Zechariah, Amegavi, Donkor, and Mensah 2021). By 2021, about 50 billion tons of CO_2 were produced. Three quarters came from the energy sector and fossil fuel combustion, 12% from the agricultural sector, 9% from the industrial

sector (mostly as a result of cement production) and 4% from waste management. Historically, CO_2 emissions per capita amounted to 0.8 tons in 1850, before rising to 2.7 tons in 1900, and during 1950 it recorded additional growth and reached the level of 4.3 tons. In the eighties of the twentieth century, there was a further increase in carbon emissions per capita (6.8 tons), and after falling to 5.8 tons in 2000, there was a renewed increase in 2019 to 6.6 tons. The reduction in emissions from the mid-1970s to 1980 is a result of improvements in energy efficiency after the oil crisis of the 1970s, as well as faster population growth in regions with below-average emissions of harmful gases (World Inequality Lab 2021).



Graph 4. Global carbon inequality, 2019 (contribution to world emissions)

Source: World Inequality Lab

https://wid.world/document/climate-change-the-global-inequality-of-carbon-emissions-1990-2020-world-inequality-lab-working-paper-2021-21/

Taking into account the latest available data, global inequality in carbon emissions is evident, since 10% of the population is responsible for almost half of all emissions. Carbon dioxide emissions of one-tenth of the total population are almost equal as the emissions of the middle 40% and the bottom 50% together (Graph 4). If we look at the period from 1990 to 2019, it can be stated that global emissions per capita increased by only 6%. What attracts attention is that observed by groups, there are large differences in carbon emissions. Namely, the production of carbon dioxide per capita 0.01% of the richest in the world's population has almost doubled to about 2.500 tons, while half of the poorest population produces only 1.6 tons per

capita. Also, if the focus of the analysis is the comparison of the contribution to the growth of global CO_2 emissions for the period 1990-to 2019, one-hundredth of the world's population (77 million individuals) is responsible for 21% growth in carbon dioxide emissions, while the contribution of the poorest half of the world's population (3.8 billion individuals) is only 16% (Table 1).

Table 1. ***Emissions growth and inequality, 1990-2019.***

	Emission per capita (tons CO_2)		Total emissions (billion tons CO_2)		Growth in emissions per capita	Growth in total emissions	Share in emission growth
	1990	2019	1990	2019	(1990-2019)	(1990-2019)	(1990-2019)
Population	6.2	6.6	32	50.5	7%	58%	100%
Bottom 50%	1.2	1.6	3.1	6.1	32%	96%	16%
Middle 40%	6	6.6	13.3	20.4	4%	54%	39%
Top 10%	30	31	15.7	24	4%	54%	45%
Top 1%	87	110	4.5	8.5	26%	87%	21%
Top 0.1%	323	467	1.7	3.6	45%	114%	10%
Top 0.01%	1397	2531	0.7	2	81%	168%	7%

Source: World Inequality Lab

In 1990, most global carbon inequality was caused by differences between countries. The differences between rich and poor countries were much more pronounced, and a much larger share of greenhouse gas emissions is attributed to the inhabitants of countries with higher gross domestic product. After three decades the situation is changing. In addition to large inequalities in carbon emissions between countries, there are also large inequalities within countries (World Inequality Lab 2021). Just transition to a greener economies requires the integration of environmental goals of sustainable development with economic and social policies and can affect the higher tax rate of rich and developed countries, whose activities most endanger the environment. In this way, countries can be influenced to reduce the production and consumption of products and services with negative environmental consequences or to allocate financial resources for

the development of green technologies that will produce fewer side effects on environmental pollution (Milanović 2021). What supports the issue of progressive taxation is certainly the growing concentration of wealth, as well as the fact that after the public health crisis caused by the pandemic, national income is declining, while the value of private wealth is growing, especially among the richest people. Since wealthy people have higher savings rates, redistribution policies, such as wealth taxes and taxes on capital income, as well as public policies such as rent control and regulation, can have a limiting effect on capital accumulation. If inequalities continue to grow, there is a possibility that the threat of owning more than a quarter of global wealth by the top 0.1% by 2070 will come true (World Inequality Lab 2021).

The Covid-19 crisis is an opportunity to move to a low-carbon economy and combat the climate crisis. Many investors see the current situation as an opportunity for investments with an environmental dimension. According to estimates, in the next ten years, a large number of new jobs can be created in the solar energy sector, which far exceeds the number of lost jobs caused by the green transition and leaving the fossil fuel industry (IRENA 2019). Green transition can contribute significantly to green jobs, poverty eradication and social inclusion.

CONCLUSION

The green economy establishes a link and an appropriate balance between ecology and the economy to increase social welfare, reduce poverty and achieve social justice. The green transition is the way to achieve the 2030 Sustainable Development Agenda and eradicate extreme poverty while achieving environmental goals that ensure human health, well-being, and development, because green investments cause positive economic effects such as gross domestic product growth, increasing the share of energy from renewable sources in total energy consumption, as well as reducing greenhouse gas emissions. Analyzing the overall structure of development funds, in countries with low inflows of foreign direct investment and low levels of revenue collected by the government through taxes and other sources, development finance institutions are an important driver of development whose potential underdeveloped countries should use for their progress. The representation of the development finance institution, i.e. the development bank, in the financial system is important not only for economic growth but also in the context of the gradual transition to the green economy, theory of tripartite green economy and reform of the economic system in terms of including the social component of development, i.e. active action against environmental and social degradation, inequality, and poverty. Investing in the private sector,

development finance institutions contribute to overall economic and social progress. Employees benefit through the creation of new jobs, higher salaries, and other benefits that are not directly related to income - improving working conditions, and exercising their safety and health rights. The government collects higher tax revenues. The increased business volume of companies that are financed by development finance institutions' sustainable projects affects positively the business activities of other members of the value chain. That is reflected in the growth of demand for suppliers' products and services. Due to the growing competition, customers have access to quality improved products that are environmentally sustainable and more affordable. Significant benefits are also realized for the community through environmental protection, construction, and improvement of production and social infrastructure.

Income and wealth inequalities have been on the rise since the 1980s. Due to the low wealth of governments, the question is whether states have the capacity to tackle inequalities as well as key 21st-century challenges such as climate change. Further, the climate change issue requires tackling high inequalities in carbon emissions. One tenth of the population is responsible for almost half (48%) of all emissions of harmful gases into the atmosphere, producing 31 tons of CO_2 per capita per year. Current annual per capita carbon emissions are twice as high as the limits imposed by global average temperatures increasing below 2°C by 2050. The great wealth is associated with high pollution rates. Progressive taxation could generate significant public revenues that can be reinvested in education and health infrastructure improvement and the green transition.

REFERENCES

1.1 Branko Milanović, International scientific conference "Sustainable recovery in post-pandemic era: Green economy challenges", December 7-8. 2021.

1.2 Climate Policy Initiative. 2021. "Global Landscape od Climate Finance." https://www.climatepolicyinitiative.org/wp-content/uploads/2021/10/Full-report-Global-Landscape-of-Climate-Finance-2021.pdf

1.3 Convergence. 2021. "Blending Global Finance: *The State of Blended Finance 2021*." https://www.convergence.finance/resource/0bbf487e-d76d-4e84-ba9e-bd6d8cf75ea0/view/relevant-deals

1.4 Dalberg. 2009. "The Growing Role of the Development Finance Institutions in International Development Policy." Accessed May 3, 2022.

1.5 https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-the-growing-role-of-the-development-finance-institutions-in-international-development-policy-2009.pdf
1.6 Deichmann, Uwe, and Fan Zhang. 2013. *Growing Green: The Economic Benefits of Climate Action*. Washington: World Bank.
1.7 DESA. 2015. "Inequality and Environmental Sustainability." Accessed May 18, 2022.
1.8 https://www.un.org/esa/desa/papers/2015/wp145_2015.pdf
1.9 EDFI. 2016. "Investing to create jobs, boost growth and fight poverty." https://edfi-website-v1.s3.fr-par.scw.cloud/uploads/2017/10/EDFI-Flagship-Report-2016.pdf
1.10 EEA. 2022. "Ecological inequality." Accessed April 9, 2022.
1.11 https://www.eea.europa.eu/help/glossary/gemet-environmental-thesaurus/ecological-inequality)
1.12 ESCAP, 2018. "Inequality in Asia and the Pacific in the era of the 2030 agenda for sustainable development." Accessed April 26, 2022. https://www.unescap.org/sites/default/d8files/knowledge-products/ThemeStudyOnInequality.pdf
1.13 EUROSTAT. 2018. "Private investments, jobs and gross value added related to circular economy sectors in million euro."
1.14 https://ec.europa.eu/eurostat/databrowser/view/cei_cie010/default/table?lang=en
1.15 Idrees, Muhhamad, and Tariq Muhhamad Majeed. 2022. "Income inequality, financial development, and ecological footprint: fresh evidence from an asymmetric analysis." *Environmental Science and Pollution Research* 29 (507): 1-15. https://doi.org/10.1007/s11356-021-18288-3
1.16 IFC. 2013. "IFC Jobs Study: Assessing Private Sector Contributions to Job Creation and Poverty Reduction." Accessed April 23, 2022.
1.17 https://openknowledge.worldbank.org/handle/10986/16979
1.18 ILO. 2018. "Just transition towards environmentally sustainable economies and societies for all." Accessed April 18, 2022.
1.19 https://www.ilo.org/actrav/pubs/WCMS_647648/lang--en/index.htm
1.20 IRENA. 2019. "Global Energy Transformation: A Roadmap to 2050. " Accessed June 1, 2022. https://www.irena.org/publications/2019/Apr/Global-energy-transformation-A-roadmap-to-2050-2019Edition
1.21 Lyeonov, Serhiy, Tetyana Pimonenko, Yuriy Bilan, Dalia Štreimikienė, and Grzegorz Mentel. 2019. „Assessment of Green Investments' Impact on Sustainable Development: Linking Gross

Domestic Product Per Capita, Greenhouse Gas Emissions and Renewable Energy.“ *Energies*. 12 (20): 1-12. https://doi.org/10.3390/en12203891.

1.22 Mitrović, Đorđe and Biljana Pešalj. 2021. *Circular economy - principles, measurement and implementation*. Belgrade: Faculty of Economics University of Belgrade.

1.23 NBER. 2021. “Covid-19 and global income inequality.” Accessed May 22, 2022. https://www.nber.org/papers/w28392

1.24 OECD. 2016. “The economic consequences of outdoor air pollution.” Accessed June 1, 2022. https://www.oecd.org/environment/indicators-modelling-outlooks/Policy-Highlights-Economic-consequences-of-outdoor-air-pollution-web.pdf

1.25 OECD. 2018. “Making Blended Finance Work for the Sustainable Development Goals.” Accessed June 1, 2022. https://doi.org/10.1787/9789264288768-en

1.26 OECD. 2021. “The Inequality-Environment Nexus: Towards a people-centred green transition.” Accessed March 15, 2022. https://doi.org/10.1787/ca9d8479-en

1.27 Ostojić, Ivana. 2022. “The role of development finance institutions in supporting sustainable development.” PhD diss., Singidunum University.

1.28 Petrović, Predrag, Goran Nikolić, and Ivana Ostojić. 2018. “Emissions of CO2 in the European Union: Empirical analysis of demographic, economic and technological factors.” *Stanovništvo* 56, no.1: 63-82. https://doi.org/10.2298/STNV180614005P .

1.29 PwC. 2017. “The Long View: How will the global economic order change by 2050?” https://www.pwc.com/gx/en/world-2050/assets/pwc-the-world-in-2050-full-report-feb-2017.pdf

1.30 Sarangi, U. 2019. “Green Economy, Environment and International Trade for Global Sustainable Development.” *Journal of International Economics*, 10 (2): 44-60.

1.31 Savoy, Conor, and Aaron Milner. 2018. *Blended Finance and Aligning Private Investment with Global Development.* Washington: Center for Strategic and International Studies.

1.32 Savoy, Conor, Paddy Carter, and Alberto Lemma. 2016. *Development Finance Institutions Come of Age: Policy Engagement, Impact and New Directions*. Washington: Center for Strategic and International Studies.

1.33 Watts, Richard, and Oliver Fiala. 2020. “Financing Social Spending in Times of COVID-19.” Accessed April 1, 2022.

https://resourcecentre.savethechildren.net/pdf/financing_social_spending_in_times_of_covid-19.pdf/
1.34 World Bank. 2012. “Inclusive Green Growth: The Pathway to Sustainable Development.” Accessed March 30, 2022.
1.35 https://openknowledge.worldbank.org/handle/10986/6058
1.36 World Bank Group. 2019. “The Impact of Water Quality on GDP Growth.” Accessed May 30, 2022.
1.37 https://documents1.worldbank.org/curated/ar/656191576065317601/pdf/The-Impact-of-Water-Quality-on-GDP-Growth-Evidence-from-Around-the-World.pdf
1.38 World Inequality Lab. 2021. “Climate change & the global inequality of carbon emissions 1990-2020.” Accessed March 27, 2022.
1.39 https://wid.world/document/climate-change-the-global-inequality-of-carbon-emissions-1990-2020-world-inequality-lab-working-paper-2021-21/
1.40 World Inequality Lab. 2021. “World Inequality Report 2022.” Accessed March 27, 2022. https://wir2022.wid.world/www-site/uploads/2022/03/0098-21_WIL_RIM_RAPPORT_A4.pdf
1.41 Zechariah, Langnel, George Babington Amegavi, Prince Donkor, and James Kwame Mensah. 2021. "Income inequality, human capital, natural resource abundance, and ecological footprint in ECOWAS member countries," *Resources Policy* 74. https://doi.org/10.1016/j.resourpol.2021.102255

Scientific Article
UDK 342.72/.73:[616.98:578.834-036.21(100)
342.729(85))

INTERDISCIPLINARY ANALYSIS OF THE FUNDAMENTAL RIGHT TO CITIZEN PROTEST

Jorge Isaac Torres Manrique*
President of the Interdisciplinary School of Fundamental Rights
Praeeminentia Iustitia (Peru)
kimblellmen@outlook.com

Abstract
The painful and endless period that the world is going through due to the effects of COVID-19, has been charging various negative collateral effects. In this regard, it is unfortunate that it had to be the State itself that, far from safeguarding the fundamental rights of the population, directed its management towards the systematic violation of them.
However, it is also possible to approach the scenario from the new demands that the effects of the corresponding confinement cause. In this sense, it is noted that this has deserved that they have had to recognize various fundamental rights, which before the pandemic did not have such quality and thus also "recognize" other rights that, although it is true, were already recognized, not in the recent extremes.
In this installment, we unravel this theme, developing it, in addition to the rights that it deserves to be urgently recognized and the priority that its attention should have.

* Consultor jurídico. Abogado por la UCSM (Arequipa). Doctorados en Derecho y Administración, por la UNFV (Lima). Presidente de la Escuela Interdisciplinar de Derechos Fundamentales Praeeminentia Iustitia (Perú). Director de la Biblioteca: "Recientes y próximos escenarios de los Ordenamientos Jurídicos", publicada por Ediciones Olejnik (Chile). Director Académico de la Revista Dogmática Penal latinoamericana (Perú). Diamont Ambassador of the Organization of World Ambassadors (Argentina). Miembro del Comité Editorial de la EDUCS- Editora da Universidade de Caxias do Sul (Brasil). Miembro del Consejo Académico del Instituto Iberoamericano de Estudios Superiores, adscrito a la Universidad de Santo Tomás de Oriente y Medio Día (Nicaragua). Pesquisador Internacional del Grupo de Responsabilidade Civil e Processo Ambiental de la Escola Superior Dom Helder Câmara (Brasil). Colaborador Extranjero del Grupo de Investigação de Investigação Metamorfose Jurídica y Colaborador do projeto de pesquisa Constitucionalismo e Meio Ambiente: Sustentabilidade, Direitos Fundamentais e o Socioambientalismo na Sociedade Consumocentrista; ambos vinculados ao Programa de Pós-Graduação em Direito da Universidade de Caixas de Sul (Brasil). Miembro de la International Association of Constitutional Law- IACL (Serbia). Autor y coautor de diversos libros y tratados en Derecho Constitucional, Penal, Administrativo. CoDirector de los Códigos Penales Comentados de Ecuador, Colombia. CoDirector de los Tratados: Lavado de Activos, Litigación Oral Estratégica, Derecho Probatorio, entre otros. kimblellmen@outlook.com; http://lattes.cnpq.br/0707774284068716; https://www.linkedin.com/in/jorge-isaac-torres-manrique-42a76924/.

Keywords: Right to citizen protest. Fundamental rights. Legitimacy. Public Management.

BY WAY OF INTRODUCTORY LINES

The long period that the world is experiencing as a prisoner of the effects of COVID-19, has been charging various negative collateral effects. In this regard, it is unfortunate that it had to be the State itself that, far from safeguarding the fundamental rights of the population, directed its management towards the systematic violation of them.

Here are some cases: i) Hungary.- In addition to the fast-track law adopted on March 10, 2020 to make labor law more flexible during the pandemic crisis, they published a press release on the government measures introduced in the state of emergency. While the unions welcome some of the measures mentioned to safeguard jobs, they express concern that changes to the Labor Code disproportionately endanger workers. The new measure that establishes that "The employee and the employer can deviate from the provision of the Labor Code in a separate agreement." It is basically the elimination of the entire Labor Code and autonomous collective agreements, ii) Romania.- In accordance with the Presidential Decree of March 16, 2020, in order to prevent the spread of COVID-19 and to achieve the management of consequences, in relation to the evolution of the epidemiological situation, during the state of emergency, the exercise of the following rights is restricted, in proportion to the degree of compliance with the criteria provided in art. 4, paragraph 4) of the decree: Free movement; right to family and private life; inviolability of the home; education rights; freedom of assembly; right to private property and right to strike, iii) Italy.- Telephone operators that track mobile phones (for example, in Milan) to inform public authorities about the extent of trafficking and movements of people.[63]

The aforementioned merits greater commitment on the part of the States. This, in order not to incur in the various violations of fundamental rights, such as those that we have referred to as an example.

However, it is also possible to approach the scenario from the new demands that the effects of the corresponding confinement cause. In this sense, it is noted that this has deserved that they have had to recognize various fundamental rights, which before the pandemic did not have such quality and thus also "recognize" other rights that, although it is true, were already recognized, not in the recent extremes.

---

[63] NOTA INFORMATIVA DEL OBSERVATORIO COVID-19 DE LA CONFEDERACIÓN EUROPEA DE SINDICATOS. *Derechos humanos y COVID-19*. En línea, recuperado en fecha 10/10/21 de: https://www.ccoo.es/d94b14a3b24162bae3a3359cccf691f3000001.pdf. Andalucía, 2020, pp. 23, 33, 35.

In this installment, we assume this commitment by unraveling said theme, developing, in addition, the rights that deserve to be urgently recognized and the priority that their attention should have.

IMPORTANCE OF SAFEGUARDING FUNDAMENTAL RIGHTS IN COVID-19

The world is facing an unprecedented crisis. At the heart of this crisis is a global public health emergency on a scale not seen for a century, demanding a global response with far-reaching consequences for our economic, social, and political lives. The priority is saving lives. In view of the exceptional situation and in order to preserve lives, countries have no choice but to take extraordinary measures. The generalized confinement, dictated to slow the transmission of the virus, necessarily restricts the freedom of movement and, thus, the freedom to enjoy many other human rights. This can inadvertently affect people's livelihoods and safety, their access to health care (not just in the case of contracting COVID-19), food, water and sanitation, work and education, as well as leisure. Steps must be taken to mitigate these unforeseen consequences. We have an obligation to make sure everyone is protected and included in the response to this crisis.[64]

The goal is threefold: to strengthen the effectiveness of the response to the immediate global health threat, to mitigate the broader impact of the crisis on people's lives, and not to create new problems or exacerbate existing ones. These three aspects will put us in a position to rebuild better for all. This is not the time to neglect human rights: human rights are needed now more than ever to navigate this crisis in a way that allows us, as soon as possible, to focus again on achieving equitable sustainable development and sustaining peace.[65] Recently, a decision adopted by the Inter-American Commission on Human Rights records that the COVID-19 pandemic may seriously affect the full exercise of the human rights of the population due to the serious risks to life, health and personal integrity that the COVID- 19; as well as its immediate, medium and long-term impacts on societies in general, and on individuals and groups in situations of special vulnerability. The Americas is the most unequal region on the planet, characterized by deep social gaps in which poverty and extreme poverty constitute a cross-cutting problem in all the States of the region; as well as the lack or precariousness of access to drinking water and sanitation; food insecurity, situations of environmental contamination and lack of housing or adequate habitat. To which are added high rates of labor

[64] NACIONES UNIDAS. *La COVID-19 y los derechos humanos. En esto estamos todos juntos*. En línea, recuperado en fecha 10/10/21 de: https://www.un.org/sites/un2.un.org/files/human_rights_and_covid19_spanish.pdf. Nueva York, 2020, pp. 2- 3.
[65] NACIONES UNIDAS. *Ob. Cit.* Pp. 2- 3.

informality and work and precarious income that affect a large number of people in the region and that make the socioeconomic impact of COVID-19 even more worrying. All this makes it difficult or prevents millions of people from taking basic prevention measures against the disease, particularly when it affects groups in situations of special vulnerability.[66]

In addition, the region is characterized by high rates of generalized violence and especially violence based on gender, race or ethnicity; as well as the persistence of scourges such as corruption and impunity. Likewise, in the region the exercise of the right to social protest prevails on the part of citizens, in a context of repression through the disproportionate use of force, as well as acts of violence and vandalism; serious prison crises that affect the vast majority of countries; and the deeply worrying extension of the phenomenon of migration, forced internal displacement, refugees and stateless persons; as well as structural discrimination against groups in situations of special vulnerability. In this context, the pandemic poses even greater challenges for the States of the Americas, both in terms of health policies and measures, as well as economic capacities, which allow the implementation of care and containment measures that are urgent and necessary to effectively protect their populations, in accordance with the International Law of Human Rights.[67]

The importance of defending and safeguarding fundamental rights in times of pandemic is clear. In this sense, although it is true that the protection of the population implies some restrictions to avoid massive contagion, it is essential to bear in mind that this does not entail in any way the violation of fundamental rights, unreasonableness and disproportionality. Otherwise, the "remedy" would become more harmful than the pandemic itself.

RIGHT TO PROTEST

In the present case, there is the recent issuance of the Judgment of the TC Exp. No. 00009-2018-AI/TC (published on 07/06/20).

This is a historic sentence for the national human rights movement and for human rights defenders in our country, constantly criminalized for exercising their right to protest. Said sentence is given regarding the unconstitutionality claim filed against article 200 of the Penal Code, which typifies the crime of extortion. Its constant modifications constituted a certain and imminent threat to several fundamental rights, but especially to the right to protest (...) If we take into account that the minimum custodial sentence contemplated for the crime of extortion is 10 years (more than 4 years), the

[66] RESOLUCIÓN NO. 1/2020 PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS. *Pandemia y derechos humanos en las Américas*. En línea, recuperado en fecha 10/10/21 de: https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf. Washington, 2020, p. 3.

[67] RESOLUCIÓN NO. 1/2020 PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS. *Ob. Cit.* Pp. 3- 4.

practical consequence is that preventive detention can be imposed on social leaders just for participating in a protest march where a public road has been taken.[68]

In the first place, that the penal system to face social conflicts, must constitute the last ratio of intervention of the State (Fund. 15). Second, it has recognized the fundamental right to protest, as a right of autonomous configuration, different from other related rights such as freedom of assembly, the right to strike, the right to petition or freedom of opinion (Foundation 82). Third, it develops a foundation for the right to protest and incardinates it with constitutional principles of the greatest importance for the order. These are the basis that sustains the structure of the Constitutional State of Law (Funds. 68 and 76). The TC even goes so far as to say that the fundamental right to protest implies recognizing the right to a critical position against power (Fund. 74). Fourth, it configures the content of the right to protest. That is to say, it develops the necessary elements for its implementation, so that this unfolds normative effects, otherwise we are left with a rhetorical declaration (Fund. 82). Finally, it pointed out that the "improper economic benefit or advantage or other advantage of any other nature", which is part of the classification of the crime of extortion, does not reach eventually legitimate demands.[69]
In this sense, it is worth highlighting the constitutional recognition of the right to protest, since it not only embraces the spirit contained in the Constitutional State of Law, but also stands out for its opportunity in the current health situation. This, in the sense that it grants due protection to the just protests that are presented during the same.

By the way, we bring up what happened in Tacna, where two humble people (father and mother) of Azangarino origin were carrying out a protest in front of the Army Command. With signs in hand and loudly they asked for information about their 22-year-old son, who has been missing since May 10 of the current year, the same one who was doing voluntary military service in the Cavalry Regiment No. 221 of the Tarapacá Barracks. However, some members of the National Police of Peru did not hesitate to intervene and use force to try to transfer them to a police station, which has been considered excessive and has generated outrage in the city, producing new concentrations in order to demand the search. of the truth in that case.[70]

---

[68] INSTITUTO DE DEFENSA LEGAL. *Tribunal Constitucional reconoce por primera vez el derecho fundamental a la protesta*. En línea, recuperado en fecha 10/10/21 de: https://idl.org.pe/tribunal-constitucional-reconoce-por-primera-vez-el-derecho-fundamental-a-la-protesta/. Lima, 2020.
[69] INSTITUTO DE DEFENSA LEGAL. *Ob. Cit.*
[70] VERASTEGUI HUAYNATE, Josué. *El derecho a la protesta en tiempos de covid-19*. En línea, recuperado en fecha 10/10/21 de: https://lpderecho.pe/el-derecho-a-la-protesta-en-tiempos-de-covid-19/. Lima, 2020.

RIGHT TO THE CITY

The right to the city is legally presented from three necessary facets: (a) the equitable usufruct of what the city has to offer its inhabitants, (b) the mandate of collective and participatory construction of city affairs and (c) the effective enjoyment of human rights in urban contexts.[71]

From what has been said, we infer that although the recognition of the right to the city is important, however, it must be specified that it fundamentally involves the protection of its own nature. That is, it does not embrace non-urban sectors, which are not considered a city.

In this sense, we consider that the need for its recognition (especially in the period of the global pandemic), becomes important as incomplete. This is because said right entails due safeguards for all persons regardless of place of residence. Ergo, it would also merit recognition of the right to non-civility. On the other hand, it is worth mentioning the recent issuance of a ruling by the Peruvian Constitutional Court (TC), STC Exp. No. 00013-2017-PI/TC (06/9/20). In it, it evaluated the possibility of establishing a new right (the right to the city) that includes, according to the plaintiffs, the enjoyment of the public spaces of the city and the participation in its management. In this regard, the Court held that the consideration of new rights must be evaluated with great caution since it will be unnecessary if it is already implicit in another existing right. Thus, he concluded: (...) the right to liberty, the right to equality, the right to free movement and the right to enjoy free time, all recognized in article 2 of the Constitution, ensure that any person can enjoy the benefits of the city or any public space with free access on an equal basis, without the need to establish a new right that specifies it. (f.j. 103).[72]

In this regard, we consider in a different sense than that indicated by the TC. This is because the recognition of the right to the city would strengthen the rights it embraces, making it possible to realize them. In addition, the argument he makes is insufficient, because if it were valid, it would have to be decided at the same time with the recognition of due process, given that it is a continent right that encompasses a plurality of fundamental rights of the defendant.

---

[71] CORREA MONTOYA, Lucas. *¿Qué significa tener derecho a la ciudad?. La ciudad como lugar y posibilidad de los derechos humanos*. En línea, recuperado en fecha 10/10/21 de: https://revistas.urosario.edu.co/index.php/territorios/article/view/1386/1303. Bogotá, 2010, p. 147.

[72] EDITOR GACETA CONSTITUCIONAL. *TC: Reconocimiento del derecho a la ciudad resulta innecesario ya que abarca aspectos esenciales de otros derechos*. En línea, recuperado en fecha 10/10/21 de: https://gacetaconstitucional.com.pe/index.php/2020/07/08/tc-reconocimiento-del-derecho-a-la-ciudad-resulta-innecesario-ya-que-abarca-aspectos-esenciales-de-otros-derechos/. Lima, 2020.

BASIS OF THE RIGHT TO CITIZEN PROTEST

It lies in the quintessence of the creation of the State. Thus we have, that at the beginning of humanity, people came to organize themselves so that through the management of themselves they take care of their basic needs.

However, with the passing of time, this became unmanageable. Well, the populations grew uncontrollably. It is then that the Social Pact appears. Thus, people decide to create an abstract entity, which can take care of all their needs and public services. In that sense, they create the state.

But, although it is true that they renounce a part of their rights as a result of the creation of the State, they continue to hold power, so much so that the first president or president of the republic is the first mandated by the principal, which is the town.

To this it is necessary to add that they not only agreed to achieve the creation of the State, but also to maintain it. Thus, the population also ends up subsidizing the State. This can be seen in each purchase that is made systematically, whether in a grocery store or a gas station, for example; where the respective taxes are included in the price. Thus, these direct or indirect taxes are centralized by the Ministry of Economy and at the end of each year, it is that the various ministries and autonomous bodies present themselves to the Legislative Power, in order to be able to sustain the budget that they require to be delivered to them, in order to be able to carry out its management for the following year.

Consequently, the population has the legitimate right to supervise, control, ask for explanations and protest peacefully without arming, in the face of any action or omission on the part of the State.

This, while we reiterate, the State works with the population's money, which enables it to request explanations of its management, consequently.

On the other hand, transparency takes on special significance to the extent that it is configured as a promoter of forms of expression and protection, especially in marginalized or deprived social sectors. Thus, "access to information is a fundamental tool for building citizenship".[73]

In this regard, it is necessary to state that it could not be otherwise, because transparency and access to public information must be interpreted and applied for the benefit of the weak part of the state relationship, that is, the population. The same transparency in public management guarantees that citizens can duly exercise control (through accountability, for example) and surveillance, as well as seek the realization of the constitutional right to development.

---

[73] BOTERO MARINO, Catalina. *El derecho al acceso a la información pública en las américas. Estándares interamericanos y comparación de marcos legales*. 2012, p. 01. En Línea: recuperado en fecha 10/10/21 de Organización de los Estados Americanos: http://www.oas.org/es/cidh/expresion/docs/publicaciones/El%20acceso%20a%20la%20informacion%20en%20las%20Americas%202012%2005%2015.pdf.

So, the policy of making state management transparent does nothing more than generate trust and support in the population. In that sense, we have that: "Transparency(...)generates two verifiable feelings: trust and certainty, which in politics translates into the desired legitimacy that every government seeks".[74]
In this sense, it is necessary that: "The citizen demand for the defense of fundamental rights is essential to generate a transparent State that is accountable to society. A transparent State is a more legitimate State(…)".[75]

CONCLUSIONS

The right to citizen protest has been recognized in case law by the TC.
The right to citizen protest is closely related to the fundamental right to the city.
The right to citizen protest is one of the pillars that the population has to exercise their right to control, audit, transparency and access to public information and accountability.

SUGGESTIONS

It is very urgent and unavoidable, the constitutional recognition of the constitutional right to protest as a fundamental right.
It requires awareness and training of public officials and different levels of education, about the nature and importance of the creation of the State, public management, control, inspection, transparency and access to public information and accountability of the population.

REFERENCES

1. BOTERO MARINO, Catalina. *El derecho al acceso a la información pública en las américas. Estándares interamericanos y comparación de marcos legales*. 2012, p. 01. En Línea: recuperado en fecha 10/10/21 de Organización de los Estados Americanos: http://www.oas.org/es/cidh/expresion/docs/publicaciones/El%20acceso%20a%20la%20informacion%20en%20las%20Americas%202012%2005%2015.pdf.
2. CORREA MONTOYA, Lucas. *¿Qué significa tener derecho a la ciudad?. La ciudad como lugar y posibilidad de los derechos humanos*. En línea, recuperado en fecha 10/10/21 de:

[74] CASTRO LEYVA, Daniel. *Cit.*, p. 10.
[75] *Cfr*. GUTIÉRREZ JIMÉNEZ, Paulina. *El derecho de acceso a la información pública. Una herramienta para el ejercicio de los derechos fundamentales*. Distrito Federal, 2008, p. 43. En Línea: recuperado en fecha 12/03/13 del Centro Virtual de Aprendizaje en Transparencia del Instituto de Acceso a la Información Pública y Protección de Datos Personales del Distrito Federal: /retaip/documentos/material_apoyo/ensayo/Ensayo7.pdf.

https://revistas.urosario.edu.co/index.php/territorios/article/view/1386/1303. Bogotá, 2010, p. 147.
3. EDITOR GACETA CONSTITUCIONAL. *TC: Reconocimiento del derecho a la ciudad resulta innecesario ya que abarca aspectos esenciales de otros derechos*. En línea, recuperado en fecha 10/10/21 de: https://gacetaconstitucional.com.pe/index.php/2020/07/08/tc-reconocimiento-del-derecho-a-la-ciudad-resulta-innecesario-ya-que-abarca-aspectos-esenciales-de-otros-derechos/. Lima, 2020.
4. GUTIÉRREZ JIMÉNEZ, Paulina. *El derecho de acceso a la información pública. Una herramienta para el ejercicio de los derechos fundamentales*. Distrito Federal, 2008, p. 43. En Línea: recuperado en fecha 12/03/13 del Centro Virtual de Aprendizaje en Transparencia del Instituto de Acceso a la Información Pública y Protección de Datos Personales del Distrito Federal: /retaip/documentos/material_apoyo/ensayo/Ensayo7.pdf.
5. INSTITUTO DE DEFENSA LEGAL. *Tribunal Constitucional reconoce por primera vez el derecho fundamental a la protesta*. En línea, recuperado en fecha 10/10/21 de: https://idl.org.pe/tribunal-constitucional-reconoce-por-primera-vez-el-derecho-fundamental-a-la-protesta/. Lima, 2020.
6. NOTA INFORMATIVA DEL OBSERVATORIO COVID-19 DE LA CONFEDERACIÓN EUROPEA DE SINDICATOS. *Derechos humanos y COVID-19*. En línea, recuperado en fecha 10/10/21 de: https://www.ccoo.es/d94b14a3b24162bae3a3359cccf691f3000001.pdf. Andalucía, 2020, pp. 23, 33, 35.
7. NACIONES UNIDAS. *La COVID-19 y los derechos humanos. En esto estamos todos juntos*. En línea, recuperado en fecha 10/10/21 de: https://www.un.org/sites/un2.un.org/files/human_rights_and_covid19_spanish.pdf. Nueva York, 2020, pp. 2- 3.
8. RESOLUCIÓN NO. 1/2020 PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS. *Pandemia y derechos humanos en las Américas*. En línea, recuperado en fecha 10/10/21 de: https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf. Washington, 2020, p. 3.
9. RESOLUCIÓN NO. 1/2020 PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS. *Ob. Cit.* Pp. 3- 4.
10. VERASTEGUI HUAYNATE, Josué. *El derecho a la protesta en tiempos de covid-19*. En línea, recuperado en fecha 10/10/21 de: https://lpderecho.pe/el-derecho-a-la-protesta-en-tiempos-de-covid-19/. Lima, 2020.

Scientific Article
UDK 331.5(497.11)"2004/2021"
331.56(497.11)"2004/2021"

EMPLOYMENT, UNEMPLOYMENT AND INEQUALITIES – CURRENT CHALLENGES [76]

Mariana Maksimovic, PhD
Jelena Zvezdanovic Lobanova, PhD

Institute of Social Sciences Belgrade
originalmarijana@gmail.com
jzvezdanovic@idn.org.rs

Abstract
Observing current world events from the economic point of view, it can be concluded that unemployment and inequality are two problems, which are more relevant than ever before. Namely, two major crises in the 21th century – the world economic crisis and the COVID-19 pandemic, has put these issues in the focus of policy-makers and researchers. Each disturbance, whether caused by war conflict, social crises, migration or poverty, has triggered significant transformations on the labour market (i.e. a decrease in employment and an increase in unemployment) and an increase in inequality. Resolving the issues of unemployment and inequality, widely seen as acute problems of almost each country, requires the permanent activity of governments and their institutions, as well as of all other market participants. Serbia is also faced with addressing these two challenges, besides changing demographic picture compared with fifty years ago (population aging), economic crisis caused by COVID-19 pandemic and war in Ukraine.

Keywords: unemployment, inequality, employment, security, Serbia.

INTRODUCTION

The labour market is the place where the supply of and demand for labour meet. It is the regulator of employment and unemployment in an economy and has foothold in the real sector and in all other sectors. The problem of employment represent a very important issue of macroeconomic policy. The unemployed are not in the same position as the employed; they do

[76]"The paper was written within the Research Program of the Institute of Social Sciences for 2022, which is supported by the Ministry of Education, Science and Technological Development."

not have income, feel rejection and their leisure time increases, which reduces the value of human capital. It is very important to single out that unemployment is not a new problem. It started to be concern at the beginning of the 20th century. This problem was especially pronounced during the Great Economic Crisis of 1929-1933 (known as the Great Depression), then, after the Second World War (several small crisis), with 1973 Oil Crisis until these last two crises, Global financial crisis of 2008-2009 and the COVID-19 pandemic. In this paper, we will present the conceptual definition of employment and unemployment, the types of unemployment, as well as a brief overview of this problem in Serbia nowadays. Inequality will be also observed in such way. The aim of this paper is to show the change in the rate of unemployment, employment and inequality in Serbia during the last two decades.

THEORETICAL DETERMINATION OF THE TERMS EMPLOYMENT AND UNEMPLOYMENT

In order to have a more complete understanding of the concept of employment and unemployment, it is necessary to precisely define these two categories. Definitions of international institutions and national legislation can be found in the literature. Only a few will be mentioned here. Employment (flow) is "the consumption of human energy and time in the production process" and it represents the minimum of labour supply and demand (Jakšić 2011). Employment (fund) can be measured through the number of people who have a job, i.e. the number of workers that employers are looking for, and who are willing to work for a given wage. Therefore, a person who does not have a job, but is actively looking for one, is considered as unemployed. Employment is easy to determine in terms of the working age population, which is actively involved in the work process. On the other hand, "registered unemployed are those persons who are able to work, but do not have a job, because there is a lack of availability of work, and they are registered with labour offices and/or public employment services" (OECD 2011). According to the definition of the International Labour Organization (ILO), there has been three unemployment criteria: "without work", currently available for work" and "seeking work" during the reference period. Therefore, unemployed is a person above a specified age who during the reference period was: (a) "without work", i.e. was not in paid employment or self-employment; (b) "currently available for work", i.e. was available for paid employment or self-employment during the reference period; and (c) "seeking work", i.e. had taken specific steps in a specified recent period to seek paid employment or self-employment (ILO 2022). According to the Employment Act of the Republic of Serbia (2018), Article 5 "an employee is a natural person employed by an employer". According to the same Law, Article 24 "An employment

relationship may be established with a person who is at least 15 years old and satisfied other requirements to work at specific jobs as specified by law i.e. rule book on organization and systematization of jobs". Article 25 states that "An employment relationship may be established with a person under 18 years of age with the consent in writing of a parent, adopting parent or a guardian, provided that such work does not put at risk his health, morality and education, i.e. provided that such work is not prohibited by law". In the same Article, it is stated that "a person under 18 years of age may establish the employment relationship only with a competent medical certificate attesting that he is capable to perform the activities of the job he is getting, and that such activities do not harm his health" (Zakon o radu 2018).

When considering the types of unemployment, it is stated that *full employment* – as the other side of the unemployment coin, exists under condition in which virtually all who (possess knowledge and skills) are able and willing to work are employed. German Chancellor Olaf Scholz has given very interesting definition of full employment. Namely, he defines full employment as a situation in which no one who loses the job do not need to look for a new one longer than a year. This would actually represent a reduction in long-term unemployment. Previously, the limit of full employment was 1%, and then it was raised to 2%, while today "full-employment unemployment rate" amounts to between 2% and 4%.

Illustration 1: The example of the full employment and labour shortage
Already at the beginning of the sixth decade of the 20th century in Germany, a one long dream has become a reality since the full employment was achieved. Namely, anyone who wanted to work could find a job; there was even a labour shortage. In 1955 there was an agreement with Italy regarding the targeting the arrival of foreign labour (so-called guest workers), and then agreements were signed with other countries, among them was former SFR Yugoslavia. As a results of this agreements, in 1964, Armando Rodriguez form Portugal was solemnly welcomed (with music) at the railway station in Cologne, as the 1 millionth „guest worker". He received a moped as a gift, and festive welcome was broadcasted live on the radio. Source: DW 2011

Frictional (inevitable) unemployment – the production possibilities of society have been used, and only those workers who switch from one job to another are unemployed, which makes about 5%-6% of total labour force. Keeping employment at this frictional minimum is also related to non-accelerating inflation (NAIR – *non-accelerating inflation rate unemployment*). Thus, frictional unemployment is short-term and temporary, and can exist even under conditions of full employment. This includes workers who seek jobs for the first time, workers who are looking for jobs after losing their old ones, and those who are re-entering the workforce after a period of economic inactivity. Thus, workers are looking for new jobs due to subjective reasons, and employers are trying to replace workers who retired or quit a job in search of

another (EFST 2011). *Underemployment* – can refer to certain sector, individual workers and those potential workers who are off their labour supply curves (students, domestic helpers), but they can start working if demand for work increases. *Cyclical unemployment* is a type of unemployment, which occurs due to cyclical fluctuations in gross domestic product (GDP). Thus, these fluctuations trigger changes in the aggregate labour demand which in period of recession, leads to layoffs (due to rigid wages) and increase in unemployment. *Seasonal unemployment* – occurs due to strong variation in certain activities and can be induced by climatic, traditional or institutional conditions. *Technological unemployment* – technological changes and product innovation can lead to an increase in unemployment in certain sectors. This type of unemployment can be seen as a part of structural unemployment, given that technological development initiates structural changes and forces structural adjustments, which cannot be realized completely, even in the short term (FFZG 2011). *Concealed unemployment* - there is a certain number of people who do not register as unemployed and who would start actively looking for work again under a more favourable economic situation. This group includes, for example, discouraged workers. *Structural unemployment* – is a gap between the supply and demand of labour, when the demand for one type of work increases, for example, information technology professionals, while demand for other type of work decreases and the supply can not adjust quickly. It shows the existence of upper limits of labour supply that an economy can absorb in the short term. This phenomenon is mainly caused by a change in the economic structure, technological production or market demand. Structural and cyclical unemployment are of a long-term nature, so these two types make up natural unemployment (frictional + structural = natural unemployment). For these reasons, the cooperation between state, employers, educational institutions and workers is required (Šuković 2009).

It is necessary to highlight that until the eight decade of the 20th century, it was a common practice for people to spend their entire working life with one employer. This was possible because in the second half of the 20th century there functioned a certain number of large concerns with employed workers who spent their entire working life at the same place. However, due to globalization and other changes (shocks) in the labour market, there have been transformations in the mode of employment. The flexibility of work has increased and people started to work from home (which has proven effective during the COVID-19 pandemic). People are in position to change employers due to their own personal accomplishments or because of claims for higher salary, but also due to the company transformation. However, in certain economies, such as Germany and Japan, there are still employees who, in large companies, during their working life, cannot visit all the subsidiaries of one company and work in them (Maksimović 2021).

INEQUALITIES THREATEN THE WEAKEST

The stability of many economies around the world in the 21th century has been shaken by the COVID-19 pandemic, as well as by the war in Ukraine. Economic and social inequalities are more pronounced due to the crisis, and countries, in such way, are moving away from the democratic principles of inclusive societies[77]. On the other hand, unemployment is a socioeconomic phenomenon, characterized by the inability of the working-age population to find suitable employment with adequate wages. It is interesting that in the definitions prevail the term „reference period", setting apart from deadlines, such as, for example, that the unemployed person „has taken certain steps to find a job in the last month" or „in last four months". The reason for this are major changes in the regulation of labour legislation, but also the development of the labour market in the context of the global economy. The solution was found in a flexible work model that actually represents a way of balancing between, on the one hand, flexibility and fluctuation, and security and protected employment relationships, on the other hand. A high level of labour market flexibility *per se* does not offer a definitive solution to the problem of unemployment, but it is certainly a solution for workers without possibility to achieve permanent employment and certainty to be re-employed (ILO 2022). Dialogue between governments, workers and employers is certainly very helpful in this regard. It is important to emphasize that unemployment has never been a constant category. It varied over time, throughout the 20th century. There were also drastic decline in employment and increase in unemployment, but also the situations of full employment in certain countries. However, full employment and flexible forms of work are possible only if there are competitive companies, capable of employing a certain amount of labour under market conditions, and, thus, contribute to strengthening employee performance.

On the other hand, inequality consists of inequality of outcomes (income and wealth) and inequality of opportunity. While income inequality refers to how unevenly income is distributed throughout a population, wealth inequality is seen as real estate wealth. Inequality of opportunity is measured by the opportunities provided to the individual at birth and those, which resulted from his life choices and luck. This category of inequality is more difficult to measure, although inequality of opportunity can contribute to income inequality and vice versa (Rješavanje problema nejednakosti 2022, 2). Inequality is measured through the GINI coefficient that ranges from 0 to 100. A coefficient of 0 means a perfect equality of income, and the closer the index

[77] The COVID-19 pandemic increased gender inequality, but also violence in society due to isolatioin and reducted communication since many people felt rejected, insecure and lonely.

is to zero, inequality is low, and vice versa. The closer the index is to 100, then inequality is high (the more unequal the distribution of income).

Namely, „economic inequalities lead to unequal living conditions, endangering the safety of a large number of people and causing social problems, which are most often expressed in raising poverty and unemployment"(Jevtić 2014, 114). The gradual elimination of the middle class led to a greater gap between the rich and the poor. The increase in poverty puts individuals at risk of survival, but also provoke other risks up to the individual safety risk. It also calls into question state security, since poverty causes state weakening, both economically and in other forms (Jevtić 2014). Poverty also leads to an increase in corruption, crime, prostitution and similar social anomalies. „Structural inequalities can result in larger increase in depression among people and fear of loss of life chances and social marginalization. The most serious forms of crime, such as organized and violent, are most present in societies characterized by large social differences, as well as in societies with a high poverty and unemployment rate. Inequality in access to political and any other power, education, health care and legal protection are characteristic forms of structural violence, which is usually invisible. It originates from the social structure itself that determines the position of people according to their economic, ethnic, gender, cultural or political characteristics. The increase in economic inequalities, poverty and unemployment reduces solidarity between people, destroys social cohesion and the normative system. The state of social disorganization is characterized not only by the collapse of the informal value system, but also by the weakening of the formal system, which causes even greater disorganization. As a result, society is faced with increasing crime rates and the overall level of violence. This violence arises because of material frustration, social inferiority, feeling inadequate, poor social promotion of broad strata and groups of the population (Jevtić and Miljković, 2021, 61). In impoverished societies, it is crucial to strengthen the state and its actions, because it has been shown that countries with developed economies and built social systems have less pronounced economic and social inequalities.

EMPLOYMENT AND HIRING IN SERBIA

The labour market in Serbia has been affected by the broader events – the emergence of the national crisis and transition since 1989. Serbia went through a stormy period of transition, war conflicts, the 1999 NATO bombing, the introduction of sanctions, crucial change of government in 2000, as well as a period of recovery that began in 2012. Namely, in the period from 1989 to 2000, there was a drastic drop in employment, i.e. unemployment growth, due to the UN Security Council decision to impose sanctions on the Federal Republic of Yugoslavia and NATO bombing, a change in ownership structure

and economic system. During this period, the unemployment rate ranged from 21% in 1991 to 29, 2% in 2000 (Stojanović 2006).

That is when a critical mass of long-term unemployed was generated, consisted mainly of persons with a lower level of education (persons with higher education belonged to the category of short-term unemployed). Despite the new legal solutions in this area, the establishment of the Labour Market Office (1992), then today's National Employment Service (2003), and series of active and passive employment measures, there were no significant results on this field[78]. In 2000, there were many crucial changes in the field of work and employment, and one of them was related to simplification of procedures for hiring and firing workers. In that period, Serbia was faced with long-term and structural unemployment. However, the encouragement of investment projects began since 2012, both domestic and foreign.

In Serbia, as well as in the majority of the neighbouring countries, unemployed occurred as a consequence of changes in ownership relations and structural reforms, companies' closure, while at the same time, the private sector was not able to accept large number of unemployed[79]. As a result, there was a mismatch between labour supply and demand, and reduction in the number of employees. However, the biggest problem was long-term unemployed workers and elderly unemployed persons. Encouragement of employment of the long-term unemployed has improved the social inclusion of these persons, but also provided livelihood support through flexible forms of work.

Flexibility occurred as a response to the crisis, both in terms of wages and employment and work effectiveness improvement. Flexibility itself should represent a stimulus for the reduction of the grey economy with the principle of the long-life education. It actually represents a strategy for flexibility adaptation on the labour market and work resources to a dynamic environment. Serbia was faced with difficult and demanding task to reduce the unemployment rate in the upcoming period, as the main indicator of the state of the labour market, but also of the economy in general[80].

Nowadays, the situation regarding unemployment and inequality has significantly changed, which can be seen from tables 1, 2, 3, and 4. We

[78] The quality and quantity of the workforece are of crucial importance for a labour market. The quantity of the workforce is affected by migration, while the quality is influenced by education.

[79]Developing countries generally record surplus labour and lack of technological innovation, and „In order to trigger its own robotic revolution, a developing country needs a excess capital, a large supply of engineers and scientists, and a labour shortage..." (Kenedi, 1997, 111).

[80]A market economy implies the establishment and functioning of an integral market, i.e. besides market of goods, services and capital, labour market also functions – the market of knowledge, dexterity, skills, abilities that individuals possess. „The labour market, like any other market, besides numerous other functions, also performs an allocative functioin, that is, the employee work allocation in territorial, branch and every other aspect.„ (Radovanović, Maksimović 2010).

observed the following years: 2004 (the implementation of economic reforms during the government of Vojislav Koštunica), 2012 (change of the democratic regime), 2020 (beginning of the COVID-19 pandemic) and 2021 (the last year).

According to the Labour Force Survey, the employment rate declined form 45,2% in 2004 to 35,5% in 2012 (see Table 1). Numerous controversial and annulled privatizations occurred during this period, which resulted in the deindustrialization of the country, a significant decline in economic growth and deepening of regional inequalities. In connection with the massive reduction of jobs, the number of employees in the period from 2007 to 2014 decreased from 2 to 1.7 million people (Zvezdanović Lobanova, Lobanov, Zvezdanović 2021). The official data on unemployment rate before the start of the global economic crisis in 2008 was 18,1%, but by the end of 2012, it had risen to 23,9%. Strengthening entrepreneurial activity and gradual macroeconomic stabilization contributed to a noticeable reduction of this rate – up to 9,7% in 2020 (according to Labour Force Survey 2021). The growth of the total employment rate is the result of strengthening of the private sector, primarily service companies and the manufacturing industry.

Table 1. Total employment and unemployment rate in 2004, 2012, 2020 and 2021 in Serbia

Year	2004	2012	2020	2021
Employment rate (%)	45,2	35,5	49,1	48,6
Unemployment rate (%)	18,5	23,9	9,7	11

Source: LFS 2004, 2012, 2020 and 2021.

In the period from 2013 to 2020, the unemployment rate decreased, but due to the spread of the corona virus disease, in 2021, it increased by 1,3% compared to the previous year. The negative effects of the COVID-19 pandemic were first felt in the informal market of labour, where most of the jobs were lost. According to the authors of the "Quarterly Monitor", this crisis did not have a deep impact on the labour market in Serbia because there was not a significant drop in GDP, while government's measures to support the economy and the labour market were effective.

Table 2. Unemployed by age groups in 2004, 2012, 2020 and 2021 in Serbia (in %)

Years	2004	2012	2020	2021
25-29	27,2	35,3	16,4	15,26
30-34	18,7	27,9	9,97	11,81
35-39	16,7	20,9	8,66	11,71
40-44	14,7	19,1	7,52	9,37
45-49	13,6	20	6,36	9,71

50-54	**12,6**	**19,4**	**6,62**	**8,35**

Source: LFS 2004, 2012, 2020 and 2021.

The analysis of the unemployment rate by age composition showed that the unemployed in the 25-29 age group are the most vulnerable. The biggest increase in unemployment is among people at beginning or in a relatively early phase of their career, who can still rely on their parents support. However, despite the high unemployment rate for this age group, it should be pointed out that they get work done faster, while older people without knowledge necessary to meet new technological requirements have a much bigger problem (Zvezdanović 2012). Based on the data from the Table 2, it can be concluded that unemployment rates for all age groups reached their peak in 2012. The lowest unemployment rates were recorded in the 50-54 age group, since there is a smaller number of people of this age who are actively seeking job and ready to engage at work.

The unemployment rate for young people aged 15–24 years, as a large demographic group, also remains extremely high, although it has decreased from 48,1% in 2004 to 26,4% at the end of 2021 (see Table 3). Unfortunately, the share of employed youth in total population is also alarming. This can be explained by the fact that many of them are still full-time students, or unemployed (those who did not enrolled at college and university). According to the youth employment rate, Serbia is still in the group of the most problematic countries in Europe.

Table 3. Youth unemployment (15 – 24) in 2004, 2012, 2020, i 2021 in Serbia

Year	**2004**	**2012**	**2020**	**2021**
Youth unemployment rate	**48,1**	**51,05**	**26,6**	**26,4**

Source: LFS 2004, 2012, 2020 and 2021.

According to Eurostat data, the inequality has been gradually decreasing since 2016. The Gini coefficient was reported at 38 in 2013, then it rose to 40 in 2015, and it amounted to 33.3 in 2020 (see Table 4). Although the values of the Gini coefficient are low and make up about 30-35% (ranked in 140th place out of 160 countries), the income of the richest 20% and the 20% poorest differs as much as nine times (Zvezdanović Lobanova, Lobanov, Zvezdanović 2021). Unfortunately, Serbia still lags behind the European Union, among other things, due to the lowest disposable income of population[81]. During the last decade of the 20th century, a third of the

[81] Due to a lack of interrupted time series data from 2000, we are unable to analyze the period before 2013.

population was below the poverty line, but by 2003, the level of absolute poverty was about 14%, while by 2010 it was up to 7% (in the second half of the second decade of the 21st century, growth of 9-10% was recorded again). A quarter of the population receives less than 60% of the average monthly income (so-called relative poverty) (Лобанов 2019).

Table 4. Inequality in Serbia in the period 2013 – 2020

Year	2013	2014	2015	2016	2017	2018	2019	2020
Gini coefficient (scale from 0 to 100)	38,0	38,3	40,0	39,8	37,8	35,6	33,3	33,3

Source: Eurostat (2022).

The general characteristics of the labour market from 2009-2012 were unchanged. It was burdened with high unemployment, decrease in employment due to deterioration in the private sector's business conditions, low labour force mobility, a mismatch between the labour supply and demand, the lack of new jobs, a large share of the long-term unemployed, unfavorable age and qualification structure of the unemployed, high youth unemployment rate, large differences between regional labour markets, a large number of unemployed belonging to hard-to-employ categories, as well as significant number of persons engaged in the grey economy (Nacionalni akcioni plan zapošljavanja za 2011. godinu, 2011).

In addition, it is also important to mention the quality of education. Namely, before individuals became ready to join the labour market, they should be given full access to quality education. „When discussing inequality, education is important not only because a higher level of education increases the probability of finding a better-paid job in the future, but it also should prevent the reproduction of inequality. By equalizing the students' achievement who come from different socioeconomic environment, it enables children in lower-income households to have equal chances to get a job with a decent salary[82]“(Arandarenko, Krstić, Žarković-Rakić 2017). The research of inequality in Serbia was initiated at the beginning of the 20th century (Milanović 2003, Krstić and Sanfey 2011, Ranđelović and Žarković Rakić 2011, Šuković, 2013) and it is still a topic of current interest for researchers. These studies have shown that there is a high-income inequality in Serbia due to a low redistributive capacity of taxes and social benefits, on the one hand, and the low employment rate and high labour market duality, on the other. Until then, the topic of inequality was not at the top of the decision-maker's

[82]For example, the results of the PISA test in Serbia show that there are twice as many functionally illiterate children in families ranked among 20% of the population of the lowest socioeconomic status than in the 20% of families with higher well-being. Children from the first group fall behing their peers whose parents belong to higher social classes by two school years (Arandarenko, Krstić, Žarković-Rakić 2017).

agenda (Arandarenko, Krstić, Žarković-Rakić 2017). It should be pointed out that such practice is slowing changing, especially after 2020 when pandemic caused the instability on the labour market[83].

CONCLUSION

Observing the labour market and the changes in the field of labour relations, it was concluded that a lower unemployment rate requires market stability. Every crisis, be it from the 20th, or the one from the 1st century, causes disruptions in the market. There is a danger that there could be high unemployment, a high percentage of long-term unemployment, a large youth unemployment rate, increasing pronounced structural unemployment, youth unemployment and low labour force participation rate for women, which occurs due to slow changes in the field of industrial and overall economic environment. In addition, there are still significant questions such as the creation of better quality jobs, social inclusion, raising the level of formal and informal education, achieving better youth employment outcomes, harmonization of the labour market, further investment in human capital, the fight against discrimination, because every person has the right to fair employment. Emphasizing the problem of unemployment and inequality, the authors tried to underline the importance of their resolving, give insight into their connection, as well as to show how Serbia improved in the last ten years in terms of employment and unemployment reduction, youth employment growth, occupational structure of employees and inequality.

REFERENCES

1. Arandarenko, Mihail, Krstić, Gorana, Žarković Rakić, Jelena. Dohodna nejednakost u Srbiji – analiza, Od podataka do politike. Novembar. Beograd: Friedrich Ebert Stiftung. 2017.
2. DW. 2011. www.dw-world.de/article/0,,3311488,00.html, Puna zaposlenost – san ili realna mogućnost?, datum dostupnosti 10.02.2011.
3. EFST. 2011. www.efst.hr/nastava/87/2_cetiri_cilja_ekonomske_politike.doc, datum dostupnosti 22.02.2011.
4. Eurostat. 2022. https://ec.europa.eu/eurostat/web/income-and-living-conditions/data/database,
5. FFZG. 2011. www. mjesec.ffzg.hr/nezaposlenost/1.1.html, J. Birsa, Definicije i merenje nezaposlenosti, datum dostupnosti 10.02.2011.

[83]In addition, there is also the concept of work within the green agenda, which should actively act against poverty and inequality, as well as to ensure inclusion by providing access to work without discrimination (Stojković – Zlatanović 2020, 229).

6. FREN. Quarterly Monitor of economic trends and policies in Serbia, October-December 2021, 67, 2021
7. ILO. 2022. https://ilostat.ilo.org/resources/concepts-and-definitions/description-labour-force-statistics/
8. Jakšić, Miomir. Zaposlenost i zapošljavanje: neka novija tumačenja, 2011. www.ekof.bg.ac.rs/nastava/osnovi_makro_ekonomije/radovi/m-jak-9.PDF, datum dostupnosti 22.02.2011.
9. Jevtić, Dragan. Miljković, Milan. Social security and risks of modern migration. Kultura polisa, str. 55-71. 2021.
10. Jevtić, Dragan. Povećanje ekonomskih nejednakosti kao izazov bezbednosti, Vojno delo, vol. 66, br. 2, str. 114-128, leto. DOI: 10 5937/Vojdelo1402114J. 2014.
11. Kenedi, Pol. Priprema za XXI vek, Beograd: Službeni list SRJ. 1997.
12. Krstić, Gorana, Sanfey, Peter. Earnings inequality and the informal economy: evidence from Serbia. Economics ofTransition, 19(1), 179-199. 2011.
13. Maksimović, Marijana. Tržišna ekonomija i poslovna kultura: Nemačka i Japan. Beograd: Institut društvenih nauka. 2021.
14. Maksimović, Marijana. Upravljanje ljudskim resursima u međunarodnom poslovanju, Beograd: IEN. 2004.
15. Milanovic, Branko. Is Inequality in Africa Really Different?. Policy Research Working Paper, No. 3169. World Bank, Washington, DC. © World Bank. 2003. https://openknowledge.worldbank.org/handle/10986/17906
16. Nacionalni akcioni plan zapošljavanja za 2011. godinu. 2011. www.merr.gov.rs/data/files/original/file/.../NAPZ-2011-preciscen-tekst.doc. "Službeni glasnik Republike Srbije, broj 55/2010 i 4/2011." Datum dostupnosti 21. 11. 2011.
17. OECD. 2011. www.oecd.org/dataoecd/0/37/2433643.pdf. Datum dostupnosti 4.03.2011.
18. Radovanović, V, Maksimović, M. Tržište rada i (ne)zaposlenost u Evropskoj uniji i Srbiji – regionalni aspekt, Geografski institut „Jovan Cvijić" SANU, Zbornik radova, Knj. 60 № 2, 2010.
19. Ranđelović, Sasa, Žarković-Rakić, Jelena. Addressing Inequality and Poverty with Tax Instruments. Economic Annals 56 (190): 7–26. 2011.
20. Rješavanje problema nejednakosti, 2022. european-semester_thematic-factsheet_addressing-inequalities_hr.pdf, datum dostupnosti 29. avgust 2022.
21. Statistical Office of the Republic of Serbia. Labour force survey in the Republic of Serbia, (Bulletin 682). 2021. Retrieved from https://publikacije.stat.gov.rs/G2022/Pdf/G20225682.pdf

22. Statistical Office of the Republic of Serbia. Labour force survey in the Republic of Serbia, (Bulletin 671). 2020. Retrieved from https://publikacije.stat.gov.rs/G2021/Pdf/G20215671.pdf
23. Statistical Office of the Republic of Serbia. Labour force survey in the Republic of Serbia, (Bulletin 564). 2012. Retrieved from https://publikacije.stat.gov.rs/G2013/Pdf/G20135564.pdf
24. Statistical Office of the Republic of Serbia. Labour force survey in the Republic of Serbia, (Bulletin 451). October. 2004. Retrieved from https://publikacije.stat.gov.rs/G2006/Pdf/G20065451.pdf
25. Stojanović, B. Tržište rada u Srbiji: 1990-2005, Sociološki pregled, vol. XXXX (2006), no. 1, 3-31. 2006.
26. Stojković-Zlatanović, Sanja. Koncept „zelenog rada“, politike pravedne tranzicije i održivi ekonomsko-socijalni razvoj – (mogući) odgovori radnog prava na klimatske promene, U: Izazovi održivog razvoja u Srbiji i Evropskoj uniji, Eds: Predrag Petrović, PhD, Sanja Stojković-Zlatanović, PhD. Beograd: Institut društvenih nauka, 225-243. 2020.
27. Šuković, D. Stanovništvo Srbije u fokusu tržišta rada, Stanovništvo, X (2009): 2. 85-99. 2009.
28. Šuković, Danilo. Did economic inequality cause the economic crisis? Panoeconomicus, 3, 369-387. 2014.
29. Zakon o radu. 2018. https://www.paragraf.rs/propisi/zakon_o_radu.html, datum dostupnosti 30. Avgust 2022.
30. Zvezdanović Lobanova, Jelena, Lobanov, Mikhail, Zvezdanović, Milan. The problems and perspectives of the labour market development in Serbia on national and regional level. Zbornik Matice srpske za drustvene nauke (179/3). pp. 413-434. 2021. ISSN 0352-5732 eISSN 2406-0836
31. Zvezdanović, Jelena. Regionalne razlike na tržištu rada u Srbiji. In: Stanovništvo i razvoj. Centar za ekonomska istraživanja Instituta društvenih nauka, Beograd, pp. 356-363. 2012. ISBN 978-86-7093-140-4
32. Лобанов, Михаил. Проблемы развития Сербии: как «удержаться на гребне» новой волны экономического роста?. Научный доклад. Москва: Институт экономики РАН, 2019.

Scientific Article
UDK 342.731:341.645.5(44)

RELIGIOUS SYMBOLS IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS[84]

Darko Dimovski, LLD*
Dragana Milovanović, LLM*

Abstract
In this paper, the authors present characteristic cases from the case law of the European Court of Human Rights (hereinafter: the Court) in which the applicants considered that there was a violation of the rights provided by the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the Convention) by states because they wore certain religious symbols or clothing. In this regard, the authors made an effort to present all the characteristic cases in various situations. Thus, the subjects related to the wearing of religious symbols in school were also analyzed. There was an interesting case in which there was an obligation to remove all religious symbols that can make identification difficult when individual person should be photographed for official documents. The next part of this paper is dedicated to cases related to security clearance. At the same time, cases related to the wearing of religious symbols in the workplace, courtroom and public place were analyzed, in which way the authors include almost every situation in which can be questionable does the interference of the state about wearing religion symbols represents a violation of the rights proclaimed in the Convention.

Keywords: European Court of Human Rights, Convention, religion, symbols, the Court.

INTRODUCTION

Wearing religious symbols or clothing can be the essence of certain people's existence. Faced with their religious beliefs, individuals express their denomination on all occasions by wearing certain religious symbols or clothing. For them, disabling them from wearing religious symbols or clothing by the competent state authorities is an expression of disrespect for their

[84]This research was financially supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia (Contract No. 451-03-68/2022-14/200120).
* Associate Professor, Faculty of Law, University of Niš, Judicial Research Center, Niš.E-mail: darko@prafak.ni.ac.rs
*Young researcher, Innovation Centar at University of Niš. E-mail: milovanovicdraganaa@gmail.com

religious beliefs, but it also (allegedly) represent a violation of certain rights. By adopting the Convention on 4 November 1950, the Council of Europe allowed any individual to apply to the Court if he considered that his rights under the Convention has been violated.

In this regard, wearing of religious symbols or clothing in certain situations may be controversial from the point of view of respect for the rights prescribed by the Convention and the accompanying protocols, as some applicants are deeply convinced that wearing religious symbols or clothing is possible in all situations, without regard to the limitations provided for in Article 9 of the Convention. In this paper the case law of the Court was analyzed, in which the applicants found themselves as victims of violations of the provisions of the Convention due to their religious beliefs, which is the reason for wearing religious symbols or clothing.

WEARING RELIGIOUS SYMBOLS IN SCHOOL

The first case, which will be the subject of our analysis, is Lautsi v. Italy. Namely, the casewas about the crucifixion of Jesus Christ in the classrooms on the wall in the public school, which was attended by the applicant's children. At a meeting of school administrators, husband of the first applicant raised the issue of the presence of religious symbols in classrooms, with particular reference to the crucifixion, with the instruction that they must be removed. However, such a request was rejected. Based on that, an administrative procedure was initiated in which the violation of the principle of secularism was pointed out. As the competent state authorities rejected her request, the applicant appealed to the Court, holding that the crucifixion at the public school attended by her children was contrary to the Article 9 of the Convention and the Article 2 of Protocol No. 1.of the Convention.

Namely, the Court was decided that the issue of the presence of religious symbols in classrooms falls within the margin of free assessment of each country individually, because there is no consensus among the member states of the Council of Europe on this issue. The Court found that, although the crucifix was primarily a religious symbol, there was no evidence before the Court that the display of such a symbol on classroom walls could affect students. At the same time, the decisions of the state, regarding this issue, do not lead to violations, provided that it does not represent a form of indoctrination. In other words, regardless of the fact that the presence of crucifixion is common in public school classrooms, visibility alone is not enough to lead to indoctrination, with the state not forcing students to learn about Christianity, with no intolerance towards students of other faiths. Likewise, the applicant was able to exercise her parental rights in terms of enlightenment and counseling her children and to guide them along the path in accordance with her philosophical beliefs. Accordingly, there has been no

violation of Article 2 of Protocol No. 1. bearing in mind the first applicant. The Court further considered that there was no specific issue under Article 9. of the Convention. The Court reached the same conclusion in relation to the case of the second and third applicant (Lautsi v. Italy).

OBLIGATION NOT TO WEAR RELIGIOUS SYMBOLS WHEN TAKING PHOTOS FOR OFFICIAL DOCUMENTS

In the case Mann Singh v. France, the applicant, who is practicing a Sikhism, stated that the request of the competent authorities to appear in the photo, for the driver's license, without a turban, constituted interference with his rights guaranteedunder Article 8 and Article 9 of the Convention.

The Court acknowledged that the impugned regulations, which required subjects to appear "naked" in personal photographs on driver's licenses, constituted interference with the exercise of the right to freedom of religion and conscience, and that interference was prescribed by law and met at least one of its legitimate aims - ensuring public safety. The Court stated that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. Although religious freedom was primarily a matter of the conscience of the individual, it also meant the freedom to manifest one's own religion, independently and privately, or in community with others, publicly and among those whose faith one believes. However, the Article 9 did not protect every action motivated or inspired by religion or belief. Moreover, it does not always guarantee the right to conduct in a way that governs religious belief and did not grant people who did so the right to disregard rules that proved justified. The Court reiterated that the fact that a Muslim student had to provide a personal photograph showing her face naked was not interference in the exercise of their right to freedom of religion.

In the mention case, the Court noted that the authorities in charge of public safety and public order, especially in the context of road traffic regulations, required identification photographs for use on driving licenses showing that the subject was bareheaded, which allowed them to identifying the driver and checking whether he or she is authorized to drive the vehicle in question. Such checks were necessary to ensure public safety within the meaning of Article 9 § 2. Therefore, the Court considered that the impugned interference was justified and proportionate to the aim pursued. The same conclusion was reached with regard to the Article 8 of the Convention (Mann Singh v. France).

SECURITY CHECK

The first case in this section is Phull v. France. The applicant, from theUK, is a member of Sikhism and therefore wears a turban. He said that he traveled to Strasbourg on a business trip, where on his return, airport security staff forced him to remove his turban for a security check as he made his way through the checkpoint. The applicant complained of a violation of the Article 9, stating that there was no need for the security staff to force him to remove his turban, especially as he did not refuse to go through the scanner or to be checked by a hand-held detector.

The Court adhered to the premise that the impugned measure constituted an interference with the applicant's freedom to exercise his religion or belief and that it pursued at least one of the legitimate aims set out in the second paragraph of Article 9. First, security checks at airports are undoubtedly necessary in the public interest. Secondly, the arrangements for their application in this case fell within the margin of discretion of the respondent State, especially since the measure was resorted to only occasionally, so this part of the application is clearly unfounded and must be rejected.

At the same time, the applicant also complained under Article 2 of Protocol No. 4 for violating his right to freedom of movement. In his opinion, as a citizen of one of the member states of the European Union, he should be exempted from security procedures of this kind in the territories of the member states.The Court finds that the security checks to which passengers are subjected at airports prior to departure do not in themselves constitute a restriction on freedom of movement, which makes this part of the application incompatible *ratione materiae* with the provisions of the Convention and must be rejected(Phull v. France).

In the case El Morsley v. France, the applicant was the Muslim faith and she's married to a French citizen who is living in France. She went to the Consulate General of France in Marrakesh to apply for an entry visa to join her husband in France. When she refused to remove the headscarf that she wore, for identity verification, she was not allowed to enter the consulate. She then submitted a visa application by registered letter. Her application was denied. Al lodged appeals were rejected.

The measure on the obligation to remove the headscarf in order to verify the identity that the applicant complained about was interference in her rights. The measure is indisputably aimed to achieving at least one of the legitimate goals - public safety and protection of public order. As to whether the interference was necessary in a democratic society, the Court saw no reason to depart from its reasoning in the above-mentioned case of Phull v. France, regarding security checks at the entrance to the consulate, including the identification of persons wishing to enter, which he considered necessary

for public safety. Further, the security check required the removal of the headscarf only for a very brief moment. The fact that the consular authorities did not instruct the female staff to verify the identity of the applicant did not exceed the margin of discretion left to the State in this matter. Therefore, there was no disproportionate interference with the exercise of the applicant's right to freedom of religion, which made the application manifestly ill-founded. (El Morsli v. France).

WEARING RELIGIOUS SYMBOLS IN THE WORKPLACE

The Court considered whether there had been a violation of Article 9 of the Convention in the case of Eweida and others v. the United Kingdom. The applicant, a flight attendant at British Airways, was banned by her employer from wearing a cross on a necklace at work. We had the same situation with the other applicant, the geriatric nurse Chaplin. The third (Ladele) and fourth (McFarlane) applicants are Christians who believe that homosexual relationships are contrary to God's will and that this is incompatible with their beliefs regarding the approval of homosexuality. Ms. Ladele was employed as a registrar. In December 2005, new law entered into force and her employer informed her that from now on she will also work on ceremonies between homosexual couples. When Ms Ladele refused to sign the amended agreement, disciplinary proceeding was taken against her for violating the policy of equality and diversity and her contract could be terminated. The fourth applicant believes that the Bible says that homosexual activities are sinful and that he should not do anything that directly supports such activities. In 2007, he began postgraduate studies in psycho-sexual therapy. At the end of the same year, the superior of Mr. McFarlanea, like other therapists, expressed concern that there was a conflict between his religious beliefs and his work with same-sex couples. In January 2008, a disciplinary investigation was opened. In March 2008. McFarlane was fired after a short procedure for gross violation of the law, because he stated that he would adhere to his religious beliefs and that he would not give advice to same-sex couples. The subsequent appeal was rejected.

As for Ms. Eweida, the UK has no legal provisions specifically regulating the wearing of religious clothing and symbols in the workplace. The lack of explicit protection in the UK law does not in itself mean that Ms Eweide's right to profess her religion has been violated. However, the Court concluded that a fair balance had not been struck between, on the one hand, her desire to express her religious beliefs and being able to represent thoseto others, and on the other hand, her employer's desire to project a certain corporate image. Other employees have previously been able to wear religious items such as turbans and hijabs. The domestic authorities therefore did not

sufficiently protect Mrs Eweide 's right to practice her religion, so they breach Article 9.

On the other hand, the reason for asking Mrs. Chaplin to remove the cross, for the protection of health and safety in the hospital ward, was by its nature much more important. Hospital managers were in a better position to make clinical safety decisions than the nacional court. The Court therefore concluded that request to Ms Chaplin's to remove the cross was not disproportionate and therefore, there has been no violation of Article 9 nor Article 14 of the Convention.

The Court considered that the most important factor to be taken into account was the applicants 'employers' policy - to promote equal opportunities and require employees to act in a way that did not discriminate others - with the legitimate aim of securing the rights of others, such as same-sex couples, who are also protected by the Convention. In particular, the Court considered that differences in treatment on the basis of sexual orientation required particularly serious justification and that same-sex couples were in a relevantly similar situation with different sexes with regard to the need for legal recognition and protection of their relationships. The authorities therefore had a wide discretion when it came to striking a balance between the employer's right to secure the rights of others and the applicants' right to profess their religion. The Court concluded that the right balance had been struck and therefore found that there has been no violation of Article 14 in conjunction with Article 9 as regards Ms Ladela, nor an infringement of Article 9 taken individually or in conjunction with Article 14 by the applicant McFarlane (Eweida and Others v. the United Kingdom).

A similar situation existed in the case of Ebrahimian v. France. The authorities refused to renew the employment contract with the applicant due to her refusal to stop wearing the Muslim veil and due to patient complaints on that. The Court held that the fact that the national courts had given more weight to the principles of secularism and neutrality in public service and the interest of the State, than to the applicant's rightto express her religious beliefs, did not cause a problem with the Convention. The Court concluded that the interference was necessary in a democratic society and that there had been no violation of Article 9 of the Convention (Ebrahimian v. France).

WEARING RELIGIOUS SYMBOLS IN THE COURTROOM

In the case of Hamidović v. Bosnia and Herzegovina the applicant refused to remove his Islamic cap while testifying before the criminal court. The judge explained that wearing an Islamic cap is contrary to the rules of dress code of judicial institutions and that it is not allowed to wear religious symbols or clothes in court. However, Mr. Hamidović refused the judge's order, arguing that it was his religious duty to wear a cap all the time. The

judge kicked him out of the courtroom and he was sentenced to a fine for contempt of court. In October 2012, the first-instance decision was confirmed, with the same explanation. Also, in July 2015, the Constitutional Court fully accepted the reasoning of the domestic courts.

However, the Court recalled that national authorities were generally in a better position to assess local needs and conditions, especially where the relationship between the state and religions was concerned. Therefore, the state should generally be given wide discretion in deciding whether and to what extent the restriction of the right to practice one's religion is allowed. However, the case of Mr. Hamidovic had to be distinguished from cases involving the wearing of religious symbols and clothing in public, especially by public officials. Civil servants, unlike private citizens such as Mr. Hamidovic, could be placed on duty, discretion and impartiality, including the duty not to wear religious symbols and clothing while exercising official authority.

In addition, the Court saw no reason to suspect that the refusal of the court order was inspired by anything but his sincere religious beliefs that he had to wear a cap always, without any intention of ridiculing the trial, or encouraging others to reject secular and democratic values or to disrupt work of court. In fact, he appeared in court when summoned and stood up when requested, thus clearly submitting to the country's laws and courts. In these circumstances, the Court found that the applicant's sentence was not necessary in a democratic society and that the domestic authorities had exceeded the free discretion granted to them, in breach of Article 9 of the Convention.

Before we turn to the next case, let us put the dissenting opinion of Judge De Gaetano. He points out that it is difficult to imagine how the behavior of the applicant, who kept his cap on his head only as an expression of his deep religious beliefs, can be considered disrespect of the court or violation of order or decent behavior in court. If the applicant was a Catholic bishop, would he be prohibited from wearing a pectoral cross in court? Or, if he were an Orthodox priest, would he be forced to take off his black hat? And what if he was Sikh? In this last example, removing that headgear would be quite complicated, and probably a long process. Also, the legal rules of Bosnia and Herzegovina in this area are completely unclear. Although a certain degree of seriousness and decent dress code of persons can be read from the expression "dress code in judicial institutions", then it could not be foreseen that it also foresees things like a cap on the applicant's head. The applicant was punished on the basis of a general and unclear legal provision and even the highest judicial body did not eliminate this uncertainty. Also, the authority of the acting judge to regulate the conduct of proceedings does not include the unnecessary provocation of conflict situations, especially those related to fundamental human rights (Hamidović v. Bosnia and Herzegovina).

This case is not about "philosophical condemnations", as was the case in Lautsi and others v. Italy. Only in exceptional cases, such as when the principle of secularism is enshrined in the country's constitution or when there is a long historical tradition of secularism, secularism can fall under the "protection of the rights and freedoms of others" within the meaning of Article 9 § 2 of the Convention. As Judge Bonello points out in his unanimous dissenting opinion in the mention case "freedom of religion and freedom from religion essentially consist of the right to freedom of expression of any religion of one's choice, the right not to accept any religion and the right of an individual to practice his religion through faith, prayer and preaching" (Lautsi and others v. Italy).

A similar situation happened in the case of Lachiri v. Belgium, in which the applicantwas removed from the courtroom because she refused to take off her hijab.On the day of the hearing, in accordance with the decision of the presiding judge, Ms. Lahiri was informed that she could not enter the hearing room unless she removed her headscarf. Ms. Lahiri refused to obey the order, as a result of which she did not attend the hearing. Ms. Lahiri considered that her right to free expression of religion had been violated. Separation of the applicant, an ordinary citizen who does not represent the state, from the courtroom was a restriction of her right to practice her religion. The restriction pursued the legitimate aim of protecting public order, with the aim of preventing conduct that was not contempt of justice nor it disrupted the proper conduct of the hearing. The Court found, however, that the applicant's conduct when entering the courtroom was not disrespectful and did not nor could pose a threat to the proper conduct of the hearing. Therefore, the need for the restriction in question had not been established and the violation of the applicant's rights under Article 9 of the Convention was not justified in a democratic society (Lachiri v. Belgium).

WEARING RELIGIOUS SYMBOLS IN A PUBLIC PLACE

In this part of the paper, authors will represent interesting cases related to wearing religious symbols or clothing in a public place. The first such case is Ahmet Arslan and Others v. Turkey. The applicants were part of a religious group. In October 1996, they met in Ankara for a religious ceremony held at the mosque. They toured the streets of the city wearing the recognizable dress of their group, which evoked that of the leading prophets, and consisted of a turban, "salwar" (wide "harem" pants), a tunic and a cane. After various incidents on the same day, they were arrested and placed in police custody. In the context of the proceedings against them for violating anti-terrorist legislation, they appeared before the State Security Court in January 1997 dressed in accordance with their group's dress code. After that hearing, a procedure was initiated against them and they were convicted for violating the

law on wearing headgear and the rules on wearing certain clothes, especially religious clothes, in public, whose ban on wearing always exists, except for religious ceremonies.

The applicants were found to have been criminally convicted for dressing in public areas that were open to all (such as public streets or squares) in a manner deemed to be contrary to legal provisions. The applicants' conviction for wearing the clothing in question fell within the scope of Article 9, as the applicants were members of a religious group and considered their religion to require them to dress in that way. It could be accepted, that the interference pursued legitimate goals of protecting public safety, preventing disorder and protecting the rights and freedoms of others. The Court further emphasized that this case refers to the punishment for wearing certain clothes in public areas that were open to all, and not, as in other cases, he had to judge, regulating the wearing of religious symbols in public institutions, where religious neutrality may take precedence over the right to manifest one's religion. There was no evidence that the applicants posed a threat to public order or that they were involved in proselytism by exerting undue pressure on passers-by during their gathering. According to the Organization for Religious Affairs, their movement was limited in size and was also interesting, and the clothes they wore did not represent any religious power or authority recognized by the state. Accordingly, the Court considered that the Turkish Government had not convincingly established the necessity of the restriction at issue and considered that the interference with the applicants' right to freedom of expression was not based on sufficient grounds. On the basis of all the above, the Court ruled that there has been a violation of Article 9 (Ahmet Arslan and Others v. Turkey).

A similar situation exists in the case of Belcacemi and Oussar v. Belgium. The case refers to the Belgian law that conduct prohibition of wearing clothes that partially or completely cover a person face in public places. The applicants present themselves as Muslim women who decided on their own initiative to wear the niqab, a veil that covers the face, except the eyes, because of their religious beliefs. After passing the law in question, Ms. Belkacemi initially decided to continue wearing the veil on the street, which she subsequently temporarily removed under pressure, fearing she could be stopped on the street and then severely punished or even sent to prison. Ms. Ousar, for her part, stated that she decided to stay at home, which resulted in a restriction on her private and social life.

First, the Court noted that the mention law could be considered drafted with sufficient precision to meet the requirement of predictability prescribed by Articles 8 and 9 of the Convention.

Second, the Court found that during the drafting of the Belgian law, three objectives were used to justify the ban in Belgium: public safety, gender

equality and a certain concept of "living together" in society. The Court noted that the concern to ensure respect for minimum life guarantees in society could be considered an element of "protection of the rights and freedoms of others" and that the ban was justified in principle only to the extent that it sought to guarantee "living together".

Third, the Court explained that public authoritieswere in a better position than an international tribunal to assess local needs and context. Where questions of general policy were raised, which could lead to deep disagreements in a democratic society, special importance had to be given to the national decision-maker. The Belgian state tried to respond to the practice that it considered incompatible in Belgian society, with social communication and, more generally, the establishment of human relations, which were necessary for life in society. It was about protecting the conditions of interaction between individuals that were essential for the state to ensure the functioning of a democratic society. The question of whether the veil for the whole face was accepted in the Belgian public sphere was, therefore, the choice of society. The Court explained that in such cases it had to show reservations in its examination of compliance with the Convention, in this case assessing the democratic decision made in Belgian society. The decision-making process leading to the ban in question lasted several years and was marked by a comprehensive debate in the lower house of parliament and a detailed examination of various interests by the Constitutional Council. At present, no consensus has been reached on such issues among the member states of the Council of Europe, either for or against a complete ban on the whole person's veil, which justifies the Belgian state's wide discretion.

At the end, the Court noted that the sanction for non-compliance with the ban under Belgian law could range from a fine to imprisonment. The easiest sanction was a fine, while theprison is reserved for repeat offenders and is not automatically enforced. In addition, the crime is classified in Belgian law as "hybrid", partly under criminal law and partly under misdemeanor law. Thus, alternative measures were possible and taken in practice at the municipal level. Taking into account the wide margin of discretion of the Belgian authorities, the Court found that the disputed provisions of the law could be considered legitimate in order to achieve the proportional goal of preserving living conditions as an element of protection of the rights and freedoms of others.

In the light of all above mention facts, the Court finds that the impugned restriction can be considered necessary in a democratic society, and that there has been no violation of Article 8 or Article 9 of the Convention.

The Court reiterated that a general policy or measure that had disproportionate adverse effects on a group of individuals could be considered discriminatory, even if the group was not specifically targeted and there was

no discriminatory intent, if that policy or measure lacked objective and reasonable justification, if not a legitimate aim pursues or if there is no reasonable relationship of proportionality between the means employed and the aim of the prosecution. In this case, the measure had an objective and reasonable justification for the same reasons as those previously elaborated. Bearing in mind that, there was no violation of Article 14 of the Convention, taken in conjunction with Articles 8 and 9 of the Convention (Belcacemi and Oussar v. Belgium).

CONCLUSION

The presented cases from the case law of the Court indicate all the diversity of the issue of wearing religious symbols and clothing. Namely, the question was rightly raised as to whether the denial of wearing religious symbols or clothing constituted a violation of Article 9 of the Convention. In above mention cases, the Court applied the criteria set out in Article 9 § 2 of the Convention. Accordingly, in some cases the Court found a violation of Article 9, but in some cases the restrictions on the right to freedom of religion were considered to have met the criteria.

These cases should serve as a kind of guideline for the officials of different states in which direction their actions would not violate the rights prescribed by the Convention. Based on that, it would be desirable to organize training by the member states of the Council of Europe in order to acquaint their bodies in the legal understandings occupied by the Court. In that way, the actions of state bodies initially will be harmonized with the established standards, and this action would disburden the state authorities when deciding on lawsuits and legal remedies in given situations, so the number of petitions submitted to the Court would be smaller.

However, it can be reasonably expected that in the future individuals will continue to address the Court with the claim that there has been a violation of the right to freedom of religion due to certain restrictions on wearing religious symbols and clothing, because it is their identity.

REFERENCES

1. Ahmet Arslan and Others v. Turkey, app. no. 41135/98, ECHR;
2. Belcacemi and Oussar v. Belgium, app. no. 37798/13, ECHR;
3. Ebrahimian v. France, app. no. 64846/11, ECHR;
4. El Morsli v. France, app. no. 15585/06, ECHR;
5. Eweida and others v. the United Kingdom, app. nos. 48420/10, 59842/10, 51671/10 and 36516/10, ECHR;
6. Hamidović v. Bosnia and Herzegovina, app. no. 57792/15, ECHR;
7. Lachiri v. Belgium, app. no. 3413/09, ECHR;
8. Lautsi and others v. Italy, app. no. 30814/06, ECHR;

9. Mann Singh v. France, app. no. 24479/07, ECHR;
10. Phull v. France, app. no. 35753/03, ECHR;.

Scientific Article
UDK 341.231.14
341.231:341.24

RIGHT TO SELF-DETERMINATION WHAT IS A FUNDAMENTAL HUMAN RIGHT

Prof. PhD. Sasha Dukoski
Faculty of Law - Kicevo University "St. Clement - Ohrid" Bitola
sasadukoski@hotmail.com

Prof. PhD. Svetlana Veljanovska
Faculty of Law - Kicevo University "St. Clement - Ohrid" Bitola
svetlanaveljanoska @hotmail.com

PhD. Marija Dukoska
marijadukoska@live.com

Abstract

"Human rights are not alien to any culture and they are inherent in all nations; they are universal".[85]

Human rights are a complex social phenomenon characterized by specific: political, legal, cultural and economic regularities.

It is not always the case that there is a distinction between the legal and human rights of groups and individuals on the other hand. The guarantees and standards that in turn determine the procedure of each individual, basically by emphasizing equality, actually protect the whole group and even the nation. In fact, the rights of groups of individuals who are united at the national level are particularly important in relation to the principles or rather the right to self-determination. All of that ultimately results in the right to choose between: assimilation, autonomy or independence. The generally accepted concept is that self-determination is a right "erga omnes", a legal principle that results through respect for generally accepted standards and norms.

[85] Kofi A. Annan, Secretary-General of the United Nations - speech at Tehran University on the occasion of Human Rights Day, December 10, 1997.

Keywords:. Human rights, International law, Nation, Right to self-determination.

A HISTORICAL RETROSPECTIVE OF THE IDEA OF SELF-DETERMINATION AS A HUMAN RIGHT

All human rights are universal, indivisible and interdependent and related. The international community must treat human rights globally, in a fair and equal manner, on an equal basis and with the same degree of importance. Although the importance of national and regional specificities and different: historical, cultural and religious views must be taken into account, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamentals of freedom.[86]

If, from a theoretical point of view, self-determination is accepted as the expressed will of a group of people, to determine their own destiny in a political sense, then it can rightly be considered that this represents an important issue from the point of view of human rights since the period of the creation of the first organized states. [87]

The social thought of advanced European countries in the 18th century, stimulated by the Enlightenment ideas of philosophers and thinkers: Locke, Grosseus, De Vatel and Rousseau, led to the denial of absolutism, which in turn laid the ideological foundations of the Great French Revolution. All of that resulted in a kind of doctrine of "sovereignty of the people", by establishing the theory of the so-called "natural right". In fact, the First French Constitution, adopted on September 3, 1791, gave the basic outlines of all that and emphasized that:

- People are free and have equal rights from birth;

- The goal of every state is to ensure the natural and inalienable rights of man;

- The source of sovereignty essentially lies in the nation. [88]

---

[86] World Conference on Human Rights, Vienna 1993 Vienna Declaration and Program of Action, point 5.

[87] Betty Miller Unterberger, Self-Determination, Encyclopedia of American Foreign Policy, 2002. Page 461, The Charter of the United Nations A Commentary, Second Edition 2002, Edited by Bruno Simma, in collaboration with Hermann Mosler+, Albrecht Randelzhofer, Christian Tomuschat, and Rudiger Wolfrum, page 50

[88] P. N. Galanza. Constitutions and legislative acts of the bourgeois states from the XVII - XIX centuries, Collected documents. M, 1957 S 250. P.167

In fact, this document is the basis for the future development of the idea of self-determination of peoples, based on the natural right of the person given from the moment of birth. This basically resulted in the theoretical notion that right and freedom are inherent only to the individual belonging to a particular nation.

In the modern sense of acceptance for legal regulation of this term, we can rightly treat the issue of the American Revolution, i.e. the liberation of the British colonies in North America, which basically had no ethnic character and ended with the American Declaration of Independence from 1776. [89]

In the period of the First World War, based on the provisions established in the American Constitution, American President Woodrow Wilson, at the end of the war and during the following peace negotiations, appeared as a supporter of the principle of national self-determination. His concept is not static and results depending on the political situation. So in 1916 he only talks about the right of peoples to choose how to live better. In fact, this is the concept of the so-called "internal self-determination".[90] Before the very end of the First World War, President Wilson formulated the principle of so-called "external self-determination"[91], according to which each nation can choose what form of sovereign it wants. Finally, in January 1918, Woodrow Wilson came up with a program for a peaceful post-war solution, which became better known as "Wilson's 14 points", in which he points out that: "the main subject of government is the people who have the right to self-determination".[92]

The question of the recognition of states became relevant in the 20th century when the international legal system received a more harmonious and logical order through the harmonization of the acts adopted by the League of Nations in 1919.

However, a step forward in this field was made at the International Conference in Montevideo in 1933, which resulted in the adoption of a Convention that provides the legal definition of the state, including the four mandatory criteria:

- Permanent population;

---

[90] Internal self-determination is carried out within an existing and internationally legally recognized state.
[91] It is a political status in an appropriate system of international relations, through the creation of a new state or joining on a federal or confederal basis to another, already existing state.
[9292] This right C. Wilson believes that it should be applied selectively, proposing that the right of secession be applied exclusively to the nations of the Quadruple Entente.

- Presence in a certain territory;

- Existence of government;

- The ability of the state to enter into relations with other countries. [93]

Much later, that is, on August 14, 1941, the modern conceptions of the principles and principles of self-determination were established, through the famous Atlantic Charter of Roosevelt and Churchill, in which these two leaders in the Anti-Fascist Coalition announced that "They respect the right of all peoples to choose their own form." of management, under which they will live and want to recover the sovereign rights and self-government of those peoples who were forcibly deprived of it". [94]

A MODERN APPROACH TO THE CONCEPT AND PRINCIPLES OF HUMAN RIGHTS IN THE SPHERE OF THE RIGHT TO SELF-DETERMINATION

The universal system for the protection of human rights was established by the Organization of the United Nations whose main purpose is actually the promotion and strengthening of respect for human rights and freedoms for all without making any distinction on the basis of race, sex, language or religion.

Through the Charter of the United Nations Organization, its Declarations, Pacts and Conventions, it generates continuous progress of democratic processes, and in that context, improvement of the situation in the sphere of human rights in the world. The world organization in that way more or less will successfully create a generally recognized and comprehensive structure for the protection of human rights, establishing two basic mechanisms of protection: - A system of protection that derives from the Charter itself.

Namely, the General Assembly of the United Nations Organization established a Human Rights Commission (Human Rights Council), which generates special procedures (Charter-based system)

; - The second specific system is based on the nine established Pacts and Conventions in the area of the protection of fundamental human rights (Treaty-based system);

However, in this part, the fundamental document is the Universal Declaration of Human Rights, which was adopted in December 1948 by the General Assembly of the United Nations Organization. It is actually the first

[93] This right C. Wilson believes that it should be applied selectively, proposing that the right of secession be applied exclusively to the nations of the Quadruple Entente.

[94] Manfred Nowak, U.N. Covenant on Civil and Political Rights - CCPR Commentary, 2. izd., Kehl – Strasbourg, 2005, page 7

international act that articulates the rights and freedoms of man as a being. All previous documents in this sphere were of a national or regional nature.

In that context, on the other hand, it is not true what some legal theorists who criticize the supposed Western concept of human rights claim, when they say that that concept is reduced to the rights of the individual.[95]

The right of peoples to self-determination (right of self-determination), as a human right, is the right to create their own national state in every sense. The right to self-determination includes the right to one's own state, as well as the prohibition of interference in the affairs of other states. The nation has the right to secede from an existing state, in whose composition it existed, with the right to unite with other nations. She has the right to freely choose the form of political and social organization that suits her best. [96]

In fact, this is a clearly defined rule derived from the norms of positive international law, decisively stated and contained in the International Covenant on Civil and Political Rights.[97]

In fact, Article 1 of the Covenant states:

1. All nations have the right to self-determination. Based on this right, they freely determine their political position and freely realize their economic, social and cultural development.

2. To achieve their goals, all nations can freely dispose of their natural resources and resources without jeopardizing the obligations arising from international economic cooperation, based on the principle of mutual benefit and international law. In no case can the people be deprived of their own means of survival.

3. The contracting states of this covenant, including those responsible for the administration of non-self-governing territories and territories under guardianship, are obliged to facilitate the realization of the right of peoples to self-determination and to respect this right in accordance with the provisions of the Charter of the United Nations. .

This kind of thing has a continuation, in fact a decisive repetition in the International Covenant on Economic, Social and Cultural Rights.[98]

---

[95] Heiner Bielefeldt, Der Streit um die Menschenrechte, y: *Menschenrechte im Umbruch*, Neuwied, 1998, page. 4

[96] Bulajic, Pravo na samoopredelenje u Drustvu naroda I Ujedinjenim nacijama (1917 – 1962), Beograd 1963, page 5

[97] International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200 A (XXI) 1966, Public International Law – Selected Documents – Second Edition (Institute of International Law and International Relations at the Faculty of Law in Zagreb, Zagreb 1977.

[98] The International Covenant on Economic, Social and Cultural Rights is an addendum to UN General Assembly Resolution 2200 A (XXI) 1966, Public International Law – Selected Documents – Second Edition (Institute of International Law and International Relations at the Faculty of Law in Zagreb, Zagreb 1977. 10 Charter of the United

Another document is of particular importance for determining this human right, and it is the Charter of the United Nations Organization itself, that is, Article 1 and Article 55 of the Declaration on the Principles of International Law and Friendly Relations and Cooperation between States, as well as the Preamble itself. of the Charter.[99]

In this context, however, it should be noted that there are norms of international law that prohibit actions against existing states and their territorial integrity, integrity and inviolability, and have been used in certain circumstances. [100]According to a statement by the Secretary General of the United Nations Organization, U Thant (1962-1971), it follows that: "The right to self-determination does not include the right of a part, within a member state of the United Nations Organization, to demand the realization of self-determination, because, when a country becomes a member of the UN, it is understood that all other members have recognized its territorial integrity, its independence and sovereignty.[101]

Particularly significant for us as a country striving for European integration is the regional system for the protection of human rights, that is, the European system of protection, which includes the Council of Europe. [102]

The Council of Europe in the field of human rights protection adopted the famous European Convention for the Protection of Human Rights and Fundamental Freedoms on November 4, 1950 in Rome.[103] It contains the following rights:

Article 2 – Right to life

Article 3 - Prohibition of torture

Article 4 – Prohibition of slavery and forced labor

---

[99] Charter of the United Nations Article 1. The objectives of the United Nations are... to develop friendly relations between peoples based on respect for the principles of equality and self-determination of peoples.... Article 55. In order to create the conditions of stability and well-being necessary for peaceful and friendly relations between peoples, based on respect for the principle of equality and self-determination of peoples, the United Nations works to improve: a) increase in living standards, full employment and conditions for economic and social progress and development: b) solving international economic, social, health and related problems and international cultural and educational cooperation; and c) universal respect and observance of human rights and fundamental freedoms for everyone regardless of race, sex, language or religion.

[100] Ein Ansprucb ouf SelbMbesLLmmungsrecht cnthalt immer die Fordcrung gcgen cmen bestchendeo S taal auf Einschrankung, im ausserslcn Fa \le sogar auf Preisgahc seiner HOChe nsrechte fOr ein bcsummres GebiCL« (Ambrusler, *np. cit* .. page. 25J---.4).

[101] 9. 01.1970; v*Press Release*SG/SM/1201,

[102] The Council of Europe was established by the London Agreement of 1949 and has 47 member states. It is composed of two main bodies: the Parliamentary Assembly and the Committee of Ministers.

[103] With this Convention, the member states of the Council of Europe promise to provide them with the basic civil and political rights not only of their citizens but also of all persons who are under them jurisdiction. It was signed in 1950 in Rome and entered into force 3 years later

Article 5 – Right to freedom and security
Article 6 – Right to a fair trial within a reasonable time
Article 7 – Freedom from punishment without law
Article 8 – Right to respect for private and family life
Article 9 - Freedom of opinion, conscience and faith
Article 10 – Freedom of expression
Article 11 - Freedom of assembly and association
Article 12- Right to marry
Article 13 – Right to an effective legal remedy
Article 14 - Prohibition of discrimination

Protocol No. 1:

Article 1 – Protection of property
Article 2 - Right to education
Article 3 - Free elections

Protocol no. 4:

Article 1 - Prohibition of deprivation of liberty due to debt
Article 2 - Freedom of movement
Article 3- Prohibition of expulsion of own citizens
Article 4- Prohibition of collective expulsion of foreigners

Protocol No. 6:

Article 1- Prohibition of the death penalty

Protocol No. 7:

Article 1- Expulsion of foreigners
Article 2 - The right to two stages in the criminal procedure
Article 3- Right to compensation for damages in case of judicial error
Article 4 - The right not to be convicted or punished twice for the same crime
Article 5- Equality between spouses

Protocol No. 12:

General prohibition of discrimination.

But as you can see here, the European Convention for the Protection of Human Rights and Fundamental Freedoms does not deal with this right at all, but regionally on the level of the European continent it focuses on the protection of individual human rights, considering that it is a top priority.

So the new trends in the sphere of definition and the European understanding of the principles and doctrines of self-determination (not going into the discussion of the current developments in Europe in the period from 1990 to today) are based on the Final Act of the Conference on Security and Cooperation in Europe from 1975 [104]. It is explicitly stated here that "the right

[104] In the wider context of legal doctrine this conference is known as the KEBS

to decide one's own destiny" is recognized by all nations. The same wording is later used in all future KEBS documents.[105]

At the same time, the Helsinki Final Act drew a lot of attention to the Principle of Inviolability of Borders, as a Universal Binding Norm, opposed to "external self-determination". The principle of mutual recognition and inadmissibility of violent change of state borders is contained in many bilateral agreements and in a number of regional acts (the Charter of the Organization of African Unity of 1963, the Charter of the Organization of American States. [106]

However, as a general finding arising from the current situation, it is that: There is no unanimous agreement among theorists and lawyers about the status of the idea of self-determination of peoples in contemporary international law. It is a doctrine that is used on a case-by-case basis, of course in the interest of those who want and can achieve a certain goal in this way. It is simply that the legal doctrine in this case is being used for political purposes.

CONCLUSION

A large number of legal theorists believe that the right of nations to self-determination is a high imperative norm of international law (jus kogens), while others believe that this right can be recognized only under certain conditions and in connection with other legal norms.

It is a widely accepted doctrinal position that the self-determination of nations is not a legal, but a political or moral principle. At the same time, not a small number of lawyers believe that the future of the idea of self-determination of nations not only does not fit into any defined legal framework, due to the uncertainty of the definitions, for which there is no general consensus around the concept of "people or individuals", but causes certain destructive and uncontrolled processes, such as: separatism, ethnic conflicts, military conflicts, economic crises and embargoes.

The concept of the right to self-determination is fundamentally both contradictory and dangerous because it basically provides an opportunity to encourage separatist movements, which on the other hand does not provide opportunities for constructive and peaceful (legal) All of this is fundamentally contrary to the goals and the Charter of the United Nations Organization.

REFERENCES

1. Британика – енциклопедиски речник , МПМ. Топер , Скопје 2005.

[105] It should be noted that the countries of Europe considered the final act of the Conference not as a legally binding source of international law, but as a political agreement and a source of doctrine.

[106] ПРАВО НАРОДОВ НА САМООПРЕДЕЛЕНИЕ: ИДЕОЛОГИЯ И ПРАКТИКА, Москва, 1997 год стр. 12

2. Betty Miller Unterberger, Self-Determination, Encyclopedia of American Foreign Policy, 2002. Page 461, The Charter of the United Nations A Commentary, Second Edition 2002, Edited by Bruno Simma, in collaboration with Hermann Mosler+, Albrecht Randelzhofer, Christian Tomuschat, and Rudiger Wolfrum, page 50
3. Bhikhu Parekh: Rethinking Multiculturalism, Cultural Diversity and Political Theory, Harvard University Press Cambridge Massachusetts, 2000;
4. Vojin Dimitrijević i ostali u „MeĎunarodno pravo ljudskih prava― Beogradski centar za ljudska prava, 2006
5. Vojin Dimitrijević „Prava pripadnika manjina prema meĎunarodnom paktu o graĎanskim i političkim pravima― u Ustavne i meĎunarodnopravne garancije ljudskih prava, Zbornik radova sa meĎunarodne naučne konferencije održane 28. maja. 2008. godine na Pravnom fakultetu u Nišu Niš,strana 12 dostupan na http://www.prafak.ni.ac.rs/files/centar_pub/medj_zbor.pdf
6. Дукоскі Саша . Захист права на свободу совісті та віросповідання на європейському просторь. // Науковь праці МАУП. – К.: ДП Вид.дім „ Персонал “, 2010. – Вип. 1 (24) – С. 253 – 259.
7. Дукоскі Саша . Міжнародно-правові забов'язання Республіки Болгарія у свері захисту права на свободу совісті та віросповідання // Матеріали мижнар.наук.-практ.конф. „ Динаміка науковіх досліджень 2009“, 2009р. – Донецьк: Наука і освіта. – 2009.- Т.3. Зовнішньоекономічна діяльність. – С. 124 – 127.
8. European Convention for the Protection of Human Rights and Fundamental Freedoms;
9. Ein Ansprucb ouf SelbMbesLLmmungsrecht cnthalt immer die Fordcrung gcgen cmen bestchendeo S taal auf Einschrankung, im aussersIcn Fa \le sogar auf Preisgahc seiner HOChe nsrechte fOr ein bcsummres GebiCL«
10. Харис, О'Бојл и Варбик, 2014, Право на Европската конвенција за човекови права, Oxford University Press
11. Heiner Bielefeldt, Der Streit um die Menschenrechte, у: *Menschenrechte im Umbruch*, Neuwied, 1998,
12. International Covenant on Civil and Political Rights (ICCPR) GA UN;
13. Љубомир Данаилов Фрчкоски: Меѓународното право за правата на човекот, Скопје, 2005;
14. Љубомир Д. Фрчкоски: Преговарање во конфликти на идентитети, Скопје, 2007;

15. Mary Robinson, „Die Allgemeine Erklärung der Menschenrechte – ein lebendiges Dokument“, у: *Jahrbuch Menschenrechte 1999,* Frankfurt 1998,
16. Manfred Nowak, U.N. Covenant on Civil and Political Rights - CCPR Commentary, 2. izd., Kehl – Strasbourg, 2005,
17. П.Н.Галанца. Устави и законодавни акти на боржуаските држави од XVII – XIX век, Собрани документи . М, 1957 С 250.
18. Право народов на самоопределение: идеология и практика, Москва, 1997
19. UN Universal Declaration of Human Rights ;
20. UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981 (UN 1981 Dec.)
21. United nations Audovisual library of International law.
22. Wolfgang Huber, *Recht und Gerechtigkeit*, Gütersloh, 1996

Scientific Article
UDK 339.543(497.7)
343.359.3(497.7)

CUSTOMS CRIMES IN THE REPUBLIC OF NORTH MACEDONIA

Ass. Prof. Dr.sc Pakiza Tufekdji, Phd
Faculty of law-Kichevo, UKLO-Bitola
pakiza.tufekci@uklo.edu.mk

Abstract
The subject of processing of this paper is the customs crimes in the criminal legislation of the Republic of North Macedonia. The legal bases of the customs policy of the Republic of North Macedonia are aligned with the practice in the European Union and coincide with the rules applied by the World Trade Organization (WTO). The legal bases of the customs system and policy are defined in: the Customs Law, the Law on Customs Tariff, the Law on Customs Measures for the Protection of Intellectual Property Rights and other regulations and agreements concluded by the Republic of North Macedonia. The customs law regulates the rights and obligations of persons and customs authorities in relation to goods in passenger and goods trade between the customs territory of the Republic of North Macedonia and foreign customs territories, and the Law on the customs tariff prescribes the rules for the method of calculation of customs duties. the system of names of the goods that are imported and exported to the Republic of North Macedonia, the tariff numbers and tariff marks and the customs duties that are applied. Customs is one of the fundamental instruments for foreign trade protection of the national economy.

Key words: Customs crime, customs fraud, smuggling, offense.

INTRODUCTION

The customs service was established as an independent body of the state administration of the Republic of North Macedonia, by a special law passed by the Assembly of the Republic of Macedonia, at the session of April 14, 1992 - the Law on Customs Administration.

The Law on Customs only indirectly and globally determines the competences and the manner of operation of the customs service. However, the Law on Customs Administration establishes that the customs service of the Republic of North Macedonia is organized as a Customs Administration with the status of an independent body of the state administration.

However, with the new Customs Law, the Customs Administration is defined "as an authority in the field of customs", which is "in the Ministry of Finance". (Patoska,2010,p.9)

At the same time, the Law incorporates a hybrid solution according to which the relative independence is expressed by the fact that the Customs Administration has the capacity of a legal entity and that the director of the Customs Administration independently "performs the reception and deployment of customs officials".

In addition, the way a society treats specific forms of deviant behavior of individuals (or groups) mostly depends on the mentality, culturological development, and attitude of a specific community towards the criminal acts.

GENERAL CHARACTERISTICS OF THE CUSTOMS SYSTEM OF THE REPUBLIC OF NORTH MACEDONIA

In the formal-legal sense, the customs system of the Republic of North Macedonia is defined by two basic system laws: the Law on Customs (the Customs Law) and the Law on the Customs Tariff. With its content and the modern approach in the shaping of the customs system, the Law on Customs defines in a comprehensive and thorough manner all the relevant institutes and instruments of the customs system of the Republic of North Macedonia and together with the Law on the Customs Tariff represents a rounded institutional entity. At the same time, the basic system solutions are based on the knowledge, principles, criteria and modalities established and recommended by modern economic science in the field of customs and customs protection**.**

The basic approach in our Customs Law is to legally regulate the basic institutes, instruments, procedures in customs supervision and customs control, as well as all other relevant issues, in the law itself. In this way, the highest legislative body of the country clearly and concretely regulates the rules of behavior of subjects in foreign trade in relation to customs protection, that is, the rights and obligations of customs debtors and of customs and other state authorities. In this way, the long-term stability and reliability of the economic subjects and their legal position is ensured, and the possible voluntarism of the bodies of the executive power and other state bodies is avoided. However, part of the legal regulation in the field of customs, especially that related to the implementation of the basic institutes and instruments, with express powers contained in the Law on Customs, is adopted by the Government of the Republic of North Macedonia, the Minister of Finance, the Director of the Customs Administration, independently or in cooperation with other competent authorities. [107]

[107] Customs Law "Official Gazette of the Republic of Macedonia" No. 39/2005; 4/2008; 48/2010; 158/2010; 44/2011; 53/2011, 11/2012, 171/12, 187/2013, 15/2015, 129/2015, 154/2015, 192/2015 and 23/2016, 144/18, 105/19, 158/19 and 279/19), Decision of the Constitutional court of the

The division of the transferred competences and powers among separate authorities and officials was not carried out by chance. First of all, there is a certain hierarchy in terms of the transferred competences and in terms of the type of by-laws.

The government, as the highest authority of the executive power, adopts acts that specify certain legal institutes and instruments established in the Law, but cannot change their essence, nor introduce new rights, obligations and responsibilities that are not established in the Law.

The Minister of Finance, on the basis of the powers expressly established for him in separate articles of the Law on Customs, also adopts certain by-laws, but these acts are of a "lower rank", that is, they can only specify certain rights, such as procedures expressly established in the Law, or to prescribe more closely the procedures for exercising those rights. (Krstanoski, 2007, p. 169)

The by-laws for the enactment of which the Customs Law authorizes the Director of the Customs Administration are basically implemented acts and acts of a technical and organizational nature (instructions, decisions, regulations, etc.).

With the Customs Law, the obligation to pay customs duties is established as a general rule, and that is by applying specific rates established in the Customs Tariff Law. At the same time, the Customs Law itself lists the cases in which the goods that are imported, exported or transported through the customs territory are exempted from paying customs duties (Articles 18 and 25 to 32), as well as the general procedure for exercising this right.[108]

However, for all cases of exemption from paying customs duty (except for a small number of directly enumerated exceptions during import and generally determined liberal export), the Government or the competent minister (mainly for finance) is authorized and obliged to pass appropriate by-laws that will only more closely the type of objects, the quantity, the value or the procedure for exercising the right established in the Law is defined, but HOBI rights cannot be constituted (Patoska, 2010, p.16).

For some of the customs privileges established in the Law on Customs, the Government adopts a general decision that determines the objects, quantities and values of the objects for which customs privileges are applied during

Republic of Macedonia U. no. 251/2008 of April 29, 2009, published in "Official Gazette of the Republic of Macedonia" No. 62/2009 and U. No. 1/2009 of 16 September 2009, published in the "Official Gazette of the Republic of Macedonia"No. 117/2009

[108] Customs Law "Official Gazette of the Republic of Macedonia" No. 39/2005; 4/2008; 48/2010; 158/2010; 44/2011; 53/2011, 11/2012, 171/12, 187/2013, 15/2015, 129/2015, 154/2015, 192/2015 and 23/2016, 144/18, 105/19, 158/19 and 279/19), Decision of the Constitutional court of the Republic of Macedonia U. no. 251/2008 of April 29, 2009, published in "Official Gazette of the Republic of Macedonia" No. 62/2009 and U. No. 1/2009 of 16 September 2009, published in the "Official Gazette of the Republic of Macedonia"No. 117/2009

importation. However, for some other privileges, the Government is responsible for specifying them more closely with a separate act.

- **Customs clearance of goods**

The provisions for customs clearance of goods prescribe in detail the actions during the customs procedure in the narrower sense, i.e. the procedure according to which the customs authorities act depending on the direction of the movement of the goods to the customs area (import), from the customs area (export), or crossing through our customs area (transit).

In fact, these are procedures in which the general customs regime is applied, or so-called "regular" import and export, as well as transit.

The procedure is established as a logical consequence of the actions of the customs debtors, on the one hand, and of the customs authorities, on the other hand:

- submission of appropriate customs declaration and other supporting documents;
- receipt of the declaration and other documents;
- formal-documentary control;
- review of the goods and comparison with the documents;
- calculation of customs and other fees;
- revision;
- collection of customs and other fees;
- additional calculation, collection or refund of customs and other import duties;
- additional verification of data on imported goods;
- forced collection of customs and other fees;
- return of imported goods abroad, that is, of exported goods in the country; and
- Issuance of certificates for distribution of goods in appropriate tariff headings.

In this group of legal norms, from the aspect of customs clearance, i.e. payment of customs duties, the provisions for the supply of means of transport in international traffic could also be moved.[109]

CUSTOMS CRIMES

The CC provides as typical customs punishable (according to legal terminology - criminal) acts: smuggling (Art. 278), customs fraud (Art. 278-a) and concealment of goods that are subject to smuggling and customs fraud (Art. 278-b).[110]

[109] Law on the Customs Tariff "Official Gazette of the Republic of Macedonia" no. 23/03, 69/04, 10/08, 35/10, 11/12, 93/13, 44/2015, 81/15 and 192/15.

[110] Tupancheski, Nikola, 2015, “Criminal Code - integral text ", Skopje

SMUGGLING

Customs criminality expressed through the actions of the crime of smuggling consists of:

- dealing with the transfer of goods through the customs line by avoiding customs control (paragraph 1);
- transferring goods of greater value by avoiding customs control (paragraph 1);
- transferring goods of considerable value by avoiding customs control (paragraph 2) – as basic forms of customs crime;
- organizing a gang, group or other association for the purpose of dealing with the transfer of goods through the customs line by avoiding customs control or dispersing non-customs goods, committing the crime armed with firearms or using force or threats (paragraph 3);
- helping, enabling, concealing or not preventing acts of smuggling by an official (paragraph 4).

- **Forms of the crime of smuggling**

Basic forms – Incriminations of smuggling are expressed through the following basic forms:

- dealing with the transfer of goods through the customs line avoiding customs control;
- transfer of goods of greater value by avoiding customs control;
- transferring goods of considerable value.

A common characteristic of all three forms of execution of the basic crime of smuggling is that the act of execution consists in transferring goods through the customs line, while the perpetrator avoids customs control.

A special feature of the crime of smuggling is that the perpetrator "transfers goods of greater value". For this form of execution, it is required firstly, that the offender managed to transfer the goods, which means that he also managed to avoid customs control, and secondly, that the goods he managed to transfer are of "higher value", i.e., of "significant value" ". The term "greater value" means a value corresponding to the amount of five average monthly salaries in the economy during the execution of the crime. Whereas, "significant value" means a value that corresponds to the amount of fifty average monthly salaries in the Republic at the time of the crime. (Arnaudovski, 2007, page 244)

The following are provided as qualified forms of the basic offense of smuggling:

- organizing a gang, group or other association for the purpose of committing the crime;
- organizing a gang, group or other association for dispersal of non-customs goods;

- execution of the crime by a perpetrator armed with a firearm and
- committing the c Aiding, enabling the execution of the crime through various forms, concealment of the already committed crime and prevention of the crime - which criminality is "reserved" for officials - are provided as forms of assisting in the commission of the crime of smuggling. An official as a perpetrator of this criminality is understood as any official who helps, enables, conceals or does not prevent the commission of smuggling crime with the use of force or threat.

CUSTOMS FRAUD

Customs fraud is a crime that was not criminalized as such in the original 1996 Criminal Code, but was introduced later with the 2004 amendments. Although the frauds that occur in customs operations can be classified under the crime of classic fraud, the legislator decided that the crime of customs fraud represents a special form of fraud and therefore separated it as a separate crime, “Customs fraud".

The criminal offense of customs fraud includes the following actions:
- intentional avoidance of full or partial payment of customs duties payable upon import or export;
- intentionally providing false data to the customs authority about goods and other facts of influence for the calculation of collection or refund of customs duties;
- non-fulfillment of obligations according to law that are of influence for the calculation of customs duties;
- in any way misleading the customs authority of the customs duties of a higher value;
- avoiding the payment of customs duties of significant proportions;
- avoiding the payment of large-scale customs duties;

Executors of the crime can be natural and legal persons. The crime is premeditated, and punishment for an attempt is also provided.

CONCEALMENT OF SMUGGLED GOODS TO CUSTOMS FRAUD

The actions of committing the crime of concealment of goods that are subject to smuggling and customs fraud are:
- buying, selling, dispersing, receiving a gift, hiding, receiving for safekeeping, using or accepting for safekeeping goods of greater value that the perpetrator knew or was obliged to know were the subject of smuggling or customs fraud. Executors of the crime can be natural and legal persons. The act is premeditated, and the attempt is punishment.

Due to the increasing volume of customs crime, in our country there was a need to tighten criminal sanctions and introduce new measures for effective repression and suppression of customs crime, and also bringing our

legislation closer to the European one. In order to strengthen the criminal policy and reduce the gray economy, in the amendments and additions to the CC of the RNM in 2004, the Criminal Code "Concealment of goods that are subject to smuggling and customs fraud" was incriminated. This crime occurs in addition to the customs offenses "Smuggling" and "Customs Fraud" (Kambovski, 2007, p.213)

It is a type of organized crime, because it is composed of several stages and in its operation several persons are involved as perpetrators of the crime. Starting with the import of the goods through the customs line avoiding the payment of the legal customs duties, organized concealment of the goods after importation into the country and further use, distribution and sale of the goods in the domestic market. Crime, which the customs officials failed to detect when importing the goods into the country, they will have to make an effort to detect it in its new form. Organized criminal groups that import goods in an illegal way must agree beforehand on the reception and storage of the same, as well as the further process of dispersal of the goods.

ANALYSIS OF DATA FROM THE STATE STATISTICS OFFICE OF THE REPUBLIC OF NORTH MACEDONIA

The data were taken from the State Statistical Office of the RSM, and they will allow us to analyze the volume, dynamics and structure of customs crime in our country.

Year	Total registered adult persons for crime against public finances, payment transactions and the economy	Total registered full-time persons for crime Smuggling	Percentages (%) of the participation of the persons of legal age reported to the crime"Smuggling" in the total registered for the crime against public finance, square traffic and the economy	Total registered adults for "Customs Fraud"	Percentages (%) of participation of crime "Customs Fraud" in the inc.
2011	472	26	5,5	35	7,4
2012	493	52	10,5	28	5,6
2013	510	84	16,4	19	3,7
2014	310	36	11,6	14	4,5
2015	344	29	8,4	14	4,06
2016	419	17	4,05	4	0.9
2017	376	14	3,7	6	1,5
2018[111]	/	/	/	/	/

[111] The institute does not have information for this year.

2019	269	19	7,06	2	0,7
2020	273	3	1,09	/	0,0
2021	303	2	0,6	/	00
Total	3769	282	7,48	122	3,23

Source: State Statistics Office

From the data presented in table no.1, we can see that the percentage of participation of the persons registered for the "Customs Fraud" crime in the total number of persons registered for the crime against public finances, payment transactions and the economy for the time period from 2011 to 2021, on average is 4.9% and is much lower than the percentage of participation of crime "Smuggling" which was 9.04%. If we analyze the participation of the "Customs Fraud" crime by years, the data show that in the first four years of the stated research period, the percentage of participation of this crime is about 7% on average, which is the highest percentage for the entire period. The next 2012 the percentage of participation drops to 5.6%, then for the next three years there is an average of about 4% and in 2016. comes to 0.9% of participation. If we compare the first year of the research, that is, 2008, where the participation is 7.1%, and the last year, 2019. with a participation of 0.7%, we can see a drastic difference in results for the twelve-year period. Also, from the results in the table, we can conclude that the occurrence of this type of economic crime is in decline. Especially in the case of customs fraud where not a single crime was reported in the period from 2019 to 2021. The question arises, do we have a reduction in the trend of the existence of customs crimes? Taking into account the fact that we ourselves are witnessing an increase in crime more and more often, we can conclude that either the dark number here is on a significant increase, so we have a decrease in the official numbers, or we can hope that it is a mistake made by the officials in The State Statistics Office.

CONCLUSION

Three customs crimes are incriminated in the CC of the RSM: "Smuggling" (Art. 278), "Customs fraud" (Art. 278-a) and "Concealment of goods subject to smuggling and customs fraud" (Art. 278-b). As for the shortcomings in the legal regulation of customs documents, our remark, as previously stated, refers to the "Customs Fraud" document. The CC of RSM does not provide for liability for an official who is part of the "Customs Fraud" crime and also does not provide for confiscation of the goods and the means used to transfer the undeclared goods.

The state of the basis of the above presented in the paper alone compared - we have by years of the data received from the SSO we also have

changes in relation to the years, each year is the most different to the factors, which is the number of perpetrators of different crimes.

From the analysis of the criminological characteristics, we can conclude that the crime "Smuggling" is the most prevalent among the customs crimes, the second in order is the crime "Customs fraud" and finally the crime "Concealment of goods subject to smuggling and customs fraud". The data from the analysis clearly show a sharp decline in the number of reported adult offenders at all crimes in RNM, including customs crimes since 2015, and so on.

Dynamic development of customs crimes, whose characteristic is a constant change in the forms in which they appear, contributes to more difficult prevention and detection by the competent authorities.

Several conclusions can be drawn from what has been said. First, although customs crimes exist and are represented on a large scale, from the analysis of the data from the State Statistics Office, we can conclude that they are showing a decreasing trend. This raises the question of whether the percentage of the dark figure is quite high, so the picture is not clear enough in relation to this type of crime. Or does the question arise as to how well the officials do their job? Do they perform it responsibly and impartially or is it all reduced to the realization of their own interests or bribery? Or is the State Statistics Office not doing its job in its entirety? Because what the practice shows us in parallel with what the statistical data show us, is completely different.

REFERENCES

1. Arnaudovski, Ljupco. 2007, "Criminology", 2nd August S - Shtip, Skopje
2. Customs Law "Official Gazette of the Republic of Macedonia" No. 39/2005; 4/2008; 48/2010; 158/2010; 44/2011; 53/2011, 11/2012, 171/12, 187/2013, 15/2015, 129/2015, 154/2015, 192/2015 and 23/2016, 144/18, 105/19, 158/19 and 279/19), Decision of the Constitutional court of the Republic of Macedonia U. no. 251/2008 of April 29, 2009, published in "Official Gazette of the Republic of Macedonia" No. 62/2009 and U. No. 1/2009 of 16 September 2009, published in the "Official Gazette of the Republic of Macedonia" No. 117/2009.
3. Kambovski, Vlado, 2007, “Customs Criminal Law”, Skopje
4. Krstanoski,Miladin, 2007,,Customs Law”, Faculty of Tourism and Organization Sciences, Ohrid
5. Law on the Customs Tariff "Official Gazette of the Republic of Macedonia" no. 23/03, 69/04, 10/08, 35/10, 11/12, 93/13, 44/2015, 81/15 and 192/15.
6. Mitreva, Renata, 2018 ,,Concealment of goods subject to smuggling and customs fraud”, UDC: 343.37(497.7), Stip

7. Patoska, Aleksandra, 2010, ,,Administrative procedures" Bitola.
8. Tupancheski, Nikola, 2015, " Criminal Code - integral text ", Skopje
9. http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/MakStat__Sudstvo__ObvinetiOsudeniStoriteli/300_SK2_Mk_T14_ml.px/?rxid=4762152b-3278-4340-98d4-740d807bb6e4

Scientific Article
UDK 343.614-053.6(497.7)
179.7-053.6(497.7)

TRENDS IN SUICIDE AMONG YOUTH IN THE REPUBLIC OF NORTH MACEDONIA

Ass. Prof. Dr.sc Ivona Shushak Lozanovska
Assoc. Prof. Dr.sc Ice Ilijevski
Assoc. Prof. Dr.sc Angelina Stanojoska
Faculty of Law, UKLO - Bitola
ivona.susak@uklo.edu.mk
iceilijevski@uklo.edu.mk
angelina.stanojoska@uklo.edu.mk

Abstract
Just a few weeks ago we were shocked by the news of a high school student from the SUGS "Rade Jovchevski-Korcagin" who committed a suicide by jumping from a garage in Skopje. He was only 17, and on the ninth floor from where he had decided to jump, left his certificate with the grades for the second year of his education and a farewell letter.
The statistic shows that several thousand people annually commit a suicide, and every third of them is a child. That is why the suicide is called "silent epidemic" and it is a serious public health problem globally.
The paper points out the data that the suicidal behavior is a current and growing problem among the adolescents in Republic of North Macedonia and as such it must be studied in order to be developed an adequate form of prevention, which asks for a multidisciplinary approach.

***Key words**:* suicide, children, phenomenology, mental healt, prevention

INTRODUCTION

The suicide[112], shown even only through statistical indicators, triggers in people different, often ambivalent feeling, anything but indifference, like hardly any other phenomenon. It provokes thinking and different evaluations and reactions. From wanting to be hidden to wanting to be spoken about, from the point of a part of a tragic personal and family faith or as a result of an unfortunate set of circumstances that could have been avoided, from condemnation to deep sympathy, from assessment that it is a rational solution

[112] The term suicide comes from the Latin word sui caedere and denotes the conscious and intentional taking of one's own life. By the way, the word suicida dates back to 1178, but it was not accepted into general use and was not used until the end of the Middle Ages, because it was considered too scary to talk about suicide. (Houlbrooke,1998)

to an unbearable situation or an escape from facing reality, from the fact that it represents a desperate cry for help to the fact that it means a complete refusal of help. Although an individual act, the suicide still affects more people and leaves painful and long-lasting psychological and social consequences, not only to the family and other close people, but also on the society as a whole.
Unlike the natural death, which is a natural epilogue of the life, the suicide is considered to be one of the most complex and correspondingly, the most mysterious human actions. The study and the defining of the suicidal act, brings many difficulties due to its complexity, multidimensionality, heterogeneity and the impossibility of answering the etiological questions related to this act in an exact way. However, suicides represent a sociopathological phenomenon with which all societies have dealt, taking a position of approval or disapproval, and in the search for answers to numerous questions, thousands of researches have been carried out and more theoretical aspects have been created that mark the development of scientific thought about this sociopathological phenomenon.

Every year in the world at least 700,000 people commit suicide. (WHO, 2019:1) The suicide is among the leading causes of death, especially among children and young people, where the prevalence shows that every eleven minutes a young person takes their own life. (UNICEF, 2021:10). Every life lost belonged to a parent, partner, child, friend or colleague. For every suicide, 135 people feel intense anger or some other affect. In one suicide, 25 people attempt to take away their own life, and even more have serious intentions to do so. (IASP, 2018). This points out to a continuing tragedy that can no longer be ignored. Although our country belongs to the category of countries with low to medium suicide rates (Nedanovska et al., 2002:60), there is a trend of increasing suicides, especially among young people, which has become evident in recent years, a fact that a challenge for this paper.

THE SUICIDE AS A SOCIAL PHENOMENON

Historically, the suicides have been subject of many philosophical debates. They ranged from complete disapproval of this act, to acceptance of attitudes that believe that no one would give up its life if it was worth living. However, by philosophically examining the being of suicides, we venture toward the edge of total darkness, says Heidegger. It is one of countless twilight zones that offer neither ruthless precision, nor apodictic truth, nor decisiveness. (Damjanovic, 2005)

The scientific explanation of the suicide begins with Emile Durkheim and his work "Le suicide" (1897). By suicide, Durkheim means any death that is a product of a positive or negative act committed by the person himself. He explains the suicide as a consequence of social influences, and considers the relationship between the individual and the society to be key to their

understanding. The suicides are a reflection of a disturbed relationship between social integration and regulation, i.e., insufficient or too pronounced degree of social integration and social regulation (Durkheim, 2002). His teaching is one-sided and he explains it in a coherent sociological system, however, after Durkheim it was no longer discussed about the morality of the act of suicide, but about the reasons that lead to this act.

The sociological theories about the suicide expand the focus from the individual to the society and social factors, while psychological theories target the suicide as an individual act. In the psychological theories, there is an opinion that people who commit suicide have certain predispositions for such behavior due to poor psychosocial support in the childhood, genetic predisposition, personality traits, as well as early traumas and other factors, while stress factors from society are perceived as their amplifiers. That is why Durkheim's understanding that the social processes can create stressful situations in which people are forced to respond in some way to conditions they did not choose is important for the psychological theories.

The movement of the analysis from the society to the individual and vice versa is necessary for understanding the phenomenon of suicide, while the psychiatric theories mediate between them, which analyze the people with impaired mental health and the relationship between psychological problems and suicide. (Dragišić Labaš, 2019:17)

THE SUICIDES AMONG CHILDREN AND ADOLESCENTS

Human's individual "journey through time", during its existence implies passage through different periods, from early childhood, through youth, mature age, later years of old age as the last stage in the biological and psychological development of man, whose "life path" it did not end before the biologically projected time. The adolescence is a turbulent period of development. It is manifested not only in anatomical-physiological growth but also in the development and the formation of adequate psychological properties and personality traits such as temperament, character, abilities and other characteristic traits of the human personality. It is a period of psychic maturation, of the still unachieved and unrealized emotional balance, a chaotic stage of internal crises and unrest, a phase of ideological and social radicalism and anti-conformism, all of which can be labeled as "crazy years". (Шкулић, 2003:66)

There is a belief that being young has never been easy. But today is harder than ever. The confusion, the complexity and the irrationality of the modern urban time offer young people few solid bases for understanding the things that surround them and their meaning. (Clark, 2009:164) And precisely that confusion of the young person, as an individual who is at the crossroads between the world of adults, to which they so strive, and the world of

childhood, from which they so strongly want to separate, can led down the road of no return. [113]

The shame, the fear, the loneliness and helplessness are just some of the feelings that can be a "ground" for suicidal thoughts. Along with them the low self-esteem, the pressure in school, by the parents or the peers, the dysfunctional relations in the family or the insecure living conditions can also have a big impact on how a young person feels. (Schliefer, 2008). A motive or a trigger for the child to think about suicide can be different events in the school, the family or the environment, as failure in school or in sport, fight with the family members or with the friends, divorce, death of a close person, break in love relationship, mixed feelings related to sexuality and sexual orientation, fear of non-acceptance, surviving abuse or peer violence, trauma or similar. (Vučkoviћ, 2022:5)

The suicide among the children and adolescents up to the age of 14 is very rare. It is considered that their immaturity and their heir limited ability to: experience (of despair or hopelessness), comprehend (of problems or death) and perform the act itself protects them. In addition, this category of children is firmly integrated in the family environment that protects them from the greatest number of risk factors.

The suicide rates begin to rise as they age. The maximum is reached in the period of the early twenties and that among the male adolescents. However, in the recent years, the increase in suicides among younger people is striking. The data shows that the suicide rate among young people aged 10 to 24 increased by 60 percent between 2007 and 2018, making suicide officially the second leading cause of death among this age group. (NVSR, 2020:3)

The suicides among children and adolescents in the Republic of North Macedonia

From the data analysis of the State Statistical Office, it can be concluded that in the period 2011-2021 the general volume of suicides is continuously decreasing with a certain growth in certain years. On average, during the analyzed period, 120 suicides occurred per year.

[113] In a conversation with adolescents who tried to kill themselves, the following is often heard: "I just wanted the tension in me to stop. I don't know the reason, but it pressures me so much that my life has become so bad...but I didn't want to kill myself," says twenty-one-year-old Natasha. a student. (Kocijan-Hercigonja, 2000)

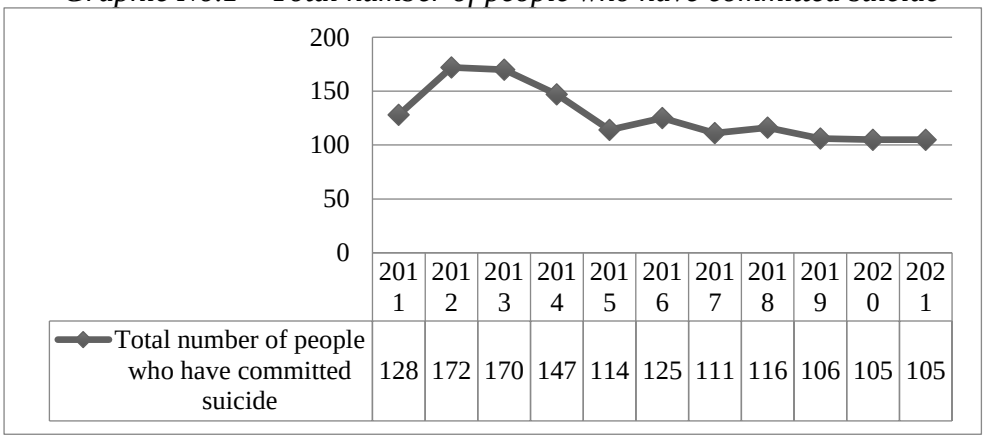
Table No. 1- Suicides in RNM in the period 2011-2021[114]

	Total Violent death	Total	Men/ Women	Total children	5-14	15-24
2011	527	128	M-96	8 6,25%	-	5
			W-32		1	2
2012	584	172	M-120	10 5.81%	1	4
			W-52		-	5
2013	552	170	M-136	11 6,47%	1	8
			W-34		-	2
2014	493	147	M-114	4 2,72%	-	2
			W-33		-	2
2015	513	114	M-82	5 4,38%	-	3
			W-32		1	1
2016	497	125	M-98	9 7,2%	1	7
			W-27		1	-
2017	421	111	M-79	8 7,2%	1	6
			W-32			1
2018	477	116	M-91	8 6,89%	1	6
			W-25		-	1
2019	454	106	M-82	6 5,66%	1	4
			W-24		-	1
2020	438	105	M-82	7 6,66%	-	4
			W-23		-	3
2021	677	105	M-73	9 8,57%	-	7
			W-32		-	2

The highest suicide rate was recorded in 2012 – 172 suicides, and the lowest in 2020/2021 – 105 suicides. On average, the suicides account for 25% of the total number of violent deaths, and the death rate shows that for every 1,000 deaths, 3 are the result of suicide.

[114] Violent Death Announcements in RNM, available at www.stat.gov.mk

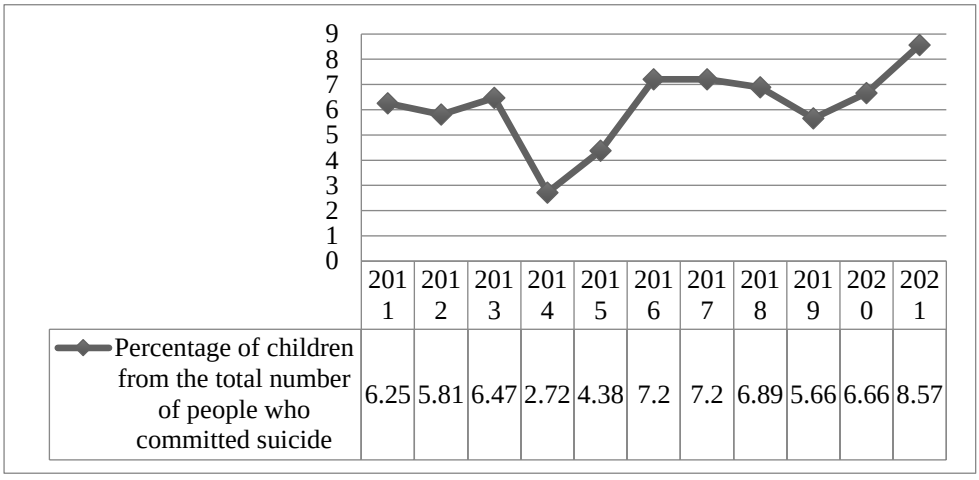
Graphic No.1 – Total number of people who have committed suicide



Although the participation of the young population in the total number of suicides is statistically small (6.2% in the analyzed period), suicide is one of the leading causes of death among this age group and shows a tendency of continuous growth in the total number, especially in the last three years.

The psychologists consider that the fact that the suicidal rate among the young people is increased during the long, exhausting, unpredictable and uncertain state of crisis caused by mass phobia and stress called covid-19 is not surprising at all. The reasons for suicide that were simmering long before the pandemic is now becoming more visible from the fact that such an uncertain situation is a trigger for the emergence of what was just waiting for an opportune moment. Other reasons lie in the fact of self-estrangement, both on an individual and social level, especially among the new generations who literally from the mother's womb sit down at the computer and grow up with an accepted state of normality of social isolation, i.e. withdrawal into one's own world and a huge reduction in all kinds of social, emotional and physical communication. The virtuality is taking its toll, and it's a topic yet to be main in all scientific circles. Such situations completely change the world of values among young people, thereby encouraging the feeling of loneliness and depression, which is the main cause in the largest number of cases of suicidal thoughts and tendencies (MetaMk, 2021).

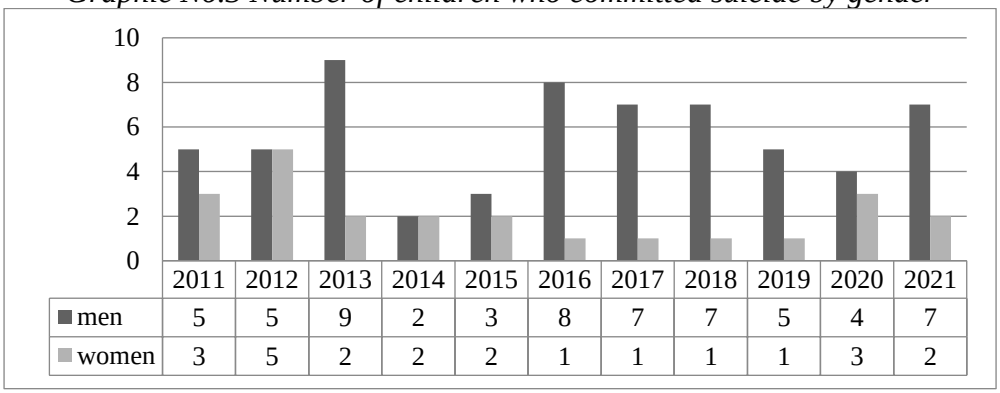
Graphic No..2- Percentage of children who committed suicide



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Percentage of children from the total number of people who committed suicide	6.25	5.81	6.47	2.72	4.38	7.2	7.2	6.89	5.66	6.66	8.57

Worldwide, the suicide among children under the age of fifteen is unusual. Unfortunately, in our country, during the observed period, there were cases of suicide among children under the age of 15 in almost half of the analyzed years, and in 2016, 2 out of a total of 9 cases were precisely under the age of 14.

Graphic No.3 Number of children who committed suicide by gender



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
men	5	5	9	2	3	8	7	7	5	4	7
women	3	5	2	2	2	1	1	1	1	3	2

The boys kill themselves more often, ie. they die in suicide attempts much more often than the girls, because they choose more violent methods of execution, such as hanging, firearms, explosives. They are more aggressive and impulsive, and they often turn on themselves under the influence of alcohol or drugs, which certainly contributes to a fatal outcome (State Statistical Office, 2010:45). This rule is also present in our country, and for the entire period of observation, the participation of boys is greater than that of girls.

According to some relevant studies, in some countries the suicide is much more common among the girls between the ages of 15 and 24 than among young men of the same age group, and the number of those who use violent means is also increasing. Girls try to commit suicide 2-3 times more often, they develop depression more often, but they seek help more easily, which is why they get off more easily (WHO, 2002). In our country, such a picture has not yet been formed, however, in the structure of those who died due to suicide, in the observed period, 37% were girls. Only in 2011 and 2012 their participation was almost equal to that of the boys.

The most common way of committing suicide among children is by hanging, strangulation (drowning) and suffocation. Then, they commit suicide with a firearm, and the next method is poisoning with solid and liquid substances as a way of committing suicide. They rarely take their own lives by drowning, jumping from a height or in another marked and unmarked way.

CONSLUSION

The suicide is a global problem. It is "responsible" for over 700.000 deaths annually, which is equal to a suicide in every 40 seconds.

The suicide is a result of a convergence of genetic, psychological, social and cultural and other risk factors, sometimes combined with experiences of trauma and loss, and as such this phenomenon becomes one of the leading causes of mortality among children.

Based on the available statistical indicators, presented in this paper, it is indicated that suicidal behavior is a current and growing problem among adolescents in RNM, especially during the pandemic period.

Hence, although we agree that it is a phenomenon that will never be fully understood, it must be studied in order to be developed an adequate form of prevention, which requires a multisectoral approach. The synthesis, however, must not remain at an elementary theoretical level. Every theory must be based on empiricism, but every theory must also have a goal, to help build prevention at the social level based on the obtained results.

REFERENCES

1. Curtin, S. (2020), *State Suicide Rates Among Adolescents and Young Adults Aged 10–24: United States, 2000–2018*, National Vital Statistics Reports, Volume 69, Number 11, available at: https://www.cdc.gov/nchs/data/nvsr/nvsr69/NVSR-69-11-508.pdf.
2. Damjanovic, A. (2005), *Filozofija samoubistva*, Engrami, vol. 27, br. 1-2, available at: https://scindeks-clanci.ceon.rs/data/pdf/0351-2665/2005/0351-26650502093D.pdf,
3. Dragišić Labaš, S. (2019), *Samoubistvo – različiti diskursi*, Univerzitet u Beogradu, available at: https://isi.f.bg.ac.rs/wp-

content/uploads/2019/05/Sladjana-Dragisic-Labas-Samoubistvo-razliciti-diskursi.pdf;
4. Durkheim, E. (2005), *Suicide: a study in sociology*, Routledge, available at: https://www.gacbe.ac.in/images/E%20books/Durkheim%20-%20Suicide%20-%20A%20study%20in%20sociology.pdf;
5. Houlbrooke, R. (1999), review of *Suicide in the Middle Ages. Volume I: The Violent against Themselves*, available at: https://reviews.history.ac.uk/review/75;
6. International Association for Suicide Prevention, (2018), *World Suicide Prevention Day-Working Together to prevent Suicide*, available at: https://d2h4p72yjb3hg1.cloudfront.net/11831/documents/2018/9/2018%20World%20Suicide%20Prevention%20Day.pdf;
7. Krug E. et al.(2002), *World report on violence and health*, World Health Organization, Geneva, available at: https://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;
8. Schleifer, J. (2008). *Sve što trebate znati o tinejdžerskim samoubojstvima*, Zagreb: Slovo;
9. United Nations Children's Fund. (2021), *The State of the World's Children 2021: On My Mind- Promoting, protecting and caring for children's mental health*, available at: https://www.unicef.org/media/114636/file/SOWC-2021-full-report-English.pdf;
10. Vučković, H., (2022*), Samoozljeđivanje i suicidalnost djece i adolescenata – analiza poziva savjetodavnim linijama Hrabrog telefona u razdoblju od 2019. do 2021. godine*, University of Zagreb, Faculty of Humanities and Social Sciences, available at: https://zir.nsk.hr/islandora/object/ffzg:6748/datastream/PDF/view ;
11. World Health Organization. (2021), *Suicide worldwide in 2019: global health estimates*, available at: https://www.who.int/publications/i/item/9789240026643;
12. Кларк, Р. (2009), *Криминалитет у Америци – запажања о његовој природи, узорцима, превенција и контроли*, Београд;
13. МетаМк (2021), *Стресот и изолацијата од ковид-19 го зголеми чувството на безволност кај младите*, available at: https://meta.mk/stresot-i-izolacijata-od-kovid-19-go-zgolemi-chuvstvoto-na-bezvolnost-kaj-mladite/;
14. Недановска, (2002),
15. Републички завод за статистику. (2010), *Насилне смрти у Републици Србији, 1997-2007*, available at: http://publikacije.stat.gov.rs/G2010/pdf/G20104008.pdf;
16. Шкулић, М. (2003), *Малолетници као учиниоци и жртве кривичних дела*, Досије, Београд.

Scientific Article
UDK 004.8
004.8:005.334

ARTIFICIAL INTELLIGENCE INFLUENCE ON DIPLOMACY

Elena Tilovska-Kechedji[115]
Aleksandra Kolakovic[116]

Abstract
Artificial Intelligence is part of our every day lives and it has influenced our working environment, our private and social environment, it has occupied our lives completely. Artificial Intelligence affects also the most traditional and conservative professions. It is influencing and changing Diplomacy as we know it. Its affects on Diplomacy are positive and negative, but also it should be accepted that there is no turning back, Artificial Intelligence is part of this world and this will not change. So, its acceptance is inevitable, which will lead to accepting and changing the classical diplomacy into new kind of diplomacy, that is technologically advanced and equipped with skilled technological personnel and AI instruments. Also, a crucial step for all humanity is not only to accept the changes whether they are positive or negative that are produced out of the use and implementation of AI, but the policy makers globally need to create a legislation that will govern and protect human beings, that will be applicable to all and cover all aspects of AI which at the moment is still a status quo.

Key words: Artificial Intelligence, Diplomacy, legislation

INTRODUCTION

Diplomacy like all the other disciplines in this modern times is changing. The main purpose of diplomacy is to maneuver in the field of international relations by using the tools of negotiation, mediation or dialog among states and other actors in order to accomplish a certain aim.[117]

With the fast technological changes and advances Artificial intelligence begun to spread in all spheres of life, in our every day life, in our professions, influencing our cultural and social life and so on. So, Artificial

[115] Associate professor at the Faculty of Law, University"St. Kliment Ohridski" - Bitola; e-mail: elena-tilovska-kechegi@hotmail.com

[116] Senior researcher at the Institute for political studies -Belgrade, Serbia; e-mail: **kolakovicaleksandra@gmail.com**

[117] Noe Cornago. "Diplomacy". Retrieved from: https://www.researchgate.net/publication/286221540

Intelligence is developing and improving computers and machines that have the ability to perform actions as human beings. AI advances were also made in the machine learning techniques, which use computing to produce algorithms that learn from data which helps in interpreting and receiving possible outcomes. [118] And these outcomes and possible scenarios can be used in negotiations, in the market or the economy and many other fields.

Therefore, as in all other fields AI is beginning to be used in the field of Diplomacy, although this process has been difficult and maybe unacceptable since diplomacy is perceived as more traditional and not open and transparent still the gradual changes are visible.

THE IMPACT OF AI ON DIPLOMACY

The huge interest and big investments in artificial intelligence (AI) has created crucial changes in diplomacy and foreign policy as well as within states relations. Its applicability can change global markets as well as the balance of power of states, meaning, who has the biggest investment and who is owning AI tools and advances he has the power and is the leading player in global politics. Therefore, we can see that AI is challenging traditional diplomacy as we know it. [119]

So, the answer to the question, can Artificial Intelligence (AI) change the practice and the concept of diplomacy? Of course, it can. AI, opposite of any human being, is cable to analyse huge amounts of data fast and precise and it is more reliable, and its mistakes are brought to the minimum. Many foreign ministries already use AI, in order to be more precise and faster in processing information, but usually this is only used for administrative purposes. [120] This is due to the fact that AI is still very new and people are sceptical of its use, especially if we are discussing the use of AI by the foreign policy agents or diplomats, mostly due to the specificity and sensitivity of issues discussed by this profession. But, with the use of AI the classical conduct of diplomacy has and can change, for example, AI can predict the turn out of negotiations through calculation of algorithms, the calculations and analysis are faster, cheaper and precise, so the job of the diplomats is only to continue with improving the results and the outcomes, and add the ethical and

[118] Ulrike Franke. "Artificial Intelligence Diplomacy". AIDA Committee. European Parliament. Retrieved from: Artificial Intelligence diplomacy | Artificial Intelligence governance as a new external policy tool (europa.eu)

[119] Didzis Klavins. "Diplomacy and Artificial Inteligence in GlobalPolitical Competition". Retrieved from: https://www.transcript-open.de/pdf_chapter/bis%205999/9783839457474/9783839457474-009.pdf

[120] Volker Stanzel and Daniel Voelsen "Diplomacy and Artificial Intelligence" Reflections on Practical Assistance for Diplomatic Negotiations. SWP Research Paper 2022 Retrieved from: Diplomacy and Artificial Intelligence. Reflections on Practical Assistance for Diplomatic Negotiations (swp-berlin.org)

moral perspectives to this scenarios.[121] Therefore, this is one way how AI can improve diplomacy, and especially if it is used only to provide assistance. Diplomats need and rely on precise decisions based on clear and stable procedures. This is done by data researching and techniques that organize the findings and make it possible to identify patterns and relationships that can not be foreseen otherwise. So now instead of the diplomats to do all the work, this is done by digital platforms that can be used as tools for *managing diplomatic crises, in* decision-making process, in ending crisis and so on. But it must be pointed out that this AI tools and digital platforms should be used carefully because they could hamper from their aim and be biased in producing certain decisions, meaning they can still make mistakes. **[122]** AI should be seen as a diplomatic tool, and as a factor that shapes the diplomatic surrounding. As a tool for diplomacy, it can support the functions and tasks of diplomats, so it will have the power to reshape international order. [123]

AI, has already been incorporated and implemented in many ministries, diplomatic and consular cabinets mostly as a tool for communication and administrative tool, its implementation is uneven and it produces different results in different countries. Most of the changes have been pragmatic, the major changes are few and with little transformation and this should be a process that is standard for adaptation for all. The futuristic computational power, and the automated decision-making in robotics that will substitute the human in diplomacy will not be accepted nor it will be used at-least in the near future.[124]

THE CATEGORIZATION USE OF AI

In 2019, Kathleen Walch presented the different use of AI. The patterns used are: 1) Hyperpersonalization, which means that AI will be developed to treat each customer as an individual; 2). Autonomous systems are mechanical systems controlled by AI with the goal to reduce manual labor; 3) Predictive analytic' s and decision support is using machine learning to understand how data on past or existing behaviors can help in the prediction of the future; 4) Conversational/human interactions allows machines to communicate as humans; 5) Identifying patterns and anomalies; 6) Recognition systems is used

[121] Volker Stanzel and Daniel Voelsen "Diplomacy and Artificial Intelligence" Reflections on Practical Assistance for Diplomatic Negotiations. SWP Research Paper 2022 Retrieved from: Diplomacy and Artificial Intelligence. Reflections on Practical Assistance for Diplomatic Negotiations (swp-berlin.org)

[122] **Corneliu Bjola**. "Diplomacy in the age of Artificial Intelligence" 2019 Retrieved from: Diplomacy in the Age of Artificial Intelligence | USC Center on Public Diplomacy (uscpublicdiplomacy.org)

[123] Corneliu Bjola. "Diplomacy in the Age of Artificial Intelligence". ARI 98/2019 14 October 2019 Retrieved from: Diplomacy in the Age of Artificial Intelligence (realinstitutoelcano.org)

[124] Ben Scott, Stefan Heumann and Philippe Lorenz January 2018 "Artificial Intelligence and Foreign Policy"Retrieved from:ai_foreign_policy.pdf (stiftung-nv.de)

for finding, classifying, and identifying images, video, audio, or objects; 7) Goal-driven systems is called when AI is used to learn the rules of games and how to play. These patterns can be used individually or combined. And we see where some of these patterns can be used in Diplomacy. For example, image recognition can be used to track people which present a threat. The communication systems can be used to target content when in need of information. Such systems help policy makers, diplomats, foreign service agents to focus, and produce better decision making. Language translators together with voice recognition can help in intercultural communication. Screening systems can be used in security clearance and intelligence-gathering applications to find relevant articles and understand the content. The behavior of individuals and organizations can be assumed in risk assessment. All of this algorithm can be used positively for certain purposes but we have to have in mind that they have their downfalls such as bias which can lead to negative outcomes.[125]

I. Technology diplomacy as a new concept

The use of AI in political, strategic, ethical perspectives, in policies and the lawful and unlawful use of AI among different countries like China, the United States, the EU, India, Japan, Korea or Russia, risk undermining its positive potential. Different organizations, civil society groups, non governmental organizations try to address different aspects and issues of the use of artificial intelligence but these initiatives are narrowed to few countries, sectors, or for certain issues. For example, the EU has presented initiatives for the ethical aspects of AI in regards to data surveillance and democracy. So what is missing is international dialogue, in regards to human rights, ethical, legal, economic, and social aspects of AI. And here can begin the new role of diplomacy, that can be called "new technology diplomacy." The present technological governance methods are slow and are not interested to adapt to the new technological developments. But with the introduction of the internet and its fast spread the legislation presented to be governed it has been successful by different multi-stakeholders. So, this can be done for AI as well. International collaborative governance offers benefits, it avoids the high costs of policy making and promotes more productive relationships among stakeholders. It offers geopolitical platform to engage in productive discussions, it fosters synergy among nations, and the international governance can monitor and address the risks of harmful AI. This allows the society to benefit from AI and to minimize the potential threats. Therefore, the "new technology diplomacy," is a new kind of international engagement aimed at national interests to shape a global set of principles. Ideally, such diplomacy

[125] Oriesek, Daniel Felix. 2022. The Potential Impact of Artificial Intelligence on Preventive Diplomacy from a Balance-of-Threat Perspective. Master's thesis, Harvard University Division of Continuing Education. Retrieved from:Microsoft Word - 202205 Oriesek Daniel Thesis final.doc (harvard.edu)

raises above the traditional diplomacy, allows guidance, and, leads to an international constitutional charter for AI. New technology diplomacy would allow addressing the different aspects of AI and the specific applications. In the common efforts to build international, collaborative governance, policymakers may give initiatives to build momentum. These diplomacy efforts, should focus on strengthening the effectiveness, and willingness to collaborate with aim to achieve trust, communication, mutual respect, and leadership. Cooperation between actors is the most powerful means to avoid the negative consequences of techno-nationalism, protectionism, and fragmentation. Policy and regulations are the key for future decisions about AI. There should be as part of the jurisdiction preventive strategies, standardization of best practices, teaming, verification, and discussions on vulnerabilities, security tools and secure hardware, the publication of risk assessment in the areas of special concern, and promotion of responsibility through education, ethics, standards, norms, and expectations. So diplomatic processes that strengthen such exchanges of knowledge would need to evolve. Several countries have such mechanisms for these new technologies. But we have to take into consideration that AI algorithms use large amounts of data without distinguishing between borders, so how should these collaborations between states be crafted because national sensitivities and regulation around data privacy should be considered. Therefore national foreign policy and the approach of diplomats should address the new tools, and elements used by technology diplomacy. For many countries there will be the need to reshape foreign policy as well as human resources so they know about emerging implications of AI. The technology diplomacy will require going beyond treaties, because AI covers different domains. Other challenges for data governance are consent, ownership, privacy and responsibility. So, the task of AI-technology diplomacy would need experts that are experts in the standard foreign policy but also in the technology.[126]

Legislation in the creation

To create a legislation that is applicable for such a fast growing science and to be applicable to all it is very difficult but still it is a necessary process. The Council of Europe created an Ad Hoc Committee on Artificial Intelligence (CAHAI) in 2001, which discussed and published a possible legal framework

[126]ClaudioFeijóoab,YoungsunKwonc,JohannesM.Bauerd,ErikBohline,BronwynHowellf,RekhaJaing,PetrusPotgieterhKhuongVuiJasonWhalleyjJunXiak. "Harnessing artificial intelligence (AI) to increase well being for all: The case for a new technology diplomacy". Telecommunication Policy. Volume 44, Issue 6, July 2020, 101988 Retrieved from: Harnessing artificial intelligence (AI) to increase wellbeing for all: The case for a new technology diplomacy - ScienceDirect

on artificial intelligence based on human rights, democracy and the rule of law. And the Committee discussed the need for an international, legally binding treaty on AI.[127] But the idea did not progress. Furthermore, UNESCO chief A. Azoulay, said that rules are needed for artificial intelligence in order for human beings to be able to benefit from it. All the Member states of the UN Educational, Scientific and Cultural Organization (UNESCO) adopted an agreement that presents the common values and principles needed for the development of AI. This is the first global framework which gives States the responsibility to apply it at their own paste and to be applicable at their national level.[128] Also, the EU proposed the AI Act as a European law on artificial intelligence (AI). The law covers three risk categories. First, applications and systems that create an **unacceptable risk**. Second, **high-risk applications**, such as a CV-scanning tools which need specific legal requirements. And third is the applications which are not explicitly banned but are listed as high-risk which are left unregulated.**[129]** But still this act does not cover all the aspects of AI and its potentials of use and also it is still a proposal. So work needs to be done for all the actors globally to mange AI and at the same time not preventing its growth.

CONCLUSIONS

To conclude, AI has influenced all sectors of life especially some traditional professions like diplomacy. Diplomacy has been changing and adapting towards the new technological tools but it is doing so slowly. The impact of AI has positive and negative consequences, like observing, gathering data and providing solutions that are fast and precise but the down fall is that diplomacy is traditional science conducted in a traditional way. Diplomats and foreign policy servants need to learn new skills in order to work in the new technology diplomacy a concept which will be accepted soon enough after proper legislation is produced to govern all aspects of AI, protect human beings but also be applicable globally.

REFERENCES

1. Ben Scott, Stefan Heumann and Philippe Lorenz January 2018 "Artificial Intelligence and Foreign Policy"Retrieved from:ai_foreign_policy.pdf (stiftung-nv.de)

[127] "Council of Europe AI treaty". Retrieved from: Council of Europe AI Treaty - Center for AI and Digital Policy (caidp.org)

[128] "193 Countries adopt-first ever global agreement on the ethics of Artificial Intelligence". Retrieved from: 193 countries adopt first-ever global agreement on the Ethics of Artificial Intelligence | | 1UN News

[129] "The Artificial Intelligence Act". Retrieved from: The Artificial Intelligence Act |

2. “193 Countries adopt-first ever global agreement on the ethics of Artificial Intelligence”. Retrieved from: 193 countries adopt first-ever global agreement on the Ethics of Artificial Intelligence | | 1UN News
3. “Council of Europe AI treaty”. Retrieved from: Council of Europe AI Treaty - Center for AI and Digital Policy (caidp.org)
4. ClaudioFeijóoab,YoungsunKwonc,JohannesM.Bauerd,ErikBohline,BronwynHowellf,RekhaJaing,PetrusPotgieterhKhuongVuiJasonWhalleyjJunXiak. “Harnessing artificial intelligence (AI) to increase well being for all: The case for a new technology diplomacy”. Telecommunication Policy. Volume 44, Issue 6, July 2020, 101988 Retrieved from: Harnessing artificial intelligence (AI) to increase wellbeing for all: The case for a new technology diplomacy - ScienceDirect
5. Corneliu Bjola. “Diplomacy in the age of Artificial Intelligence” 2019 Retrieved from: Diplomacy in the Age of Artificial Intelligence | USC Center on Public Diplomacy (uscpublicdiplomacy.org)
6. Corneliu Bjola. “Diplomacy in the Age of Artificial Intelligence”. ARI 98/2019 14 October 2019 Retrieved from: Diplomacy in the Age of Artificial Intelligence (realinstitutoelcano.org)
7. Didzis Klavins. “Diplomacy and Artificial Inteligence in GlobalPolitical Competition”. Retrieved from: https://www.transcript-open.de/pdf_chapter/bis%205999/9783839457474/9783839457474-009.pdf
8. Noe Cornago. “Diplomacy”. Retrieved from: https://www.researchgate.net/publication/286221540
9. Oriesek, Daniel Felix. 2022. The Potential Impact of Artificial Intelligence on Preventive Diplomacy from a Balance-of-Threat Perspective. Master's thesis, Harvard University Division of Continuing Education. Retrieved from:Microsoft Word - 202205 Oriesek Daniel Thesis final.doc (harvard.edu)
10. “The Artificial Intelligence Act”. Retrieved from: The Artificial Intelligence Act |
11. Ulrike Franke. “Artificial Intelligence Diplomacy”. AIDA Committee. European Parliament. Retrieved from: Artificial Intelligence diplomacy | Artificial Intelligence governance as a new external policy tool (europa.eu)
12. Volker Stanzel and Daniel Voelsen “Diplomacy and Artificial Intelligence” Reflections on Practical Assistance for Diplomatic Negotiations. SWP Reseach Paper 2022 Retrieved from: Diplomacy and Artificial Intelligence. Reflections on Practical Assistance for Diplomatic Negotiations (swp-berlin.org)

Scientific Article
UDK 341.985:340.13(497.7)
341.638:339.5]:340.13(497.7)

FOREIGN JUDGMENT VS FOREIGN ARBITRAL AWARDS: OVERVIEW OF THE LEGAL SYSTEM IN THE REPUBLIC OF NORTH MACEDONIA

Mirjana Ristovska, Ph.D.
Associate Professor at Faculty of Law - Kicevo, Saint Clement of Ohrid University of Bitola,
Republic of North Macedonia
e-mail: mirjana.ristovska@uklo.edu.mk

Abstract
Nowadays, arbitration as an alternative dispute resolution method is increasingly taking the place of court proceedings. Consequently, arbitral awards are more common in the legal systems of the countries, compared to the past. The main goal of this paper is to provide a comparison between foreign arbitration awards and foreign judgments in the Macedonian legal system, in terms of their legal force and the procedure and conditions for their recognition and enforcement.
For the purpose of this paper, several methods will be applied: method of normative analysis, method of comparison, method of analogy, and case law method.

Keywords: arbitral award, foreign judgment, civil procedure.

INTRODUCTION

In the Macedonian legal system, judgments represent specific judicial acts, by which the judge adjudges the matter on the merits in judiciary proceedings, while the arbitration decision is a decision by which the arbitrator decides on the merits of the dispute, in an arbitration proceeding. When defining the concept of arbitration decision in Macedonian legislation, a two-fold approach is applied: a) in the Law on Civil Procedure[130], in chapter thirty, where the provisions for internal arbitration are provided, i.e. which regulate the procedure before the chosen courts whose seat is in the Republic of North Macedonia and for disputes without foreign element, the term judgment is applied, influenced by jurisdictional theory; and b) in the Law on International

[130] Official Gazette of the Republic of Macedonia, no.79/05

Commercial Arbitration[131], which regulates the procedure before arbitration in disputes with a foreign element, the term arbitration decision is applied.

Consequently, the focus of this paper will be on the normative analysis of the provisions that regulate the legal institutes of a foreign judgment (in civil cases) and foreign arbitration decision in the Macedonian legal system, especially through the prism of the question whether the judgment and the arbitration decision have the same legal force and whether the procedure and grounds for recognition of a foreign judgment or foreign arbitration decision are identical or different from each other. In this direction, we would like to emphasize that for the purposes of this paper, the subject of analysis will be only judgments adjudged in civil matters.

DEFINITION OF THE FOREIGN JUDGMENT

Macedonian Private International Law Act[132] defines the foreign judgment in article 157, as follows:

"(1) A decision of a court of a foreign country is considered a foreign judicial decision.

(2) A settlement entered into before a court is also considered a foreign judicial decision under paragraph 1 of this Article.

(3) The decision of another authority in the state where it has been rendered is considered equal to a judicial decision or settlement is also considered as a foreign judicial decision or settlement is also considered as a foreign judicial decision if it regulates the relations referred to in Article 1 of this Act."

The definition of a foreign judgment in article 66 of the Croatian Private International Law Act[133] reads:

"(1) A foreign court decision is equated with a decision of a court of the Republic of Croatia and has legal effect in the Republic of Croatia only if it is recognized by a court of the Republic of Croatia.

(2) According to paragraph 1 of this article, a settlement concluded before a court (court settlement) is also considered a foreign court decision.

(3) A foreign court decision is also considered a decision of another body which, in the country where it was made, is equated with a court decision, i.e. a court settlement, if its subject is related to Article 1 of this Act."

In the United States legal system, a foreign judgment means any judgment, decree, or order of a court from any other state or of the United States.[134]

[131]Official Gazette of the Republic of Macedonia, no.39/2006

[132] Official Gazette of the Republic of Macedonia, no.32/2020

[133] Official Gazette of the Republic of Croatia, no. 101/17

[134] https://www.leeclerk.org/departments/recording-official-records/record-a-document/foreign-judgments

The Brussels I Regulation (recast)[135] Article 2 also defines the term judgment:

"Judgment means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court."[136]

In the same manner, as the 2019 Hague Convention, the arbitration is excluded from the *ratione materiae* scope of the Regulation.

The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Hague Convention)[137], the term judgment defines descriptively, stating that: *"judgment means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognized or enforced under this Convention."* According to Article 3 of this Convention, the term judgment does not cover interim measures of protection. Also, this Convention does not apply to arbitration proceedings.

Bearing in mind the mentioned definitions, we can conclude that in determining the term foreign judgment, the territorial criterion is applied in national and international acts. That is a very objective criterion as it applies the territorial connection between the foreign judgment and the certain country, where that judgment is passed.

DEFINITION OF THE FOREIGN ARBITRAL AWARD

The legal notion of the term arbitral award is defined by the Law on the International Commercial Arbitration of the Republic of Macedonia: *"Arbitral award means a decision of the arbitral tribunal on the merits of the dispute."*[138]

According to article 37 of the Macedonian Law on the International Commercial Arbitration, a foreign arbitral award "*shall be the award which was not made in the Republic of Macedonia*" and *"shall be treated as an award of the state in which it was made."*

Croatian Law on Arbitration[139] its article 38, explicitly states that *"the award of an arbitral tribunal shall have the nationality of the country in which the place of arbitration is situated."*

---

[135] Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)

[136] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF

[137] https://assets.hcch.net/docs/806e290e-bbd8-413d-b15e-8e3e1bf1496d.pdf

[138] Article 2 para.1

[139] Official Gazette of the Republic of Croatia, no. 88/2001

In Austrian law, an arbitral award must be considered foreign when it is made outside of Austria, and in Holland, a foreign arbitral award is *"an award made in a foreign country"* (Deskoski, 2016, 322).
Swedish Law defines it as foreign that arbitration takes place in a foreign country (Mauro Rubino- Sammartano, 2001, 29).

The Swiss Federal Court has provided a very clear definition of an international award:

"An arbitral award is a decision made under an arbitration agreement by a non-state tribunal to which the parties have granted the task to decide a financial dispute of an international nature" (Mauro Rubino- Sammartano, 2001, 33).

The German national report raises the possibility that a court might decline to treat an award rendered abroad as an award within the meaning of the Convention if, under the law of the rendering State, the award required local judicial confirmation (i.e. reduction to a local court judgment) to be enforceable and such confirmation had not taken place (citing BayObLG, 4Z Sch 13/02, SchiedsVZ 2003, 142, para 47-48 (2002)) (Berman, 2017,13).

The situation may be slightly different in Turkey; there, under the so-called "procedural law principle," whether an award is domestic or foreign is determined not so much by the place of arbitration as by the procedural framework governing the arbitration. Thus, presumably, an award rendered in Turkey based on the arbitration framework of another State will be treated as "foreign" (Berman, 2017, 13).

UNCITRAL Model Law on International Commercial Arbitration[140] does not contain a provision that defines the term foreign arbitral award. However, UNCITRAL Model Law goes one step forward, by equalizing the legal effect of domestic and foreign arbitration awards, providing for both the same regime for recognition and enforcement (Deskoski, 2016, 323).

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)[141] article 1 explicitly states that *"this Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought…"*

Analyzing the above-mentioned provisions of the national and international acts, it can be concluded that the territorial principle is primarily applied when defining the term foreign arbitration award. Also, the majority

[140] United Nations documents A/40/17, annex I, and A/61/17, annex I, as adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006
[141] https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

of the countries define an award as "foreign" in the same manner as the New York Convention, only if it is made on the territory of a foreign country.

RECOGNITION OF FOREIGN JUDGMENT AND FOREIGN ARBITRAL AWARDS

Macedonian PIL Act provides that *"a foreign judicial decision becomes equal to a decision of the court of the Republic of North Macedonia and has legal effect in the Republic of North Macedonia only if it has been recognized by the court of the Republic of North Macedonia."*[142]

Articles 159 to 164 introduce the grounds or preconditions for foreign judgment recognition, while articles 165 to 174 determine the recognition proceedings of a foreign judgment.

Macedonian PIL Act provides several grounds for foreign judgment recognition procedure: certificate of validity and enforceability, the exclusive jurisdiction of a Macedonian court, excessive jurisdiction of a foreign court, irreconcilability with judgment in the country where the recognition is sought, contrary to public policy and disregard of the right to defense.

The Macedonian PIL Act provides a deliberative procedure for the recognition of foreign judgments, applying the system of limited control of foreign judgments. The foreign judgments in the Macedonian legal system are recognized in a special non-contentious procedure.

Law on the International Commercial Arbitration of the Republic of Macedonia in the provision of article 36 states that "*the award of the arbitral tribunal shall have, in respect of the parties, the force of a final judgment and is enforceable unless the parties have expressly agreed that the award may be contested by an arbitral tribunal of a higher instance."*

The provision of article 37 of Macedonian Law on the International Commercial Arbitration explicitly provides that *"the recognition and enforcement of foreign arbitral awards shall be carried out according to the provisions of the Convention signed in New York on 10 June 1958 on the recognition and enforcement of foreign arbitral awards (Official gazette of SFRY, International Agreements, no.11/81)."*

According to this provision, the Macedonian court should take into account the grounds determined by the New York Convention for foreign arbitral award recognition procedure.

Article IV from New York Convention reads as follows:

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

[142] Article 158

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in the official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

This provision specifies the formal grounds for foreign arbitral award recognition. On the other hand, article V specifies the meritorious grounds for refusing the recognition of a foreign arbitral award:

"1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement are sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement are sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country."

The New York Convention provides several grounds for foreign arbitral award recognition procedure: the duly authenticated original award or a duly certified copy, the original arbitration agreement or duly certified copy, a translation of these documents into a foreign language, certified by an official or sworn translator or by a diplomatic or consular agent, the invalidity of the arbitration agreement, violation of the principle of hearing the parties, beyond the competence of the arbitral tribunal, improperly constituted court or violation of the rules of the arbitration procedure, non-binding or suspended arbitral award, non-arbitrability of the subject matter and violation of the public policy.

The New York Convention harmonized the rule in recognition and enforcement of arbitral awards made by the tribunal seated in a foreign country. Under Article III, each Contracting State 'shall' recognize and enforce foreign arbitral awards granted in another contracting country. The procedure of recognition and enforcement should follow the domestic law of the requested country, and the state cannot impose higher fees or more onerous conditions to enforce foreign awards than domestic awards (Tang, 2014,224).

Consequently, in the Macedonian legal system, the procedure for recognition of foreign judgments is identical to the procedure for recognition of foreign arbitration awards.

The Republic of North Macedonia belongs to the group of countries in which a single procedure is prescribed for the recognition of both types of decisions (Deskoski, Dokovski 2020, 503).

CONCLUSIONS

In the concluding remarks, two particularly important situations in the legal system of the Republic of North Macedonia can be ascertained:

Firstly, the procedure for recognition of foreign judgments is equal to the procedure for recognition of foreign arbitration awards;

Secondly, the Macedonian court should make a distinction between the grounds for the recognition of foreign judgments and a foreign arbitration award. Namely, in the first case, the provisions of the Macedonian Private International Law Act should be applied, while in the second case, the provisions of the Macedonian Law on International Commercial Arbitration should be applied, which refer to the direct application of the provisions of the New York Convention.

REFERENCES

1. Berman A. George, Recognition and Enforcement of Foreign Arbitral Awards The Interpretation and Application of the New York Convention by National Courts, Springer International Publishing AG, 2017

2. Deskoski Toni, International Arbitration Law, Faculty of Law – Skopje, 2016
3. Deskoski Toni, Dokovski Vangel, Private International Law, Faculty of Law – Skopje, 2021
4. Tang Sophia Zheng , Jurisdiction and Arbitration Agreements in International Commercial Law, Routledge is an imprint of the Taylor & Francis Group, 2014
5. Rubino-Sammaranto Mauro, International Arbitration, Law and Practice, Kluwer Law International, 2001
6. Law on civil procedure, Official Gazette of the Republic of Macedonia, no.79/05
7. Law on International Commercial Arbitration, Official Gazette of the Republic of Macedonia, no.39/2006
8. Private International Law Act, Official Gazette of the Republic of Macedonia, no.32/2020
9. Private International Law Act, Official Gazette of the Republic of Croatia, no. 101/17
10. Law on Arbitration, Official Gazette of the Republic of Croatia, no. 88/2001
11. Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)
12. The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Hague Convention)
13. New York Convention, United Nations documents A/40/17, annex I and A/61/17, annex I, as adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006
14. https://www.leeclerk.org/departments/recording-official-records/record-a-document/foreign-judgments
15. https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF
16. https://assets.hcch.net/docs/806e290e-bbd8-413d-b15e-8e3e1bf1496d.pdf
17. https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

Scientific Article
UDK 305-055.2-021.23:316.334.55(497.774/.775)

GENDER (IN) EQUALITY IN RURAL PELAGONIJA – MAIN SOCIO-ECONOMIC DETERMINANTS

Natasha Trajkova Najdovska,PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Economics, Inos – Prilep, email: natasha.trajkova@uklo.edu.mk

Marija Midovska Petkoska, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Economics, Inos – Prilep, email: marija.midovska@uklo.edu.mk

Mirjana Ristovska, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Law, email: mirjana.ristovska@uklo.edu.mk

Ile Masalkovski, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Law, email:ile.masalkovski@uklo.edu.mk

Abstract
Women in Rural Pelagonija face many challenges, which puts them in inequal position relative to men. [143] Rural Pelagonija is huge agricultural valley abundant with fertile land and sunlight. Characterised with great agricultural production in the past, now Pelagonija's lands and potentials remain only partly used, due to immigration and bad policies. In addition, poverty is one of the main problems, as many households, especially in the rural Pelagonija face the challenge to meet ends. Main income activity in the region is agriculture, more precisely, traditional subsistence agriculture, with intense use of human labour. In this male-dominated socio-economic setting, rural women of the region are involved in agricultural production as family unpaid workers or as low-paid informal manual labourers and rarely as farming women, alongside their key role as providers of unpaid care work for the whole

[143] This paper is a product of the project funded by the Australian Embassy to Serbia, North Macedonia and Montenegro through the Direct Aid Programme and Center for Innovation and Development INOS-Prilep. The authors would like to express their gratitude for the generous support. The views expressed in this document belong solely to the authors and cannot be attributed to, nor do they represent, the views of Australian Embassy to Serbia, North Macedonia and Montenegro and Direct Aid Programme.

family. This, accompanied by the relatively lower educational status limits their capacity to advance their knowledge and self-confidence and limits significantly their contribution to the household and community. This paper aims to identify the socio-economic challenges and concerns that rural women in Pelagonija are facing, as well as to highlight some of the most promising opportunities that are available to this region.

Keywords: rural economics, socio-economic determinants, inequality, North Macedonia.

INTRODUCTION

The Food and Agriculture Organization of United Nations warns the World of the possible shortages of food, emphasizing that the food crisis can be especially hard in developing countries (FAO, 2022). A key part to decrease food insecurity is to take actions towards better prevention, anticipation, and targeting of agricultural production and to address the root causes of food insecurity. Woman can be play vital part in solving the problem, as they well educated and equipped with equipment and know-how can provide significant support to the efforts (UN Food agency, 2021).

In the last two years economic growth in North Macedonia slowed down considerably, mainly, due to the Covid-19 crisis and global crisis caused by the Russia-Ukraine conflict. The prolonged economic crisis, accompanied by huge dependency from imported electricity and supply chains interruptions, came to affect the country's economic performance by having a measurable negative impact on production, investment and raising inflation into two-digit numbers. The agricultural sector is especially hit by the crisis on both sides – supply and demand side. Among the main exports and import agricultural partners of North Macedonia are Russia and Ukraine, hence the country faces serious food and also other agricultural materials supply shortages, but also export issues. The rising minimum wage and other social protection measures on private consumption that were designed to help socially vulnerable groups did not help in combating the high inflation in the country that reached above 16 % in summer 2022. Inflation especially put agricultural producers in unfavorable position, by increasing costs, devaluating the value of the delayed state subventions and making export and placement of products impossible. A further rise in inflation, threatens to worsen the situation even more, especially for small agricultural producers. In this worsened economic context, rural women in Pelagonija become especially vulnerable, as their families and farms are pushed close to the survival boundaries.

Pelagonija, southwest of North Macedonia is huge agricultural valley abundant with fertile land and sunlight. Characterised with great agricultural production in the past, now Pelagonija's lands and potentials remain only

partly used, due to immigration and bad policies in the past. Pelagonia region has agricultural land with an area of 276. 777 hectares, of which 117.770 hectares are arable agricultural land, and the remaining 159. 007 hectares are pastures. The structure of arable land – plotted fields and gardens participate with 83 percent (https://pelagonijaregion.mk/en/).

With a constantly decreasing population, due to immigration of young people and aging of inhabitants, the region is abundant with almost empty villages, surrounded by unspoiled and unused natural resources, land and water springs. In addition, poverty is one of the main problems, as many households, especially in the rural Pelagonija face the challenge to meet ends (UNICEF, 2022).

Main income activity in the region is agriculture, more precisely, traditional subsistence agriculture, with intense use of human labour, women and even children included ((https://pelagonijaregion.mk/en/). Alongside hard work on the fields, children, women (sometimes pregnant) and men are exposed to the pollution that comes from uncontrolled use of pesticides and herbicides. In addition, non-existent legal or other rules, creates perfect ground for discrimination of women and children labour, and in many cases happening even within the family. Pelagonija is mainly famous for its production of tobacco leaves, wheat, corn and various vegetables. Although with the support of government funds, many households managed to buy basic equipment such as tractors, the disintegrated small plots and intense agriculture methods do not yield high efficiency, or any economies of scale.
In this male-dominated socio-economic setting, rural women of the region are involved in agricultural production as family unpaid workers or as low-paid informal manual labourers and rarely as farming women, alongside their key role as providers of unpaid care work for the whole family (Analysis of the situation of rural women in North Macedonia, more obstacles than opportunities (2018)). According to some estimates, 85-90 percent of their active day time rural women spend on unpaid household activities, whether working for the farm or for the household. This, accompanied by the relatively lower educational status limits their capacity to advance their knowledge and self- confidence and limits significantly their contribution to the household and community. In fact, rural women were in a very difficult situation and often they are among the poorest population, with no-paid work within the household or sometimes very low-paid jobs. In rural households in Pelagonija, mainly the man is breadwinner, who traditionally owns and inherits the entire property, making women fully dependent. This tradition is still favourited. Hence, a large proportion of women living in rural areas are not employees, and the low level of education, mainly high school degree, contributes largely to this, which is usually the result of early marriage and family formation.

LEGAL FRAMEWORK – RURAL WOMEN CONSIDERATIONS

North Macedonia's legal and regulatory framework is declaratively favourable to rural women. However, the EC Progress Report (2021) "…*Calls on North Macedonia to take steps to ensure an adequate representation of women in all decision-making positions, and to further address the lack of implementation of women workers' rights and tackle gender stereotyping, gender imbalance and the gender pay gap in the labour force; points to significant gender differences in terms of participation and quality of work, insufficient action on sexual harassment in the workplace, discrimination in legal provisions related to maternity leave and the lack of childcare and pre-school capacity; acknowledges the amendments to the law on the rights of the child and the completion of the deinstitutionalisation process…"*

In general, the Constitution does not make distinction between men and women, putting them in the equal position. North Macedonia has also commitments as it has signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the European Convention for human rights. However, this furthermore means that the rural women are not positively discriminated. Positive discrimination is necessary in order to improve the subordinated position of women for the start. In addition, several other Laws that have been approved in North Macedonia define the gender equality concept that needs to be applied[144].

- Low for equal opportunities of women and men (2006)
- National plan for gender equality (2007-2012)
- Law for equal opportunities for Women and Men (2012)[145]
- Strategy for Gender Equality
- Law for combating and protection of Discrimination (Official Gazette No. 50/2010)
- Law for Agriculture and Rural Development (2008)
- Law for Organic production (2010).

In line with international commitments and EU accession requirements, North Macedonia adopted the Law on Equal Opportunities for Women and Men in 2006 and later in 2013, in which the 'gender equality approach' was developed into fostered equal opportunities framework. The Law on Equal Opportunities on Women and Men regulates the basic and the special measures for establishing equal opportunities for women and men, the institutional network and their competences, the procedure for identifying the unequal

[144] More on the specific Laws and their impact can be found in the Analysis of the situation of rural women in North Macedonia, more obstacles than opportunities (2018).

[145] Law on Equal Opportunities for Women and Men, Official Gazette of the Republic of North Macedonia No. 6/2012 of 13.1.2012, http://www. mtsp.gov.mk/WBStorage/Files/zem_2012.pdf, accessed June, 21, 2022.

treatment of the women and men, the rights and duties of the mediator for equal opportunities on women and men.

The rural women are specifically targeted with various activities under the objectives of the National plan for gender equality and Strategy for Gender Equality. Within these documents assessment on the women rights of rural women, their educational problems and needs as well as raising the awareness and building capacities for realization of rights of rural women are planned. In addition, some of the measures planned are related to the increasing rural women participation in decision making, and tackling the employment issues of women in rural areas by: encouraging them as business operators and by increasing their knowledge and business skills though education and trainings. In general, the gender equality policy and Laws in North Macedonia are declaratively sensitive to rural women needs. However, some of the measures on the ground are not based on sound analysis and therefore they do not manage to reach the goals. In general, the Laws, policies are criticized by the legal experts as non-systematic, with lack of accountability mechanisms on reporting on the implementation of National plan for gender equality or Strategy for Gender Equality.

Law on prevention and protection from discrimination accompanied by the independent seven-member anti-discrimination Commission of seven members is another guardian of rural women rights. Antidiscrimination commission has advisory role, providing advice and recommendation on the available protective measures in front of the courts and other institutions. However, not many cases were brought in front of this Commission.

Rural development is defined within the Law for agriculture and rural development (2008). The law does recognize specific situation of the rural women, by adopting a Decree (No. 137/2008) which offered operationalization of the rural development policy, positively discriminating the rural women. Namely, in Article 4, p.3/the Decree, 20 points will be awarded to woman applicant, and 15 points to women entrepreneurs for IPARD and National programme funds. The Government also encouraged rural women by awarding 10 points in comparison to the male farmers for receiving refundable resources from the government in the area of modernization of the agriculture. The possibilities for acquiring financial help are even greater (20 additional points) for the women candidates that are aged between 18 to 40 years, and are registered as a farmer and live in difficult and poorer areas. Having in mind the traditional setting and mainly male ownership of the farms and lands, it can be said that these measures are rather cosmetics, and do not improve significantly the position of the women.

The organic production is regulated under the Law for organic production which is aligned with the EU Regulation No 834/2007 and the Commission Regulation 889/2008. The control system is consisted by two

certification bodies (Balkan Biosert and Pro-Cert); which are authorized by MAFWE for control and certification in organic production, and accredited by the Institute of Accreditation of Republic of North Macedonia (IARNM). They conduct expert control, certification and also consultations in line with the MKC EN 45011 (General requirements for bodies working with product certification systems). In order for the organic products to be exportable, the IARNM authority is supported by Mutual Recognition Agreement of Accreditation Certificates (EA-MLA) with the European cooperation for Accreditation. Again, within the positive discrimination is not defined.
In general, the country has made significant efforts to harmonize its legal framework with the laws of the European Union. By widely and thoroughly describing the measures, acts and the responsibilities, it ensures that the legal framework is defined as to ensure the rights of the women, rural women including. However, the criteria, standards and practices are yet to be implemented, even in the public institutions and urban areas. The situation is even worse for the agricultural sector and areas, where traditional and patriarchal values and norms "are somehow above" the Laws. In Pelagonija, this mentality prevails, while there are no monitoring bodies or they have little control.

Of late, there are many domestic and internationally founded actions that promote the gender equality concept. However, the results are coming slower than anticipated. In addition, a number of other challenges in the society remain. These issues are equally burdening for men and women living in Pelagonija. Weak rule of law, high level of corruption, weak institutional capacity worsens the otherwise difficult life in Pelagonija, even more so for the rural women. Their inherited subordinate position in society is not treated systematically, but with separate measures and interventions, that sometimes prove to be inappropriate or totally displaced.

AGRICULTURAL PRODUCTION IN PELAGONIJA– GENERAL OVERVIEW

Agriculture (including forestry, hunting and fisheries) in North Macedonia contributes to the GDP gross value added (GVA) with around 9%, and encompass 13.9% in total employment, which is decrease as compared to the past (EU Instrument for Pre-Accession Rural Development Programme 2021-2027). However, when it comes to the number of the enterprises, agriculture participate only with 2 605 or 3% in the total enterprise number in North Macedonia. Mainly, above 90 % enterprises are micro and small, up to 19 persons employed. In 2019, cultivated land represented around 519 thousand hectares or about 41% of total agricultural land (EU Rural Development Report, 2022), leaving almost 60% of land unused. Even more devastating is the fact that the irrigation systems are installed for around 164

thousand hectares, however, only 7.2% of agricultural land is actually annually irrigated due to obsolete and deteriorated irrigation systems (EU Instrument for Pre-Accession Rural Development Programme 2021-2027).

Main crops that are cultivated in Pelagonija are: tobacco, cereals, wheat, vegetables, potatoes. The crop production usually depends on the size of the farm. The large agriculture holdings usually produce cereals (mainly wheat), while small agriculture holdings produce fresh fruits, tobacco and vegetables. It is noticeable that many studies have confirmed that the average yields on various crops are usually below the average of the SEE countries and far below the average yields of cereals recorded in EU-28 (EU Instrument for Pre-Accession Rural Development Programme 2021-2027).

Almost 40 percent of the agriculture holdings in Pelagonija are breeding livestock. In Pelagonija, the number of breeding livestock farms has largely decreased in the last decade, as well as the number of animals. Usually in Pelagonija, dominate cattle, pigs, sheep and goats as well as poultry, and mainly those are small farms breeding less than 6 heads of animals. Small scale breeding holdings usually produce raw milk that is sold to milk companies, but only small percentage of it is compliant with EU standards, due to unconsolidated dairy sector, use of antibiotics, and non-compliance to the EU norms.

RURAL WOMEN IN PELAGONIJA – SOCIO-ECONOMIC DETERMINANTS

The research was conducted with a structured questionnaire consisting of 3 parts: the first part are questions related to the demographic and socio-economic characteristics of the respondents, the second part of the questionnaire refers to the knowledge that respondents have about business and marketing, legal framework for organic production, as well as financing opportunities. The last part refers to characteristics of the agricultural and farming practices and activities of the respondents.

The questionnaire was distributed online using the Google Forms platform. In addition, terrain research was conducted by visiting the rural areas of the Pelagonija region and surveying the women who live there. The research was conducted on 327 women of different ages from rural areas of Pelagonija region as follows.

Table 1: Age of respondents (rural women in Pelagonija)

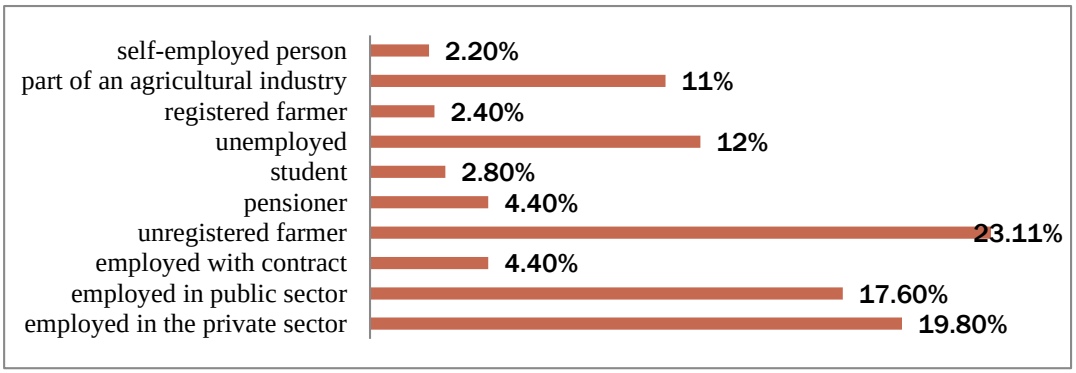
Age	Percent
18-29	17%
30-40	27%
41-50	32%

51-64	20%
65 and more	4%

Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

Also, the research included respondents with different employment status. Most of them (23,5%) are registered farmers or are part of the agricultural industry (11%). 5,5 % of the respondents are engaged in agriculture but are not officially registered as such. The others respondents are employed in public (17,6%) or private sector (19,8%).

Figure 2 Employment status of rural women in Pelagonija

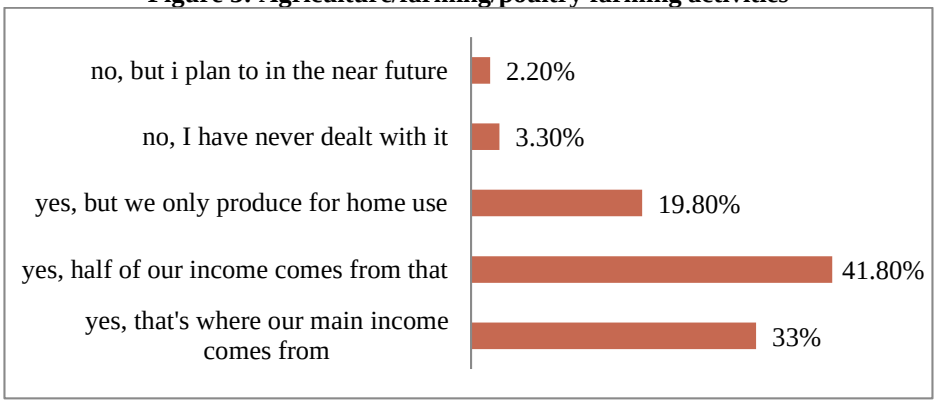


Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

AGRICULTURE FACTS

The agriculture and farming are the main work activity of the people from rural areas of Pelagonija region. According to the results 94.5% of respondents are engaged in agriculture, farming or poultry farming. Even for 33% of them their main income is from this work. 41.8% of respondents derive half of their income from agriculture/farming. About 20% produce agricultural and farming products only for domestic use.

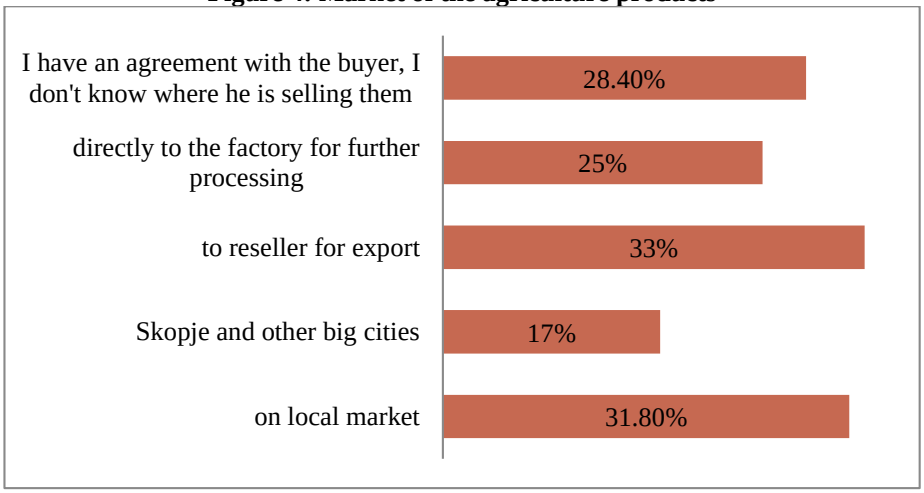
Figure 3: Agriculture/farming/poultry farming activities



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

The experience of farmers has shown that the main problem during production is the placement of their products. Almost every year farmers have a problem with the placement of their products. They face low purchasing prices, insufficient export support, and demonstration of power by the scares buyers. Farmers market their products in different places. Thus, 33% of the interviewed women answered that they give the products to a reseller for a further resale. Around 31.8% sell them on the local market, while 28.4% have an agreement with a buyer, but do not know further where he markets the products.

Figure 4: Market of the agriculture products

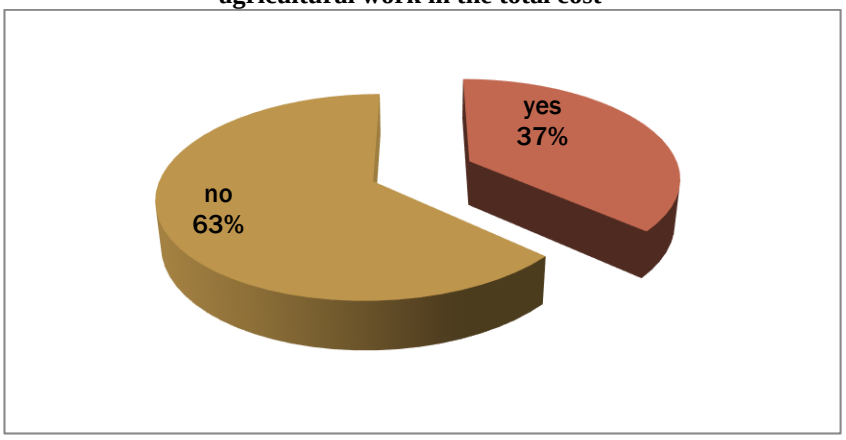


Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

In substance agriculture practiced in North Macedonia all members of the family are involved in production and farming. Children from a very young age, as well as elderly people help with agricultural work. However, it should

be emphasized that their work is not calculated as a cost and is considered as help. High 63% of women answered that they do not calculate it as an expense.

Figure 5: Calculation of the working hours of all family members who participate in agricultural work in the total cost[146]



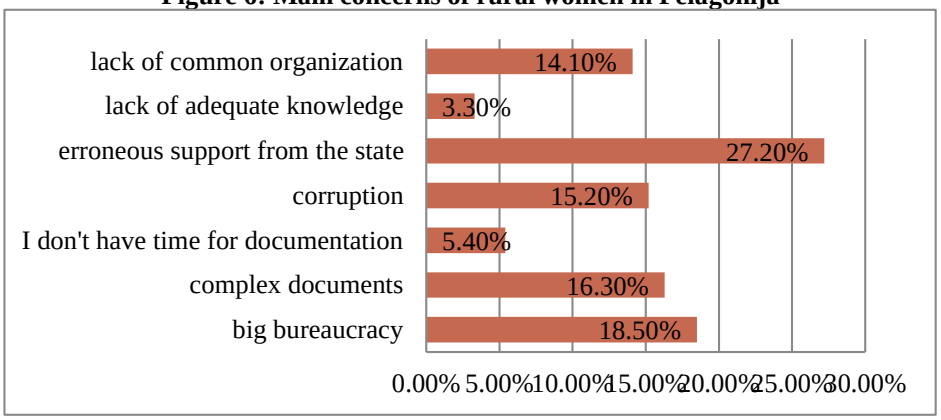
Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

Working with agriculture and crop production can be a profitable business for many, but only if they manage to sell the products to the final customers. Around 64.4% of the women thought about starting their own business for selling agricultural products, but the main obstacle to the realization of such an idea is their financial resources, which are not enough for them to start the business. There are also those, about 11%, who do not have enough knowledge about running and starting a business.

Most rural women emphasized the system problems as the main concerns that affect their life and production. Almost half of the women identified the complicated documentation process (21.3%), great bureaucracy (19.7%) and no time for the procedures (6.6%). The rest think that the high level of corruption (14.8%) and inappropriate support from the government (23.0%) also contribute to the problems. Interestingly, rural women believe that not having the appropriate knowledge is not a main issue. Having in mind that mainly rural women have high school degree, probably they have confidence that they can easily be trained and educated, as well as possibly some is not aware of its importance.

[146] Do you calculate the working hours of all family members (children and elderly members) who participate in agricultural work in the cost?

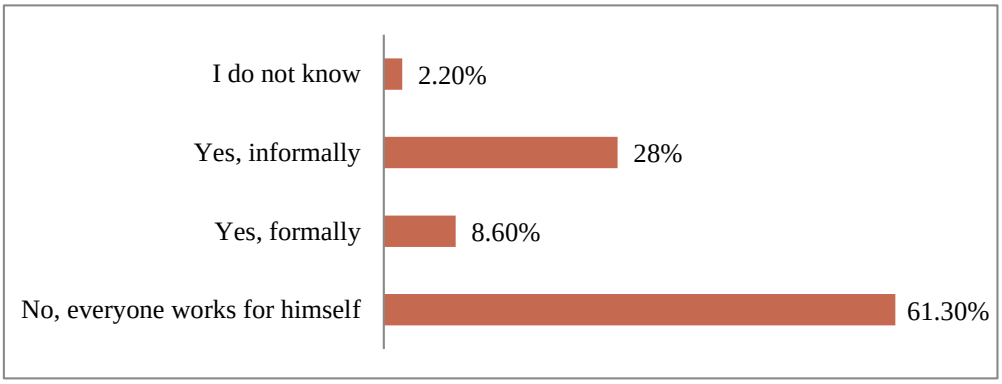
Figure 6: Main concerns of rural women in Pelagonija



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

Additional worrying fact is that mainly Pelagonija's women are not having any formal cooperation. Only 6.5% of them answered that participate in some formal cooperation, while around 30 % cooperate in some informal way (Figure 3). Rest, that is approximately 60 % are working separately. This situation reinforces the oligopsonic power of the buyers on the markets.

Figure 7: Cooperation of rural women in Pelagonija[147]



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

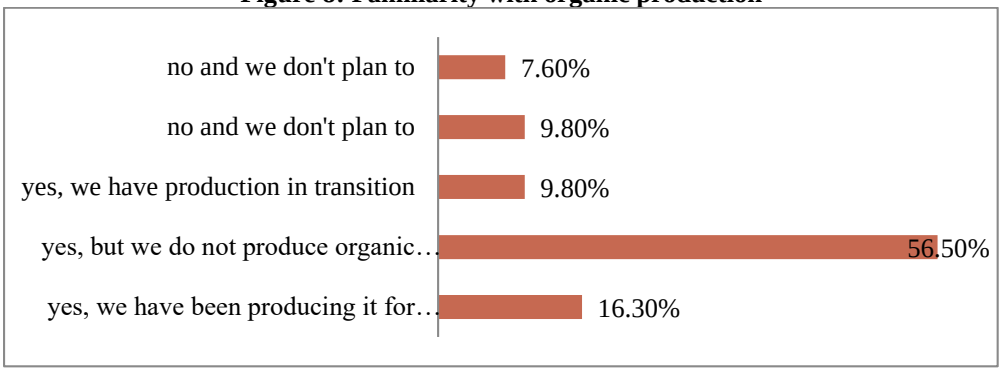
Additionally, support and cooperation from government and local institutions, which is very important for agricultural and business development, is lacking. Around 91% of respondents think that the municipality should help them in some way, 76% of women are not satisfied with the support they receive from the municipality they belong to, and 86% are not satisfied with the support they receive from the state.

[147] Do you have formal cooperation in the village?

ORGANIC PRODUCTION

More than half of the women are familiar with organic production, but have not yet started to apply it in their production. On the other hand, the 16.3% of respondents who already practice this method of production, as well as the 9.8% who have production in transition, are encouraging, even though they are few. It should also be mentioned that the answers received which refer to the Law on Organic Production, shows that 70% of these respondents declare that they are not familiar with the legal framework for organic production. Additionally, the women are also familiar with the term genetically modified product and even 90% of them know what it is.

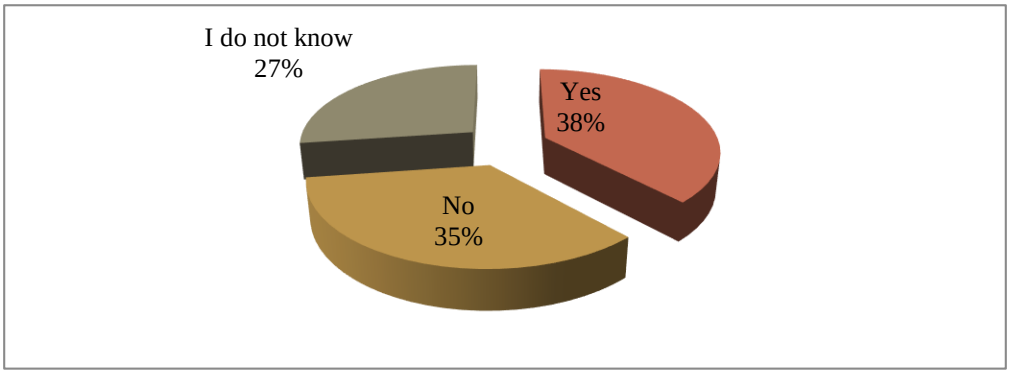
Figure 8: Familiarity with organic production



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

When it comes to organic production and the income from it, the views of the women are divided. So, 38% of them believe that with organic production they would earn more, almost the same percentage of respondents, that is, 35% believe that organic production is not profitable.

Figure 9: Perception of the possible income from organic production[148]



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

Before starting with organic argicultural production, it is necessary for producers to meet certain prerequisites that are necessary for obtaining an organic production certificate. The legislator in the country has prescribed how the procedure goes. Regarding the procedure, 40% of women consider that the procedure for obtaining an organic production certificate is complex. On the other hand, 23% consider that the procedure is not complex.

Corruption is still the main problem that citizens face. Even in this case, 58% of women believe that there is selectivity and there is corruption among all the bodies that do the Certification. Only 5% of them believe that there is not. The same percentage is in relation to the bodies that award the subsidies, that is, 60% of respondents believe that there is selectivity and corruption in the awarding of subsidies to farmers.

[148] The question asked - Do you think that you will earn more with organic production?

Figure 11: Corruption among all the bodies that publish the list or do the Certification

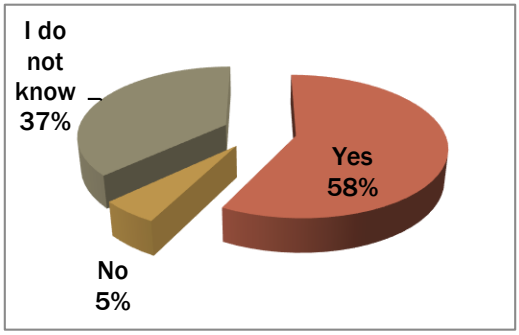
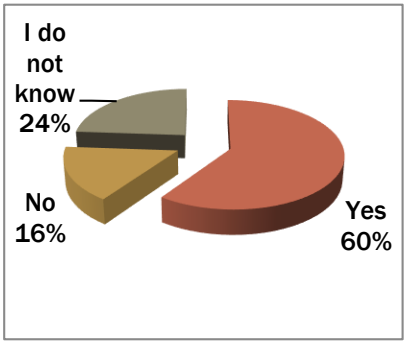


Figure 10: Corruption among all the bodies that grant the subsidies



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)[149]

IMMIGRATION

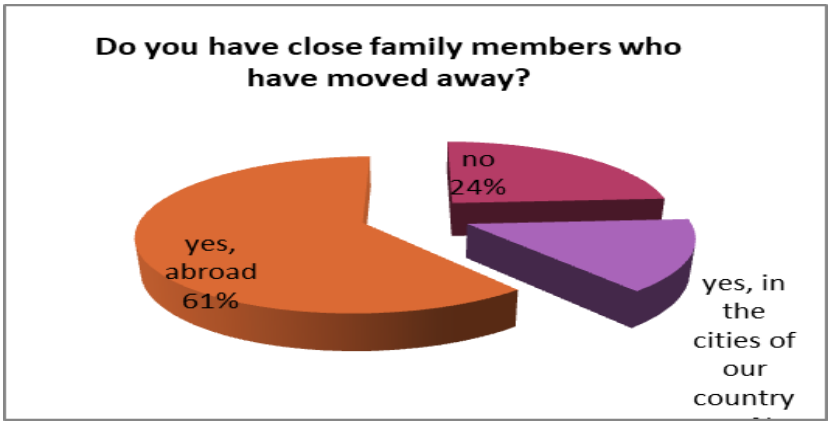
Similar to all regions in North Macedonia, rural Pelagonija has problem in keeping the young population, especially in the rural areas. Unsatisfactory age structure (65+ years old) is evident in Pelagonija. The share of the oldest group in the population increased in the last decade significantly (EU Rural Development Programme, 2022). Women in Pelagonija are especially concerned about immigration, naming lack of jobs, lack of financial support and perspective, as well as bad conditions and non-existent rural areas as main reasons for its increase. The high unemployment rate of young people (15-24) is an additional problem that leads to the out migration of the young labour force from rural areas to urban centres and abroad.

The rural areas of Pelagonia region are experiencing high levels of migration, both in the cities of the country and abroad. The results of this research confirmed this trend. Around 76% of women answered that they have members of their close family who have immigrated, from whom 61% have immigrated abroad, and only 15% have immigrated to the cities of our country.

[149] Questions asked were, **Do you think that there is corruption or selectivity among all the bodies that publish the lists or do the Certification? Do you think that there is corruption or selectivity among all the bodies that grant the subsidies?**

Figure 12 Migration of close family members

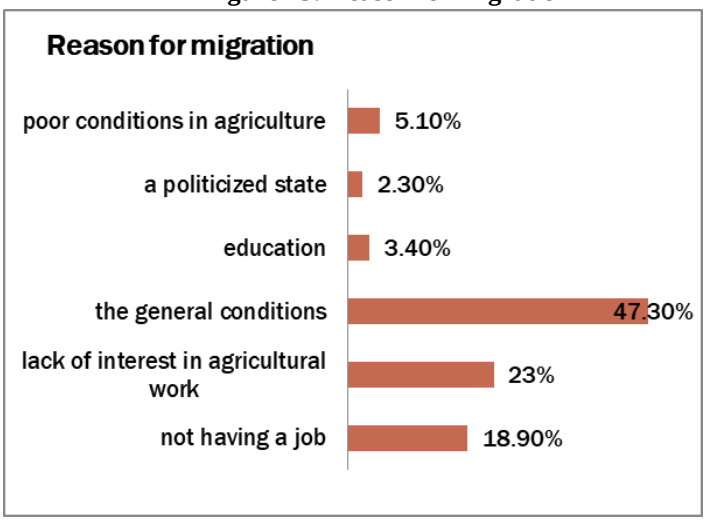
.



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

According to the respondents, one of the main reasons for migration are the general conditions in which people live (47.3% of the women). Another reason is that the inhabitants of the rural areas in the Pelagonija region, especially the young people, are not interested in doing agricultural work, which is tedious and physically demanding. Bad conditions in agricultural sector are also identified as main reason for migration of 5.10% of women.

Figure 13: Reason for migration



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

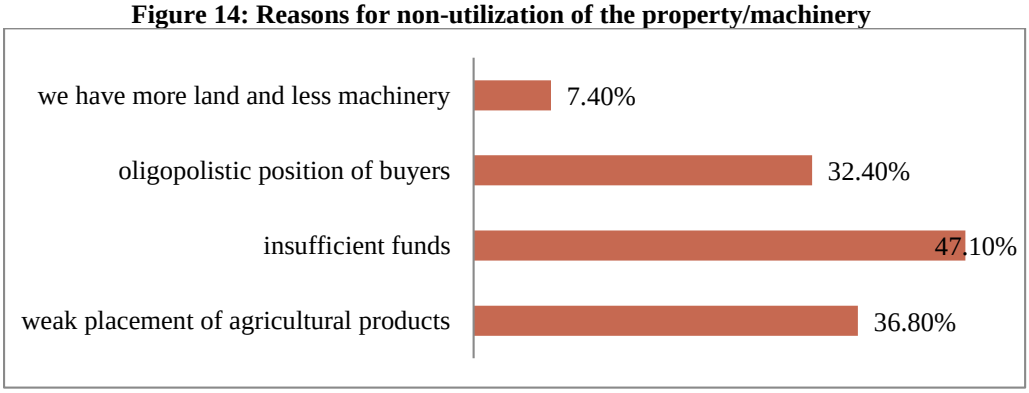
INFRASTRUCTURE, PARCELS AND IRRIGATIONAL SYSTEMS

Only 144,9 thousand ha of UAA can be irrigated, although the irrigation systems are installed for around 164 thousand ha (51,1% of UAA). As reported by the public enterprise for Water Economy only 7,2% of UAA is

actually annually irrigated due to deteriorated irrigation systems (EU Instrument for Pre-Accession Rural Development Programme 2021-2027). The average parcel size is very small (high frequency of parcels bellow 0,2ha) and with significant presence of borders in between or dispersed small plots of unorganized agricultural space. Agriculture roads are absent or unorganized in between small parcels. Agricultural holdings are organizing their production on many parcels, estimated to 5 land parcels per holding.

The Pelagonija region is characterized by large areas that remain uncultivated. As many as 75% of the women answered that they have uncultivated land. As the main reasons for unused land and machinery, they state: insufficient finances (47.10%), poor placement of products (36.80%) and the oligopolistic position of buyers (32.40%).

Figure 14: Reasons for non-utilization of the property/machinery



Source: Authors' own calculations based on Survey of women in Pelagonija (2022)

The small size of the farms, agricultural and livestock breeding ones, the inadequate production process in both, inadequate (autochthone) seeds and breeds and plants and animal treatments still poses risks to low productivity of the agricultural sector and low quality of the products. In addition, the physical capital, such as machinery are rather obsolete, some aged from the previous state, while investments (main in tractors) are not big enough to modernise the agriculture. Hence, it is usually high labour intensive, with traditional methods and intense use of pesticides and herbicides. The low productivity is determined to a large extent by low level of mechanisation, low quality seeds and breeds and poor land and livestock management practices affected also by high land and property fragmentation. The distribution and trade of the agro chemicals is unregulated and uncontrolled leaving the matter on the big agricultural Pharmacy shops and importers.

Furthermore, low level of producer's co-operation in Pelagonija also hinders the development of agricultural production. Horizontal integration is almost absent, and also the vertical organisation is weak especially in the food

processing industry. Although there are emerging investments in the modernisation of the processing capacities, the logistic networks and marketing channels are inefficient and compound by retailers. Improvement of the farm management practices is precluding for benefiting the investments and modernization of the farms.

CONCLUSIONS AND POLICY IMPLICATIONS

In general, the survey of women and the literature review suggest several main conclusions, some relating to the general conditions in Pelagonija, some related to the situation of women in particular.

The agricultural sector in Pelagonija needs modernization and additional restructuring to sustain the increased requirements of quality products from the farms but also from the processing industry. Low productivity both in agricultural production, farms and processing related industries is also a result of insufficient physical capital, low investments, lack of appropriate education, lack of cooperation, low quality in human capital and knowledge in organic production and, furthermore, poor management and marketing practices, in general. Strengthening and modernisation of processing industry is very important due to the reason that it needs to compete to the big scale foreign processing units and it needs to create condition for using the raw agricultural products in order to increase value of the agricultural exports.

It is worth noting that the agricultural production in the individual small and scattered agriculture holdings does not meet the EU requirements always. In the case of agricultural production and livestock breeding, the control of the use of harmful pesticides, herbicides, antibiotics and other chemicals are the main problem, as well as the questionable seeding material, breeds, and way of farming in general. Lack of storage capacities and freezing facilities affects the potential of the agricultural and livestock production capacities. Aiming to increase competitiveness of the production, there is a need to improve the farm structure as this is of vital importance aiming to increase the productivity which, in fact, can only be a result of a number of actions not only from the owners, but also from the state support. Moreover, the investments into physical capital as well as improvement of farm management and marketing practices through investments into human capital will result into increased competitiveness.

The organic farming sector is still at its initial development stage in North Macedonia and the number of farms certified as organic, or in transition, is relatively small, especially in Pelagonia. According to some unofficial data only one in 1000 farms have or are in transition to produce organically. Although the farmers show an increasing interest in organic production, the number of certified organic farms, processors and traders is increasing very

slowly as there is belief among producers that it is inefficient and financially not viable. The organic production is mainly exported, through specific agreements with foreign exporters, as the domestic market is still small and undeveloped. The export demand for some organic products, such as herbs, spices, fruits, vegetables and honey are especially increasing of late, while the domestic supply chains of organic products is almost undeveloped and small. Interestingly, mostly the market of organic products functions on the word-of-mouth principle, with limited linkages between the organic farmers, processors and customers. The domestic customers are largely not aware of the advantages of organic production to the environment and human health, but also the average household income is rather low, pushing the families to buy commercial and nonorganic products. Insufficient education and organization of organic farmers is yet another barrier to organic plant production development in Pelagonija, too.

Vertical cooperation and food processors' industry, as well as slow implementation of EU standards are main reasons that hinder the food processing sector from becoming competitive on the mass product markets. Some processing establishments especially, the smaller ones in Pelagonija do not have the financial resources required to meet the strict hygiene and food safety standards of the EU, hence, the export is more difficult and problematic. The level of technological quality and innovations, which is important ingredient of competition in European Union, is low. Processing enterprises have also problems with obsolete equipment in the processes of quality control, packaging and labelling and marketing in general.

People, women especially, living in rural Pelagonija are less satisfied with the quality of life, which have been the main reason for the migration of young people, leaving behind a more vulnerable and poorer population in the villages. As evidence showed, , rural women still have lowest educational status, which puts them in a vulnerable position in the family in society setting. The introduction of the compulsory secondary schooling improves this situation, especially for the younger generation of rural women, but still in some areas there is a problem of early marriages and drop outs from school. Rural women in Pelagonija are prone to unemployment because of the limited offer of jobs in the rural regions and the tradition patriarchal social milieu that predestines the role of housewife and mother, meaning exploitation as unpaid family agricultural worker or low paid seasonal worker again in agriculture. Having limited social life and access to services and being faced with the patriarchal setting, rural women of Pelagonija have incentive to leave villages, sometimes even under the old family-arranged marriage agreement.

Therefore, there is a need for rural development policies to increase investment in infrastructure to make the villages once again attractive places for young people and entrepreneurs to live and work. Given the problems of

women in Pelagonija, and their potential for contribution to regional growth, urgent attention is needed to develop and execute supportive and development policies targeting women especially.

- Firstly, on a central level, the state institutions and government need to simplify the procedures, and fight against corruption. The main demotivating factor for women is bureaucracy and distrust, hindering the efforts even before they start. Establishing industrial zones for small manufacturing and service industries and developing rural cooperatives can be a start to build rural social capital and trust. The positive climate must be built in order for the trust to be restored.
- Then, gathering data and assessing the real situation in the agriculture is necessary and urgent. Women believe that their voice has not been heard systematically, except in rare gathering before the elections.
- The harmonization of national legislation with the European Union standards in the area of organic production, environmental protection and plants and animal welfare, also in the processing food, milk and meat sectors require significant investments. It is not only the Laws, but also the implementation of the Laws and practices.
- Additional efforts to support women, such as educational trainings are needed. Women in Pelagonija, need free of charge trainings or courses in practical issues related to business skills and organic production. In addition, they need training related to the use of the structural funds aimed at supporting the agriculture.
- Formalization of the cooperation throughout the Pelagonija region is required, in order to leverage the position of the producers in respect to buyers. Women can even better if they see interest in it.
- In addition, substantial analyses of cost benefit of subventions for each agricultural product are required. Justification and proper valuation of subventions shall combat dubious agricultural activities and possible corruption.
- Finally, independent monitoring on an on-going basis of the production, trade, and exporting of products is necessary for accurate and consistent analyses and evidence-based policy making.

REFERENCES

1. Agency for Financial Support of Agriculture and Rural Development, 2010: Report for implementation of the program for fi nancial support of rural development for 2009
2. Analysis of the situation of rural women in North Macedonia, more obstacles than opportunities (2018)

3. Decree for Criteria for Defining Rural Areas, Official Gazette of the Republic of Macedonia, No. 137/2008
4. EC, 2010: EC Progress report, SEC(2010)1332
5. Empowering women and girls is crucial to ensure sustainable food security in the aftermath of COVID-19, say UN food agency heads ahead of International Women's Day; (2022) United Nations in North Macedonia. https://northmacedonia.un.org/en/115246-empowering-women-and-girls-crucial-ensure-sustainable-food-security-aftermath-covid-19-say
6. EU Instrument for Pre-accession for Rural Development (IPARD) - National Programme for Agriculture and Rural Development 2007-2013, available at http://www.sep.gov.mk/ content/Dokumenti/MK/Part%20I_SITUATION%20OF%20AGRICULTURE%20 AND%20RURAL%20AREAS.pdf
7. European Commission (2022) - REPORT on the 2021 Commission Report on North Macedonia Report - A9-0133/2022, available on: https://www.europarl.europa.eu/doceo/document/A-9-2022-0133_EN.html
8. FAO (2022). Global Report on Food Crises: acute food insecurity hits new highs; https://www.fao.org/newsroom/detail/global-report-on-food-crises-acute-food-insecurity-hits-new-highs/en
9. Finance Think, UNICEF
10. Global Report on Food Crises: acute food insecurity hits new highs (2022), FAO. https://www.fao.org/newsroom/detail/global-report-on-food-crises-acute-food-insecurity-hits-new-highs/en
11. Government Decision for Establishment of Ministerial Body for Rural Development, Official Gazette of the Republic of Macedonia, No. 15/2007
12. Law for Agriculture and Rural Development, Official Gazette of the Republic of Macedonia, No. 54/2008, 49/2010
13. Law on Equal Opportunities of Women and Men of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, No. 66/06, 117/08, www.mtsp.gov.mk
14. Law on Local elections OG 54/2011 Available at: http://www.sec.mk/Predvremeni2011/ IZBOREN_ZAKONIK_(Precisten_tekst).pdf (last visited 20/01/2012)
15. Law on Social Care, Official Gazette of the Republic of Macedonia, No. 79, 2009
16. National Action Plan for Gender Equality 2007 -2012, Ministry for Labour and Social Policy http://www.mtsp.gov.mk/WBStorage/Files/NPARR-finalen%20dokument.pdf 3. National strategy for employment 2007-2010, Ministry for labour and social politics (2006). http://www.mtsp.gov.mk/WBStorage/Files/strategija.pdf

17. National Agricultural and Rural Development Strategy (NARDS) for the period 2007-2013. Ministry of Agriculture, Forestry and Water Economy. Available at http:// www.seerural.org/wp-content/uploads/2010/03/2007-Macedonia-National-StrategyNSARD1.pdf
18. National strategy for poverty reduction and social inclusion in Republic of Macedonia 2010-2020, Ministry for labour and social politics. Available at htttp://www.mtsp.gov.k/WBStorage/Files/SocialExclusion%20Starategy%20MK%20fi nal%20word.doc
19. Operational program for regional development 2007-2009, Ministry of Environment and Physical Planning. http://www.moepp.gov.mk/WBStorage/Files/OPRD%20 First%20Offi cial%20Draft.pdf
20. Program for active employment measures for 2011, Ministry for Labour and Social Politicy http://www.mtsp.gov.mk/WBStorage/Files/OP_2011_01_02_2011.pdf
21. Program for social inclusion 2004, Ministry for Labour and Social Politicy, http:// www.mtsp.gov.mk/WBStorage/Files/socijalna_inkluzija.pdf
22. Strategy for regional development of the Republic of Macedonia 2009-2019, Ministry of Local Self Government
23. The State of Food and Agriculture 2010-2011 WOMEN IN AGRICULTURE Closing the gender gap for development, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, Rome, 2011. https://www.fao.org/3/i2050e/i2050e00.htm
24. UNDP, 2008: People centered analysis.
25. UNDP, 2009: People centered analysis.

UDK 343.261(497.11)
343.24(497.11)

BASIS OF TERRORISM IN AFGHANISTAN

Jelena Šuleić[150]
Hatidza Beriša[151]

Abstract

The study of terrorism shows that terrorist organizations where the targets are only civilians almost do not achieve their final goals. On the other side, groups whose targets are soldiers or civilians have a higher chance of success. In general, terrorist organizations are not directly targeted by the state. The terrorism changes form into a civil war In case of acting to the targeted state.
A typical example is that terrorist groups aim at confrontation with the state and therefore active participation in the civil war. The state's inability to confront terrorist and insurgent structures and exporters of terrorism on a global level certainly caused the response of the USA and its partners. That's should contribute the stability to Afghanistan and the region.
This paper shows the basis of the emergence of terrorism in Afghanistan, its objectives, goals, and the possibility of the organization operating in the future.

Keywords: Afghanistan, basis, terrorism, insurgency, organization, USA

INTRODUCTION

There are many definitions of terrorism. General sense of terrorism means the using or threat of an act that: involves serious violence against a person, serious damage to property, endangers the life of a person (but the person who commits the act), creates a serious risk to the health or safety of the public, or it is designed to interfere with or seriously disrupt an electronic system. The use or threat of such actions must be designed to push a government or an international governmental organization or to intimidate the public with the aim of the purpose of advancing political, religious, racial or ideological causes (UK government, 2019). The very definition of terrorism has changed over time, so terrorism has countless definitions, but there is no general agreement about the essence of the term, nor is there one generally accepted definition.

Many groups - organizations that have been characterized as terrorist, have been established in the territory of Afghanistan, due to their way of recruiting members and acting towards the population in the territory, but also towards the security forces, both foreign and domestic. The organizations that

[150] Doctor of Economic Sciences, Meil: jelena_suleic@yahoo.com <jelena_suleic@yahoo.com>;
[151] Doctor of Political Science, Faculty of Engineering Management, Belgrade, meil: berisa.hatidza@gmail.com

is the most famous and carry's out terrorist attacks in Afghanistan both outside the territory of Afghanistan are the Taliban, the Haqqani network, Al Qaeda, the Islamic State (ttps://charityandsecurity.org), etc. A war conflict which includes insurgency, begin with an idea. That political idea could be a vision of conquest and annexation, liberation from tyranny, foreign occupation or colonial rule. Certainly, it can also be seen as a defense against the threat of culture or "ancient freedoms", the desire to spread ideology, religious beliefs, economic interests or dreams about "destiny" and gaining a "right place under the sky".

An idea is the purpose, central goal or desired outcome of a war. It is a unifying feature of all actions that occur during conflict. In monumental work "On War" written by Carl von Clausewitz who explains the great extent that the nature of any war is fundamentally not just political itself. His famous and oft-quoted observation "... war is not merely an act of politics, but a truly political instrument, a continuation of a political relationship, continued by other means" captures in one sentence the inevitable fact that any form of conflict, from nuclear holocaust at one end spectrum to tribal insurgents on the other, fighting to achieve some political goal. He points out that the goal of war is forcing the enemy to accept one's will, i.e., bow to his own political program.

THE BEARERS OF TERRORISM

The organization and functioning of every organization, including terrorist or insurgent ones, is based on the need to determine the main actors, who are recognizable by the performance of their activities. The area of Afghanistan, as in many other cases, did not provide an answer as to who is the main bearer of insurgent activities from which terrorist activities were generated both in the country itself and throughout the region, but also on a global level. Therefore, in the case of Afghanistan, it is very difficult to draw a clear line of belonging to the rebels, guerrilla movement or terrorist organizations. It has been proven many times that members of rebel groups are also members of terrorist organizations. There is no strict rule that the same rebels also belong to terrorist organizations or organize guerilla cells and often smaller groups of partially trained soldiers.

Comparing the theory of David Galula, who considers four prerequisites necessary for a successful insurgency, one of which is certainly a weakness in the COIN (Clause, The War) forces, in the case of the war in Afghanistan, it is not possible to clearly draw a line of affiliation or bearers of terrorism between insurgents, guerillas or persons designated as terrorists. Insurgents have historically used a mixture of two forces - persuasion and coercion (a negative form of persuasion), while undermining the government entity to the point where it dissolves or easily destroyed. More sophisticated

(and usually successful) insurgent movements uses a carefully balanced mix of benefits and threats to achieve victory. To start with a comprehensive analysis of counterinsurgency operations – COIN (Galula 2014) etc. Thread effectiveness, it is important to define precisely what an insurgency is and what effect it was intended to achieve. Rebellion is a form of political violence that seeks to overthrow the established political order and establish its own form of governance. Insurgent movements routinely use both "open" advanced groups and coalitions as well as secret groups in a political war campaign that the Sandinistas (Nicaragua, 1961) called the power of two faces. Such an approach cannot be defeated by military force, but only by competent counterintelligence work combined with effective regime programs of political warfare. The critical understanding is that terrorist and insurgent groups must be those groups that are not recognized as legitimate military formations. Insurgent and terrorist activities are usually fragmented groups, partially organized, relatively lightly armed, living among the local population and the territory in which they operate. In order to defeat the terrorist mode of action, it is necessary to isolate the terrorists from the local population, depriving them of physical support, in the form of sources of supply and shelter using propaganda as well. The Afghan war in terms of military confrontation has recognized several organizations as carriers of terrorism and slavery. The globally most famous terrorist organization, Al Qaeda has its members and followers in the Taliban movement, which is also an active part in the conflict. Not less important organization that has elements of terrorism in its ideology and actions is certainly the Haqqani network. All the listed actors of the military confrontation on the territory of Afghanistan implements their goals through violent actions with elements of terrorism.

The Taliban movement

The term insurgent is used to describe non-state actors involved in open conflict in Afghanistan. Believing in Sharia law, motivated by the suffering of the Afghan people, Mullah Mohammad Omar supported campaign with by 50 students who, founded a group that would later become known as the Taliban on the territory of Pakistan. Within a few months, the Taliban grew up to 15,000 followers - recruits. Growth of the movement came financial and military support from Pakistan. In late 1996, they had popular support among members of Afghanistan's southern Pashtun ethnic group, as well as helped from conservative Islamic elements abroad, allowed the faction to capture the capital Kabul and gain effective control of the country.

Although we believe that the best description of the Taliban is "insurgents wrapped in the preaching of jihad" (Mullah Mohammad Omar), it is necessary to focus on the Taliban's innovations and adaptive capabilities, so the term insurgent can also refer to members of Al Qaeda and the Haqqani

network. The insurgents in Afghanistan are unique, unlike traditional revolutionaries, they are dedicated to Islamist-jihadi ideology. The Taliban are conducting insurgencies in Afghanistan across the country in accordance with the following goals: the withdrawal of foreign forces from Afghanistan, the establishment of a government with Islamic principles and international political recognition. The stated goals largely provide the conditions for the Taliban's main goal, which is to strengthen the negotiating position in possible negotiations with the United States of America. After a long time, after suffering of the great losses, the Taliban realized that a weaker force can attack a stronger force, but the attack must be carried out outside all the rules. The great powers hold in their hands the entire international trade, legal authority and military power. There is no point in attacking a superior opponent openly, but is vulnerable if it is attacked outside of all norms and standards. In order to implement a strategy outside the established pattern, the structure of the Taliban movement required that its elements be very low visibility, reminiscent of the guerilla way of organizing and fighting. At the mid of the Taliban movement is a horizontal network, based on shared religious schooling and shared military experience, that endows the group with a powerful, unifying ideology over the world (Farell, 2018). Driven by such religious beliefs, gained by military experience through continuous wars the Taliban movement has been involved in violent conflicts since its inception. On the territory of Afghanistan this movement went through several stages that are from its emergence to a national rebellion to the attempt to gain influence outside of its traditional bases in the south and east of the country (Semple, 2015).

They recognized small groups and cells exercise more effective control than large ones, because the frequency of meetings and the length of contact affect the development of mutual ties. Case of Afghanistan shows strong organizational ties based on extended family, tribal and village relationships proved to be a strong cohesive factor. There are many reasons why Pashtuns join insurgent and terrorist movement, which are: love of power, pressure from friends, anticipation of future rewards, hatred, ideology and patriotism. The Taliban draws special attention in spiritual leadership, personnel organization, and response to the enemy from the Quetta Shura, which is in a way a government in exile. Quetta Shura represents an analytical concept but not geographical (United Nations Security Council, 2014).

In addition to the extremely radical position related to the armed struggle against the enemy, one part of the Taliban members of the Quetta Shura advocates political involvement. The interpretation of such a position is justified by the disastrous military situation in some provinces in the south of Afghanistan. The financial and military power comes from the south of Afghanistan, primarily from Helmand and Kandahar provinces. With the

beginning of the military operations of the United States of America and the Northern Alliance, the Taliban were ousted from power in Afghanistan were the reorganization of the movement and resorting to a new way of warfare was increasingly certain. Organizing rebellions on the entire territory of Afghanistan according to the coalition forces meant resorting to a new - old way of warfare that characterized as hybrid warfare. Wise and experienced Taliban commanders and commanders who had experience from the war with the Soviet Army, understood that confronting a superior enemy was not possible in an open or frontal conflict. Defeated, they retreated to the border area with Pakistan, where they followed the development of the situation.

Realizing the strategy of the enemy, in this case the United States Army and its allies, the Taliban calmly waited for the stabilization phase, prepared forces and means for a new - old way of attacking the enemy. At the beginning of the summer and autumn of 2003, Taliban attacks became more frequent and the targets were Afghan civilians, members of the ANSF, representatives of foreign and non-governmental organizations. In order for the attacks to be as effective as possible and to cause as many victims, on the side of the coalition forces as well as civilians. Support the official government in Kabul lies in the idea of controlling the combat space, i.e. using detailed local information in the formulation of their plans and strategies.

Continuing with the idea of exploiting information in the local environment, they form a parallel government in the provinces and districts known as the "Shadow Government". The first signs of a side of government appeared in 2003. In the next ten years, the Taliban would have "parallel" governors in 33 provinces and 180 districts (Thomas H). Certainly, this approach to unarmed but also armed combat required a certain hierarchy. The Taliban's "Shadow Government" is strictly hierarchically established from the supreme leader through the military and provincial trusts to the "chiefs" of the districts. During the years of conflict with government forces and the NATO coalition, the Taliban movement had a trend of increasing its followers, which is contrary to the expectations of the planners of the Western Alliance. The exact number of members of this movement is almost impossible to accurately estimate, but according to the available data number is around 60,000 members (Kube, NBCNews). Various groups make up the Taliban movement, namely the Quetta Shura group, the Haqqani network, Tora-Bora front, Hizb-i-Islami Khalis, etc. Almost 100 percent of the members of the aforementioned groups belong to the Pashtun ethnic group. Through years of warfare, Taliban fighters have adapted to the conditions on the ground, forcing the enemy to adapt to their way of thinking and understanding of war. The Taliban see a turning point in the approach to solving problems on the ground in the negotiations with the representatives of the government in Kabul, but also with the representatives of the coalition forces and their leaders. Pakistan, as a faithful ally of the

Taliban movement and especially its intelligence service ISI, in addition to permanently arming Taliban fighters, advocated negotiations with representatives of the authorities in Kabul. The goal of negotiations for the outcome should be the entry of the Taliban into power, and thus they would become a legal political factor.

Hackney network

The network represents a type - a way of organizing independent entities into one larger whole, i.e. a network consists of network elements, with more or less mutually dependent or less dependent elements characterized by the epithet "organized" by one mission - a guiding idea. Elements of it are more or less participation in the gradual realization of a goal, visible to key leaders. An attack on the network represents a synchronized action of one or more entities directed against the network with the aim of gathering information, building an intelligence network within the target network, building trust with the network in order to eliminate key leaders, idea creators, as well as culturally looking at the aspects of the guiding idea of the *network (*U.S.A. Department of Defense, 2011*) That* is ultimately the outcome winning the minds and hearts of the targeted social group, tribe, nation or group. This is a relatively new approach to the fight against the network and its capacities, given that the dynamics of warfare, the mass of communications, the multitude of key interest communities introduce an immeasurable number of variables into the way of conducting and implementing measures. Actions and procedures that reduces the risk of threats may be caused by the action network and the time of an adequate response decreases immeasurably which does not give much space for an adequate response. That leads to the conclusion and valid information, in this segment of risk assessment and risk management when fighting against the network, is priceless.

Activities aimed at combating the network and network capabilities of the enemy must be aware of its own capabilities, the capabilities of the enemy than should be aware of the possible impact of a successful attack on the network and a successful attack on the network on friendly forces, their long-range and the consequences they can cause in the wider geopolitical context. The Haqqani (Jalaluddin Haqqani) network and its affiliates have been waging insurgent-style wars in Afghanistan since the 1970s, when the name of this insurgent and later terrorist organization was first mentioned. The founder and leader of the network, Jalaluddin Haqqani, began his struggle in the war against the Soviet Union (War, 1979. – 1989). which intervened militarily in Afghanistan. Members of the network are experts in asymmetric warfare and fighting as small terrorist groups. They are not trying to reinvent guerrilla warfare or use new techniques and technologies when it comes to warfare and

carrying out terrorist attacks. Bombing attacks on hospitals, police forces and schools, ambushes are common tactics of the Haqqani network.

The Haqqani network is known for attacks near the border with Pakistan, and after carrying out terrorist attacks, they retreat to the Waziristan area in Pakistan, more precisely to the federally administered tribal area known as FATA (Federally Administered Tribal Areas). There they have supported among the local population. During the 1980s, FATA became a gateway for jihad fighters to enter Afghanistan (Hussain, 2008).

First of all, it is a semi-autonomous Afghan rebel group, but also a terrorist organization that are considered the most capable militant organization in Afghanistan (https://www.dni.gov/nctc). During 2011, US intelligence and military officials designated the Haqqani network as the deadliest insurgent group in Afghanistan, responsible for the deaths of hundreds of US and coalition soldiers. The transnational capability of the Haqqani network which operates simultaneously from Afghanistan and Pakistan, makes it difficult for US and NATO forces to find them, disrupt or defeat it entirely. Coalition forces do not have the same influence in Pakistan as they do in Afghanistan and therefore rely solely on their ally Pakistan which deals with the Haqqani network inside Pakistani territory or they deal with that issue on the other point view. The Haqqani network is assisted by three broad groups ranked at three levels: local, regional and global. Locally, the Haqqani network is supported by the Afghan Taliban, tribal leaders and the Pakistani Taliban. Tthe group assisted by the Pakistan Army and the Pakistan Intelligence Service belongs to the regional level.

The ISI's support made the Haqqani network a formidable threat, resistant to foreign attacks and infiltration. Unlike al-Qaeda, the Haqqani network is openly supported by Pakistan, especially its military. Statements by senior Pakistani officials, as well as actions taken by the Pakistani government, show that the Haqqani network remains a strategic tool in their hands. Globally, the Haqqani network is supported by al-Qaeda, the Islamic Jihad Union, Lashkar-e-Taiba and other sympathizers from the Middle East. Collectively, all of this support they provide to the Haqqani network makes it a powerful and potent threat to peace and stability both in Afghanistan and beyond. Their idea and strategy of warfare bases of no need to change what has proven successful for decades against perceived external threats to the Islamic fundamentalist way of life in Afghanistan. The Haqqani network has successfully defined itself as much more than an insurgent group. Where the Haqqani network is very innovative is in their strategy to raise money and support from the population in the territory where they carry out their operations. Like most groups that are trying to become an important and indispensable factor for solving and ending the conflict on the territory of

Afghanistan, the leaders of the network are under the strong influence of neighboring Pakistan, have established and maintain official ties. After intervention in 2001, Jalaluddin Haqqani was invited to negotiations in Islamabad regarding the possibility of forming a post-Taliban government in Afghanistan.

The most important military leaders of the Pakistani army, Haqqani has been designated as a strategic tool for negotiations with the Taliban and the possibility of a peaceful solution in certain parts of Afghanistan. The goal of the Haqqani network is to suppress and expel the United States army and coalition forces, but also to replace the Afghan government with the Islamic State, which acts in accordance with the strict Salafi Muslim interpretation of Sharia in the operational area of the Afghan Taliban.

Al Qaeda

Historically speaking, probably the most famous terrorist organization in human history is Al Qaeda. The media space occupied by this Islamic terrorist organization increased its importance in the global environment. The founder and long-time leader, the Saudi terrorist Osama Bin Laden, once an associate of the intelligence structures of the United States of America, from the beginning of the 21st century, became the most sought-after personality precisely by the same structures from the West. The establishment of this terrorist organization in 1988 was a direct response to the consolidation of the network during the Afghan-Soviet war. The organization's initial goals were to support Islamic revolutions throughout the Muslim world and reject foreign intervention in the Middle East. Before the events on the territory of the United States of America, it cannot be said that Al Qaeda was considered a terrorist organization. With the declaration of the war against terrorism, this terrorist organization was become first as a threat to global security.

Organization, financing, affiliation, best define that it is a global international terrorist organization. Through mutual activities, the members of this terrorist organization are working to strengthen it, but also to expand the territory of influence in relation to other terrorist organizations. Certainly, if the above elements are taken into account, Al Qaeda poses a threat to the interests of major global powers. It is a very sophisticated terrorist organization, according to data that high-ranking members of the organization are sent to a large number of countries around the world in order to lead a policy of geographical expansion. The formation of branches of the organization around the world was and remains the main goal and task of this terrorist organization. Due to its protection and recruitment of as many fighters as possible, safely leading the expansion of the network, it found its main foothold in Afghanistan and Pakistan. The decentralized network was created in Khartoum during 1991 to 1996.

In order for covert operations and the execution of terrorist activities as a serious resource to give the best possible results, a regional decentralized structure was conceived and organized. Al-Qaeda is a natural offshoot of the Muslim Brotherhood organization turning the Brotherhood's rhetoric into concrete actions. The Muslim Brotherhood persistently talked about the martyrdom of the Muslim world which Al Qaeda used as a platform and carried out its terrorist activities. As the biggest management weapon of this terrorist organization, it is certainly the ability or the ability of its leader to address Muslims around the world. Such ability of the leader of the terrorist organization gives it an unprecedented reach and strength especially in the ability to recruit new members. The recruitment of new members is based on the principle of family, ethnic and national affiliation and loyalty. The operation of Al Qaeda since the time of the Soviet intervention has changed a lot. The members of the organization or network are not soldiers who only carry weapons and act as a military formation. With the expansion and availability of new technologies, members of terrorist networks are using sophisticated technology to conduct hybrid warfare both within the territory of Afghanistan and in the global area.

Organizationally, the network is adaptive and it is organized according to a system of isolated nodes until September 2001 when it functioned without main points or hubs and without a known structure. The adaptability and decentralization of the network is visible in the physical but also in the virtual environment. Understanding and legitimizing the virtual battlefield Al Qaeda managed to create a new wave of terrorists who succeed in radicalizing sympathizers as well as individuals. Legitimization and use of the media as a weapon were the key importance for this terrorist organization. Accepting the impossibility of physical warfare against the enemy, the religious elements of Al Qaeda approved and encouraged resistance, i.e. warfare in cyber and media space. Even more, at the moment when this terrorist organization was under strong pressure from the coalition forces, with the withdrawal to the eastern part of Afghanistan, the strategy of any form of opposition to the enemy was accepted. Availability of media and global networks made the transmission of ideas and orders to followers a very reliable and fast way of communication. This way of warfare opened the door to a new wave of recruitment with their teachings of radical Islam, raising the fight against infidels which easily inspired new terrorists to radical thinking and action.

GOALS AND ORGANIZATION

For two decades Afghan terrorist and insurgent movements have been investing effort and resources in creating and projecting the case of the "victim" whose struggle was just and requires the using of violence. Insurgent rhetoric, ideology, and the political ideas which expresses to be key in enabling

terrorists and insurgent movements to maintain high levels of violence despite major changes in the political context throughout the years of Western Alliance intervention. Rhetoric has an impact at the level of individuals, institutions and society. The case of the Taliban shows that for the committed violence, motivation and assurance was provided to other Afghan recruits to join the movement or other terrorist organizations, giving them moral cover for the violent actions they commit. The case for violence was at the core of the Taliban's collective raison d'être. Terrorist activities and insurgent activities are that one of the ways of further opposition to coalition forces and security forces in Afghanistan. In addition to classic military action, which is seen as asymmetric action, terrorist organizations and networks in Afghanistan are moving their actions to the cyber and media space. A strong connection with the intelligence structures of regional powers enables members of terrorist organizations to access new knowledge and technologies. Forms of confrontation have the goal of expelling the coalition forces and overthrowing the government in Kabul. Maybe, from the point of view of the rebels and terrorists, the primary goal is the overthrow of the democratically elected government in Afghanistan, because with the departure of the coalition forces, aware of their strength, they have aspirations of returning to power where they were until December 2001.

Ideology and nationalist separatism

Ideologies can be seen as the daughters of ideas, more complex, more decisive and far more deadly. Nationalism is the earliest form of militant ideology in the modern West followed by Marxism and fascism. In the Arab and Muslim world religious fundamentalism took the leading role in the nineteenth century, then extreme nationalism which was replaced by socialism and Islamism during the twentieth century. Similarly, East Asian and African cultures veered between nationalism, religious extremism and communism. In Latin America it was between left and right ideologies. Civil and ethnic wars have also spread in places such as Lebanon, Ireland, Sudan, the Philippines or Nigeria. Rebellions and revolutions sprouted like mushrooms after the rain in Cuba, Bolivia, Algeria, Hungary, Iran and beyond. In all these conflicts, with leaders from Bismarck to Trotsky and from Hitler to Mao Zedong, ideologies were omnipresent: nationalist, socialist, communist, populist, anarchist or ultra-religious, all seeking dominance in the name of the higher, appealing to the divine, materialistic, a philosophical or historical ideal. However, it is not unknown that ideologies can begin as an expression of eternal desires, such as the lust for territory and domination, but as history develops, ideologies become a desire in itself, an autonomous desire to realize an idea regardless of its irrelevance.

The insurgent doctrine or terrorist activities is focused on internal efforts, and in particular it refers to maintaining cohesiveness within the movements themselves. Terrorism in Afghanistan and operations throughout Central Asia and the Middle East, the radicalization of members of tribal communities, began with the assassination of Egyptian President Anwar El Sadat. Peaceful solutions and agreements between the Muslim world and others from the point of view of radical Islam are not allowed. The preaching of the "Holy War" in the fight for the rights of Muslims on the territory of Afghanistan is deeply spread and present in the religious and social community.

The radicalization of the Islamic world in the Middle East and parts of Central Asia came with the intervention of the United States of America in Iraq in 1990. The polarization of Afghan tribal supporters for and against the Iraqi president on the territory of Afghanistan went unnoticed. The upheavals occurring in the Islamic world allowed the Haqqani network to play a major role in the spread of jihad. The quadrangle of relations between the Haqqani network, Al Qaeda, the Taliban and Pakistan provides an answer to the actions against coalition forces and other security forces on the territory of Afghanistan and Pakistan.

Political changes in the modern age

No matter how much Afghanistan and its people did not follow the region, in terms of democratic or ethnological development, changes did not bypass them. Going back in time, the changes can be seen through the rise and fall of the Taliban movement. It is obvious that the Taliban movement has left a deep scar in the development of Afghanistan itself for many years. With the establishment of communist rule during the Soviet military intervention a domestic opposition front led by the Mujahedeen developed. After the withdrawal of Soviet troops, Afghan society remained divided into two factions. The government in Kabul was represented by Najibullah, while on the other side were the Mujahedeen divided into several conflicting groups. Tribal affiliation which was a strong factor of persuasion and decision-making, has given the right to many tribal leaders to represent themselves as they represent the people of Afghanistan. The reality was quite different which led to massive destruction of the country and the displacement of millions of Afghans. The chaotic social, economic and political situation enabled the Taliban to come to power. Their consolidation in power is directly related to regional development that was seen by the West in the early nineties of the last century. Access to oil and gas deposits in the former Soviet republics was determined by the political changes in Afghanistan. Pakistan, for whose economy natural gas is crucial, has determined its policy towards Afghanistan. With the fall of the Taliban regime democratically elected leaders such as

Hamid Karzai who have entered the scene as member of the Pashtun ethnic group.

In order to establish a safer environment and more stable state, President Karzai tried to announce an amnesty for all members of various movements who surrender their weapons and express loyalty to the democratically elected government. Attempts to call the government in Kabul to reconcile with the rebel movements, primarily with the Taliban, did not bear fruit. Attempts to categorize terrorists and rebels into "moderate" and "extreme" in order to achieve a more stable situation in the country also did not give results. Certainly, such a rigid division did not have the support of tribal leaders and even less of the Afghan people whom publicly or secretly support some forms of resistance.

Currently, the Taliban movement has accepted the possibility of approaching and solving problems in a different way compared to military confrontation. The Taliban movement's ability to adapt, and its broad support on the territory of Afghanistan, represents a key advantage in announcing and realizing its goals. From a solid almost military organization, they managed to develop the ability to be a politically acceptable interlocutor. Certainly, their acceptability stemmed from military capabilities, which means the military element of the movement achieved results that provided the conditions for talks with the opposite party in the conflict. Political changes in the rebel and terrorist ranks are nothing more than Clausewitz's understanding of war.

MODE OF ACTION

The structure of a terrorist, insurgent or revolutionary movement is very much like an iceberg. It has relatively small visible elements that are organized to carry out open armed operations and much larger secret covert force or in other words underground. The underground carries out vital activities of infiltration and political subversion, establishes and manages shadow governments and acts as a guerilla support organization. An insurgent or revolutionary movement is defined as a subversive, illegal attempt to weaken, modify or replace existing governmental authority through the prolonged use or threat of use of force by an organized indigenous group outside of an established governing structure. The strategy of terrorists in Afghanistan is motivated by local concerns and a less visible but firm ideological commitment to the philosophy of expansive and global jihad.

The structure of terrorist and insurgent organizations on the territory of Afghanistan certainly has elements of organization. When it comes to large terrorist organizations such as Al Qaeda or the Haqqani network. Each of them can be viewed through organizational elements for direct action, more precisely for operations, diplomatic activities, while they also have support functions. The network's ability to act is reflected in its ability to act in the

local and regional but also on a global level. Providing the ability to act to other terrorist groups gives importance and strengthens the importance of the main terrorist organization or network which provided the activity and support. The most obvious example of such action is the support of the Haqqani network, the Pakistani Taliban and the terrorist network known as Tehrik-e-Taliban. The higher hierarchical structure in terrorist networks is based on kinship.

Most of the terrorist, insurgent and guerilla operations that are carried out in Afghanistan and in parts of Pakistan, are based on tribal and sub-tribal lines or relationships. Tribal connection enables deep trust in the planning and implementation of terrorist activities. The overflow of terrorism fighters in the border area with Pakistan are strongly controlled by tribal relations. With the arrival of members of the terrorist network in the area of operations it was clearly determined under whose tribal affiliation and control they are subject. Actions in the conflict with the Soviets, then with the coalition forces, the connection of terrorist elements is deeply integrated and interdependent.

The method of action used by terrorist, insurgent and guerilla groups has not changed in the last two Afghan wars. Just mass of percentage of joining terrorist networks, as well as the radicalization of the fight against the foreign factor and the Afghan security forces, is noticeable. It can be concluded that the applicability of the old strategies of fighting against a militarily and technically superior enemy with less adaptability in the case of Afghanistan gives results again. Individuals with the support of small units on the ground that are guided by tribal policies, with the protection and financial support of large terrorist networks and managed to force the enemy to think differently and view the war.

Structure, carriers of terrorism and insurgency

The official leadership structure of the terrorist and insurgent movement on the territory of Afghanistan consists of the deputy leader, other executive officers, the leadership council and twelve special commissions. Special commissions include a military commission, a political commission, an economic commission, a commission on education, affairs of prisoners, martyrs and the disabled, as well as a council of ulema. The most important of the aforementioned commissions, the military, has a branch in Pakistan, specifically in Peshawar which deals with the management of affairs in the eastern province. Certainly, one cannot put a sign of equality in terms of the structure of terrorist organizations operating in the territory of Afghanistan. Speaking about Al Qaeda, it is noticeable that the structure after the terrorist attack on the United States of America is not known. On the other hand, the Haqqani network is certainly the most serious terrorist and insurgent organization in Afghanistan, but also much wider.

The ability of this network to act centrally on strategic issues sets it apart from all other organizations that have been treated as terrorists. There is difference in the organization of two networks with the same goal, one that acts decentralized like Al-Qaeda and the other that rules strategic issues of Haqqani network. A large number of terrorist attacks carried out against coalition forces or civilian targets were collaborations between different networks and movements. Serious terrorist but insurgent attacks were carried out in collaboration with the Haqqani network and the Tehrik-e-Taliban movement. This cooperation and collaboration is a product of high mutual trust and respect, as well as agreement to act on strategically important goals.

The Taliban of Quetta Shure are the inevitable bearer of terrorist activities as well as insurgent operations against the coalition and security forces. Projecting in the southeastern part of Afghanistan is vital for all irregular formations. The existence of differences in thinking and acting on the issue of confronting the enemy, tribal leaders in the mountainous and lowland parts of Kandahar and Paktia provinces is of crucial importance for terrorist networks. Tribal ties in the mentioned provinces are certainly most pronounced in the Haqqani network which has the absolute greatest influence on events and actions that have elements of terrorism.

It is necessary to observe the other participants as carriers of terrorist activities which is certainly not easy, ie. it is not easy to judge which structure they belong to. There is a simple reason for this which lies in the fact that Afghan fighters, Arab volunteers or Pakistanis with a questionable past can acquire weapons, food and prepare for an attack. It is precisely this ability of members of terrorist movements and rebel groups that presents a constant problem in defining the structure, the bearer or belonging to the organization, group and even the country from which they are recruited.

Asymmetric approach and action

The asymmetric conflict from the beginning of the war in Afghanistan shows that 70% of the territory was in under the Taliban, while a very small part in the north was controlled by the Northern Alliance. The lines reached, the control of the territory were completed by 1998 and the situation on the ground most resembles the Western Front in the First World War. Both opponents were insufficiently strong to break through the line and cause the opponent losses in manpower and territory. This frozen state remained until the intervention of coalition forces in October 2001. Afghan fighters who sided with terrorist groups and rebels were not trained in the military. A large number of members were only religiously inspired, while military training and the ability to seriously oppose the coalition forces was only in the realm of the possible. Armed mainly with light infantry weapons, they faced the most modern air force of today. The deposed, temporarily and partially

incapacitated network of terrorists and insurgents realize that resistance to a superior opponent can only yield results through the use of non-linear and asymmetric forms of warfare. Preventing large-scale insurgency was at the top of the agenda for the planners the Afghanistan and other campaign. Radical religion and its use in the field often enabled the support of the local community, members of terrorist groups and above all Al-Qaeda fighters. The asymmetry is more than obvious in the case of the Afghan conflict. Terrorists and rebels recognize the importance of local politics, that is the importance of local influence on the population.

The ability to influence the local population, terrorist activity has the ability to control territory. In order to oppose the actions of the coalition forces as well as the representatives of the authorities in Kabul, the rebel and terrorist structures developed a complete system of so-called shadow governments. With the weakening and porosity of the bearer of security affairs, terrorist organizations and groups expand and strengthen their competences. As a non-state element, terrorists used flexibility and dynamism in planning and achieving goals. Understanding the strategy of coalition forces who had just defeated them with small teams of special forces, targeting coalition aircraft, the terrorists resorted to asymmetry. Through the use and operation of improvised explosive devices, and even more radically with the use of suicide fighters, they forced the enemy to think about changing the way they operate. After Iraq, Afghanistan is probably the area where the most improvised explosive devices were used, sending the message to coalition forces that there are ways to fight in an asymmetric environment. The loss of a large number of fighters in direct attacks on the bases and forces of the coalition forced the Taliban to change tactics and find a different way of inflicting the greatest possible losses on the enemy.

The adoption of the technique of placing improvised explosive devices during 2008 was aimed for the coalition forces to withdraw from the locations - the positions they occupied. As an example of forcing the opponent to the will of the attackers, which happened in 2008 in the area of the city of Sanguine Helmand province, when the rebels who reinforced with elements of terrorist groups, more and more often set up improvised explosive devices, inflicting serious losses on the coalition forces in the area of operations. It was finally decided that the base be completely closed and abandoned. Understanding the Afghan military culture is extremely important when it comes to asymmetric warfare. It is known that a large number of rebels, as well as members of terrorist groups, have no sense of military honor. They are ready to change affiliation, alliances and parties at a given moment. It was the change of allegiance to the alliance, resorting to the coalition side, that may have opened cracks for destructive action within the already fragile sustainable security system. On the other side, precisely in the ranks of terrorist groups and rebels,

cracks appeared that the coalition forces wholeheartedly exploited. For a long time, the terrorist network failed to stop the exploitation of the coalition's asymmetric action which was related to divisions within the structure itself, i.e., networks.

Direction for further engagement

Conflicts at Central Asia are fundamentally unpredictable, ca used from the participants themselves to the time frame of duration. Conflicts between India and Pakistan, Iran and Iraq, all conflicts throughout history in Afghanistan resulted in a temporary cessation of conflict but not a permanent solution. Afghanistan, as the most complex example of a war conflict, shows two solutions in the coming period. First, the continuation of the military conflict as the most realistic option and the second solution is the achievement of a peace agreement. Afghan society as a whole is heavily influenced by ethnic groups and tribal leaders, while Pakistan's influence on the conflict has never been questioned.

The real desire to reach a solution lies in the fact that terrorist and insurgent groups want the complete return of the Taliban regime with all the elements of their rule of total Islamic teachings. Banishing the foreign factor is one of the priority tasks of the Taliban movement, as well as other networks that support this movement. The government in Kabul, branded as corrupt and a subject of the West, should be overthrown in order to restore faith in the value of the Afghan national being.

STRATEGIES FOR FURTHER MILITARY CONFRONTATION

In the coming period, as it was in past nineteen years of the conflict in Afghanistan, will be marked by the strategic determination of terrorists and rebel groups to continue military confrontation. All the efforts of the regional and international actors involved in the conflicts on the territory of Afghanistan against the Taliban leaders and those who support the terrorist networks, to stop the hostilities, did not give result. Otherwise, the Taliban leaders supported by prominent members of the Haqqani network, despite clear calls for peace negotiations with representatives of the Afghan government and representatives of the US administration and have no intention to stop terrorist and insurgent attacks. The declared operation "Victory" on the territory of Afghanistan by rebel groups indicates that various rebel and terrorist networks have a strategy of expelling foreign military formations, but also a complete victory.

The strategy of the Taliban, which appeared as a new way in the execution of insurgent operations is attacks on the main cities of the districts and an attempt to control them. The Taliban still consider themselves the legitimate Afghan government, an insurgent force fighting to impose Sharia

law and revise the constitution. Their attitude is that after the withdrawal of the foreign troops, the Afghan security forces will not be able to stop them in their campaign and to return to power and therefore to a military victory. Long-term war experience mixed with religious teachings, new technological wave in the form of the Internet, social networks, the ability to use the media space, gave terrorists new opportunities and tools to confront the enemy. From banning the use of television receivers or the reproduction of music content, terrorist and insurgent leaders today operate innovative and agile social networks. The area of action has changed to the physical dimension of confrontation, a virtual one and also a cyber-dimension has been added. Terrorist and insurgent groups have proven that they can adapt to established tactics, techniques and procedures from the world's battlefields.

They apparently apply such capability on their own turf with flexible thinking about adopting tactics from other terrorist groups all over the world. The continuation of military cooperation in the coming period will primarily be expressed through the ability to use air defense systems, a greater and more lethal number of IED attacks, and a focus on information operations. In order to fully oppose the enemy terrorist groups and complete networks will use the media to exploit deadly terrorist attacks of strategic success and also with the increasing participation of suicide bombers. The cycle of rapid adaptation and organizational innovation by terrorists has lasting effects on the fight in the coming period. Negotiations between rebel groups and representatives of the US administration at the highest level, which began at the end of 2018, did not produce the desired results. Unclear political situation on the territory of Afghanistan, prospects for a sustainable political solution remain unclear. Space has been left for the continuation of hostilities and activities of insurgent groups both in Afghanistan and outside its borders.

Negotiation network

Veterans of the Afghan wars who at the same time belong to some of the terrorist, rebel or guerilla movements, discussing the prospects for peace in the country, considers that peace is a natural and desirable state. Their fight against the foreign presence is basically a fight for peace by all paramilitary and terrorist groups. With the establishment of peace, the goal for which the Taliban, Al Qaeda fighters, Haqqani network, etc. fought would be reached. Through years of warfare Taliban fighters have adapted to the conditions on the ground, forcing the enemy to adapt to their way of thinking and understanding of war. The Taliban point of view in the approach to solving problems on the ground in the negotiations with the representatives of the government in Kabul, but also with the representatives of the coalition forces and their leaders. Pakistan as a faithful ally of the Taliban movement and especially its intelligence service ISI, in addition to permanently arming

Taliban fighters, advocates negotiations with representatives of the authorities in Kabul.

The United States, Pakistan, Afghanistan and China reached an agreement in late February 2016 on a road map to end the war in Afghanistan and negotiated between the official Kabul and the Taliban. Taliban representatives were expected to join Afghan officials for peace negotiations in Pakistan in 2016. The continuation of negotiations and possible cooperation between the government in Kabul and the Taliban did not succeed due to the murder of one of the leaders of the Taliban in May 2016.

The Pashtun ethnic group which forms the main part of the terrorist network and insurgent movement in Afghanistan supported by religious elements, realized that they had almost reached military and political power. They feel that they do not have control over larger urban areas, ie. cities, nor can they have them considering the current engagement and capacities of the coalition forces and the ANSF and looking for a way to initiate peace negotiations. The most serious negotiations in the nineteen-year war were conducted between representatives of the Taliban movement and officials of the administration of the United States of America, held in Doha in July 2019. Negotiations between opposing parties should ensure consistent application of the agreed terms. For the Taliban a priority was to solve problems of their fighters, imprisoned in prisons both in Afghanistan and on the territory of the United States of America. Besides, the coalition forces have a crucial interest that the Taliban movement undertakes to reject the aid to terrorists that the coalition forces and the judicial system of the United States of America in some way require. If we recall the Soviet engagement and withdrawal from Afghanistan, negotiations seeking conditions during the withdrawal, etc. the cyclical repetition of events that create military strategy is noticeable.

CONCLUSION

The historical burden of war on the territory of Afghanistan has never been a facilitating factor for the establishment of lasting peace. The desire of the global powers for absolute domination over this part of Asia burdened all attempts for long-lasting peace, regardless of which historical epoch it was about. The last fifty years from communist to democratic government, supported by coalition forces, have not produced results for the establishment of long-term peace. As it is known, the global superpowers leave the question of this part of the world open and chaotic moment in order to open old questions. Even today, nothing is easier and simpler situation, which should lead to peace and prosperity of the country. It is obvious that Pashtun way of life, the Taliban movement, religious support, will decide war or peace in Afghanistan. The years that have passed have brought small but important changes in the thinking of Afghans, that do not see war options as the only

way. The vast majority of Afghans, although they dislike the government in Kabul, do not want the Taliban to return to power and rule the country. The change of thinking and understanding of the situation also speaks to the desire of the people of Afghanistan to improve the economic situation, even though they are disappointed with the economic reform and support from Western partners. The guiding idea that can move things in a positive direction when it comes to peace is precisely the economic situation, hence the thinking that while the coalition forces are on the territory of Afghanistan. There is a chance for economic recovery and stabilization of the security situation.

Due to such thinking and the situation in the country it is more than necessary to convince the other side, i.e. the Taliban to accept such a solution to the situation in the country. For the Taliban the government in Kabul is a "government of crime" that they do not recognize, which complicates the creation of a generally positive climate for the establishment of peace. Intolerance between the "position and the opposition", speaking in the language of democracy, must be overcome by political understanding of the demands. While the main issue for the Taliban is to release of imprisoned Taliban members for the government in Kabul as well as for the coalition forces. It is the cessation of insurgent operations, terrorist activities and violence. The necessity of including diplomacy as a strategic weapon of the negotiators was understood in Kabul as well as in the Taliban decision-making centers. The Taliban succeeded in their intention to force the enemy to negotiate, which may ultimately result in withdrawal. The Doha peace negotiations, as a view of American policy on the further resolution of the conflict in Afghanistan, suggest a possible withdrawal of coalition forces. The withdrawal of coalition forces with the eventual signing of a peace agreement would open a new chapter in the history of Afghanistan. Needs for peace negotiations and mutual respect between the government in Kabul and the Taliban movement should be the key to establishing a truce. Whether we can talk about the establishment of a long-term truce will depend to a large extent on all the factors involved in the "Great Game". Although treated as a terrorist organization by the United States of America, the Taliban movement managed join to negotiate as an equal negotiator with the aim of achieving peace tailored to the people of Afghanistan.

REFERENCES

1. UK Government, Home Office, Proscribed Terrorist Organisations, 1 November 2019, page. 3
2. Karl von Klauzevic, The War, page 82
3. David Galula, Counterinsurgency Warfare: Theory and Practice, Published in the United States of America in 1964 by Frederick A. Praeger, Inc., Publisher, page 31

4. Joint Publication 3-24, Counterinsurgency, 25 April 2018, EXECUTIVE SUMMARY, pag. IX
5. The Sandinista Front of National Liberation, formed in Nicaragua in 1961, was founded in Afghanistan. 1961.
6. Farell, Unbeatable: Social Resources, Military Adaptation, and the Afghan Taliban', Texas National Security Review, 2018, page.63
7. Semple, Michael, 'Rhetoric, Ideology and Organizational Structure of the Taliban Movement', United States Institute of Peace, 2015, page 7
8. United Nations Security Council, Sixth report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2160 (2014) concerning the Taliban and other associated individuals and entities constituting a threat to the peace, stability and security of Afghanistan, 26 August 2015
9. Thomas H. Johnson∗ and Matthew C. DuPee, Analysing the new Taliban Code of Conduct (Layeha): an Assessment of changing perspectives and strategies of the Afghan Taliban, page 85
10. Kube, Courtney. "The Taliban Is Gaining Strength and Territory in Afghanistan." NBCNews.com, NBCUniversal News Group, 30 Jan. 2018, www.nbcnews.com/news/mideast/numbers-afghanistan-are-notgood-n842651, 27.11.2021.
11. Attack the Network Field Guide, Afghanistan, The United States *Department of Defense*, Version 1, 2011.
12. Soviet-Afghan War 1979. – 1989.
13. Raja G. Hussain, Badal a culture of revenge the impact of collateral damage on Taliban insurgency, Monterey, California, 2008, page 23
14. https://charityandsecurity.org/country/afghanistan/, 14.03.2020.
15. https://www.oxfordbibliographies.com/view/document/obo-9780199766581/obo-9780199766581-0194.xml
16. https://www.britannica.com/topic/jihad
17. https://www.dni.gov/nctc/groups/haqqani_network.html, 14.03.2021.

Scientific Article
UDK 323.285-05:316.4.063.3(497.7)

REPATRIATION, REHABILITATION, AND RESOCIALIZATION OF FOREIGN TERRORIST FIGHTERS IN NORTH MACEDONIA

Dr. Sc. Vasko Shutarov
European Centar for Security Studies "George C. Marshall"
Alumni Scholar
sutarov@yahoo.com

Abstract
Returnees, foreign terrorist fighters (FTFs), women, and children from North Macedonia are classified into several groups: those still abroad waiting to return to the country; repatriated or arrested and are in a different status serving their prison sentences; those who already left prisons and returned in their community. Various examples illustrate the repatriation process. State institutions led resocialization and rehabilitation process in cooperation with civil society. Activities within correctional institutions are considered crucial, especially if are followed by post-prison phase. For women and children, there is a specially designed approach. The National Committee coordinating state institutions lead inter-disciplinary approaches in cooperation with civil society. The National plan outlines activities implemented at a central and local level. Civil society organizations (CSOs) provide valuable contribution through specially designed projects for returnees and families. There are already registered threats from the returned FTFs that have not been deradicalized and rehabilitated.

Keywords: *FTFs, repatriation, rehabilitation, resocialization, prison*

INTRODUCTION

The prolonged conflict in Syria attracted thousands of foreign citizens to fight against the rule of Bashar Al Asad in what was initially a civil war. The situation was quickly exploited by dozens of extremist and terrorist groups giving the conflict a more religious and ideological label. The "Islamic State" (IS) which has been already operating in Iraq took the opportunity to expand in Syria and establish a so-called "Caliphate". This new "ideal state" was used as propaganda to attract foreign fighters and their families in a kind of "hijra" (relocation). Along with the military defeat of the "IS" and the collapse of the "Caliphate" hundreds of foreign citizens were captured, mainly by the Syrian

Democratic Forces (SDF), and put in camps. This became a new challenge for the global counterterrorism efforts, emphasizing the aspect of repatriation, resocialization, and reintegration. There was no precise number of how many Macedonian citizens responded to the call of terrorist groups. It is estimated that 160 citizens fought in the conflict theatres in Syria and Iraq, as part of the "Islamic State" and "Tahrir Al Sham". 60 of them have died, while 90 have returned.[152]

THE RETURNING PROCESS

Returnees, here including fighters, women, and children, could be classified into several categories:

- *Returned before the changes in the Criminal code* (2014) with the purpose to avoid further prosecutions under the newly established article 322-a criminalizing their activity. Most of them were FTFs and fit this category. Some of them face disillusion and disappointment from the situation in Syria which didn't meet their expectations.
- *Repatriated in a group* by state institutions in coordination with partner countries. In this regard, the Republic of North Macedonia is obligated according to International law, international law for human rights, and international humanitarian law, standards, and resolution of the SC of the UN. There have been two such examples. On August 7, 2018, seven Macedonian citizens (age 23-41) from Skopje, Prilep, Tetovo, and Gostivar were repatriated with a US military plane at Skopje airport. They have been kept in captivity by the SDF. The operation was organized with the US partners and this action was used an example to follow by other partner countries. These seven citizens were previously charged with the police actions "Cell 1" in 2015 and "Cell 2" in 2016 and were under an international warrant.[153]

On July 17, 2021, a group of four men (FTFs), 5 women, and 14 children was repatriated to Skopje. Based on previously collected evidence, criminal charges were filed against the FTFs that have already been under an international warrant. Women and children were enrolled for rehabilitation, re-socialization, and re-integration in the community programs, but also went under security checks to determine if they have been involved in terrorist activities.[154]

---

[152] 360 Stepeni (August 31, 2021), "(ФОТО) Нови легитимации за припадниците на АНБ на двегодишнината од формирањето на институцијата", https://360stepeni.mk/foto-novi-legitimatsii-za-pripadnitsite-na-anb-na-dvegodishninata-od-formiraneto-na-institutsijata/

[153] Огнен Чанчаревиќ (July 18, 2021), "Вратени борци на терористичката ИСИС кои војувале во Сирија и Ирак", https://mk.voanews.com/a/5970025.html

[154] Влада (July 18, 2021), "Репатрирани странски терористички борци и членови на нивните семејства, државјани на Република Северна Македонија", https://vlada.mk/node/25946

- *Deported from Turkey*. On March 10, 2020, L.S. (38) from Skopje was deported from Istanbul to Skopje. On two occasions, she traveled to Syria and took part in the "IS" activities, for which was immediately arrested and charged according to article 322-a.[155]
- *Returned by their initiative*, using regular travel routes and regular IDs, hoping that they would not be detected by security services. For example, on August 27, 2021, Z.S. from Negotin (Gostivar), was arrested under suspicion of involvement in activities concerning article 322-a.[156]

Women and children became a specific category of citizens that needed to be returned, considering the general perception that they were not involved in any extremist or terrorist activities.

As Syrian and Iraqi security forces re-took control over previously held "IS" territory, about 30 Macedonian citizens tried to reach Macedonian authorities to return to their hometowns (Skopje, Gostivar, Tetovo, and Kumanovo). On November 12, 2019, Revajet Shahini from Gostivar, held at Al Hol Camp, took the opportunity of a TV crew from Albania and required publicly to return home with her four children. In the past six years, she was left alone in the camp losing all contacts with her husband and family. In the same period, four other women with seven children were present in Syrian camps.[157]

Some of the families were split. For example, while one of the FTFs served his prison sentence in North Macedonia, his wife of Syrian origin and four years old child were left in the camps. The FTF family contacted state institutions and required to be repatriated. In this case, the rehabilitation process, beside the psychological support, needed learning of the languages spoken in North Macedonia[158] because the woman and the child didn't know the local language. An additional challenge, in this case, was to prove the true biological father of the child through DNA analysis. In all cases, it was proven that children had parent(s) with Macedonian citizenship.[159]

Women and children were accepted by the social work centers that provided further help and enrolled them in programs of formal and informal

---

[155] Makfax (August 4, 2020), "Уапсена скопјанка, членка на ИСИС", https://makfax.com.mk/crna-hronika/уапсена-скопјанка-членка-на-исис/

[156] 4 News (August 28, 2021), "Апсење на скопскиот аеродром – приведено лице од Гостивар кое во војна се борело против Македонија", https://4news.mk/apsene-na-skopskiot-aerodrom-privedeno-litse-od-gostivar-koe-vo-vojna-se-borelo-protiv-makedonija/

[157] Радмила Заревска (November 15, 2019), Подготвени ли сме за ресоцијализација на џихадистите,**https://www.novamakedonija.com.mk/makedonija/подготвени-ли-сме-за-ресоцијализациј/**

[158] Мики Трајковски (October 14, 2020), "На Северна Македонија ѝ е потребен силен процес на ресоцијализација на повратниците од ИСИС", https://mk.voanews.com/a/voa-macedonian-isis-members-back-home-resocialization-experts/5621132.html

[159] KOD (10 October 2021), "Devojcinja vo ISIS na pat so tesko vrakjanje i resocijalizacija - VTOR DEL", https://www.youtube.com/watch?v=GxCnpMuWWjs

education.[160] The initial assistance was in obtaining Macedonian IDs for the necessary state institutions in order to receive social and children protection services. Part of the children didn't have citizen number and never attended a kinder garden or school, thus some of them have been enrolled in the education system. Most of the women and children have been accepted by their families. Yet, there were cases when initially their families didn't embrace them, which required additional assistance in the resocialization process.[161]

Some of the returnees were physically exhausted after living in camps, while others, especially children, were traumatized by conflict scenes. This alone required a well-prepared returning process, in a manner that would not provoke additional trauma. For this purpose, social workers, psychologists, and other experts have been trained to immediately assess their condition and start working with them.[162]

SECURITY INSTITUTIONS

The Ministry of foreign affairs (MFA), Ministry of the Interior (MoI), Intelligence Agency (IA), and Agency for National Security (ANS) took a leading role in the repatriation process. As a foreign intelligence service, it is IA that obtains initial information about all Macedonian citizens' locations in conflict areas. In the past years, MoI, IA, and ANS were in permanent communication and cooperation with the purpose to share information on many people and their locations in conflict areas. After that in cooperation with partner countries, their repatriation has been organized.[163]

To establish contact with the women and children, MFA was in permanent communication with the Macedonian embassy in Ankara, as well as CSOs and the Red Cross. Returnees needed a valid passport and transportation from Syria to North Macedonia.[164]

---

[160] Nova TV (22 December 2019), "Судбината на повратниците и нивните семејства: Опасноста од боиштата ја носат дома", https://novatv.mk/sudbinata-na-povratnitsite-i-nivnite-semejstva-opasnosta-od-boishtata-ja-nosat-doma/

[161] KOD (2021)

[162] Fjori Sinoruka, Xhorxhina Bami and Siniša Jakov Marušić (August 20, 2021), "Dobro došli kući? Povratnici iz ISIL-a testiraju sposobnost balkanskih zemalja za reintegraciju", https://balkaninsight.com/sr/2021/08/20/dobro-dosli-kuci-povratnici-iz-isil-a-testiraju-sposobnost-balkanskih-zemalja-za-reintegraciju/

[163] MVR (October 11, 2019), "Спасовски за МИА: Враќањето странските борци предизвик за државата", https://mvr.gov.mk/vest/10171

[164] Nova TV (2019)

NATIONAL COMMITTEE FOR PREVENTION OF VIOLENT EXTREMISM AND FIGHT AGAINST TERRORISM

The process of creation and implementation of programs for the reintegration of FTFs and their families is under the authority of the National Committee for Prevention of Violent Extremism and the Fight against Terrorism.[165] Since the beginning, the National committee emphasized the need to strengthen the capacities of the institutions to work with these people, prepare the local community for their interception and involve the CSOs in the process.[166]

In 2019, the Government established an Interdepartmental working group for the implementation of the National plan for repatriation, rehabilitation, and reintegration. The group was tasked to prepare a precise plan of action by the institutions in providing adequate educational, psychological-social, social–economic, security, and legal treatment of these citizens. The group considered that this category of people should not be stigmatized by the broader community.[167] On the proposal of the National Committee, the Government on June 30, 2021, adopted the "National Plan for reintegration, resocialisation, and rehabilitation of returnees from foreign armies and members of their families".[168] The working group has also developed individual plans for the reintegration of returnees and their family members which served as basis for further engagement.[169]

The national plan has two main pillars: "voluntary approach" and "individual treatment" of all returnees and their families. Each individual should be treated separately, according to the risk assessment they pose, and the needs and requirements they have. The Plain aims to strengthen the capacities of the central and local institutions and to raise awareness in the community for the need to accept returnees within the local government.[170]

The biggest concern in this process was the capacity of state institutions to coordinate with each other. The National Committee coordinates the efforts of 22 different institutions, including social workers, security services, local governments, religious communities, schools, and others that consisted the main stakeholders in the prevention of violent extremism and the fight against terrorism. These institutions also took part in

---

[165] MKD (February 15, 2021), "Бегалскиот канал сè понеактивен, но повратниците од Сирија стануваат сè поактивни", **https://www.mkd.mk/makedonija/politika/begalskiot-kanal-sje-poneaktiven-no-povratnicite-od-sirija-stanuvaat-sje**

[166] Nova TV (2019)

[167] Kanal 5 (December 9, 2020), "Заев:Ги спроведуваме највисоките стандарди во борбата со насилниот екстремизам и тероризмот", https://kanal5.com.mk/zaev-gi-sproveduvame-najvisokite-standardi-vo-borbata-so-nasilniot-ekstremizam-i-terorizmot/a451848

[168] Влада (June 30,2021), Соопштение од 73-тата седница, **https://vlada.mk/node/21959**

[169] MKD (2021)

[170] Мики Трајковски (2020)

the process of resocialization. One of the main challenges was related to the local government bodies considered least prepared to take on the burden, undermining the overall process of resocialization.[171] Centers for social work have been given a very big role in the process to create special measures and conditions for re-integration of each individual. If needed, Psychologists were included.[172]

Most of the FTFs originate from the Northwestern part of the country - municipalities of Chair, Saraj, Gazi Baba (Skopje) and Kumanovo, Tetovo, Gostivar, Kicevo, and Struga. These municipalities were expected to be the most prepared and lead the reintegration efforts. However, initial research on the readiness of the municipalities has shown that they didn't see this problem as their own and expected it to be addressed by the central government. Municipalities didn't anticipate that the FTFs in prisons or women and children, would return to their respective homes at the end of the day.[173]

To strengthen the capacities at the local level, multidisciplinary local teams have been established in local communities where returnees were expected to return. The role of the local teams was to facilitate the re-socialization and re-integration process for which they have already started implementing activities.[174]

The National Plan was recognized for several comparative advantages. The main among them is inclusion of multiple institutions and stakeholders is considered to be the key to success because the overall process presents a complex dynamic for the returnees and the society as well. The Plan describes the roles and responsibilities of different national institutions, beginning from the intelligence agencies to health authorities that could determine whether there is enough evidence to indict a returnee, make a risk assessment, determine potential health needs, etc. The collected information further navigates what mechanisms of prosecution, counseling, social support, or other services should be employed.[175]

Three main challenges were identified in the National Plan. The first challenge is related to institutional and professional capacities for its implementation. This requires specialized education for employees in schools, social protection, and psychological and social protection as well as the development of protocols for handling such cases. The second challenge is cooperation between the law enforcement institutions and the returnees. The third challenge is the Plan not is focused only on the returnees but to all people

[171] Fjori Sinoruka et al. (2021)
[172] Лука Андреев (2020), "Борците на ИСИС се враќаат дома: Како Македонија ги чека?", https://www.slobodenpecat.mk/borczite-na-isis-se-vrakaat-doma-kako-makedonija-gi-cheka/
[173] Fjori Sinoruka et al. (2021)
[174] MKD (2021)
[175] Катерина Блажевска (November 5, 2020), "Виена како поука: македонска стратегија за реинтеграција", https://p.dw.com/p/3ktru

at risk of radicalization. In addition, there is a threat of stigmatization of returnees and their families. This requires other people to support their new inclusion in the community. Reinclusion also requires specialized training for psychologists on how to provide adequate care for traumas considering their experience in conflict areas and camps. Additional training should include how to provide help for overcoming stigmatization, a sense of belonging, and isolation within the community. All these factors could have an impact on the successful rehabilitation and reintegration process.[176] Other critics of the process include the absence of a special Center that would accept returnees and would provide education for them and their families, their further employment.[177]

CORRECTIONAL INSTITUTIONS

Previous experience proves that a prison sentence could not significantly change radical views that could be additionally strengthened by the bad prison conditions. One of the main risks is the radicalization of other prisoners, which in the case of North Macedonia is considered to be low due to the lower number of radicalized or terrorism-related prisoners. The national plan also lists activities that need to be implemented in prisons:

- Communications restrictions, especially the internet used to spread radical content;[178]
- Improvement of the living conditions in prisons and training of employees for their attitude toward prisoners within the Council of Europe programs;[179]
- Opening a new block specialized to host FTFs, with special conditions, surveillance, and work with sociologists and psychiatrists;
- Inclusion of a representative from the religious community that will work with the prisoners, based on experience in other countries and after adequate training;
- Integration in the community of foreign fighters after serving their sentences.[180]

The main challenge was to prevent further radicalization in prisons and strengthened the capacities to recognize signs of radicalization. On 3 February 2021, the Council of Europe program HELP (Human Rights Education for Legal Professionals) started its implementation. A group of 50 prison and

[176] MKD (September 15, 2020), "Враќање на семејствата на ИСИС: македонски модел?", **https://www.mkd.mk/makedonija/razno/vrakjanje-na-semejstvata-na-isis-makedonski-model**

[177] Матеја Петровски (June 28 2021), "Припадници на ИСИС да се држат во Сирија", https://www.youtube.com/watch?v=1QjHHm05-JQ

[178] MVR (2019)

[179] Катерина Блажевска (2020)

[180] Press 24 (14 August 14 2018), "Специјално одделение во затворот Идризово за терористите на ИСИС", **https://press24.mk/node/342525**

probation officials attended a radicalization prevention course to learn how to handle radicalization cases in prisons and how to rehabilitate extremist prisoners.[181] Such programs may come too late having in mind that 15 prisoners already left prisons (2018-2020), and in October 2021, there were 10 prisoners (5 in "Idrizovo" prison in Skopje, 5 in Stip). The other 4 were still in custody in Skopje waiting for a trial.[182]

Until 2020 there were no specific programs for former fighters in prisons as well as after they are released from prisons. Only the municipalities were prepared how to reintegrate them. There was an idea to offer the already prepared programs for resocialization, to those prisoners that have served their prison sentences and are currently released. After their release from prisons, former FTFs were treated as all other convicts according to the procedures and opportunities in the Law on executions of sanctions. These include food, medicine, counseling, family relations, finding a residence, job, and training. Under this law, some of these prisoners were released conditionally under probation supervision, about which penalty institutions had the duty to contact the regional centers for social work.[183]

Deradicalization is another difficult challenge. Yet, FTFs didn't have the interest to communicate with official religious authorities and leave their radical beliefs. Furthermore, they pose a further risk of radicalization of other prisoners. In "Idrizovo" prison, FTFs shared living and working premises with other 100 prisoners converting some of them to Islam. They have used the opportunity of the absence of Imams to pass their "religious knowledge" on to other prisoners. They also shared a praying room and Friday prayers with other convicts.[184]

While deradicalization is considered a difficult task, the desired result would be at least disengagement from future involvement in violent and terrorist activities. Yet, on 1 September 2020, in police action in Kumanovo and Skopje, a terrorist cell based on the "IS" ideology and called "Balkan Lions" was dismantled. The cell bought weapons, ammunition, and military equipment and prepared explosive vests for the execution of terrorist attacks. The leader of cell B.A. (28) fought within the “IS” until 2016. The other two members were also FTFs. All of them were released from prison in 2019 after completing a 3 years sentence.[185] In prison, some of them have participated in

[181] Council of Europe (3 February 2021), “Курсот за Превенција на радикализација на ХЕЛП програмата на Советот на Европа започна во Северна Македонија и Косово”, https://www.coe.int/mk/web/skopje/-/help-course-on-radicalisation-prevention-launched-in-skopje-and-pristina

[182] KOD (3 October 2021), “Radikalizacija i reintegracija na povratnicite od Islamska Drzava - PRV DEL“, https://www.youtube.com/watch?v=JIrL32EjF9M

[183] Лука Андреев (2020)

[184] KOD (2021)

[185] ZNM (December 29, 2020), “КОВИД 19 и тероризмот. Има ли поврзаност?”,

UNDP and Ministry of education training program for bakers and locks miters for which they received certificates to compete in the labor market.[186] However, their return to terrorism is considered a failure in the resocialization efforts.

CIVIL SOCIETY

The National Committee has developed close cooperation with civil society. The involvement of the CSOs has been especially recognized in the success of the overall efforts of the state institutions. In addition, the Committee signed a Memorandum of understanding with CSOs in ongoing projects. At the end of December 2021, a workshop has been organized in purpose to coordinate activities between the Committee, state institutions, and CSOs in the implementation of the activities listed in the National Plan. The ongoing challenges in the work of women and children that communicate with the local multidiscipline teams have been analyzed. It has been agreed that all further activities in support of the teams will be executed in mutual replenishment and coordination with the National committee.[187]

"Horizon Civitas" in the past years has been actively engaged in helping the families of the FTFs and their re-socialization in society. Based on communication with the families and Centers for social work, they assessed that designated direct programs have been implemented in the right direction, the contacts with the Centers for social work are effective and ongoing efforts would proceed professionally and effectively.[188] The approach of this CSO is public institutions to build "bridges of a dialogue" with the returnees, but not to be prosecuted and stigmatized for their whole life.[189] From October 2018-March 2019 they implemented the project BRIDGE ("Building Reintegration and Initiating Dialogue for Greater Engagement") bringing families of the returnees and institutions closer to each other. The project assessed the concerns, issues, and needs of the families, and engaged them in policy-making with National Committee and other institutions for resocialization and reintegration programs.[190]

---

https://znm.org.mk/ковид-19-и-тероризмот-има-ли-поврзаност/

[186] KOD (2021)

[187] Влада (December 25, 2021), "Националниот комитет за спречување на насилен екстремизам и борба против тероризам ќе соработува со граѓанските организации на реинтеграција на повратниците, https://vlada.mk/node/27305

[188] TV 21 (July 18, 2020), "4 мажи, 5 жени и 14 деца вратени од Сирија и Ирак – репатрирани терористички борци во Северна Македонија", https://mk.tv21.tv/4-mazhi-5-zheni-i-14-detsa-vrateni-od-sirija-i-irak-repatrirani-teroristichki-bortsi-vo-severna-makedonija/

[189] Infomagazin (March 21, 2018), "Прво одговорност, па реинтеграција на борците од ИД", **https://infomagazin.net/2019/03/21/прво-одговорност-па-реинтеграција-на/**

[190] Horizon Civitas (2018), "Building Re-Integration and Initiating Dialogue for Greater Engagement", https://www.horizon.mk/building-re-integration-and-initiating-dialogue-for-greater-engagement/

CONCLUSION

FTFs joined terrorist groups after passing a process of indoctrination, radicalization, and recruitment. While it's difficult to expect someone quickly leaves his radical beliefs in terms of deradicalization, from the security aspect, disengagement from terrorism is considered a success. Most of the FTFs don't attend deradicalization and resocialization programs. It also depends on their preparedness and willingness for a personal change. For this reason, further resocialization and reintegration into the community are considered a challenge. The result of the process also depends on whether returnees would face stigmatization by society or are accepted by the local community. Children could be most vulnerable and include not only children of the returnees but all those originating from families with radical individuals. The broader community should be encouraged not only to refrain from their isolation but actively engage in their acceptance. Religious authorities, local leaders, and CSOs have a crucial role in this process because they work and originate from the community. A successful deradicalized, resocialized, and reintegrated person could further engage in civil society and be the best role model against the radicalization of youth and their engagement in extremist and terrorist activities.

REFERENCES

1. Андреев, Л. (2020). Борците на ИСИС се враќаат дома: Како Македонија ги чека?. https://www.slobodenpecat.mk/borczite-na-isis-se-vrakaat-doma-kako-makedonija-gi-cheka/
2. Блажевска К. (November 05, 2020). Виена како поука: македонска стратегија за реинтеграција. https://p.dw.com/p/3ktru
3. Council of Europe. (February 03, 2021). Курсот за Превенција на радикализација на ХЕЛП програмата на Советот на Европа започна во Северна Македонија и Косово. https://www.coe.int/mk/web/skopje/-/help-course-on-radicalisation-prevention-launched-in-skopje-and-pristina
4. Horizon Civitas. (2018). Building Re-Integration and Initiating Dialogue for Greater Engagement. https://www.horizon.mk/building-re-integration-and-initiating-dialogue-for-greater-engagement/
5. Infomagazin. (March 21, 2018). Прво одговорност, па реинтеграција на борците од ИД. https://infomagazin.net/2019/03/21/прво-одговорност-па-реинтеграција-на/
6. Kanal 5. (December 09, 2020). Заев:Ги спроведуваме највисоките стандарди во борбата со насилниот екстремизам и тероризмот. https://kanal5.com.mk/zaev-gi-sproveduvame-najvisokite-standardi-vo-borbata-so-nasilniot-ekstremizam-i-terorizmot/a451848

7. KOD. (October 03, 2021). Radikalizacija i reintegracija na povratnicite od Islamska Drzava - PRV DEL. https://www.youtube.com/watch?v=JIrL32EjF9M
8. KOD. (October 10, 2021). Devojcinja vo ISIS na pat so tesko vrakjanje i resocijalizacija - VTOR DEL. https://www.youtube.com/watch?v=GxCnpMuWWjs
9. Makfax. (August 4, 2020). Уапсена скопјанка, членка на ИСИС.
a. https://makfax.com.mk/crna-hronika/уапсена-скопјанка-членка-на-исис/
10. MKD. (September 15, 2020). Враќање на семејствата на ИСИС: македонски модел?. https://www.mkd.mk/makedonija/razno/vrakjanje-na-semejstvata-na-isis-makedonski-model
11. MKD. (Fevruary 15, 2021). Бегалскиот канал сè понеактивен, но повратниците од Сирија стануваат сè поактивни", https://www.mkd.mk/makedonija/politika/begalskiot-kanal-sje-poneaktiven-no-povratnicite-od-sirija-stanuvaat-sje
12. MVR. (October 11, 2019). Спасовски за МИА: Враќањето странските борци предизвик за државата. https://mvr.gov.mk/vest/10171
13. Nova TV. (December 22, 2019). Судбината на повратниците и нивните семејства: Опасноста од боиштата ја носат дома. https://novatv.mk/sudbinata-na-povratnitsite-i-nivnite-semejstva-opasnosta-od-boishtata-ja-nosat-doma/
14. Петровски, М. (June 28, 2021). Припадници на ИСИС да се држат во Сирија. https://www.youtube.com/watch?v=1QjHHm05-JQ
15. Press 24. (August 14, 2018). Специјално одделение во затворот Идризово за терористите на ИСИС. https://press24.mk/node/342525
16. Sinoruka. Fjori, Xhorxhina Bami and Siniša Jakov Marušić. (August 20, 2021), Dobro došli kući? Povratnici iz ISIL-a testiraju sposobnost balkanskih zemalja za reintegraciju. https://balkaninsight.com/sr/2021/08/20/dobro-dosli-kuci-povratnici-iz-isil-a-testiraju-sposobnost-balkanskih-zemalja-za-reintegraciju/
17. Србиновски, А. (September 28, 2020). Од безбедносна закана, преку ресоцијализација, до безбедносна безопасност.
18. https://www.novamakedonija.com.mk/makedonija/politika/од-безбедносна-закана-преку-ресоција/
19. Станковиќ, С. (January 30, 2015). Ресоцијализација на повратниците од Сирија и Ирак. https://mk.voanews.com/a/2621149.html
20. Тодески, А. (Fevruary 22, 2019). Паника во Македонија: Дали ИСИС планира терористички напади?. https://inbox7.mk/archives/6198
21. Трајковски, М. (October 14, 2020). На Северна Македонија ѝ е потребен силен процес на ресоцијализација на повратниците од ИСИС.

https://mk.voanews.com/a/voa-macedonian-isis-members-back-home-resocialization-experts/5621132.html
22. TV21. (July 18, 2020). 4 мажи, 5 жени и 14 деца вратени од Сирија и Ирак – репатрирани терористички борци во Северна Македонија. https://mk.tv21.tv/4-mazhi-5-zheni-i-14-detsa-vrateni-od-sirija-i-irak-repatrirani-teroristichki-bortsi-vo-severna-makedonija/
23. Чанчаревиќ, О. (July 18, 2021). Вратени борци на терористичката ИСИС кои војувале во Сирија и Ирак. https://mk.voanews.com/a/5970025.html
24. Влада. (June 30,2021). Соопштение од 73-тата седница. https://vlada.mk/node/21959
25. Влада. (July 18, 2021). Репатрирани странски терористички борци и членови на нивните семејства, државјани на Република Северна Македонија. https://vlada.mk/node/25946
26. Влада. (December 25, 2021). Националниот комитет за спречување на насилен екстремизам и борба против тероризам ќе соработува со граѓанските организации на реинтеграција на повратниците. https://vlada.mk/node/27305
27. Заревска, Р. (November 15, 2019). Подготвени ли сме за ресоцијализација на џихадистите, https://www.novamakedonija.com.mk/makedonija/подготвени-ли-сме-за-ресоцијализациј/
28. ZNM. (December 29, 2020). КОВИД 19 и тероризмот. Има ли поврзаност?. https://znm.org.mk/ковид-19-и-тероризмот-има-ли-поврзаност/
29. 4 News. (August 28, 2021). Апсење на скопскиот аеродром – приведено лице од Гостивар кое во војна се борело против Македонија. https://4news.mk/apsene-na-skopskiot-aerodrom-privedeno-litse-od-gostivar-koe-vo-vojna-se-borelo-protiv-makedonija/
30. 360 Stepeni. (August 31, 2021). "(ФОТО) Нови легитимации за припадниците на АНБ на двегодишнината од формирањето на институцијата. https://360stepeni.mk/foto-novi-legitimatsii-za-pripadnitsite-na-anb-na-dvegodishninata-od-formiraneto-na-institutsijata/

Scientific Article
UDK 3 004.8
004.8:005.334

THE AGE OF ARTIFICIAL INTELLIGENCE: HOW THE ARTIFICIAL INTELLIGENCE AFFECTS THE MODERN SOCIETY

Assoc. Prof. dr.sc Valeri Modebadze
Georgian Technical University, Georgia

Abstract
The article describes the impact of artificial intelligence on modern society. An interdisciplinary method was used during the research. As a result of the research, it was determined that the development and massive use of artificial intelligence is both a great benefit for humanity and also a great risk and danger for future generations. Although artificial intelligence can solve many social and economic problems more easily, at the same time there is a danger that various terrorist organizations will try to implement their dark activities and cause great harm to people through artificial intelligence. The use of artificial intelligence in the military field can also be a very dangerous process and can inflict a lot of harm to modern society.

Keywords: artificial intelligence, automatization of work, positive and negative sides of artificial intelligence, risks to modern society

INTRODUCTION

The term artificial intelligence was first coined in 1956 by John Mccarthy at the Darthmouth conference. He difined artificial intelligence as the science and engineering of making intelligent machines. Nowdays, aritificial intelligence is used in a wide range of fields inluding healthcare, marketing, education, defence, etc. Artificial intelligence can be of great help to mankind especially in performing heavy and routine tasks. With the ability to process large amounts of data that often exceed human mental capacity, artificial intelligence can make a big contribution to automatization of work. Unlike humans, artificial intelligence does not get tired after performing heavy physical work or does not get tired of performing the same activity over and over again, which makes it very efficient both in the production process and in the process of performing various intellectual activities.

Unlike humans, whose mental and intellectual capabilities are limited, artificial intelligence can analyze massive amounts of data, and thus, machines

can be much more efficient at performing various complex tasks. They react quickly to various challenges and do not experience fatigue and stress unlike humans. That is why artificial intelligence is effectively used in such fields as medicine, electrical industry, military industry, chemical and biological engineering, electrical industry, etc.

Artificial intelligence is being used successfully in the medical industry, especially in automated diagnostics, clinical decision-making, and automated surgery. Artificial intelligence can also be used in the electric power industry to predict and diagnose various problems related to power supply, such as power outages and faults in the electric power system. Artificial intelligence can also be used in the waste industry to quickly detect the most effective ways and techniques to reduce waste. Artificial intelligence robots can perform heavy physical activities in the waste industry, that are currently performed by workers, and replace them. In this case, people will no longer have to work in hard and dangerous jobs and carry out risky activities (Rahman, 2020).

THREATS EMANATING FROM ARTIFICIAL INTELLIGENCE

Despite the many positive features mentioned above, the massive use of artificial intelligence can still cause great harm to humanity in the future. A massive reliance on artificial intelligence can lead to a significant reduction in creativity levels and impair human thinking ability. If a computer or a robot will do complex mathematical calculations, then a person will no longer need to think too much and develop his or her mental capacity. For example, we can cite the field of medicine. It is quite possible that artificial intelligence will reduce the creativity and intellectual abilities of medical personnel in the future, given the fact that the reliance on artificial intelligence in the field of medicine has greatly increased. For example, a computer using artificial intelligence can make an accurate diagnosis of what disease a patient has and also give recommendations on how to improve his or her health. Thus, the more widespread use of automation in the field of medicine can accelerate the process of dequalification of doctors and contribute to the decline of their professional knowledge and experience. In the future, the training of doctors and the improvement of their professional knowledge may become meaningless, if we take into account the fact that the use of robots and machines in the medical field will intensify in the future. These machines and robots will have a much greater intellectual potential and will be able to make complex decisions and perform the most difficult operations. The robots and machines mentioned above will hopefully be so easy to operate that even people with the most basic medical education will be able to use them (Rahman, 2020).

The function of a doctor or surgeon is currently already performed by special medical devices, and their role will increase even more in the future. However, the question arises here: how rational is such excessive reliance on machines and artificial intelligence? What happens if the robot or a medical device will break down? Let's imagine such a situation that a patient is undergoing a surgical operation and suddenly the machine breaks down. It is quite possible that his life will be in mortal danger and such a situation will end in a fatal outcome. That is why today there is a heated dispute and debate among experts regarding how correct and appropriate it is to use artificial intelligence instead of highly qualified doctors in the medical field. Similar problems also appear in other fields, where artificial intelligence is massively used in the decision-making process (Rahman, 2020)

Thus, automatization of work is associated with a lot of problems and risks. Historically, technologies could replace only a very limited area of human activity. Artificial intelligence tries to replace the human mind and make important decisions insted of him or her. However, the question arises whether a robot or machine will always be able to make rational decisions; Will fatal mistakes be made in a critical situation, causing great material and moral damage to humanity? For example, we can cite Tesla's invention of self-drive cars, which do not need a driver and can move independently. A number of accidents have been reported because the autopilot system did not work properly. As a result of the accident, many people were maimed and injured, which showed the whole world how dangerous it is to rely on artificial intelligence.

Artificial intelligence could dramatically increase the social inequality that exists between the North and the South. The demand for cheap labor from southern countries will decrease and the use of machinery and robots in the production process will increase even more. Millions of people will be unemployed and their work will be done by robots in the future. Artificial intelligence will further increase the global technological disparity between the North and the South. The rich and economically developed northern countries will find themselves in better conditions and will be able to exploit the southern countries more easily.

The famous Jewish scientist Yuval Noah Harari in his book "Homo Deus - A Brief History of Tomorrow" describes well how the massive use of artificial intelligence will lead to unprecedented socio-political inequality in the world. According to him, "the more people are driven out of the labor market by algorithms, the greater the chance that wealth and power will fall into the hands of a small elite who own all-powerful algorithms, and unprecedented socio-political inequality will arise. Today, millions of taxi, bus and truck drivers have significant social and economic influence, as each of them owns a small share of the transportation market. If the collective interests

of these people are threatened, they unite in trade unions, organize strikes, announce boycotts, create powerful electoral blocs. However, when millions of drivers are replaced by one algorithm, all the wealth and power will be concentrated in the hands of the corporation that owns that algorithm and the handful of billionaires that own that corporation." (Yuval Noah Harari, 2021).

If in the previous centuries the bourgeoisie used the proletariat in the production process and the proletariat played an important role in the creation of the material wealth, in the future, through artificial intelligence, it will be possible to organize the production process in such a way that the involvement of the lower classes in this process won't be necessary at all. It's a sad reality, but it's a fact that now robots and computers are much better at doing tasks that only humans could do before. Due to the massive use of artificial intelligence, the proletariat will lose its function and will turn into an idle class. As Yuval Harari states, "In the twenty-first century, we may witness the emergence of a new mass class of the unemployed: these people, having no economic, political or even creative value, will not contribute to the enrichment, strengthening or glorification of society. Representatives of the "useless class" will not simply be unemployed, but their employment will become practically impossible" (Yuval Noah Harari, 2021).

If previously machines and robots were used to perform hard physical work in the production process, and cognitive activities were mainly carried out by humans, in the future artificial intelligence will develop to such a level that it will be able to perform cognitive tasks better than humans. Accordingly, the capitlist class will begin to use artificial intelligence in the production process and the demand for labor will decrease, which will put the proletariat and the representatives of the lower class in difficult conditions and will transform them into an "idle class".

Two British researchers, Carl Benedict Frey and Michael A. Osborne devoted a lot of time and energy to studying this problem, and in 2013 they published a work with the folowing title "The Future of Employment". In this work, British researchers state that in the future, various professions will be replaced by computer algorithms. Thus, the massive use of artificial intelligence will make many professions disappear. According to them, 47 percent of occupations in the United States will disappear (Carl Benedict Frey & Michael A. Osborne, 2015).

THE USAGE OF ARTIFICIAL INTELLIGENCE FOR MILITARY PURPOSES

Artificial intelligence will also radically change the tactics and strategy of warfare. Technologically advanced and developed countries will use robots during wars and conflicts in order to minimize human and material losses. Accordingly, the North, which will have a great technological

advantage, will be able to wage wars against the developing and backward countries with minimal losses. If in the past the declaration of war was accompanied by great public discontent, because wars were accompanied with a lot of destruction and casualties, in the future political leaders will be able to avoid human protests against wars because they will massively start using artificial intelligence in military operations. We can cite drones as an example. Countries have already started using lethal drones in military operations that are controlled remotely by humans. Such a lethal drone uses artificial intelligence through which the target is identified and recognized. Unmanned aerial vehicles and drones can independently make military decisions about what objects to bomb and what infrastructure to destroy during military operations. For example, we can cite the Russian-Ukrainian war, where the Russian side can use stealth drones called KUB-BLA to achieve military goals during the battles (On.ge, 2022).

The question arises: how ethical is the use of such drones during military operations? What happens if a drone decides to destroy civilian objects and critical infrastructure? It is quite possible that lethal drones will make wrong decision and will bomb not only the military infrastructure of the opposing side, but also civilian objects, settlements, villages, cities and towns; They can also destroy critical infrastructure such as hydroelectric power plants, dams, nuclear power plants,etc. What dangers will humanity face, and what will happen if a drone will atack a nuclear power plant or the nuclear arsenal of an adversary state? In this event, radiation levels will rise dramatically worldwide and human existence will be in mortal danger.

The famous British sociologist Anthony Giddens considered the unconditional trust in abstract systems and technologies as one of the characteristic features of the modern era, which in his opinion creates risk, since not all abstract systems can be trusted. That is why Giddens calls the modern era a "Juggernaut". The modern era is characterized by the absence of ontological security. According to Giddens, there is no accurate prediction of the further development of society. The modern world is uncontrollable and unpredictable (Giddens, Anthony, 1990).

Giddens closely associates the concept of risk with the concept of security and claims that the nature of risk has changed in the modern era. Globalization of risk is taking place, which is manifested by: 1. Intensity (for example, a nuclear war that threatens the existence of humanity); 2. A rapid increase in unforeseen events that affect all people, or even broad sections of the population (for example, a change in the world division of labor). New risks arise due to the features of modern social organization; 3. Risks arising from the artificially created environment and artificial intelligence, i.e. caused by the introduction of human accumulated knowledge into the material world, and 4. The development of institutionalized risks that affect the life chances of

millions of people (for example, investment markets). Today, the perception and understanding of risk is becoming more intense (Giddens, Anthony, 1991).

Giddens pays particular attention to global risks: The possibility of nuclear war, ecological disaster, environmental pollution and other global catastrophes threaten everyone equally. They do not take into account the rich and the poor and cannot distinguish between different regions of the world. The Chernobyl disaster was indeed of global intensity. It is considered a global disaster, as it affected not only Ukraine, but almost all regions of the world.

The most dangerous of global catastrophes is nuclear war. Even the smallest nuclear war can cause a huge ecological disaster and threaten almost the entire world's flora and fauna with destruction. In such a case, there will be no losers and winners, since the catastrophe caused by a nuclear war will be of a global scale.

The massive use of modern technological achievements for military purposes began in the 20th century, which put mankind in front of many threats. Durkheim and Weber witnessed the horrors of the First World War. This war did not fulfill the prophecy of Durkheim, who thought that the development of industry would make human life more harmonious. None of the founders of sociology paid attention to the development of military power. This suggests that there was great hope that the modern era would be more peaceful than previous eras. It was unimaginable to even think that humanity would invent weapons of mass destruction or lethal drones. The development of weapons of mass destruction and the use of artificial intelligence for military purposes should undoubtedly be considered one of the "dark" sides of the modern era.

Coutnries are spending enourmous resources for the development of military equipment, artificial intelligene and for strenghthening their armies. In 2021, global military spending exceedes $2 trillion American Dollars. Colossal amounts of money are being spent on armaments, artificial intelligenve and military development, which would be enough to overcome poverty around the world. Currently, the world's leading states want to improve artificial intelligenve and use it for military purposes. For example, the Chinese Communist Party is spending huge financial resources to ensure that the Chinese military industry creates robots equipped with military equipment and weapons, which will be used massively during ground battles. In the future, robots equipped with various military weapons and equipment will participate in ground operations and military operations instead of human resources. A state that can more effectively use artificial intelligence for military purposes and during war operations will gain advantage and obtain superiority during the battle.

Twentieth and twenty-first century is a century of war. Approximately hundred million people were perished in the last century alone. Wars, of course, existed in pre-modern eras, but unlike modern wars, they had a local character. The war did not generally go beyond the local context and was limited to some region. Local wars still exist today and will continue to exist for a long time, but the development of technology on an ever-increasing scale and the industrialization of warfare have exposed humanity to new dangers and changed the nature of warfare. Technological progress has made it possible to wage war on a global scale. The proof of this is the two world wars that humanity endured in the twentieth century. The world war is already affecting all humanity. The proliferation of weapons of mass destruction could put the entire world's population at great risk. A nuclear war would be devastating for everyone and would affect all regions of the world. There will be no winners and losers in this war. Modern weapons eliminated the possibility of victory. A nuclear war will end with the destruction of the world. Therefore, today humanity is in constant danger.

Finally, artificial intelligence may completely cut people off from their social environment and further reduce their interpersonal relationships. Today, people have become so attached to digital technologies that they are literally completely socially isolated, especially after the spread of the coronavirus pandemic. For example, children are no longer interested in going out on the street and playing with their peers; They prefer to stay at home and sit at the computer for hours. With the emergence of emotionally charged robots, social bonds will further dissolve and interpersonal relationships between people will be drastically reduced.

CONCLUSION

The development of artificial intelligence should undoubtedly be considered one of the greatest achievements of mankind, which can make human life more comfortable. Artificial intelligence can perform heavy physical activities and provide great help to mankind. However, the massive dependence on artificial intelligence can put humanity in front of many problems, such as a significant decrease in the level of creativity of an individual and a decrease in the intellectual potential of a person. Artificial intelligence may cause some professions to disappear altogether and raise unemployment levels. In the future, physical and mental work will be performed by machines and robots, which will drastically reduce the demand for labor.

The world's leading countries have also started using artificial intelligence during combat operations and conflicts. Through artificial intelligence, it becomes possible to gain a great advantage during both air battles and ground operations. However, it should be noted here that the use of

artificial intelligence during war is associated with great risks and dangers. For example, unmanned aerial vehicles, which have the ability to make independent decisions during combat operations, often make mistakes and cannot distinguish between civilian and military objects. That is why, as a result of the use of artificial intelligence during war, the population can be greatly harmed and the number of casualties can increase dramatically. There is also a danger that unmanned aerial vehicles will destroy critical infrastructure and cause great material and economic damage to humanity.

Various terrorist organizations will also try to use artificial intelligence to achieve their dark goals, which will present the greatest challenges and threats to humanity. Various terrorist organizations have already started using drones in terrorist attacks. A particularly dangerous situation will arise if terrorist organizations themselves begin to create artificial intelligence, for example, the production of drones. That is why it will be necessary for the states to develop defense mechanisms to neutralize various threats and protect the population on time.

REFERENCES

1. Rahman, Mohammad Mushfequr (2020) Dangers of Artificial Intelligence, available from World Wide Web: https://www.researchgate.net/publication/340094210_Dangers_of_Artificial_Intelligence

2. On. Ge (2022) შესაძლოა, რუსეთი "მკვლელ რობოტებს" იყენებდეს — ეს ომში ხელოვნური ინტელექტის ჩართვის შიშს იწვევს, available from World Wide Web: https://on.ge/story/100806-%E1%83%A8%E1%83%94%E1%83%A1%E1%83%90%E1%83%AB%E1%83%9A%E1%83%9D%E1%83%90-%E1%83%A0%E1%83%A3%E1%83%A1%E1%83%94%E1%83%97%E1%83%98-%E1%83%9B%E1%83%99%E1%83%95%E1%83%9A%E1%83%94%E1%83%9A-%E1%83%A0%E1%83%9D%E1%83%91%E1%83%9D%E1%83%A2%E1%83%94%E1%83%91%E1%83%A1-%E1%83%98%E1%83%A7%E1%83%94%E1%83%9C%E1%83%94%E1%83%91%E1%83%93%E1%83%94%E1%83%A1-%E1%83%94%E1%83%A1-%E1%83%9D%E1%83%9B%E1%83%A8%E1%83%98-%E1%83%AE%E1%83%94%E1%83%9A%E1%83%9D%E1%83%95%E1%83%9C%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%98%E1%83%9C%E1%83%A2%E1%83%94%E1%83%9A%E1

%83%94%E1%83%A5%E1%83%A2%E1%83%98%E1%83%A1-%E1%83%A9%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%98%E1%83%A1-%E1%83%A8%E1%83%98%E1%83%A8%E1%83%A1-%E1%83%98%E1%83%AC%E1%83%95%E1%83%94%E1%83%95%E1%83%A1

3. შოთა ჯაფარიძე (2002) პოლიტიკური ფილოსოფია, თბილისი.

4. Giddens, Anthony (1990):The Consequences of Modernity. Cambridge: Polity Press.

5. Giddens, Anthony (1991): Modernity and Self-Identity. Cambridge: Polity Press,

6. იუვალ ნოახ ჰარარი (2021) ჰომო დეუსი -ხვალინდელობის მოკლე ისტორია, სულაკაურის გამომცემლობა: თბილისი.

7. Carl Benedict Frey & Michael A. Osborne (2013) The Future of Employment: How Susceptible Are Jobs to Computerisation?, available from World Wide Web: http://www.oxfordmartin.ox.ac.uk/downloads/academic/The_Future_of_Employment.pdf

Scientific Article
UDK 343.54-053.2:340.13(497.7)
343.54-053.2:159.9(497.7)

CHILD VICTIM OF SEXUAL ATTACK, PSYCHOLOGICAL CONSEQUENCES AND PROTECTION FROM IT

Daniela Trajkovski Kolevski MA
Faculty of Security in Skopje, St. Kliment Ohridski University in Bitola
(PhD student)
trajkovski_daniela@hotmail.com

Abstract
The subject of this paper is the child as a victim of sexual violence, its psychological consequences and protection. At the same time, the personality of the victim and the perpetrator, their relationship, will be examined, as well as a review of the recovery from the received psychological traumas. Today we hear every day new events for a child victim of secular violence. Sexual violence is one of the most serious forms of violence against children, which can be combined with psychological violence and physical violence. Children are our future and we must work on their proper psycho-physical development that will be built into healthy people without trauma, we must put an end to all forms of violence against them, all forms of coercion.

Keywords: child, violence, psychological, victim, protection;

INTRODUCTION

The public must be aware that this topic, which still knows how to be a taboo among a large number of citizens in many areas of the country, needs help and that they need to go to the hospital. the child, then the pedagogues and psychologists in the educational institutions, the non-governmental organizations, as well as the professional institutions that deal with this topic, first of all the police.

Behavioral patterns suggest that a child who is a victim or observer of inappropriate sexual behavior learns to imitate and is later reinforced by such behaviors. These people are deprived of normal social and sexual contacts and thus seek satisfaction with less socially acceptable means. Physiological models focus on the relationship between hormones, behavior, and the central

nervous system with particular interest in the role of aggression and male sex hormones.

Individuals may become aware of their sexual interest in children during puberty. Pedophilia can be a lifelong condition, but pedophile disorder includes elements that can change over time (troubles, psychosocial disorders, tendency to act as needed). Growing up to 14 years of age presupposes their more complete protection from various forms of sexual abuse and aberrant influences on their formation as healthy individuals.

Paedophiles (as defined by the Fifth Diagnostic and Statistical Manual of Mental Illness) are individuals who are primarily or exclusively attracted to prepubertal children, mostly children under the age of thirteen.

There is a clear classification of pedophiles depending on which stage of development attracts them to children. Those who are attracted to children entering puberty are called hebephiles. Those who are attracted to adolescent children are ephebophiles.

Not all pedophiles are sex offenders and vice versa, not all sex offenders are necessarily pedophiles. Some people are not primarily attracted to children but sexually abuse children: abuse is a matter of favorable circumstances - a child is a sexual substitute for an inaccessible adult or abuse is a need for domination and control of another human being.

THE CHILD AS A VICTIM OF GENDER ATTACK

According to Article 188 of the Criminal Code of the Republic of North Macedonia, a person who commits sexual intercourse or other sexual act on a child under 14 years of age will be punished with imprisonment of at least 12 years. Paragraph two (2) states that, if due to the crime from paragraph (1) a severe bodily injury, death or other serious consequences occurred or the crime was committed by several persons or in a particularly cruel or humiliating manner, the perpetrator shall be punished with imprisonment. at least 15 years. Paragraph three (3) states that the perpetrator of the crime referred to in paragraph (2) of this Article shall be banned by the court from performing a profession, activity or duty under the conditions of Article 38-b of this Code. Ha site dejstvija that the Law on Military everything predvideni kako criminal dela the Criminal zakonik in which spored zakonskite obelezhja na deloto deteto everything javuva kako zhrtva na deloto court and the other courses BODIES it uchestvuvaat in postapkata everything required ea prezemaat merki charter aid and zashtita and ea postapuvaat in a way that the possible harmful consequences for his personality and development will be avoided. All events involving measures and protection for child victims or witnesses are carried out with the aim of protecting them from intimidation, or secondary victimization that may occur. The secondary victimization refers to the further victimization, which is not a direct result of the criminal act,

through the treatment of the victim by the parties or by the institutions. For example, it may occur when the victim approaches the perpetrators, while testifying in court or in the presence of the perpetrator.

According to all this, children are protected and their rights are guaranteed by the following acts: Constitution of the Republic of Macedonia; Law on Child Justice (Published in the Official Gazette of RSM, No. 148 of 29.10.2013); European Convention on the Rights of the Child adopted in Strasbourg on 25.01.1996, according to which a child under 18 years of age was ratified in Macedonia on 24.01.2002. Criminal Code of the Republic of Macedonia with the criminal offense under Article 188 Sexual assault on a child under 14 years of age. Law on Criminal Procedure, etc. ...

It is well known that children fall into the risk category of persons and how they appear in the role of potential and real victims. This is due to the physical and mental characteristics of children that set them apart from the rest of the population. Physical inferiority in relation to adults is even more pronounced if the child has physical disabilities (disability, deafness, if blind, with impaired vision, etc.), or mentally retarded. Children of both sexes, both male and female, can appear as victims of sexual assault on children. However, in most cases the victims are female children. It is about children who are not yet mature. A child can become a victim of sexual assault because he is in an immature phase of his development, when he is not able to recognize anyone who knows him. his person, whereupon the perpetrator of the crime will find himself in a situation to dictate to him the manner of behavior for which the child will develop the awareness that he should be able to do so at night. A large part of the victims do not condemn themselves to talk about the event, but hide it in themselves for various reasons: shame, fear of avoiding others, doing or doing something . Also, the reason for not being recognized by someone is that the perpetrator may be a member of the immediate family. Victims of sexual assault often hide the incident of sexual abuse and because of what they think they will forget it faster. developed neither mentally nor physically and are aged up to 14 years.

Children who feel unwanted and unwanted, who are not popular in society, who are lonely are at increased risk of sexual abuse. By exploiting their lack of attention and desire for love, such children become easy targets for sexual abusers.

In the case of sexual abuse of children, it is not possible to talk about the victims of provocateurs, because the very fact that it becomes a person who has not reached 14 years of age should be sufficient for a reason. provocation or not. Such a statement can be justified by the fact that it is a matter of persons who, in view of their age, are not able to judge yet and react reasonably.

Pedophiles usually contact the child for a longer period of time, building a relationship of trust. The perpetrator is emotionally attached to the child and

even knows how to get closer to his parents. Most often, the perpetrator knows how to praise the child as he is the best, the most beautiful, the smartest, has a good future, then knows how to deceive him with various gifts, sweets, candies, toys, playing with him, etc. The perpetrator camouflages himself as a "good uncle". They spend a lot of energy while luring the child. The perpetrator is not always an uneducated person, most often an intelligent person, educated, close to the child, family friend, professor, doctor, lawyer, etc.

The dark figure for violence against children as well as against children is very high.

The harmful norms that perpetuate sexual violence take a heavy toll on families and communities too. Most children who face sexual abuse experience other kinds of violence.

THE INFLUENCE OF THE INTERNET AND CHILD PORNOGRAPHY ON CHILD ABUSE

Children are increasingly using computers and smartphones, the Internet and social networks. They can enter different content, and contact different people from different parts of the world.

Among them, pedophiles are found on various forums, Facebook profiles, chat rooms, etc. They do not choose religion, nation and culture.

At first they introduce themselves as their peers. First they send them various jokes, jokes and the like and then they falsely tell them that they are supposedly studying in a school, with whom they live and fake meat is in order to gain the child's trust to tell the truth. information about himself, where he studies, where he lives, when his parents are at work, etc. They get them to talk about sex through a joke, and then from them looking for photos or persuading children to take photos of provocative scenes. Not infrequently, pedophiles send them pornographic images to convince them that it is quite common and that they should try the same. After such scenes children suffer shock, but rarely report it to someone out of shame and guilt that is created in them. Unfortunately, they are generally unable to assess who people with whom they contact so that the more careless can easily reveal all personal information which can later put them in a situation to become victims.

Pedophiles use child pornography not only for sexual purposes stimuli already find justification for their actions in them. Besides child pornography, real or virtual, serves pedophiles as a means persuading children (grooming), potential victims, to have sex with them relationships. There are numerous examples of communication between pedophiles and children in the so-called chat rooms in which children were sent photographs and films of pornographic content to convince them that such activities are nothing out of the ordinary or

unnatural. According to Babić , pedophiles often teach children how to give from their parents hide such content. This lesson includes 4 steps:
1. Transfer the file to a floppy disk or USB;
2. Do not keep the file on your computer;
3. Replace the file name with the game name;
4. Replace the file extension.

According to clinical psychologist Marija Sutulovic from Bor, the communication between the pedophile and the victim on the Internet takes place in several stages, as follows:
Talk phase:
• First phase: formation of friendship / special relationship.
• Road phase: risk process.
• Third phase: talking about sex.
• Fourth phase: meeting in person.

PSYCHOLOGICAL CONSEQUENCES

Psychological consequences are rare and complex, very little visible from the physical and material, so it is difficult to understand and understandable way to deal with them and help the victim.
When a child suffers sexual violence, he has symptoms that are non-specific - in the first period he starts behaving strangely, withdraws, has emotional changes, cries, is in a bad mood, has trouble sleeping, starts urinating in bed, avoids activities he liked. , they do not want to leave home, to play, to avoid certain people - explains psychiatrist Dr. Snezana Japalak.

Among the child victims, mental changes, changes in behavior, correspondence at night, excessive and obsessive checking of the phone, depressed behavior, poor grades in school, inattention, decreased concentration, excessive withdrawal or, conversely, the desire for parental attention, hugging. for example, which is a red alarm with all other changes.
Sexual abuse of a child can manifest itself with short-term and long-term consequences, ie trauma, including psychopathology in later life. Consequences include depression, post-traumatic stress disorder, anxiety, eating disorders, decreased self-esteem, antisociality and increased nervousness, general psychological pain and disorders such as somatization, school problems, learning disabilities, sexual behavior, and criminal behavior later in life and suicide, drug and alcohol use.

Psychological signs in a child victim of sexual abuse would include:
Anxiety; Depression; Nervousness; Sleep disorders; Aggression or withdrawal; Suicide attempts; Problems at school; Avoiding certain places, reacting to every touch from another person; Problems at school; Eating Disorder; Excessive hygiene or avoidance of hygiene;
Specific signs include:

Copying adult sexual behavior; persistent sexual play with oneself with other children, with toys; showing sexual knowledge through speech that is not appropriate for his age; Visible sexual self-satisfaction; unusual secular interest or avoidance of everything related to sexuality, drawing similar scenes, etc.

Children victims of sexual abuse often feel the fear of the perpetrator that if they say he can harm them or a loved one, fear of shame, fear of avoidance, then guilt that everyone will condemn him and that the child is guilty and have a sense of shame. They often withdraw into themselves and sink into what happened to them. Particularly worrying is the situation of children who are victims of sexual abuse by a parent, sibling, when the child thinks that if he says he will be left without a family, left to himself, that other members of the family will not trust him, etc.

The child should be given protection to get out of that mental confinement, usually through talking to parents, various games, distractions and sessions with a psychologist. The recovery of the child should not only be undertaken by the family but also by the school and the center for social work. The victim suffered trauma, she is certainly both physical and mental. The trauma is accompanied by fears that the same situation may happen to her again, that the same people or someone else may hurt her. Victims tend to see potential perpetrators in other people, and often some resemblance to the one who abused them causes them to panic. It can also be a physical resemblance, in the sense that a person reminds with a character, or other physical features or voice, of the one who did something so terrible to them. In most cases, they withdraw into themselves, scare other people, avoid their peers, and lose trust in people. It happens to children that they are afraid to go anywhere without their parents, that they have to follow them everywhere they go. During the investigation and court proceedings, care must be taken to treat the child properly, as well as in the environment in which he lives or moves to avoid re-victimization, "explains Andonovski, adding that the victim may have panic attacks, nightmares and various other mental disorders, as well as obsessive thoughts that haunt them and cause anxiety.

The consequences remain for the rest of their lives, sometimes the exception is small children, who never find out what happened to them, so they forget over time, but that is rare. Certainly, I think the scars are permanent. Traumas are even harder to overcome when more than one person is sexually abused, especially if they do it in front of other people. I have never met anyone, through my practice, to fully recover, whether a person is male or female. It is a multiple injury, where both the soul and the body suffer. A person suffers physical pain at the same time and psychological trauma, which makes him very sensitive and fragile for all time(Natasa Andonovski).
From talking to a child victim, now an adult:

First I had a constant rapid heartbeat. I was afraid he would attack me again. I slept with the light on. I could not go further in my life and I still have cases when I can not sit next to a man. I can not stand a man approaching me, whether he is a doctor, a driving school instructor and the like. I want to hit him. For many years I dreamed of him twice as vile, as he chased me and caught me in a corner where I had nowhere to run. Although he just hugged me and tried to kiss me on the mouth, fortunately I escaped, I dreamed it twice as scary.

From an interview with clinical psychologist Marija Sutulovic, we learned the following about the psychological consequences for a child victim of sexual assault:

Psychological consequences are severe psychological traumas that are permanent, and in terms of severity, even when there is no physical contact with a pedophile, they are at the level of rape consequences, especially since they are mostly children aged 10 to 13, who are not yet mentally ill. able to define themselves, as well as to recognize the difference between normal and unusual behavior. The behavior of pedophiles deceives them precisely because their approach is gradual and most often protective of them, to the extent that they feel safe, even though they do not know that there is a pedophile on the other side of the network (when we talk about the Internet) and not their peer. On the other hand, the situation is the same with people who know children, because they are usually people close to their family. And when it comes to celebrities, most often they are people close to family, and relatives.

Of psychological consequences and 3 times more likely than planning or committing suicide.

Low self-esteem is also a consequence of trauma in contact with a pedophile. Fear of confiding in anyone, fear for their own lives and the lives of their families, because they are threatened in most cases. And all of this is part of the post-traumatic stress disorder. In addition to it, there is anxiety, depression, and as I said, an increased risk of suicide due to feelings of worthlessness.

And as child victims reach adulthood, sexual violence can reduce their ability to care for themselves and others.

PROTECTION AGAINST SEXUAL ABUSE

In addition to the legislation, the prevention of sexual abuse of children consists of other ways.

General social prevention is undertaking activities of a social nature, aimed at combating crime and delinquency as negative social phenomena in a given socio-cultural environment. It is a matter of social changes which, according to their objective character and content, regardless of the specific

actions, aimed at criminogenic hotspots and influences, make the society more immune and resistant to such influences and incriminating behaviors.
Raising the level of education of the population; Raising cultural awareness and other needs of the population; Raising legal awareness and responsibility of the population; Development of material, organizational (introduction of medical, psychiatric and psychological services) and staffing for the upbringing of children; Organizing leisure time in accordance with the need the need to raise the physical and spiritual condition of the person; Elimination of social differences in population, Unemployment and poverty of the population (it is perfectly fine for a 13-year-old girl to be "sold" for money and to live in an extramarital union with an adult);

The family is the basic functional unit of society. The family is a key factor in protecting and preventing a child from pedophilia. From an early age, the child should be taught not to talk to strangers, not to take toys and sweets from strangers, and to say everything that happens to him at home, not to be ashamed and afraid. The child should be instilled with trust, treated as a person, given the knowledge that he is loved. Parents must take care of their children, they must talk to them about the topic of pedophilia, to talk if they notice changes in his behavior, sleep, mood, etc.

The school is often equated with the family. It is a key factor in raising children and preventing pedophilia. In the curriculum as a faculty teaching or between the lectures there must be a lecture on how to protect themselves from the "bad adults", which one adult can tell them, which gain is good and which is bad, at the same time to instill confidence in the child if something happened to him to tell the teacher, classmate or psychologist.

Free time is also an important factor in preventing a child from sexual assault. Many parents in their spare time leave their children to play on the street, in the park, on the playground without having control over who is watching them from the side. At the same time, we live in an era of developed information technologies, where children can become victims of pedophiles through their mobile phones, tablets and computers.

Pedophiles are constantly in the chat rooms, on social networks under the cover of their peer. Some do not even hide. Many adults in the chat show their genitals or force the child to do the same thing that they feel sexual pleasure in.

CONCLUSION

The purpose of this paper was to see the personality of the child as a victim of sexual abuse, to see the psychological trauma and to provide some roadmaps for its prevention. Children are the most vulnerable category, still sexually immature, do not think rationally. A very important fact is the help after that act so that the child does not become a person with psychological

disorders, and even more importantly to prevent it through various measures of protection. However, we live in a time when all the technical means available to children are available on the Internet and social networks, where they can most easily become victims of this type of abuse.

Regular control by parents over children in access to information media, social networks, what they publish there, what content they read, the most important person with whom they correspond or contact is the most important step in protecting the child from pedophilia. we should always try to prevent or prevent.

If the child is already a victim then he should receive maximum support first from the parents and then from the institutions, then psychological and psychiatric support through various treatments.

REFERENCES

Documents

Constitution of the RS Macedonia;
Criminal Code of the RS Macedonia;
Law on Child Justice;
European Convention;

1. Angelovska A, Criminal-legal aspects of pedophilia, Skopje, 2011;
2. B. Kapamadzija, Forensic Psychiatry, Belgrade 1974;
3. V.Nikolic-Ristanovic, Od Zrtve do pobednika, Victimologija kao teorija, praksa I aktivizam, Belgrade 2019;
4. V. Babić, 2009. Computer crime. Sarajevo: Rabic,
5. V. Kambovski, N. Tupancheski, Criminal Law special part, Skopje 2011
6. Vanja Elezović High School, SEXUAL ABUSE OF CHILDREN AND THE INTERNET CHILD SEXUAL ABUSE AND THE INTERNET, "SOCIAL AND TECHNICAL RESEARCH" Professional paper
7. D. Trajkovska, Specialist Thesis ,, Criminal-Legal and Criminalistic Aspects of the Crime of sexual assault on a child under 14 years of age ,, Faculty of Law FON University in Skopje;
8. Z. Sulejmanov, Foundation, Criminal Policy ,, Friedrich Ebert ,, Institute for Sociological and Political-Legal Research, Grafochartia, Skopje 2001;
9. J. Јордановски, Б. Peshevska, M. Danilova, G. Panova, V. Ilievski, Psychosocial rehabilitation of children abused in incest and pedophilia, University Goce Delchev Stip;
10. O. Bacanovi,, Victimology, Course syllabus, Faculty of Security in Skopje;

11. Đ.Ignjanović. B.Simeunović-Patić, Victimology Opsti Deo, Belgrade 2015;

12. Internet:
13. https://mk.wikipedia.org/
14. https://www.psychologytoday.com/conditions/pedophilia
15. https://www.centarzabezbednost.org/problem-pedofilije/
16. https://pink.rs/drustvo/168730/roditelji-pratite-ponasanje-deteta-na-drustvenim-mrezama-evo-kako-da-otkrijete-da-da-je-vase-dete-zrtva-predatora-vode
17. https://nova.rs/vesti/hronika/silovanje-dece-jednom-zrtva-zauvek-zrtva/
18. https://www.unicef.org/protection/sexual-violence-against-children

Scientific Article
UDK 347.96/.99(497.11)
34/35(497.11)

BAR EXAM IN THE REPUBLIC OF SERBIA - *DE LEGE LATA ET DE LEGE FERENDA*

Dušan Milošević LL.M.
Judge and Deputy of the President of the Magistrate Court in Kruševac
PhD student at the Faculty of Law University of Belgrade
dmilosevic037@gmail.com

Abstract
During 2022, the Constitution of the Republic of Serbia has been amended in the parts related to the Courts and Public Prosecutor`s Offices. In the following period, accompanying legislation will be revised too in order to be harmonized with the highest general legal act. Doubtless, focus will be on issues related to the High Judicial Council, Courts and Judges, but one may not neglect *conditio sine qua non* for the performing of many legal professions in the Republic of Serbia as well as for the undertaking of actions in various proceedings before the relevant institutions too. Namely, this is the Bar Exam, which has remained relatively untouched for decades, although many essential changes had taken place in the meantime. Therefore, one should analyze some aspects of the existing legal framework, with a review on some of the proposals and perspectives for its update and advancement too.

Key Words: Bar Exam, legal professions, Republic of Serbia, Candidate, program, Ministry of Justice

INTRODUCTION

During 2022, Constitution of the Republic of Serbia from 2006 has been amended in parts related to the Courts and Public Prosecutor`s Offices, but the Constitutional Amendments were explicit, only, in terms of the composition and competencies of the High Judicial Council, the abolishment of the concept of "first election" and full promotion of the "permanent election" on Judicial Function, as well as by the renaming of the highest court from Supreme Court of Cassation to the Supreme Court.[191] Simultaneously, Constitutional Law on the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia has been adopted too. *Inter alia*, the

[191] More about compare the previous and current constitutional solutions: Marković 2006, 21-6; Orlović 2010, 174-7; Pajvančić 2011, 15-7; Rakić, Vodinelić, *et al.* 2012, 49-68; Petrović, Škero 2017, 218-24; Kolaković, Bojić 2018, 83-5; Pejić 2022, 80-6; Simović 2022, 107-13.

aforementioned general legal act set the deadlines for the harmonization of accompanying legislation with the constitutional changes,[192] which last one year regarding the Law on the Organization of the Courts, Law on Judges, Law on High Judicial Council and two years for the other "unspecified" laws. Still, it remains unclear whether the above-mentioned harmonization should have a "limited" scope by transplanting of the thinly constitutional formulations into relevant lower general legal acts or one should go a step forward in order to regulate many other issues too, as well as whether better option would be to amend the existing legal framework or to adopt the completely new one.

Definitely, there are a lot of questions, dilemmas and problems that have to be considered, but one should not neglect the Bar Exam (hereinafter: BE) regardless, even, on existence of the idea of its redundancy.[193] Still, BE is very important for overall system (Ivković 2021, 802), because this is *conditio sine qua non* for the performing of many legal professions in the Republic of Serbia (hereinafter: Serbia), such as Judge, Judicial Assistant, Public Prosecutor, Deputy of Public Prosecutor, Public Prosecutorial Assistant, Beneficiary of Initial Training for Judges and Deputies of Public Prosecutors, Public Attorney, Deputy and Assistant of Public Attorney, Notary Public, Deputy and Assistant of Notary Public, Public Enforcement Officer, Deputy of Public Enforcement Officer, etc., which *per se* refer to the valid undertaking of actions in various proceedings before the relevant institutions too.[194] However, it has remained relatively untouched for decades besides many essential changes that happened in the meantime. Therefore, one should analyze some aspects of the existing legal framework with a review on certain proposals and perspectives too, while some of these findings could serve for its update and advancement too.

CRITICAL OVERVIEW - *DE LEGE LATA et DE LEGE FERENDA*

BE is regulated by the Law on Bar Exam (hereinafter: LBE) and further elaborated by two bylaws: Regulation on Taking of the Bar Exam (hereinafter: RTBE) and Regulation on Program of the Bar Exam (hereinafter: RPBE). Interestingly, all of these general legal acts had been adopted in 1997 and, mostly, remained unchanged, except RTBE that had been revised in the meantime by adding a provision related to the compensation for work of persons who participate in the organization and implementation of BE. Thus,

[192] Oppositely, the Constitutional Law on the Implementation of the Constitution from 2006 lacked any similar provision related to the designation of deadline for the harmonization of the accompanying lower general legal acts with the highest one in terms of Judicial Branch of Power.
[193] More about: Perić 2020, 10-1.
[194] More about: Law on Judges, Law on Organization of Courts, Law on Public Prosecution, Law on Judicial Academy, Law on Public Attorney`s Office, Law on Notary Public Office, Law on Enforcement and Security, Law on Advocacy, Criminal Procedure Code, Civil Procedure Law, Law on Misdemeanors.

one may note obvious non-compliance with other relevant general legal acts in the current Serbian legal system. Still, RPBE mentions Federal Republic of Yugoslavia (hereinafter: Yugoslavia) and Republic of Montenegro (hereinafter: Montenegro) on several places, as well as the various Yugoslav and Montenegrin institutions, although Serbia became independent state during 2006. In this regard, it is pointless to prescribe certain Yugoslav and Montenegrin general legal acts as obligatory legal sources for BE too, such as Constitution of the Federal Republic of Yugoslavia, Constitution of the Republic of Montenegro, Law on the Federal Constitutional Court, Law on the Constitutional Court of the Republic of Montenegro, Law on Yugoslav Citizenship, etc., while this statement refers, *mutatis mutandis*, on the Serbian ones that are not in legal force for decades, such as Law on Citizenship of the Socialist Republic of Serbia, Law on Marriage and Family Relations, Law on Enforcement Procedure, Law on Private Entrepreneurs, Law on Labor Relations, etc.

On the other side, LBE does not take into account that misdemeanor matter became the part of the Judicial Branch of Power by establishing of the magistrates courts as specialized courts for the misdemeanor cases.[195] Oppositely, it uses the non-existing notion of "misdemeanor body" and, even, put the law graduates who gained relevant work experience (hereinafter: Candidate) within the these courts in unfavorable position in comparison with their colleagues from the other courts by prescribing of the minimum of three years of work experience instead of two years. Moreover, one does not adequately recognize the new legal professions in Serbian legal system too, such as Notary Public Office and Public Enforcement Office, regardless of the fact that they perform many judicial affairs (Đurđević 2018, 212). In a certain sense, *sui generis* outsourcing process started within the enforcement and security matter by organizing of the Enforcement Offices and appointing of Enforcement Officers, which were later renamed as the Public Enforcement Offices and Public Enforcement Officers (Bodiroga 2017, 108-9). Namely, these are natural persons, *inter alia*, with completed exam for the Public Enforcement Officer and relevant work experience after completion of the BE who have been appointed as the relevant public authority by the Minister of Justice in order to conduct and decide in enforcement and security proceedings in accordance to the delegated powers (Stanković, *et al.* 2018, 1371). Meanwhile, Notary Public Offices have been formed by appointing of the Notaries Public among the natural persons who, *inter alia*, completed exam for the Notary Public and have relevant work experience after completion of the BE, while the this public authority became competent for compiling and issuing of the various public documents, public records, public certificates and

[195] More about: Rakić, Vodinelić, *et al.* 2012, 80; Vuković 2016, 22-3; Delić, and Bajović 2018, 148.

other entrusted tasks including, even, conducting and deciding in inheritance proceedings (Trgovčević, Prokić 2012, 85). Anyhow, it remains unclear how to treat the Candidates from the both of above mentioned public authorities in terms of taking the BE. More precisely, do they need two years of work experience like the Candidates from courts, public prosecutor`s offices, public attorney`s offices and attorneys or three years like the Candidates from state, provincial and local organs or, even, four years like all of the other Candidates. Currently, the Ministry of Justice in its opinions stated that both of them should have the same status like the Candidates from state, provincial and local organs, because concrete public authorities have, pretty much, the same legal natures like these organs.[196] However, this is a very problematic standpoint in many aspects. At first glance, Notaries Public and Public Enforcement Officers cannot be put under the same regime, since the first ones, as well as courts, public prosecutor`s offices, public attorney`s offices and attorneys, may have law graduates as Trainees according to the Law on Notary Public Office, while the second ones, *per legem*, have no such possibility taking into account that they may employ, only, Assistants for performing of the, more or less, technical actions and who are, *per se*, not obliged to have legal education. In a certain sense, Trainees from the Notary Public Office should be in a better position in comparison to the Candidates from Public Enforcement Office, but one has to bear in mind that both of these public authorities are not explicitly mentioned anywhere within the relevant law. Therefore, the most correct option currently would be to subsume them under the "open" legal notion of the "other organization", which indicates that they should need a four years of work experience for taking of BE (Đurđević 2018, 217) despite of that their jobs are in a very tight connection with jobs of their colleagues from courts.

Ministry of Justice is organizing BE and performing related administrative tasks, but these affairs are delegated to the Autonomous Province of Vojvodina too regarding the persons who have residence within the concrete territorial unit according to the Law on Establishing of the Competencies of the Autonomous Province of Vojvodina. In this regard, Minister of Justice or relevant Provincial Secretary forms one or more Examination Committees (hereinafter: EC), designates who of seven members will examine every of concrete subjects, appoints the president of EC between EC`s members, determines the compensation for work of persons who participate in organization and implementation of BE, as well as determines, even, the time and place for maintaining of every BE. Obviously, the above-mentioned process is based on the discretionary power, which may be susceptible to numerous and various types of abuses. First of all, it should be

[196] More about: Opinion of the Ministry of Justice No. 011-00-00069/2015-05 from 26 February 2015 and Opinion of the Ministry of Justice No. 011-00-00244/2016-05 from 21 November 2016.

necessary to introduce the method of public competition regarding the (s)election of EC`s members, as well as to set the time-limited terms of office and its maximization on the one more re(s)election. Also, one may note a lack of criteria in terms of the notion of distinguished lawyer too (Perić 2020, 5) regardless of a certain limitation regarding the selection of members on persons who, previously, have completed BE or professors of law faculties on positive law subjects who are, *vice versa*, not obliged to have completed BE. Thus, relevant work experience after the completion of the BE in concrete legal area may be added as a condition for the EC`s membership, while in terms of the professor of law faculty it may be clarified that it has to be a teacher on the positive law subject in legal area within the BE`s curriculum. Otherwise, it may result, even, with the paradoxical situation in which some members may be determined to examine a certain subject in a legal area that is out of its specialization (Odobašić 2020, 5). Surely, decisions on formation of the ECs and (s)election of their members should be explained, as well as published both in official journal and official web address of Ministry of Justice or relevant Provincial Secretariat too. Furthermore, one could use modern technologies in order to further improve transparency of the EC`s work by replacing the "old fashioned" manner of keeping the transcript of records of BE in paper form with audio-video recordings obtained by adequate computer programs and followed by stenographic notes. Finally, the existence of the Judicial Academy (hereinafter: Academy) should be used too, since it could perform administrative and technical tasks, as well as provide necessary space for the taking of BE within its building, especially, taking into account its role as key training institution for many legal professions.[197]

BE consists of written and oral parts. Firstly, candidates take a written part in form of the case studies both in Criminal Law and Civil Law by using adequate legislation, but with no audience and, even, without a possibility to leave concrete room before finishing except for very justifiable reasons and under the supervision of the EC`s Secretary too. Afterwards, one has oral part before examiners on publicly open sessions in following subjects: Criminal Law, Civil Law, Labor Law, Administrative Law, Commercial Law, International Private Law, Constitutional Law and Organization of Judiciary, while every of them will ask Candidate a minimum three questions within the concrete legal area. However, BE`s curriculum has to be updated and enriched in accordance with the many significant novelties and challenges in the Serbian legal system. At least, it is necessary to leave the paradigm from the RPBE according to which Misdemeanor Law is underestimated by having the status of segment within the Criminal Law regardless of the existence of the specialized courts for conducting and deciding in misdemeanor proceedings as

[197] More about JA: Kolaković, Bojić 2018, 89-93.

it has been, already, mentioned before. Thus, Misdemeanor Law should be separated from the Criminal Law and become the subject for itself within the BE`s curriculum. Also, one should introduce a new subject regarding the basis of the Council of Europe Human Rights Protection System, which should consist European Convention on Human Rights and Fundamental Freedoms with additional protocols (hereinafter: ECHR) that due the ratification became integral part of Serbian legal system and have direct effect in proceedings before relevant Serbian institutions, as well as by the practice of the European Court of Human Rights taking into account broader effect of its decisions concerning the interpretation of the ECHR.[198] Moreover, the method of checking of Candidate`s knowledge should be rearranged too. Surely, the existing model of case studies both in Criminal Law and Civil Law should remain untouched within the written part, but the test could be added as the new segment in which one would check Candidate`s knowledge in other legal areas from the BE`s curriculum. On the other side, both case studies may be exposed before examiners within the oral part, while Candidate`s knowledge on other subjects may be checked on existing manner in oral part by asking of a minimum three questions in concrete legal area. Of course, Candidates could use the adequate legislation in solving the case studies on the written part, as well as during their exposition within the oral part. Finally, transparency may be further improved by direct broadcast of oral parts of the BE on Academy`s web page, as well as by their later publishing both on the web pages of the Ministry of Justice or relevant Provincial Secretariat and Academy too.

CONCLUSION

Constitutional changes present may be used for the modification of many issues regarding Judicial Branch of Power, while one of them should be, definitely, the BE. Presumably, it will remain *conditio sine qua non* for the performing of many legal professions in the as well as for the undertaking of actions in various proceedings before the relevant institutions in Serbian legal system too. Still, BE`s concept remains untouched for decades besides many essential changes that happened in the meantime. Thus, it is necessary to update and enrich BE in accordance with the many significant changes and challenges in the Serbian legal system.

Definitely, one has to remove Yugoslav and Montenegrin general legal acts and institutions, as well as the Serbian ones that are not in legal force anymore in every sense. *Mutatis mutandis*, the aforementioned statement should refer to the non-existing notion of "misdemeanor body" too, which enables equalization Candidates from magistrates' courts with their colleagues from all of the other courts in terms of relevant work experience for taking the

[198] More about: Paunović, and Carić 2007, 101-2; Popović 2008, 117-8.

BE. So, all of the Candidates who gained relevant work experience in courts should be in the same position, but one has to take into account the other newly established legal professions too, such as Notaries Public and Public Enforcement Officers. Namely, these public authorities perform many judicial affairs, while law graduates who work in Notary Public Office and Public Enforcement Office are working, more or less, the same jobs like their colleagues from courts and both of them should have the same treatment in terms of the relevant work experience for taking the BE.

Also, it is necessary to reduce discretionary power and improve transparency of the overall process. In this regard, one should start from the members of the EC that have to be (s)elected on public competition with time limited terms of office and its maximization on the one more re(s)election, while EC members would be (s)elected among the persons who have relevant work experience after the completion of the BE in concrete legal areas from BE`s curriculum or professors of law faculties who teach the positive law subjects in legal area within the BE`s curriculum. Furthermore, decisions on formation of the ECs and (s)election of their members should be explained, as well as published both in official journals and official web addresses of relevant decision makers too.

Al least, BE`s curriculum should be enriched by adding of minimum two new subjects: Misdemeanor Law and Basis of the Council of Europe Human Rights Protection System, since both of these legal matters are immanent to the workplaces in which work legal professionals with BE. Moreover, it would be great to rearrange the method of checking of Candidate`s knowledge too. Namely, case studies in Criminal Law and Civil Law would remain within the written part of BE, but both of them should be exposed before examiners within the BE`s oral part. On the other side, one should add tests as the new segment within the written part of BE that would include all of the other subjects from BE`s curriculum that would be further checked on during the oral part of BE by asking of a minimum three questions in every concrete legal area. Finally, the existence of JA may be useful too, because this institution could perform administrative and technical tasks related to the BE starting from broadcasting of BE`s oral parts on its web page until the providing of necessary space for BE`s taking.

LIST OF ABBREVIATIONS

BE - Bar Exam;
ECHR - European Convention on Human Rights and Fundamental Freedoms;
EC - Examination Committee;
LBE – Law on Bar Exam;
RPBE - Regulation on Program of the Bar Exam;
RTBE - Regulation on Taking of the Bar Exam.

REFERENCES

1. Delić, Nataša, and Bajović, Vanja. 2018. *Priručnik za prekršajno pravo*. Beograd. JP Službeni glasnik;
2. Đurđević, Dejan. 2018. "Nova pravosudna zanimanja i uslovi za polaganje pravosudnog ispita." *Srpska politička misao No*. 4/2018;
3. Ivković, Nikola. 2021. "Pravničko obrazovanje i pravosudni system Republike Srbije." *Usluge i vladavina prava* from 28 May 2021;
4. Kolaković, Bojić, Milica. 2018. *Organizacija pravosuđa u Republici Srbiji - Reformski okvir i EU standardi*. Beograd. Institut za kriminološka i sociološka istraživanja;
5. Marković, Ratko. 2006. "Ustav Republike Srbije iz 2006 - kritički pogled." *Anali Pravnog fakulteta u Beogradu No*. 2/2006;
6. Odobašić, Nihad. 2020. "Pravosudni ispit u BiH: Analiza stanja i iskustva." *Obrazovanje pravnika za sudačku/tužilačku funkciju* from 02 October 2020;
7. Orlović, Slobodan. 2010. "Stalnost sudijske funkcije vs opšti reizbor sudija u Republici Srbiji." *Anali Pravnog fakulteta u Beogradu No*. 2/2010;
8. Pajvančić, Marijana. 2011. "O sudskoj vlasti u ustavnom sistemu Srbije u kontekstu međunarodnih standarda." *Zbornik radova Pravnog fakulteta u Novom Sadu No*. 3/2011;
9. Paunović, Milan, and Carić, Slavoljub. 2007. *Evropski sud za ljudska prava - nadležnost i postupak*. Beograd. Pravni fakultet Univerziteta u Beogradu;
10. Pejić, Irena. 2022. "Constitutional Reform and Judicial Reform in Serbia." *Zbornik radova Pravnog fakulteta u Nišu No*. 94/2022;
11. Perić, Branko. 2020. "Pravosudni ispit: relikt koji odolijeva." *Obrazovanje pravnika za sudačku/tužilačku funkciju* from 02 October 2020;
12. Petrović, Škero, Vida. 2017. "Visoki savet sudstva - status, izbor, razrešenje, mandat, članstvo, nadležnost." *Glasnik Advokatske komore Vojvodine No*. 3-4/2017;
13. Popović, Dragoljub. 2008. *Evropski sud za ljudska prava*. Beograd. JP Službeni glasnik;
14. Rakić, Vodinelić, Vesna, and Bojović, Knežević, Ana, and Reljanović, Mario. 2012. *Reforma pravosuđa u Srbiji 2008-2012*. Beograd. Pravni fakultet Univerziteta Union u Beogradu & JP Službeni glasnik;
15. Simović, Darko. 2022. "Ustavni amandmani iz nužde - kritički osvrt na ustavnu reformu sudske vlasti." *Zbornik radova Pravnog fakulteta u Novom Sadu No*. 2/2022;
16. Stanković, Gordana, and Palačković, Dušica, and Trešnjev, Aleksandra. 2018. *Komentar Zakona o izvršenju i obezbeđenju*. Beograd. JP Službeni glasnik;

17. Trgovčević, Prokić, Milena. 2012. "Zakon o javnom beležništvu Srbije i potreba za usklađivanjem sa drugim zakonima." *Pravni život No*. 12/2012;
18. Vuković, Igor. 2016. *Prekršajno pravo*. Beograd. Pravni fakultet Univerziteta u Beogradu;
19. *Civil Procedure Law* Official Gazette No. 72/2011, 49/2013, 74/2013, 55/2014, 87/2018;
20. *Constitution of the Republic of Serbia* Official Gazette No. 98/2006, 115/2021;
21. *Constitutional Law on the Implementation of the Constitution* Official Gazette No. 98/2006;
22. *Constitutional Law on the Implementation of the Act on Amendments to the Constitution of the Republic of Serbia* Official Gazette No. 115/2021;
23. *Criminal Procedure Law* Official Gazette No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021;
24. *European Convention on Human Rights and Fundamental Freedoms with Protocols* Official Gazette No. 9/2003, 5/2005, 7/2005, 12/2010, 10/2015;
25. *Law on Advocacy* Official Gazette No. 31/2011, 24/2012;
26. *Law on Bar Exam* Official Gazette No. 16/1997;
27. *Law on Establishing of the Competencies of the Autonomous Province of Vojvodina* Official Gazette No. 99/2009, 67/2012, 18/2020, 111/2021;
28. *Law on Enforcement and Security* Official Gazette No. 106/2015, 106/2016, 113/2017, 54/2019;
29. *Law on Judges* Official Gazette No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012, 101/2013, 111/2014, 117/2014, 40/2015, 63/2015, 106/2015, 53/2016, 47/2017;
30. *Law on Judicial Academy* Official Gazette No. 104/2009, 32/2014, 106/2015;
31. *Law on Misdemeanors* Official Gazette No. 65/2013, 13/2016, 98/2016, 91/2019;
32. *Law on Notary Public Office* Official Gazette No. 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015, 106/2015;
33. *Law on Organization of Courts* Official Gazette No. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013, 40/2015, 106/2015, 13/2016, 108/2016, 113/2017, 65/2018, 87/2018, 88/2018;
34. *Law on Public Prosecution* Official Gazette No. 116/2008, 104/2009, 101/2010, 78/2011, 101/2011, 38/2012, 121/2012, 101/2013, 111/2014, 117/2014, 106/2015, 63/2016;
35. *Law on Public Attorney`s Office* Official Gazette No. 55/2014;
36. *Regulation on Program of the Bar Exam* Official Gazette No. 51/1997;
37. *Regulation on Taking of the Bar Exam* Official Gazette No. 14/1998, 88/2008, 108/2012;

38. Opinion of the Ministry of Justice No. 011-00-00069/2015-05 from 26 February 2015;
39. Opinion of the Ministry of Justice No. 011-00-00244/2016-05 from 21 November 2016.