МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

РЕФОРМИ НА БЕЗБЕДНОСНИОТ СИСТЕМ КАКО ПРЕДУСЛОВ ЗА ЕВРО - АТЛАНТСКИ ИНТЕГРАЦИИ

INTERNATIONAL SCIENTIFIC CONFERENCE

SECURITY SYSTEM REFORMS AS PRECONDITION FOR EURO-ATLANTIC INTEGRATIONS

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PREFACE

The mission of the international scientific conference is to encourage the academic community and practitioners in the security sector to share knowledge based on the application of subject specific research scientific methods and upgrade the practical experience with a scientific – research dimension. The idea for organizing this Conference coincides with the need for essential reforms of the security sector in the Republic of Macedonia.

The papers received by means of a public announcement offer solutions for the future establishment and renaming of the security system in order to respond efficiently to the contemporary security risks and threats, that is, the destabilizing factors that create conflicts.

On that note and in correlation with the Conference title, the rational assumption for full application of the required reforms in the security sector presented in the papers that treat security issues in a number of sub-disciplines of the science of security, confirms the existing and encourages the creation of new solutions within the security system, based on a holistic approach in view of efficient and timely dealing with security risks and threats and accelerating the Euro – Atlantic integration process.

Hence, the mission of the conference is to stimulate scientific workers to exchange views and knowledge of the science that should identify the security needs and determine the security reforms and opt for an appropriate security concept, as one of the prerequisites for Euro – Atlantic integration of the country.

The practical goal of the topic of Conference Compendium is multifaceted, primarily due to the scarce number of papers and analyses on this topic in scientific and expert literature and the partial scientific approach in those that exist, which implies imposing effects in practice. The Conference and the Compendium aim to produce valid results and scientifically verified knowledge that will enable the implementation of a rational and acceptable solution for the security sector reforms. Argumentative substantiation and presentation of the derived results and the overall situation are used to consider the systemic and institutional solutions and to initiate a new phase of qualitative development of the security system and its institutions.

Security sector reforms aim to provide an efficient security system with appropriate security capacities to deal with potential threats. Hence, security sector reforms contribute not only to a more efficient security apparatus, but also to a more responsible one.

The overall goal of the "security sector reform" is directed toward transformation of the security institutions so that they acquire an efficient, legitimate and democratically responsible role in ensuring the external and internal security of its citizens. The work invested in these reforms is expected to yield certain positive effects that will be felt primarily by the state itself, and then by its citizens. In terms of the effects or the implications that may arise in the process, they should be grouped in two segments; positive and negative effects.

Positive effects mean increased internal and external security, greater and increased investment process, higher level of employment, greater mobility of population

and capital, offering more possibilities to the citizens and a wider choice of living conditions, receiving assistance from European development funds, assistance in the defence sector, modernization, development and all other areas on which the progress of the security sector is dependent.

The positive effects also concern the citizens directly, in terms of respect of human rights, the rule of law, equitable and ethnic representation in the security structures, improved living and working conditions, participation in different peace missions, requesting certain competences for executing the assigned tasks, control over the work – external and internal, assessment, ensuring a quality system, increasing the services for the citizens and their quality, more stringent criteria for non-legal conduct, etc. What is more important, considerable progress has been made in increasing the communication of the security structures regionally and internationally and developing their cooperation within international security organizations, which has resulted in positive effects in conducting major actions against international crime covering trafficking in drugs, weapons, people, radio-active materials, etc.

On the opposite side, there are also negative effects of the reforms: downsizing of employees, losing some privileges, decreasing competences, jurisdictions and the possibilities for fight against crime.

It is evident that there is a global process of continuous changes of the security threats worldwide, which calls for transcending the local needs of the security structures and stimulating them to think and act globally.

The papers in the Compendium and the Conference cover the following topics:

- The relation between external threats and internal weaknesses as the basis for security reforms
- Civilian and democratic control of the security system
- Transformation of the secret (intelligence and counterintelligence) services
- The role of the police and the Army in the crisis management and protection and rescue system
- Restructuring of the security system to enable dealing with contemporary threats, terrorism and organized crime
- Coordination and reorganization of the security institutions
- Regional security cooperation as an imperative for Euro – Atlantic integration
- Prevention against internal risks and asymmetric threats
- The role of non-state actors (private security, civic organizations, the media) in the security system and its reshaping;

The Faculty of Security – Skopje has a key role in promoting the security system. Moreover, it aims to increase the security and stability in the Republic of Macedonia by learning, creating professional personnel, conducting research and implementing the best practices in the security sector reform process in the country.

Thus, the Faculty of Security – Skopje continues its orientation toward organizing international conferences in the security field in order to contribute to the development of scientific thought, and help policy creators (political level) and decision makers (senior practitioners) on the regional, national and local level to overcome the practical problems they are facing in a faster, simpler and timely fashion with the acquired knowledge and research results.

I believe that the next 10th jubilee will crown the successful joint project of the Faculty of Security – Skopje that is a combination of experience and youth of this higher educational institution, stimulating its greater development in future into one of the most important security academic fora of South Eastern Europe.

Chairman of the Organizational Board
of the International Scientific Conference and Vice Dean for Science and
Development at the Faculty of Security – Skopje
Assistant Professor Marjan Gjurovski, Ph.D

Country	Original scientific paper	Review scientific paper	Professional paper	Total work papers
Bulgaria		2		2
Bosnia and Hercegovina		5	1	6
Croatia		2		2
Dubai		1		1
Kosovo		1		1
Macedonia	8	30	14	52
Serbia		13	1	14
Slovenia		1		1
Turkey	1	1	1	3
United Kingdom		1		1
Total work papers	9	57	17	83

CRIMINAL LAW AND SOCIAL SCIENCES

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NEW CONCEPTUAL REVIEW OF THE RELATION OF THE REFORMS OF THE CRIMINAL-JUSTICE AND POLITICAL SYSTEM

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Abstract

Reforms in the criminal-justice and political system should be simultaneously implemented, because they are inextricably linked. Challenges that arise in conditions of increased security risks and threats from the most sophisticated unconventional types of high political and economic corruption and with them the closely related institutional type of organized crime impose the need for more profound systemic reforms in the structures of the crucial social systems, especially the criminal-justice and the political system. Non-standard situations, to a smaller or larger extent, that last for the entire past period of independence of the Republic of Macedonia, cannot be solved by standard measures and solutions, which otherwise give excellent results in countries with a long-standing democratic tradition and high level of political culture.

In the paper, among the other methods, the following methods will be used: the method of analyzing the contents of strategies, laws and draft laws; the logical method of rational confrontation of arguments based on logical principles among opposing theses, in the context of rationalist epistemology; the empirical method based on indisputable empirical facts from various sources; the comparative method, which does not only imply comparing normative-institutional solutions among different countries, but comparing the different concepts of a reform strategy in both respectable systems; interviews with people from target groups, such as professionals in the state institutions, university professors, businessmen and lawyers; observation.

For Macedonia, the most optimal, generally conceptual framework is a systemically crossed series of optimally independent key state institutions from the executive and legislative power, but not absolutely independent from a wider range of institutional mechanisms constituted in a qualitatively new way by competent representatives of professional streams and the civil sector. With the purpose of effectively and efficiently functioning of the criminal-justice and political system, it is necessary to establish a system that will function with the least possible damage, by the force of the internal logic of the system itself, regardless of the fact whether or not the much deficient political will was present.

Keywords: *strategy, reform, criminal-justice, political system*

1. INTRODUCTION

The very text of the Criminal-justice Strategy contains many correct statements, and for the most part they are generally accepted goals that cannot be considered unacceptable to any reasonable person (Strategy for reforms in the criminal-justice sector, Government of the Republic of Macedonia, 2017). So, if we exclude the essential remarks of generally strategic aspect, this can be considered a solid document based on the recommendations of Priebe, the European Commission Progress Reports, the opinion of the Venice Commission, and other international and domestic NGOs (assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues Brussels, 2017; recommendations of the Senior Expert Group on Systemic Rule of Law issues related to intercepted communication, 2015; European Commission Progress Report, 2016). The problem is that the foundations on which the deep structural reforms in the criminal-justice system should be based are weak. It is similar to building a house which is very beautiful from the outside because it has a lovely facade, roof, and interior, but if the foundations are weak, that house can fall apart as a "tower of cards". In the case of the Strategy as it was designed, I can responsibly claim that precious time was wasted again. In this way, apart from the honest individuals as exceptions, Macedonian criminal-justice system cannot have qualitatively positive changes related to high corruption and the institutional type of organized crime, which imperil the rule of law to the greatest extent, because in such criminal-legal events prime politicians may be involved (Labovic, 2016). Many reasons, which I hope will be further discussed, do not give us realistic ground for optimism that the judiciary from a servant of one party or coalition will not again be used as a servant to another party or coalition (Chambliss, 1986; Darendorf, 1990).

In the Strategy for Criminal-justice Reforms there is not a concrete strategic approach about the way in which the biggest problems in the Criminal-justice will be solved. Without predicting a general direction of the way in which the problems will be solved, these strategic directions represent only a simple list of wishes. Namely, any profound strategy must contain visionary assumptions about the general approaches of the way in which it is planned to solve the identified problems in a long-term and systemically stable manner. Tactics or action plans on the other hand deal with the determination of the measures (activities), the competent entities for implementation of those measures, and the dynamics (deadlines) in which the strategic objectives should be realized in the specific concrete socio-historical moment, in a very specific and detailed modification of solutions. This has already been foreseen in the general strategic approach. In that sense, the most important strategic directions are lacking in this Strategy, or there is only a shuffle of empty strategic directions without a clear general approach of how the goals will be achieved. The strategic guidelines regarding the need for objective criteria for selection and determination of professional and disciplinary responsibility of judges and public prosecutors, as well as the strategic directions from technical nature are the only exception from this assertion.

Brutal empirical fact is that in the public discourse of Macedonia the information, which is denied to the general public, is completely lacking, as well as the fact that in Macedonia there are two diametrically opposed, substantially and qualitatively different concepts for the strategic directions of the development of crucial social systems, especially the judicial and political system.

The **first conception** is the basis on which the Draft Strategy for Justice was drafted. The standpoints of all intellectuals who have the opportunity to create public

opinion in Macedonia, and which differ only in the different variations in the formulations of essentially the same views are literally inclined to this conception. The pivotal documents on which this concept is based are the Priebe Reports, the Venetian Commission, the Reports of other relevant international documents, and the Proposal for urgent democratic reforms from 70 NGOs and individual experts.

What are the main theses of this conception? First, we start from the very correct statements that in Macedonia there are no explicit, objectified criteria for professional competence when choosing and determining responsibility, that there are no criteria for persons with high moral integrity and authority (which by the nature of things are very fluid categories and therefore easily susceptible to manipulation), that there is not a transparent and accountable procedure in the selection, promotion, and pronouncing plurality of sanctions for eventual determination of responsibility, especially for the judges and public prosecutors. Second, it is considered that if professionals of high moral and professional criteria (quantitative and qualitative) come to the key positions, especially in the judiciary as the most important segment of the systematic rule of law but also in other key state institutions, they will be a safe dam for party and all other non-legal pressures and influences. Third, politicians are called upon with moral appeals to set aside from the judiciary and not exert pressure and influence in various subtle ways. It is even proposed that politicians should not allow prosecutors and judges to make autoclave even when they do not know that such a thing exists (they should assume and prevent it in advance, which in itself is a moral ideal, but in reality it is an absurdity). Anyway, these are old moral appeals for the authorities to not abuse the huge concentration of power they possess. However, if such moral appeals that are constantly present in lesser or greater intensity were realistic, so far in the world there would not have been high corruption and institutional organized crime, as the two biggest threats to endangering the rule of law.

The **second conception** does not negate Priebe; on the contrary, it absolutely agrees with Priebe. However, I point out that Priebe is at least 20 times insufficient not only in scope but also in the depth of the quality in the restructuring of structures in the key systems of society (see why: in the conclusions). The second conception does not deny the great importance and the need for objectified criteria, professional and ethical standards. On the contrary, it affirms them to the maximum possible extent. Namely, objectified criteria for professional competence by the results achieved in the work not only by quantitative but also by qualitative criteria, responsibility, and moral qualities (although these categories are very fluid and difficult to measure, and hence easily susceptible to manipulation) are more than necessary. This conception adds to and develops the previous concept, because it is based on argumentative premises and backed up by undeniable empirical facts which last from the independence of our country. According to the prognostic function of science, those facts will be very slowly and difficultly changed in the following decades without radical systemic reforms. The second conception starts from the following cognitive premises:

1. Apart from the unfavorable specific determining factors (specific type of mentality, special type of political culture, lack of legal awareness, absence of democratic tradition and longstanding statehood), one of the main factors in Macedonia for non-governance of the law is the huge imbalance in the tripartite division of power in favor of the Government. This problem in Macedonia cannot be resolved as our intellectual elite tries to resolve it for many years through an eclectic combination of solutions that give excellent results in the developed

countries with long-standing democratic tradition and with completely different specific determining factors. Where is the difference of perception?

2. According to the second conception, these criteria are not sufficient in conditions of socio-cultural circumstances with a lack of democratic tradition, lack of long-standing statehood, specific mentality, especially marked low political culture, low legal awareness, nepotism, cronysm, and patron-clientelistic relations are not infrequently stronger than the laws. There are too many empirical examples which unequivocally show and prove that even where there is clear criteria for selection in a certain function or profession so far, the law and the bylaws are not respected almost without an exception. In such an environment with all listed specific determining factors it is not theoretically excluded that in Macedonia we experience the example with the Romanian Laura Kovesi, which we must not forget, was strongly supported by the international factor. (She filed an indictment against the current Prime Minister at that time Victor Ponsa, who proposed her in office against the incumbent President of Romania, who assigned her for the office). However, we must be realistic: the specific determining factors in Romania and Macedonia are significantly different, although they are Balkan countries. Here, it is not necessary to talk about the highly developed Western countries with a completely different culture, mentality, etc. Therefore, there is a qualitative factor analysis in science, which is literally neglected in Macedonia. Based on these deeper scientific researches and analyses, I consider that deeper systemic reforms are needed.
3. The second conception is based on the main thesis that the biggest social problem in Macedonia, the absence of rule of law, can be resolved by a systemic cross-series of optimally independent, key state institutions from the executive and the legislative power, but not absolutely independent from a wider circle the institutional control mechanisms which should be constituted in a completely qualitatively new way by the competent representatives of the respective professional streams (social areas).
4. The uniqueness of this system is that the ROLE OF LAW will be applied to a much higher level than before, because such a system will function according to its internal logic, through a consistent, consequential, and coherently developed system of division of the power, especially its two most important characteristics: the mutual control and balance of power between independent key state institutions in the horizontal organization of the authority at the highest state level. The hierarchy, of course, remains within the systems and their subsystems. In such a developed system of division of powers, the functioning of the RULE OF LAW will no longer depend on whether there was or not a political will, which is constantly deficient in the past 27 years. What are the guarantees on which the high level of positive expectations that the system I propose will work effectively is based?
5. If the system of cross-series of optimal independent institutions of the executive and legislative power is implemented, but not absolutely independent of a wider range of institutional control mechanisms constituted of a completely new qualitative approach, of competent representatives of appropriate social segments, such system by the strength of its internal logic ensures the functioning of a much higher degree of rule of law than ever before. This is our biggest problem and a prerequisite for solving all other economic, political, social, security, and other

problems. The driving force of that system is contained in the fact that from a whole series of independent government institutions which control one another, it is much more likely that at least one, if not more, will point out to the possible violation of the constitutionality and legality by each Government, as the main generator of systemic corruption and the institutional type of organized crime in all countries where these phenomena are present. The high degree of certainty for the positive course of the processes is based on a well-argued premise according to which: the initial cap that will raise the whole system to function, by virtue of its internal logic, among other things, is the fact that in that interconnected cross-series of truly independent institutions from the Government, and from all other centers of power, none of the key state institutions will be left out of social control and responsibility (such as the examples we have today). This will also apply to the foreseen control institutional mechanisms, since they will also be found in the cross-controlled system. In this way, there is a much greater probability that such a system will function in such societies in a stable and long-term manner, regardless of whether there will be political will of the leaders of any political party that will be in power.

6. Political will is necessary only in the initial stage, when it is necessary to recognize and legally adopt the proposed reforms. Once it is established and put into legal circulation, the system will then function according to its internal logic, without the need of the much desired and for these 27 years never sufficient political will. Otherwise, on the basis of scientifically grounded prognoses, for at least the same period of time, if not longer, we will have to wait for the change of the awareness (and all derivatives of awareness, such as the political will, moral integrity, individual sense of responsibility, etc.) by an evolutionary path to that level in order to achieve awareness as it is in the developed world. Of course, as an exception, it is possible for a government to have such a strong political will for the rule of law, so there will not be a need for such deeper structural reforms to provide the functioning of the system during the mandate of such a government. But even in such situation, the need for profound structural reforms remains, because so strongly expressed political will is not a feature even for more developed democratic countries than ours. This means that such a will can be considered as a happy episode. The duty and the goal of a visionary leader is to leave behind a system which, in conditions of political circumstances with low political culture, low legal awareness, specific mentality and lack of democratic tradition, will function according to the strength of its internal logic without making a more serious damage even when people will elect the wrong person to come to the head of the state.

7. It has never been ideally, nor can it ever be, so this system is not ideal either. However, compared to all other known concepts so far, according to the postulates of rationalist epistemology based on the logical principles of argumentation which are related to undisputed empirical facts, this proposed concept shows the least weaknesses and the most advantages. This brings to the greatest probability that precisely this system can bring about a significant improvement in the rule of law, especially in its practical dimension of concrete application of the laws.

8. Also, in the public discourse, the contra-thesis that all reforms, amendments to laws, etc., would be pointless if people's awareness does not change is often present, because people are the main pillars of the institutions and the law

enforcement. Even though this thesis is true, it is not complete and only partially reflects the reality. Namely, the undeniable empirical and historical fact that the awareness is difficultly and slowly changed is often neglected. Establishing the proposed system would bring to faster change of the awareness of the people. Otherwise, should we wait for another fifty or a hundred years to change the awareness by an evolutionary path? (Darendorf, 1990; Labovic, 2016) Or, should we think of the frivolous ideas which are present in the public discourse that we need to "import" new people, experts, and politicians with more developed awareness from abroad? Of course not. A sustained evidence for this is that when our people, with the same awareness and the same mentality move to countries where the system works (but, on different grounds which we do not have), relatively quickly adjust to the new system. That is why a qualitative and radical restructuring of the normative-institutional structure in our system is necessary. In this way, when the new concept of a systemic cross series of optimally independent institutions will starts to function, things will naturally begin to function parallel with the democratic processes in all segments of the society, especially the necessary democratization within the political parties. Introduction of a proportional electoral model with one electoral unit for the entire RM, and open lists of candidates can be some of the measures.

2. PUBLIC PROSECUTOR OF THE REPUBLIC OF MACEDONIA, DISCUSSION

First and foremost, the Strategy does not consider the possibility and there is not a strategic direction about the way in which the election procedure will be conducted in future and the body which will control the Public Prosecutor of the Republic of Macedonia, as Head of the entire Public Prosecutor's Office in the Republic of Macedonia. However, the importance of this issue was well explained in the statement of one of the 23 candidates for Public Prosecutor of the Republic of Macedonia in one TV show. I would now paraphrase his statement very authentically: If we resolve the issue with the Head of the Public Prosecutor's Office in the Republic of Macedonia, we will solve 90% of the reforms in the criminal-justice system regarding criminal law matters. Given that the judiciary covers both civil law and administrative law matters, resolving this issue, which has not been settled in Macedonia in the past 27 years, we will resolve 50% of the criminal justice reforms.

Regarding the Public Prosecutor's Office of the Republic of Macedonia, the first conception does reflect any problem in the existing solution, according to which the Public Prosecutor's Office of the Republic of Macedonia on the proposal of the Government, and after previously obtained opinion from the Council of Public Prosecutors, is appointed by the Assembly of the Republic of Macedonia. The fact that in most countries in Europe and the world the Public Prosecutor's Office is part of the executive branch, to the professional and scientific community in Macedonia is a sufficient argument. They do not see a problem in the statutory provisions, but they emphasize the quality of the person who is elected. According to this most frequently advocated opinion, the problem is not in who proposes and who appoints, but to appoint the Public Prosecutor who will have such professional and moral qualities (moral integrity, credibility, authority) that will be a sufficient dam to stop all possible future political pressures and influences. On the other

hand, this thesis, again and again appeals to morality - that politics must be put aside from the Public Prosecutor's Office and the judiciary in general.

In Macedonia, we cannot say that it is theoretically impossible but it is very difficult for the Public Prosecutor of the Republic of Macedonia, who is elected according to the current procedure, to allow investigation or indictment against an incumbent Prime Minister or another powerful person from the Government-Party leadership regardless of who is in power. This will not be done especially in conditions when, neither in the Strategy, except for declarative wishes, nor in the positive regulation, there are clear conceptual solutions in which direction the reform of the Public Prosecutors Council should move; furthermore, there is not a clear strategic direction of the way of constituting and positioning of the body to which the members of the Council of Public Prosecutors and the members of the Judicial Council will answer; we are still in the conditions of existence of a huge concentration of uncontrolled power of the Government in the Republic of Macedonia in conditions of lack of real control mechanisms, which not only de jure, but also de facto can put the Government under the control of the rule of law if it eventually violates the Constitution and laws. Here are a number of other strategic issues that are not mentioned at all in the public discourse in Macedonia. In Macedonia or many other small and dependent countries the above mentioned possibility can only happen if the strong international factor encounters some major obstacle by a key politician who will decide to remove it in order to achieve concrete long-term geo-strategic and / or geo-economic interests, which may be certain sub-goals in relation to higher objectives in the region and beyond.

A very illustrative empirical example is the last tender for the Public Prosecutor of the Republic of Macedonia with 23 candidates. Even assuming that the Government selected the best candidate from all those candidates who would not be its servant and who would not be “grateful” according to the Macedonian mentality and customs that the Government gave him such a high prestigious function and power, as opposed to all those candidates, if, in the future, there will be evidence about certain criminal activities of a current Prime Minister, or their close associate or relative, regardless of the political party they come from, is there a probability that the Public Prosecutor will be so brave to set aside all personal interests putting the public interest in the first position. Moreover, let us not ignore the fact of how big is the concentration of Government power in all segments of the institutional structure of society and the whole public life in general. Given all of the stated facts and circumstances, I personally think that such chances are very small, and the time will best show whether there were or no real chances of the Public Prosecutor, under such conditions, to initiate an investigation against the highest government representatives and their closest associates, of course, if there is evidence of that.

But even if the improbable assumption happens, the most professional and the most honest candidate (from all candidates) to be chosen in the public competition, at least for now and for a relatively longer period of time, here in Macedonia (not in Sweden or the Netherlands), it can be a very rare, happy episode of an extremely brave and wise man. However, it cannot be a long-term systemic stable solution, because after the departure of this avant-garde government, which I want to believe that has chosen a candidate in a different manner from all previous practices in Macedonia, it is much more likely that in future another typically Macedonian Government will come, which again will be calling for "objectified" criteria, but in a situation where the Constitution and the law allow the open possibility of systemic corruption, the Government will again choose their own candidate. Awareness changes very slowly and difficultly (Darendorf, 1990).

a. Public Prosecutor of the Republic of Macedonia - discussion and draft decisions

I deliberately avoid to give specific concrete solutions partially selected from the system context, because when you have a big social problem which is like an equation not with 9, but with 99 unknowns, to someone the final concrete result may seem too simple and nothing special, without having to consider the complex path, why and how did this result come about, in our case - the concrete solution for the Public Prosecutor of the Republic of Macedonia. Often, the "cure" can be very cheap, but it is difficult to find it. So it was with all epochal discoveries. Before they were discovered no one could see them, and after they were discovered they were considered to be the easiest. Everything is ultimately simple, but getting to simplicity is not easy at all. In the strategic vision of deep structural reforms in which I develop the system-strategic approach, no concrete solution should remain unrelated, excluded from the main thesis for the only systemic cross-series of optimal independent institutions from the executive, and in our circumstances, due to very obese reasons, from the legislative power as well. I have already emphasized, I will only remind you that these institutions must not be absolutely independent of a wider system of controlling institutional mechanisms, which should be constituted by competent representatives of the respective social segments (Labovic, 2016).

Considering the importance of the function of the Public Prosecutor's Office of the Republic of Macedonia for the conduct of the criminal procedure appropriate changes are needed in the Constitution of the Republic of Macedonia. One of the possible concrete draft solutions may be the following: the Public Prosecutor of the Republic of Macedonia elects the Public Prosecutors Council (a newly structured Council, see below) in a public competition. Appropriate Constitutional changes are needed for this solution. The circumstances and the procedure for election and dismissal, as well as the termination of the mandate of the Public Prosecutor of the Republic of Macedonia shall be regulated by law. The conditions and criteria for the selection of the Public Prosecutors of the Republic of Macedonia should be in accordance with strengthened and objective criteria of higher professional standards than for all other Public Prosecutors.

Another alternative option, as a general strategic approach which also requires Constitutional changes is: the Public Prosecutor of the Republic of Macedonia is selected and dismissed by an independent expert body composed of competent experts proposed by the Government (parliamentary majority), the parliamentary opposition, the professional Association of Public Prosecutors or the Council of Public Prosecutors (a newly structured Council), the professional association of judges or the Judicial Council (a newly structured Judicial Council), the university community (proposed by Inter-university conference) and the Macedonian Bar Association. This solution also requires Constitutional changes. The number of proposed government representatives (the parliamentary majority) should be maximum on the same level as the number of representatives proposed by the parliamentary opposition. The number of representatives from the public prosecutor'occupation should be dominant over all other representatives. The method of constitution, the structure, and the numerical composition of this body should be discussed. All these issues may be subject to legislation.

According to the proposed solution in the SDSM Program (SDSM Program, 2016), after two (2) years, the Public Prosecutor of the Republic of Macedonia should be elected by the Parliament of the Republic of Macedonia, but on the proposal of the opposing party. This solution is bad, even worse than the existing solution. It is so even viewed from a daily-party aspect, for the current government itself. Viewed in long terms, it will be bad

for the citizens of the Republic of Macedonia because in that case we will not have a Public Prosecutor who professionally prosecutes the perpetrators of crime, but the Public Prosecutor will turn into a partisan instrument for collecting political points of the opposing party, regardless which party will be opposing in the current and for some time longer future constellation of the political forces and relations in the Macedonian Parliament. Simply, when you give to the opposition in Macedonia (not in Germany, Sweden, Denmark, Finland or the Netherlands), the right to propose its candidate for the Public Prosecutor of the Republic of Macedonia, the opposition in Macedonia (anyway, for a relatively long time in the future), will try to propose an instrumentalized candidate for the Public Prosecutor of the Republic of Macedonia in order to come much faster and easier in power, due to the immense important functions that this criminal-justice functionary has in the Public Prosecutor's Office, which functions according to the principles of hierarchy and subordination. As much as the parliamentary majority insists on a mutually acceptable proposal for a candidate, in such circumstances it is quite clear that the election of a Public Prosecutor of the Republic of Macedonia will be impossible, or again the international factor will have to intermediate. I ask publicly: Is this a long-term systemic stable solution to overcome this key problem? Which of the above mentioned solutions is currently the most optimal solution for the rule of law in the particular socio-historical period in the Republic of Macedonia?

3. COUNCIL OF PUBLIC PROSECUTORS - DISCUSSION AND DRAFT SOLUTIONS

The second empty strategic direction refers to the Council of the Public Prosecutors. As for all other key state institutions, the same refers to the Council of the Public Prosecutors. The Government Strategy provides conclusions with which I mostly agree, but the most important strategic direction is lacking, which is the structure and composition of this council, on which ultimately depends the external independence of this important body of party and various other extra-legal influences and pressures (Venice Commission Report, 2010 - 1, 2, 3). Of course, in this direction more concrete, alternative draft solutions are possible.

In that sense, in the strategic direction it would be sufficient to emphasize that it is necessary to modify the structure of this body. Namely, out of 11 (eleven) members, 6 (six) members elected by the public prosecutors from their ranks, in the manner envisaged in Article 6 of the Law on the Council of Public Prosecutors, remain unchanged. I propose that the amendments to the applicable Article 6 of the Law should refer to the fact that the Minister of Justice and the Public Prosecutor of the Republic of Macedonia should no longer be members in the office in the Council. Instead of them, together with the other three who, according to the applicable Article 6 of the law, are elected by the Assembly of the Republic of Macedonia, I propose the corresponding paragraphs of Article 6 of the Law on the Council of Public Prosecutors to be replaced with the following substantive paragraph (which, of course, nomotechnically will be further appropriately formulated): the Parliament elects the (remaining) five members in a new manner, of whom at least three on the proposal of the opposition. Members of the Council elected by the Parliament of the Republic of Macedonia are from among the law professors and lawyers. Of course, for well-known reasons, the provision for proportional representation of the members of the non-majority communities in the Republic of Macedonia remains in force.

4. SPECIAL PUBLIC PROSECUTOR'S OFFICE - DISCUSSION AND DRAFT DECISIONS

For at least 17 years I stand for an independent and specialized Public Prosecutor's Office in chsrge of high corruption and the institutional type of organized crime. My proposals were and remain the following: this institution should be constituted in a completely different way from the one at the moment, in order to make it a not unconstitutional and quasi-institutional ad hoc body. Before and after the introduction of the Special Public Prosecution Office, the main core of the co-authors of the Government Strategy publicly stated that the Special Public Prosecutor should not be from the Public Prosecutors of the Republic of Macedonia and that it is not unconstitutional (Kalajdziev, 2015; Frckovski, 2015 - 1, 2) . Now that the government has changed, those same people require the Special Public Prosecution is transformed into a Special Public Prosecutor's office with autonomous competences within the system of the Public Prosecutors, as the Constitution requires. The strategy states that this should be done with a new Law on the Public Prosecutor's Office, where the competences of the existing Special Public Prosecution Office and the competencies of the Basic Public Prosecutor's Office for Organized Crime and Corruption Prosecution should be precisely defined and demarcated. This proposal once again demonstrates the complete lack of vision for making long-term and systemically stable solutions among the members of the Working Group and the Judicial Reform Council, which drafted the initial version of the Government Strategy. I understood the daily party need of the Special Public Prosecution Office to be put into function for the easier fall of the regime of Gruevski. But can it be a question of long-term and systemic stable solutions, if the Strategy's authors changed their views overnight depending on the current political-party conjuncture and the constellation of political forces and relations in Macedonia? Personally, I think that there is a great need for the Special Public Prosecution Office, but not in this semi-qualitative way.

In that sense, my proposal is that the Special Public Prosecution Office, in an indefinite period, should become a constitutionally established, truly independent and specialized institution that will be outside of the regular Public Prosecutor's Office, but also from the Government`s and Party`s peaks, to any ruling parties that are or will come to power. However, the Special Public Prosecution Office must not be out of control of the system. The Special Public Prosecution Office should be responsible for prosecuting high-corruption crimes and the institutional type of organized crime, and not just the crime of "white collars", given the fact that there is a big difference between these terms. The current Basic Public Prosecutor's Office for Organized Crime and Corruption should remain within the Public Prosecutor's Office. This body should be responsible for lower, conventional types of organized crime committed by organized criminal groups that do not have at all or have a weak connection with the lower echelons of state-political structures. The need for the Special Public Prosecution Office, out of the public prosecution system, is gaining weight and importance even more, having in mind the scientifically-based prognoses that the phenomena of high corruption and institutional organized crime will long be present in a smaller or larger scale and intensity in Macedonia. In addition, the Special Public Prosecution Office is the best counterweight to prevent and repress these phenomena, if they occur in the peak of the regular Public Prosecutor's Office. As to the majority in the Parliament, for amending and supplementing the Law on Public Prosecutor's Office, it is necessary to have a two-thirds majority in the Parliament, just like for changes and amendments in the Constitution. Therefore, I think it is better to go with

Constitutional amendments that will solve this problem in a long-term and systemic manner.

5. JUDICIAL COUNCIL, DISCUSSION AND DRAFT SOLUTIONS

The strategy has many exact assertions for the Judicial Council, but there is not a strategic direction for its structure and composition. Considering the fact that the Judicial Council represents a constitutional category, Constitutional amendments are needed, and with this, the Minister of Justice and the President of the Supreme Court should not be members by function in the council. The Strategy envisages that these two functionaries will remain in the Council, but without the right to vote, which is not the best possible, realistic, and practically feasible solution, because they can influence and perform a certain kind of pressure on the decision-making of the council without the right to vote. This refers to the Minister of Justice and the President of the Supreme Court, which, as I have already explained, may itself be the subject of deciding before the Judicial Council. Necessary cooperation and coordination for certain matters can be exercised in another way, when the President of the Supreme Court is not a member of the Council.

Further strengthening of the structure of the Judicial Council is necessary for strengthening of its external independence from political influences and pressures. One of the possible draft solutions could be in the following direction: ten members of the Judicial Council to be elected by the judges from their ranks; four of the elected members shall be members of the communities that are not from the majority communities in the Republic of Macedonia, while respecting the appropriate and equitable representation of the citizens belonging to all communities; five members are elected by the Parliament of the Republic of Macedonia, of which at least three on proposal of the opposition from among the law professors, lawyers, notaries, or enforcement agents, where there must be a majority of the votes of the total number of members of Parliament belonging to communities that are not from the majorities in the Republic of Macedonia. The paragraphs one and two of Amendment XXVIII of the Constitution of the Republic of Macedonia remain unchanged. The conditions and the procedure for election and dismissal, as well as the termination of the mandate of office of the members of the Judicial Council, shall be regulated by law.

I agree with the allegations in the Strategy of judiciary, in the part where it is stated that legal changes should be made to the provisions in the part of the criteria for election of the members of the Judicial Council and the Council of the Public Prosecutors in the direction that members of the Judicial Council and the Council of Public Prosecutors are to be elected from the ranks of more experienced judges or public prosecutors who at least meet the requirement for performing a judge and public prosecutor's office in the appellate courts or the higher prosecutor's offices.

6. SUPREME COUNCIL OF JUSTICE, DISCUSSION AND PROPOSED SOLUTIONS

The members of the Judicial Council and the Council of Public Prosecutors, according to the positive regulations in Macedonia, are nor responsible to anyone. As a conclusion, this is mentioned in the Strategy of the Government of the Republic of Macedonia (2017 - 2022), but again there is no strategic direction for this extremely important issue at all. My general conceptual views on the way of constitution, the position in the judicial system and the entire legal system, as well as the relations with other state

institutions to this extremely important body, which is also called the Supreme Council of Justice, were drafted 17 years ago and developed in the scientific study "The Power Corrupts" (Labovic, 2006). In the last scientific study "Systemic corruption and organized crime", I propose a similar concept, but with the changed competencies of the institution, which in the newly expanded and important role it should have. As the highest institution for control of the rule of law it can be called the Constitutional Council of Justice (Labovic, 2016). However, these are larger conceptual elaborations, which involve amendments in several laws, so that for spatial reasons I cannot elaborate here. Anyway, a major strategic gap is that it does not exist at all, as a strategic direction of such a body, regardless how it will be named, given that the members of the Judicial Council do not respond to anyone for now. On the other hand, judges should not have their right to appeal against the decisions of the Judicial Council before the council established within the Supreme Court, because this is not the best solution, given the fact that the Supreme Court judges themselves can be subject to disciplinary and professional responsibility before the Judicial Council.

There is also the opinion that the judges in the Supreme Court do not answer to the Trial Chamber, but the conspirators of that idea do not have an adequate solution which another body which will control the Supreme Judges, if not before the Trial Chamber. Or, is it considered that they should not answer to anybody at all? My proposal is that this solution remains, the judges of the Supreme Court to answer to the Trial Chamber. But the Judicial Council must be with a strengthened structure and a strengthened lineup of the most experienced and high-quality judges (Venice Commission Report, 2010). The right to appeal against the decisions of the Judicial Council and the Supreme Court judges should be considered in the newly conceived body (Constitutional Council of Justice or the Supreme Council of Justice). Also, the Strategy does not provide for a strategic direction that should overcome the existing situation according to which judges have no right to complain against the decisions of the Judicial Council for election or promotion. My draft decision is the appeals against the decisions of the Judicial Council and in this section to be the subject of deciding in the Constitutional Council of Justice or the Supreme Council of Justice.

The proposal for a new strategic direction is:

1. Determination of the responsibility of the members of the Judicial Council and the Council of Public Prosecutors to be carried out by an independent body (Constitutional Council of Justice or the Supreme Council of Justice);
2. Judges and public prosecutors may declare their right to appeal against decisions of the Judicial Council and the Council of Public Prosecutors before an independent expert body (Constitutional Council of Justice or Supreme Council of Justice). For these independent bodies an additional space for discussion should be opened about the procedure of constitution, position in the system, structure and numerical composition.

7. COUNCIL FOR DETERMINING OF FACTS, DISCUSSION AND DRAFT SOLUTIONS

The Judiciary Strategy refers to the recommendations of the Venice Commission for the complete abolition of the Law on the Fact Finding Council, and the initiation of a disciplinary procedure to be returned to the members of the Judicial Council, while

determining that the members initiating the disciplinary procedure and the "investigators" will not participate in deciding on a disciplinary cases from the position of judges. In my opinion, consideration should also be given to the proposals that come from relevant international institutes. In this regard, the recommendations of the OSCE and the Max Planck Expert Team (OSCE / Max Planck, 2010) should be taken into account, which clearly recommend the delineation of the competencies for selecting judges, promotion and training, assessment of discipline, expertise, budgeting, etc. in order to avoid the concentration of power in one body and to avoid the possible danger of corporate clientelism. Complementary to this goal is the recommendation to separate competencies in different bodies, for initiating disciplinary proceedings and for conducting such a procedure. Bodies in charge of disciplinary proceedings for judges must provide protective procedural mechanisms in the sense of the right to defense and the right to appeal to a second-instance competent authority.

Therefore, I consider it necessary to think once more about the option of whether there should be a body for initiating a disciplinary procedure. Accordingly, the Law on the Council for establishing facts and initiating a procedure for determining responsibility for a judge should have been amended in terms of the way it was constituted, the transparency of the procedure and the criteria for selection and responsibility of the members of this Council, but not to be completely abolished, because we "should not throw the baby along with the dirty water from the trough". In that sense, I would like to point out to the danger arising from the view that some issues have been resolved and should not be opened anymore. Surely you do not need to constantly and unnecessarily raise questions about things that work. But, remember that in this part we had and still have big problems.

8. RELATION OF THE REFORMS WITHIN THE CRIMINAL-JUSTICE AND POLITICAL SYSTEM

Of course, I dedicate the largest space in the concrete proposals to the criminal-justice system. Here is our "cancer wound". The diagnoses almost coincide with all who professionally and scientifically deal with this issue. However, the differences in the approach to systemic solutions on how to overcome the established negative conditions are huge among the author of this article and other leading authors in the Republic of Macedonia (Shkaric, 2015 - 1, 2, 2016 -1, Siljanovska, 2014, 2018, Kambovski, 2005, 2018, Kalajdziev, 2012, 2015 - 1, 2, Frckovski, 2015 - 1, 2, 3, 2017 - 1, 2, Klimovski S., Desoska R., Karakamisheva-Jovanovska T., 2012, Klimovski, 2005 - 1, 2).

According to the scientific conception of the author of this proposal, deep systemic reforms are inevitable in 9 (nine) key systems, and especially in the political and security system, which are most directly related to the justice system if we really want to have an essential improvement in terms of systemic rule of law in the Republic of Macedonia. Namely, it is a fact that we are constantly reforming, almost for the entire past period of 27 years, but the same mistake remains the same: there is a big lack of a complete general conceptual vision, a general system-strategic approach to the reforms as a whole. I have been explaining in my scientific study, among other things, why we need a strategic vision for deep structural reforms in key social systems, which has been designed in order to significantly improve the systemic rule of law.

The judicial system must not be treated in isolation as it has been done so far, if we want to have a significant improvement in its performance. Simply put, no matter how good reforms are in a sector, they cannot give the expected results if, at the same time,

consistently, coherently, consistently and in a complementary way they do not make such deep (and, I would say even deeper) reforms in other inextricable related sectors. I say, deeper reforms in other sectors, because, in particular, the judiciary, as a subsystem in the justice system, has been reformed from a formal-law aspect, since the focus has always been put on it. With the constitutional amendments of 2005 formally and legally, our judiciary was fully emancipated from the executive and legislative powers. In this regard, we are at the very top of the EU member states, not to mention other countries in Europe and the world. But the old disease has remained - de facto, the judiciary remains under the control of the executive, regardless of its party belonging. What is the worst, there is a "self-censorship" among judges and public prosecutors. Apart from the honest exceptions among the judges and public prosecutors, many of them, even in the situation when none of the Government-Party peaks appeals to them and does not exert pressure or influence in any way upon them, they know what is the line of interest of the current government officials and from the servants of one ruling party they are transformed into servants of the other ruling party, as Priebe pointed out in the Report of 2017. This proved to be in action during the voting in the Council of Public Prosecutors for the dismissal of Marko Zvrlevski, when the same Council members who persistently defended him, after several days of coming of the new government, changed their behavior in a diametrically opposite way. This is only one drastic example, without going into the essence and content of the justification of the mentioned decision. There are too many empirical examples. However, this example speaks enough about our mentality, so it should be clear to us what we are talking about here. All of these empirically irrefutable facts, for those who can understand them, do not leave too much space for real optimism that in the future, something more seriously could be changed in this plan, if there will not be any fundamental structural reforms in Macedonia.

A similar situation happened in the judiciary, which did not approve almost any proposal of the Special Public Prosecution, but when the government changed, the situation immediately changed drastically. By someone, this may be interpreted as due to the release of the "captured state", so that immediately the judges and public prosecutors have altered their consciousness and now quite contemplating and deciding with the power of the arguments, rather than by following the argument of force which is subtly pushed from the highest institutional positions of power. Of course, I allow the possibility of differences in perceptions, which can range from very naive to realistic. But from the approaches to perceiving problems, the approaches to the depth of the reforms depend.

The political system is most closely related to the judiciary. Therefore, the reforms here should be most profound. One of the reasons is that the political system has never been truly reformed. These reforms should not change the type of the political system, which in our country is a parliamentary democracy, but within this type of political system, restructuring reforms in some of its subsystems are needed. Simply put, a new, developed system of power-sharing is needed. By the implementation of the suggested solutions, when proper de-monopolization of the Government from certain atypical governmental powers will be achieved and they will no longer contribute to the huge concentration of uncontrolled power, which was given by the Constitution and laws to all our governments since the independence, then the Government will lose the levers of control over all the autonomous social segments. Moreover, the possibilities for the interference of the ruling party in all spheres will be significantly reduced. In such a constellation of the things, people (judges, public prosecutors, lawyers, notaries, executors, professors, journalists, and every body else) will gradually realize that the Government is no longer omnipotent, as it

is in the present moment. Then, the judiciary will be not only declarative, but truly autonomous and responsible to the society. In this way, the general assemblies of the professional associations of judges, prosecutors, journalists, but also of university professors, the commercial, bar, notary, enforcement, appraisal and audit chambers, the trade unions, the associations of farmers, wine-growers, ranchers, pensioners, and everybody else will no longer be instrumentalized in the function of ensuring narrow governmental-party interests. All these categories of occupational branches or citizens, when electing representatives and / or the Heads of their associations, will be free from electing them in line with the interest of the Government as its "extended hands", as it was done in the so-far practice, without exception.

All proposed changes, which to a certain degree are so needed in the course of de-monopolization of the government functions, by no means imply breaking into the government's original competencies in the implementation of current policies in the economy, finance, social affairs, health, education, ecology, security, defense, foreign policy, etc., as well as the responsibility of the government in the enforcement of the laws. On the contrary, the effective mechanisms for determining of the Government's responsibilities will be additionally strengthened. It is certain that even then things will not be ideal, so, for example, maybe even then it will not come to election of the best candidates from the professional branches for the positions of Heads and leaders, because the reasons for that can be deep and multilayered, and difficult to overcome. However, one thing is certain: the elected representatives will be representatives of their professional branches and the guilds. They will no longer be "extended hands" of the governmental-party leaders. They will be elected for relatively shorter mandates, with the possibility of re-election. In case of avoiding to implement the laws or not representing the opinion or the basic views of the professional associations or the bodies they come from, the representatives of the professional branches may be revoked or dismissed by the expert bodies in which they are members. Apart from their dismissal, other sanctions can also be applied. For example, for a certain period of time they may be obstructed in their election to a higher position in the professional branch. In this way, they will represent the voice and the needs of the professional stream. This means that only then we will start to feel the application of the laws, codes of ethical principles, and professional standards, as well as the most important principle of responsibility will; it will no longer be only a rule written on paper.

Our best-known scientists, experts, analysts, etc., still wonder why the judiciary, although it has been formally and legally completely separated from the executive and even the legislative power in Macedonia, has been, in fact, under the control of the Government-Party leaders in all these past years, to a lower or a larger volume and intensity. The reason is the following: all other segments are still de jure and / or de facto under the control of the Government, having in mind the manner of their constitution, structure, and composition. The most direct, and sometimes the most vulgarly expressed answers, sometimes best express the truth. In this context, even the most competent theoreticians obviously cannot or do not want to understand that judges are also people who have children who need jobs, son's-in-law with firms waiting for a public tender, or daughter's-in-law striving for high state, public or diplomatic functions. Hence, self-censorship arises as a way of courting the almighty Government and also because of the fear of not being in line with the government's interest. This argument is especially strong in relation to the fact that the Government is the biggest investor (the high profitability of most economic entities depends on receiving large public tenders, precisely from the

government-controlled commissions); The government is the largest employer for almost all new employments in the state and public administration; The Government is de jure and de facto the largest institution in the election and appointment of almost all significant public officials or diplomatic and consular representatives of the Republic of Macedonia abroad.

9. CONCLUSION

The Government strategy of November 2017 represents a good basis for a major attempt that can contribute to the rationalization and cost-effectiveness of the work of courts and public prosecutors. Yet, it assumes an operation of scope which really requires precise quantitative analyses, because in the contrary it may affect the inefficiency of the judiciary. However, this operation is not such a reform action that can substantially and qualitatively change the structural relations in the judiciary, which could affect the quality of work, especially in cases of high corruption and institutional type of organized crime, where the rule of law is most endangered and where the political influences and pressures of each current government have naturally been and will remain the largest.

The multiply layered problems in the judiciary are a consequence of a deeper causal connection of many phenomena, processes, and relationships in the society, which have been developing uncontrolled over a long period of time since the independence of our country. Such profound causes cannot be solved without a deeper systemic-strategic approach in which fundamental structural reforms in the crucial social systems and their subsystems should be carried out simultaneously if we really want to see the expected effects. The system I am proposing is, in fact, a developed system of power sharing, through which two of its most important characteristics are developed: the mutual control and the balance of power between the institutions. In such a system, the polycentric responsibility and the horizontal organization of power refers only to key state institutions from the three branches of government, such as the Public Prosecutor's Office, the regular judiciary, the Government, the Parliament, the President of the country, the independent regulatory bodies, agencies, etc., as well as the Constitutional Court as a state organ sui generis. The hierarchy of course remains, because it is necessary within the Government and within all hierarchically subordinated subsystems (ministries, or state bodies within ministries) that should naturally be under its control. Also, the hierarchy remains within the Public Prosecutor's Office, the judiciary and other systems with a branched hierarchical structure of subsystems.

The Priebe`s Report (Recommendations of the Experts' Group on the Systemic Rule of Law issues related to the communication interception, 2015) as a basis for the urgent reform priorities in the Przino Agreement contains completely accurate diagnosis in the indicated areas and provides recommendations for appropriate changes and amendments to the legal regulations, bylaws, as well as appeals for respecting ethical and professional standards, which are completely acceptable and should undoubtedly be implemented inexorably. The Government and all representatives of the intellectual elite in Macedonia, as the highest achievement and general framework that must not be broken into the reform strategies outlines the recommendations of Priebe and other relevant international organizations. Yet, the 2015 Report and the Priebe Report of 2017 are at least 20 times insufficient not only in scope but also in the quality and depth of engagement in the structures of the systems and their subsystems. This is also due to the fact that, firstly, Priebe, in the scope of his reports focuses on 5 areas which are subsystems of other larger

systems. It is true that in the Priebe Report of 2017 the scope of consideration of several other parliamentary commissions and institutions has been expanded. However, in the scientific concept of the author of the proposition, reforms are envisaged in 9 systems, which embrace about 40 subsystems within those systems. In order to substantiate this claim, everyone should answer to their own conscience whether Priebe, apart from the State Commission for Prevention of Corruption, has mentioned the institutions listed below, or whether he goes deeper into reform recommendations about the procedure of their constitution (the manner of proposing or applying, election of the members of the key state institutions and to whom they are responsible), the position in the system, the structure and the composition of the key state independent institutions, the inter-institutional relations among the bearers of the various branches of government. These are the most important questions on which it depends whether or not laws will be respected in Macedonia, and not in Germany, the Netherlands or France, whether there will be systemic rule of the law (about which the Priebe`s expert group is talking), even in conditions of most transparent procedure and most objectified criteria for which we all stand. Also, in certain institutions, the question which arises is: Is the need to expand their functions (competences and authorizations) recognized, taking into consideration the need for their extended or enhanced role. In that sense, the key state institutions that were not covered at Priebe at all, are the following: 1) the Constitutional Court, as an elementary institution of the rule of law, from which composition the majority of constitutional judges are elected by the parliamentary majority, which for all 27 years from the independence was a "voting machine" for the Government-Party peaks and will probably continue to be one; 2) the Government; 3) the Parliament of the Republic of Macedonia; 4) the President of the Republic of Macedonia from the aspect of greater efficiency and effectiveness of its constitutional-legal relations with the Parliament, the Government and the Constitutional Court; (See the essence of these reforms, which are provided in the scientific conception of the author, without changing the general framework of the existing type of political system); 5) Does Priebe elaborate at all one of the most important issues in the justice system: the need of qualitatively new conditions about election and responsibility of the Head of the Public Prosecutor's Office in the Republic of Macedonia; 6) the State Commission for Prevention of Corruption is covered in the Priebe Report of 2017. But, except for its competencies and authorizations, there is nothing about the most important weaknesses that raise the ineffective work of this institution, such as: the manner of its constitution, the procedure for initiating and determining responsibility and sanctioning, and the structure and composition of the members; 7) the State Audit Office; 8) reforms in the area of illegal and non-transparent financing of political parties; 9) the Ministry of Interior and the Public Security Bureau (apart from what Priebe mentions in the area of interception of communications for the Office of Security and Counterintelligence, and other security institutions); 10) the Intelligence Agency; 11) the Civil Servants Agency; 12) envisaged mechanisms of preventing the endemic tendency towards making things inclined to a certain party, and real mechanisms for practical functioning of the "merit" system in the state administration; and 13) the public administration; 14) the public procurement system, in which among other reforms it is necessary to make them fully reformed and merged into one body; 15) the Public Procurement Bureau and 16) the Public Procurement Council; 17) the Government Commission deciding upon an appeal, in the second instance for public procurement; various “independent” regulatory bodies, especially 18) the Energy Regulatory Commission; 19) the Securities and Exchange Commission; 20) the Commission for Protection of Competitiveness; 21) the Health

Insurance Fund; 22) the Board of accreditation in higher education. Certain reforms are also necessary in the functioning of 23) the local self-government, etc.

The scope which is lacking in Pribe is supplemented to a certain degree by "the Proposal for immediate democratic reforms", proposed by NGO groups and "independent" experts from Macedonia (Proposal for immediate democratic reforms, 2016). This so-called "blueprint" proposal developed by 70 NGOs and 20 individual experts contains a number of useful and detailed proposals for measures for a wide range of areas that cover most of the above-mentioned areas and sub-areas. However, apart from the scope of the wide range of areas, this "blueprint" proposal lacks the quality and the depth of appreciation in the structure of the systems and their sub-systems, for the purpose of creating conditions for a new quality in the work of the judiciary.

Therefore, apart from the scope, the second, even more important premise is the quality and the depth of the engagement in the structures of the systems. Accordingly, nor Priebe, neither the "blueprint" proposal as a basic document on which the aforementioned Strategy is based suggest systemic reforms in the structures of the systems, for which appropriate Constitutional and legal changes are needed, When I say Constitutional changes, I mean a long-term strategic planning and conception of generally conceptual approaches for the solution of the most complex problems in the justice system, which are inevitably related, as I have already emphasized, with other public systems.

The main goal was and still remains: through these reforms to solve the enormous factual imbalance in the functioning of the tripartite division of power, where the dominance of the government is enormous not only in relation to the other two authorities, but also in relation to all other autonomous spheres in society. This is an objective fact which has been proven in practice, and confirmed in the experience over the course of all these 27 years, and this fact has been present in all previous governments in a smaller or larger scale and intensity. Of course, we must not focus here only on the mandate of this government's practices, but the problem should be seen through the prism of a system-strategic approach in terms of designing the best possible long-term system-stable solutions.

There have been attempts to show the similarity of the draft solutions for the key state institutions envisaged by the author of this paper, and the constitution of two relatively independent institutions precisely in the period of political crisis with the help of the international factor. These are: the State Election Commission, which is composed of an equal number of members of the opposition and the government, plus three members from the independent experts. In a similar manner, the Special Public Prosecutor's Office was established. Yet, there are doubts (I do not want to go into such party rhetoric), as well as many serious allegations still come at the address of these institutions that they are party instruments working only for the benefit of one party, or similar. The question which arises here is whether these institutions are a sufficient indicator that such and similar solutions for other institutions will not yield the expected results in the future.

The analogy of the related system of proposed solutions proposed by the author proposes and these seemingly "independent" institutions, at first sight seem appropriate. But, if you look at little better, you will see major substantive differences. First, in the State Election Commission, the independent experts, who were supposed to make the qualitative benchmark in the decision-making of this body, were elected by a consensus of four political parties, each with an interest to assign their candidate among those three members. If it was left only to their conscience to decide with consensus, they would never have agreed. It is a public secret that with the "facilitating" role of the international factor

these three members were elected. Hence, this solution cannot be compared with the idea of the main thesis of the scientific concept for a systemic cross-series of optimal independent institutions (Labovic, 2016), on which the concrete proposal solutions are based, for reasons that they cannot see the two catastrophic errors on the basis of which the mentioned institutions are constituted: 1) four political parties (and according to the formula (2 + 2)) decide outside the institutions of the system; 2) political parties decide by consensus! In a similar manner, the Special Public Prosecutor's Office was conceived and constituted.

As to the international experts, they are trying to help through the implementation of international standards and good solutions and practices of their highly developed countries in our legislation and practice. However, they cannot know better than us about our specific conditions and determining factors (Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues, Brussels, September 14, 2017). They cannot do deeper, qualitative, factual research and analyses, and on that basis propose appropriate system solutions. That is a task of our science. International standards are a minimum bellow which we cannot go. Of course we should accept those standards, but that does not mean that we should not even exceed them. On the contrary, not only it is desirable, but in my opinion, it is not possible to overcome non-standard conditions of systemic-endemic corruption, which systemically and systematically imperils the rule of law in the Republic of Macedonia, only with standard solutions based on international standards and excellent solutions which give excellent results, but in quite different conditions and factors of highly developed countries. One great allegoric question much better illustrates the whole problem: If we undertake excellent constitutional and legal solutions that deliver excellent results in highly developed countries such as Germany, France, the Netherlands, Denmark, or Sweden, will we become like them? The largest percentage of all interviewed people answered to this question negatively. The small percentage of answers that contradict the previous implies another logical question: why, then, we would need all those strong "scientists". Can we summon translators to translate the constitutions and laws of these countries and we become like them? In this way, again we come back to the answer of the previously asked question! Despite all this knowledge, what has been done so far by our most exemplary social scientists through their participation in commissions and working groups for amending and supplementing the laws, is a non-critical application of the comparative method and an eclectic combination of several legislative solutions from the comparative systems, without having qualitative factor analysis of the specific determining factors that differ from country to country, not to mention the differences between the underdeveloped and highly developed countries of the Western civilization. The comparative method is important, but this method must be related to a specific qualitative factor analysis and qualitative synthesis, because the specific determining factors are objective limits on which the realization or non-realization of each social idea or project in every single society of our planet depend.

10. REFERENCES

Chamblis, W. J. (1986), State organized crime, Paper presented at the annual meeting of the American Society of Criminology.

Dahrendorf, Ralf (1990) Reflections on the Revolution in Europe: In a letter intended to have been sent to a gentleman in Warsaw. New York: Random House

European Parliament, (2016), Research about corruption within public procurement in the European Union published by “DNEVNIK” on 21. 03. 2016
EUROPEAN COMMISSION STAFF WORKING DOCUMENT, Former Yugoslav Republic of Macedonia, Report for 2016
PRIBE, Former Yugoslav Republic of Macedonia: assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues Brussels, 14 September 2017 2017.09.14_seg_report_on_systemic_rol_issues_for_publication
PRIBE, The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to intercepted communication, revealed in spring 2015, Brussels, 8 June 2015
VENICE COMMISSION REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIAL SYSTEM: PART I: THE INDEPENDENCE OF JUDGES, Adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010) on the basis of comments by Mr Guido NEPPI MODONA (Substitute Member, Italy) Ms Angelika NUSSBERGER (Substitute Member, Germany) Mr Hjortur TORFASON (Member, Iceland) Mr Valery ZORKIN (Member, Russia) CDL-AD(2010)004
VENICE COMMISSION, REPORT ON THE EUROPEAN STANDARDS WITH REGARDS TO THE INDEPENDENCE OF THE JUDICIAL SYSTEM: PART II – THE PROSECUTION SERVICE, Adopted by the Venice Commission at its 85th plenary session (Venice, 17 - 18 December 2010) on the basis of comments by Mr James HAMILTON (Substitute Member, Ireland) Mr Jørgen Steen SØRENSEN (Member, Denmark)Ms Hanna SUCHOCKA (Member, Poland) CDL-AD(2010)040 – 2, p. 12 - 13
VENICE COMMISSION, REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIAL SYSTEM: PART II – THE PROSECUTION SERVICE, Adopted by the Venice Commission at its 85th plenary session (Venice 17 - 18 December 2010) on the basis of comments by Mr James HAMILTON (Substitute Member, Ireland) Mr Jørgen Steen SØRENSEN (Member, Denmark) Ms Hanna SUCHOCKA (Member, Poland) CDL-AD(2010)040 – 2, p. 3 - 4
VENICE COMMISSION, REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIAL SYSTEM: PART II – THE PROSECUTION SERVICE, Adopted by the Venice Commission at its 85th plenary session (Venice, 17 - 18 December 2010) on the basis of comments by Mr James HAMILTON (Substitute Member, Ireland) Mr Jørgen Steen SØRENSEN (Member, Denmark) Ms Hanna SUCHOCKA (Member, Poland) CDL-AD(2010)040 – 2, p. 6 - 12
OSCE - Office for Democratic Institutions and Human Rights /Max Planck Minerva Research Group on Judicial Independence, KYIV RECOMMENDATIONS ON JUDICIAL INDEPENDENCE IN EASTERN EUROPE, SOUTH CAUCASUS AND CENTRAL ASIA - Judicial Administration, Selection and Accountability - Kyiv, 23-25 June 2010, p. 3 - 5
Калајџиев, Г., (17 март 2012), “Доцна стигнал Марко на Косово поле“ , Скопје, “Публика-Дневник“
Калајџиев Г., (03.11. 2015), стенограми од научно-стручната дебата за независноста на правосудството, МАНУ. (Спореди го ова излагање со ставовите на Миодраг Лабовиќ, на истата расправа . Исто така,овие ставови спореди ги со ставовите на М. Лабовиќ во “Без нов концепт ЗКП е неприменлив“, во “Публика“-“Дневник“ од 10 март 2012 и одговорот на Гордан Калајџиев: во “Публика-Дневник“ од 17 март 2012,

како и одговор од Миодраг Лабовиќ на одговорот на Гордан Калајџиев во “Дневник“ од 24 март 2012)-(1)
Калајџиев Г., ТВ Телма, Топ тема, 02. 09. 2015 година - (2)
Камбовски В., (03.11. 2015), стенограми од научно-стручната дебата за независноста на правосудството, МАНУ.
Камбовски В., (2005), Организиран кроиминал, Штип, “2-ри Август С“ – Штип
Камбовски В., (1996), Правна држава и организиран криминал, Скопје, Правен факултет
Климовски С., Дескоска Р., Каракамишева-Јовановска Т., (2012), Уставно право и политички систем, Скопје, Просветно дело
Климовски С., Шкариќ С., Митков В., Мукоска-Чинго В., Тренкоска Дескоска Р., Каракамишева Т., Цветковски Ц. и Арсов Ј., (2011), Улогата на уставниот суд на Република Македонија во заштита на слободата и правата на човекот и граѓанинот повредени со поединечен акт или дејство, Правен дијалог број 3, Скопје, Институт за човекови права
Климовски, С., (2005), “Утрински весник“, “Уставот не е Библија, туку генератор на кризи“ март,
Климовски, С., (2005), “Дневник“, “Доста беа судиите чиновници и слуги“ март,
Лабовиќ, М. (2016), “Системската корупција и организираниот криминал“, Факултет за безбедност, Скопје, Скопје,
Лабовиќ, М., (10 март 2012), “Без нов концепт ЗКП е неприменлив“, “Публика“-“Дневник“ , Скопје
Лабовиќ, М. (24 март 2012) “Кога обвинителот ќе стане судија ни Господ Бог не може да помогне“ одговор на одговорот на Гордан Калајџиев во “Дневник“ (Види поопширно за ова полемика и спореди ги ставовите на Миодраг Лабовиќ, “Без нов концепт ЗКП е неприменлив“, во “Публика“-“Дневник“ од 10 март 2012 и Гордан Калајџиев: во “Доцна стигнал Марко на Косово поле“ , Скопје, “Публика-Дневник“ од 17 март 2012, како и одговор од Миодраг Лабовиќ на одговорот на Гордан Калајџиев во “Дневник“ од 24 март 2012)
Лабовиќ, М. (29 септември, 2005), “Прилог кон расправата за Нацрт-Амандманите на Уставот на РМ во областа на правосудството“.(2005), Јавна расправа за Нацрт-Амандманите на Уставот на РМ, организирана од Здружение за Уставно право на РМ и Министерство за правда на РМ, хотел “Холидеј Ин“, Скопје,
Силјановска, (15. 03. 2018), ТВ Телма, “Ноќно студио“
Силјановска, (24. 10. 2014), ТВ 24 Вести-Анализа,
Фрчковски, Љ., http://24vesti.com.mk/24-analiza-04-03-2015-(1)
Фрчковски, Љ., http://daily.mk/makedonija/frchkoski-osmani-nikovski-stojkovski-otvoreno-24-vesti-(2)
Фрчковски, Љ., www.facebook.com/toptema.telma-30-09-2015-(3)
Фрчковски, Љ., (18. 09. 2017) ТВ 24 Вести-Анализа, -(4)
Фрчковски, Љ., (17. 10. 2017) ТВ Телма, “ Топ Тема“, -(5)
Предлог за итни демократски реформи, (2016, јули), Скопје, група на НВО и експерти
Програма на СДСМ “ План за живот во Македонија“, 2017-2020, Скопје
Стратегија за реформи на правосудниот сектор (2017-2022), (29. 11. 2017), Влада на Република Македонија, Скопје
Шкариќ, С., (2015), Уставно право, Осмо издание, Скопје, Култура
Шкариќ ,С. ТВ 24 Анализа, 31.08. 2015

Шкариќ, С. ТВ Телма, “Топ Тема“, 29.03. 2016
Шкариќ, С./Силјановска, Д. Г., (2009), Уставно право, Скопје, Правен факултет “Јустинијан Први“

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INFLUENCE OF THE RISK FACTORS ON SOCIOPATHOLOGICAL PHENOMENA AMONGST YOUTH IN THE REPUBLIC OF MACEDONIA

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Abstract

Sociopathological phenomena among youth in the Republic of Macedonia haveundoubtedly increased in the last almost three decades. What is more concerning, a clear trend of further increase can also be observed. There is an evident lack of scientific research in this field, apart from the research of the influence of the risk factors on sociopathological phenomena amongst youth. Having that in mind, this paper aims at determining the relation between the risk factors and sociopathological phenomenaamongst youth in the Republic of Macedonia. To this end, the author has done a survey of students' value attitudes and perceptions trying to shed light on the relatedness between risk factors and different kinds of sociopathological phenomena. The survey was conducted in the last five years with students at the Faculty of Security of Skopje.

Theoretically, the research rests primarily on risks vs. protective factors theory, with some broader references to theory of anomie, broader theories of socio-structural disorganization, and interaction. Methodologically, the research uses a semi-structured questionnaire for data gathering, while results have been analyzed and interpreted in correlation with similar recent studies, both domestic and foreign. The main premise of the author is that there are no significant differences in students' attitudes and perceptions concerning the influence of the risk factors on sociopathological phenomena compared to recent scientific studies. Also, the research tries to determine what the risk factors which influence each of the sociopathological phenomena the most are, and to specify the risk factors that have highest relatedness (influence) on each sociopathological phenomenon.

Consequently, the research, though limited in its scope, should give an insight in this under researched field. In this context, the author offers recommendations and conclusions that could be of use both to scientific researches and state and civilian policy makers as well to practitioners in the field of societal reaction, control and prevention.

Keywords: *risk factors, sociopathological phenomena, youth, aetiology, phenomenology*

1. INTRODUCTION

The sociopathological phenomena are quite present in the contemporary Macedonian society. What is really disturbing and concerning is their constant growth in the last almost three decades. According to some scientific researches and studies that have been done so far, the number of sociopaths or people that practice some kind of sociopathological behaviour is quite high and it does not show any signs of being slowed

down or diminished. On the contrary, it has been increasing and intensifying by each past year and what is mostly worrying, it affects mainly the young population. The adolescence, the period that is found to be especially critical and vulnerable for youth population offers many opportunities, but at the same time creates numerous risks which the youngsters have to deal with as well (Raleva, 2006: 9). The youth is considered to be, as it is widely known and accepted among scientists, especially vulnerable population due to its preconditions and propensity to sociopathological behaviour, accompanied with unfavourable social conditions which could act as risk factors. As a matter of fact, the very youth population is being so overwhelmed with risks in today's society that the term "*youth at risk*" has been coined to refer to all youth population, not only smaller or so called risk target groups (Vrucinic, 2016: 172). We all live in the so called age of risks and uncertainty that are produced predominantly by society itself, but which affect especially youth, as they have to face the fluid times mostly leaning on their own right decisions. The problem is that the human relations have been significantly weakened, but, for the same reason, they have become terribly insecure, which further makes the overcoming of risks hard enterprise (Bauman, 2016, 30).

Speaking from scientific point of view, manly recent studies in deviant behaviour and sociopathological behaviour have predominantly used risk vs. protective approach to highlight the state of affairs in this field, stressing that some factors could proven to be both risk and protective factors that could impede or lead to sociopathological behaviour amongst youth. For instance, family could be observed both as protective, but also as risk factor depending on broader societal setting and quality or relations between youngsters and members of their societal groups. Also, there is an obvious interplay between those factors which could change from risk to protective factors and vice versa pretty rapidly and too often. What is really challenging is to research the risk factors vs. the sociopathological phenomena nexus in nowadays youth generations, also named by some scientists as "*millennia generations*" or "*transition generations*", since all of them were born in the transitional period of two millennia when tectonic societal changes occurred (Topuzovska - Latkovic, Borota - Popovska, Cacanovska, Jakimovski, Sasajkovski, Simoska, Zabijakin - Chatleska, 2016: 41).

By this paper an attempt is made to give an insight on the relatedness between the different risk factors and different kinds of sociopathological phenomena. It is concerned primarily with the relations between the risk factors and the different sociopathological phenomena (vagrancy, alcoholism, drug addiction, prostitution, gambling, and suicide), not with the relatedness between protective factors and different sociopathological phenomena. In actual fact, what we are trying to highlight is the question of the relatedness between each of the risk factors to each of the sociopathological phenomena mentioned. In this way, so far as we know, it could be one of the rare, if not the first attempt to give a clearer picture of the relatedness between specified risk factors and different kinds of sociopathological phenomena amongst youth in the Republic of Macedonia, especially from sociopathological point of view.

Although the paper rests primarily on the data gathered by the research that the author performed with students from the Faculty of Security throughout the last five years, and can be limited in its potential to give some wider generalizations, we believe that it could give some valuable new findings, insights, and contributions in terms of this kinds of sociopathological researches. Moreover, the research shows the level of relatedness of each risk factor with the different sociopathological phenomena, and the most priority risk factors that should be count on when making social reaction, prevention, and control

policies by scientists, state institutions and professionals as well as broader civilian organizations that are active in this sphere.

2. THEORETICAL UNDERPINNINGS

Amongst numerous theories that could be successfully used in order to understand and explain the relation between risk factors of deviant behavior amongst youth and sociopathological phenomena, are the so called strategic models of prevention. Within it, the risk vs. protective factors strategic model is considered to be one of the most suitable. In addition to this strategic model of determination and prevention of deviant behavior specifically applied to the deviant behavior amongst youth, we could mention a few more models, such as: the concept of positive development, the model of developmental advantages, the concept of resilience and risk and the concept of promotion of mental health. There is a widely accclaimed stance among sociologists, social pathologists and criminologists that the model of risk vs. protective factors is among the most extensively used, very often with a combination of some of the above mentioned strategies, models and concepts of social reaction and prevention. The most widely used combination is the one of the model of risk vs. protective factors and the concept of positive behavior, where the first one aims at reducing the risk behavior, while the latter aims at preventing the first occurrence of risk behavior (Bašić, Ferić, Kranţelić, 2001: 1, 2). Since the model (concept) of risk vs. protective factors is the most relevant to our study, we will use it to determine the risk factors of deviant behavior amongst youth in the Republic of Macedonia and to give some hints on the protective factors of deviant behavior, as well as some recommendations on what to do with regard to the prevention of deviant behavior amongst youth.

The model of risk vs. protective factors is one of the latest theoretical developments in the prevention of risky behavior and it provides us with scientifically based explanation of the probability of occurrence and development of risky behavior (Popović-Ćitić, Tunić-Pavlović, 2005: 29).

This concept is based on the assumption that the increase or decrease in probability of deviant behavior is conditioned by the existence and mutual interaction of various risk and protective factors, which could vary considerably even in the same socio-cultural setting in different periods of time. Therefore, this model is a multifactorial model that needs constant research of the dynamic change and interplay between risk and protective factors of deviant behavior. Risk factors refer to the factors of societal development for which science has determined that they are related to some risky behavior in a way that they increase the probability of such behavior, irrespectively of their biological, psychological or social nature and their consideration as causes, conditions or incentives. It has also been scientifically determined, quite convincingly, that the risk factors of behavior, particularly deviant behavior, have often been found between the youth. However, it is crucial to understand that the presence of risk factors amongst youth does not mean by itself that they will produce a deviant kind of behaviour, but it implies that the presence of risk factors only points to the higher probability of occurrence of deviant behavior amongst youth. The newest theoretical and empirical findings in social pathology and prevention have concluded that young people possess a kind of mix of risk and protective factors which determine the probability of occurrence and development of risky and deviant behavior (Bašić, Ferić, Krantelić, 2001: 5, 9).

Risk factors are often determined as something that lacks during the process of youth socialization, and, therefore, over time they become risk factors of deviant behavior. At the same time, the protective factors represent the presence of socialization factors which act as a barrier against risk factors, preventing deviant behavior. Therefore, the risk factors and protective factors are often viewed as opposite, negative vs positive factors, and, as such, they have also been construed (UNICEF, 2010: 21).

Researching of relatedness and influence of risk factors of deviant behavior to sociopathological phenomena amongst youth needs broader theoretical frame that the one provided only with risk vs. protective factors theory. It necessarily refers to structural and functional theories of deviation and to some extent to interactionist theories of deviance. Thus, for instance, some of the risk factors that refer to global societal disorganizations are selected and included predominantly on the basis of the socio-structural theory of anomie and deviation of Emile Durkheim and Robert Merton's strain theory, such as distorted system of societal values or structural socio-economic changes (Durkheim, 1982; Merton, 1938: 672-682; Tasheva, 1999: 274). But, risk factors such as societal setting labelling, inappropriate close societal setting (peers, friends, colleagues) or distorted family relations stem from the interactionist theory of deviant behavior, found in the works of Howard Becker (the labeling theory), Travis Hirschi (control theory) and George Herbert Mead (the significant other concept) (Becker, 1963; Mead, 1925: 251-277; Shoemaker, 2010: 239; Clinard & Meier 2011: 26-44).

For the purpose of our study, we have singled out a list of 11 risk factors of deviant behavior amongst youth, made according to some previous, mostly theoretical insights of the author of this paper. At the same time, we do not claim exhaustiveness of the list, but believe, according to some considerable scientific effort made so far in this field in the Republic of Macedonia, that this list represents the most widely present risk factors of deviant behavior amongst youth on this territory in the last two decades. When looked structurally in terms of the scope, the list includes micro, mezzo, and macro societal factors, and when looked by the origin of factors it also includes endogenous, exogenous and victimogenous risk factors of deviant behavior. That give us firm believe that the list is balanced and can pass the test of their relevance. The list of risk factors is as it follows:

- Inherited deviant potential
- Distorted family relations
- Societal setting labelling
- Inappropriate close societal setting (peers, friends, colleagues)
- Unfavorable media influence
- Distorted system of societal values
- Structural socio-economic changes
- Frustrations caused by non-perspectiveness
- Socialization flaws within the schools
- Conscious self-exposure to deviant phenomena (victimization)
- Physical and psychological vulnerability of the youth population.

For the purpose of this research we correlated the previous risk factors of deviant behavior amongst youth in the Republic of Macedonia with some of the most present sociopathological phenomena. Thus, we wanted to analyze the relatedness of each risk factor with each of the following sociopathological phenomena:

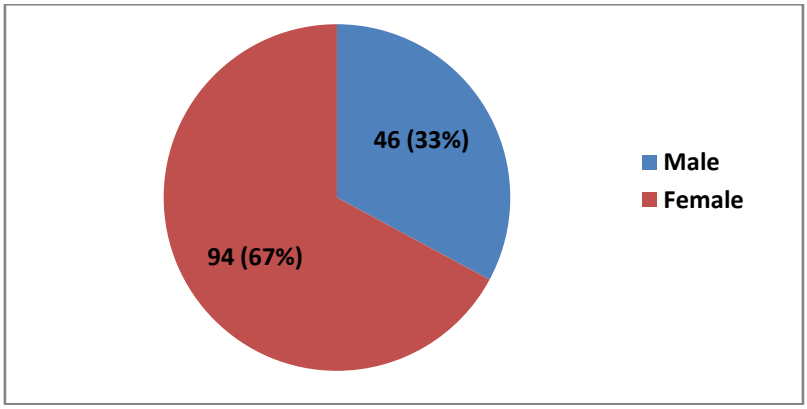
- Vagrancy
- Drug addiction

- Alcoholism
- Prostitution
- Gambling
- Suicide.

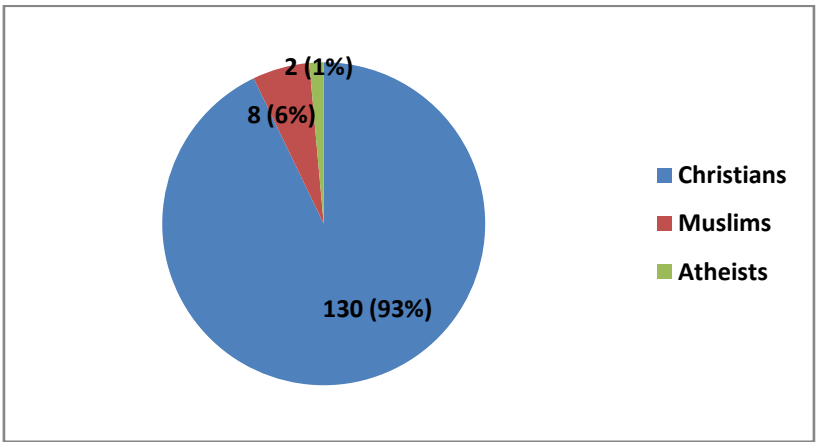
3. SURVEY ON THE INFLUENCE OF RISK FACTORS ON SOCIOPATHOLOGICAL PHENOMENA AMONGST YOUTH

In order to research the influence of risk factors on sociopathological phenomena amongst youth in the Republic of Macedonia, we have conducted a survey with students from the Faculty of Security in Skopje. This survey is part of the wider research that the author has undertaken in the previous five years at the Faculty of Security, with the general topic of researching the risk factors of deviant behavior amongst youth in the Republic of Macedonia. Due to its extensiveness, parts of this research have already been elaborated by the author in other papers (Gerasimoski, 2015: 39-54; Gerasimoski, 2013: 157-170). Although we are aware of possible limitations of this survey considering the representativeness of the sample to general youth population, nevertheless, we consider this as valuable knowledge that could give us a general picture of the state of affairs in this field. The sample included 140 students from the Faculty of Security who have attained lectures in Social Pathology and was conducted in the period of five years. It means that students from five different generations of studies were included. Also, all interviewed students were attaining lectures regularly, or in other words, they were full-time students. All of this gives the necessary reliability and representativeness of the sample and also the necessary methodological underpinning of the results. The survey was anonymous and was done according to all ethical standards of scientific research. The survey questionnaire consisted of 11 questions, 4 of which were closed, 5 semi-closed and 2 open. General data of the questionnaire were gathered according to 7 items (gender, age, place of living, education, religious affiliation, ethnic affiliation and work status). We have correlated the independent variables (risk factors) with the answers of students on relatedness with different sociopathological phenomena (dependent variable) asking them: Link the risk factors of deviant behavior amongst youth with the sociopathological phenomena with which you think they are connected with? The main premise was that there are were no significant differences in students' attitudes and perceptions concerning the influence of risk factors on sociopathological phenomena compared to recent scientific studies.

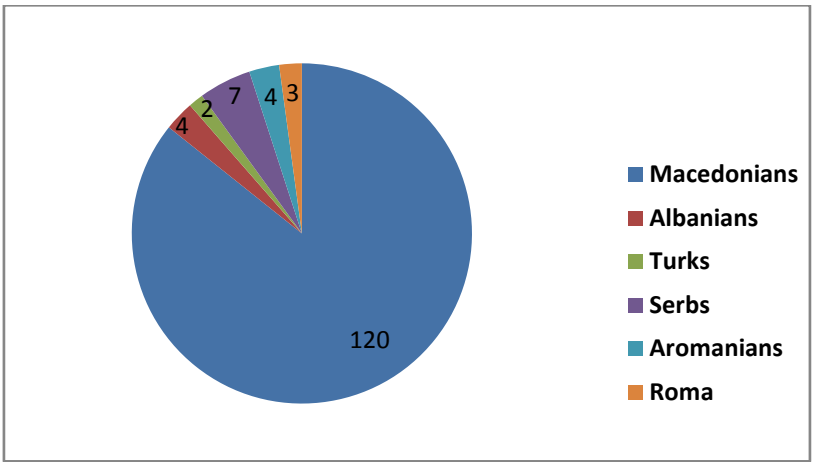
Considering the structure of the sample by different variables, most of them were female students - 94 or 67%, while 46 or 33% were male students. Viewed by age, all were between 19 and 21 and that is the final formation period of late adolescence where it could be considered that the respondents were formed as persons and their answers can be deemed quite relevant. As far as the living place is concerned, there were students from all over the country, so we can talk about some pretty dispersed distribution according to this variable. In terms of their religious affiliation, most of the students were Christians or 130 (93%), 8 Muslims (6%) and 2 Atheists (1%). According to the ethnic affiliation, most of them were Macedonians or 120 (86%), 4 were Albanians (3%), 2 were Turks (1%), 7 were Serbs (5%), 4 were Aromanians (3%) and 3 were Roma (2%). The structure of the interviewed students according to male, religious, and ethnic affiliation is given in the graphs below.



Graph No. 1. Structure of the interviewed students according to gender



Graph No. 2. Structure of the interviewed students according to religious affiliation



Graph No. 3. Structure of the interviewed students according to ethnic affiliation

The relations of each independent variable (risk factor) with dependent variables (sociopathological phenomena) are shown within the table no.1 below. The table shows the

frequency of the obtained answers and gives us the relatedness of each risk factor being connected with each sociopathological phenomenon.

Risk Factors	Sociopathological phenomena					
	Vagrancy	**Drug addiction**	**Alcoholism**	**Prostitution**	**Gambling**	**Suicide**
Inherited deviant potential	**42**	18	**45**	6	18	17
Distorted family relations	24	**52**	**73**	26	14	33
Societal setting labelling	**35**	16	**24**	**24**	12	21
Inappropriate close societal setting (peers, friends, colleagues)	30	**43**	**36**	21	18	15
Unfavorable media influence	**36**	20	11	11	18	**24**
Distorted system of societal values	**32**	14	19	**38**	**31**	11
Structural socio-economic changes	**27**	13	18	**32**	**39**	20
Frustrations caused by nonprosperity	19	**25**	**22**	16	20	**33**
Socialization flaws within the schools	**35**	**39**	**28**	19	16	7
Conscious self-exposure to deviant phenomena (victimization)	16	**28**	21	**32**	**28**	24
Physical and psychological vulnerability of the youth population	8	**24**	**28**	**22**	15	**66**
Other (individual and uninherited features)	1	1	1	1	1	1
(Other) Intense migration	1					

Table No.1. Relatedness between risk factors and sociopathological phenomena

The first two risk factors show clear relatedness between inherited deviant potential and distorted family relations with alcoholism as sociopathological phenomenon. We can conclude that evidently from the very high number of answers, 45 at the first and even 73 at the second factor (this one being the highest score of answers out of all answers in the survey). Also, our respondents declared that inherited deviant potential is pretty highly related with vargancy (42 answers), while many of the respondents deem distorted family relation to be closely linked with drug addiction (52 answers). Since we also know that one quarter of youth population drinks alcohol, when compared with findings from our survey, it is pretty clear that we should be especially careful when making preventive policies that affect alcoholism mainly, and vagrancy and drug addiction at second place, that we will have to focus on these two factors (Topuzovska - Latkovic, Borota - Popovska, Serafimovska, Cekic, 2013: 26).

It is quite intriguing to analyze the results obtained from the answers concerning the relatedness between unfavorable media influence and different sociopathological phenomena. The results have shown highest level of relatedness between unfavorable media influence and vagrancy with 36 answers, while the second sociopathological phenomenon that was related with this risk factor, and that is suicide, has shown considerably weaker relatedness with 24 answers. If we know that young people in Macedonia, according to another relevant study spend 7 hours in front of some media (3 in front of television and 4 in front of computer or mobile phone using Internet), then we should indirectly conclude that unfavorable media influence could not be really associated with drug addiction, alcoholism and prostitution as one might expect (Topuzovska - Latkovic, Borota - Popovska, Serafimovska, Cekic, 2013: 15).

The inappropriate close societal setting is most narrowly related to drug addiction (43 answers) and alcoholism (36 answers). This has been a typical case of interplay between risk and protective factors, where the factors that supposed to be protective can turn to be risk factors. Obviously, this protective factor turned to be one more risk factor, so we have to bear this in mind when constructing preventive and control measures on drug addiction and alcoholism to avoid resting too much on the role of close societal setting since it is problematic and could have more negative than positive influence. Perhaps, some of the reasons why is this happening could be found within the control theorists explanations, especially the control theory of deviance by Travis Hirschi (lack of control mechanism and breaking of the bonds between close societal setting and persons can lead to deviant behavior and transformation of protective to risk factors) (Spaseski, Aslimoski, Bachanovic, 2009: 75). We should also refer to theories of negative cultural transfer, where the negative (inappropriate) values and norms of the close societal settings exert influence on personal behavior and work as risk factors for deviant sociopathological behavior. Comfirmation of the thesis that this risk factor is crucial for alcoholism and drug addiction is one recent study, where researchers stated that young people in Macedonia start using alcohol and very small number of them light cigarette (marihuana) mostly by the age of 16 and 17 respectively. These are the years that perfectly fit with the dominant role of peer groups and close societal settings as possible risk factors, but as long as they act as inappropriate models of behavior (Jakimovski, Serafimovska, Markovic, Topuzovska - Latkovic, Cekic, Zabijakin - Chatleska, Babunski, 2014: 56).

Global disorganizations like the distorted system of societal values and structural socio-economic changes are two risks that can trigger sociopathological phenomena. According to the results of our survey, the students believe that they are mostly related with prostitution and gambling respectively. Distorted system of societal values is mostly

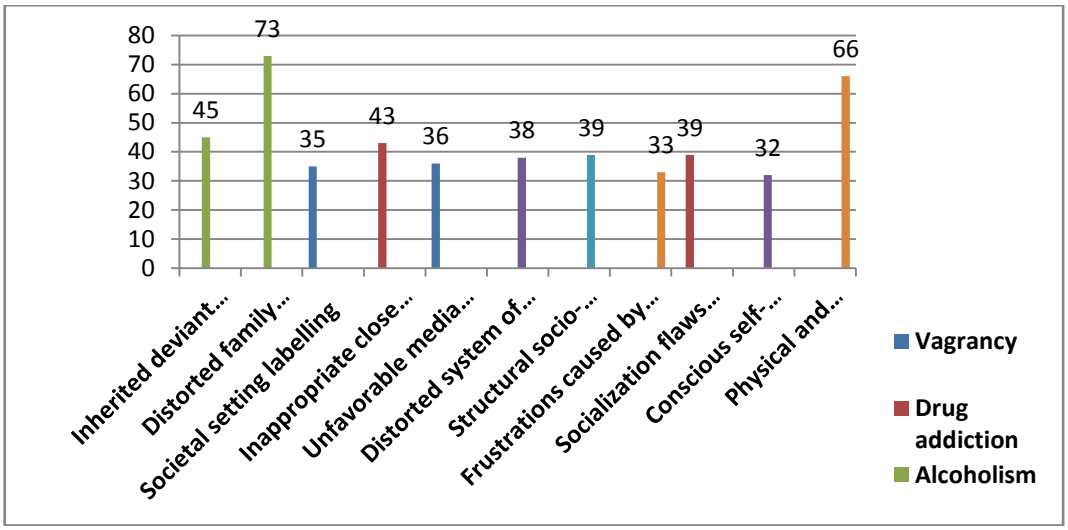
related with prostitution (38 answers), then with vagrancy (32 answers) and then with gambling (31 answers). Structural socio-economic changes is mostly correlated with gambling (39 answers), then with prostitution (32 answers) and thirdly with vagrancy (27 answers). We can undoubtedly see that these risk factors are mostly influencing the same sociopathological phenomena (vagrancy, prostitution and gambling), but their order is different depending on the risk factor. This also suggests that the students are quite aware and assured that these risk factors play crucial role in formation and sustaining of the above mentioned sociopathological phenomena, which could be also supported with conclusions of a lot of scientific studies on this theme, both home and abroad, especially in developing countries like Republic of Macedonia (Vujović, 2010: 54-69; Sugar, Kleinman and Heggenhougen, 1991: 211-219; Loeber, 1990: 1-4).

As far as suicide is concerned, the students have overwhelmingly connected this sociopathological phenomenon with these two risk factors: frustrations caused by nonprosperity by 33 answers and physical and psychological vulnerability of the youth population of very high 66 answers. The relatedness by first risk factor can be ascribed to famous frustration-aggression theory, in this case manifested as frustration-self-aggression, which, as theory, is still good in explaining the nexus between frustrations and suicide. However, we cannot discern whether these answers were provided by personal knowledge and perceptions of the respondents, or they simply applied this theory and connected the risk and sociopathological phenomenon as part of what they've learned during the lectures. Considering the second relation between physical and psychological vulnerability of the youth population, it is so some extent expected result, but what makes this result so striking is that it stands out by almost double more answers than the sociopathological phenomena with answers next to it.

Drug addiction is the sociopathological phenomenon with which, our respondents think, is mostly influenced by socialization flaws within the schools with 39 answers, while the relation is slightly less present in vagrancy by 35 answers and alcoholism by 28 answers. Although we can argue that all sociopathological phenomena could be more or less associated with this risk factor since it is one of the most important agencies of socialization, nevertheless, the students have very rightly pointed to drug addiction as one grave sociopathological phenomenon that nowadays can arise from this risk factor. To our positive surprise, the answers of correlation of this risk factor with drug addiction match with relatedness of drug addiction with other quite adequate risk factor as inappropriate close societal setting (peers, friends, colleagues). This is what most of contemporary scientific studies have also shown, that, namely, drug addiction is mostly influenced by flaws in socialization and inappropriate close societal setting (peers, friends, colleagues). Schools and peer groups are actually societal settings where, unfortunately, drug addiction can start, learn, evolve and strengthen amongst youth.

One strikingly victimogenous risk factor that was included in this survey, conscious self-exposure to deviant phenomena (victimization), has proven to be, according to respondent's answers, mostly associated with prostitution (32 answers). Also drug addiction and gambling have shown slightly less correlation (28 answers each). Again, we can be predominantly satisfied with seriousness and scientific relevancy of student's answers to this question and relatedness between risk factors and sociopathological phenomena. Prostitution is indeed sociopathological phenomenon where young people can be significantly influenced and threatened to practice it because of youngsters' victimogenous behavior, not only predispositions. In fact, conscious self-exposure can plant an idea and later on can even provoke behavior to other persons which could result

with entering of this person within the sphere of prostitution. So, frankly speaking, the students have very rightful and insightful stance concerning this risk factor-sociological phenomenon nexus.



Graph No. 4. Relatedness of risk factors and sociopathological phenomena among youth (highest answers)

The graph No. 4 displays the most frequent relatedness of each risk factor with each sociopathological phenomenon. It means that these were the highest obtained answers of each risk factor with different sociopathological phenomenon and it can be considered as the highest level of relatedness. In the process, we will try to comment the obtained results and to give interpretation on them.

By analyzing the answers from the survey, we can divide the highest answers (highest number of answers given on each risk factor and its sociopathological phenomenon) in several groups. Namely, we can see that five groups of highest number of answers in terms of sociopathological phenomena are related with two of the risk factors each, and one sociopathological phenomenon with one risk factor. In other words, we can observe relatively even distribution of relatedness between the risk factors and sociopathological phenomena among youth. Thus, our respondents think that inherited deviant potential and distorted family relations are mostly related (mostly influence) the alcoholism, society setting labeling and unfavorable media influence found to be mostly related with vagrancy, inappropriate close societal setting and socialization flaws within the schools to be mostly linked with drug addiction, distorted societal values and conscious self-exposure to deviant behavior with prostitution, while frustrations caused by non prosperity and physical and psychological vulnerability of the youth population believe to be most tightly related with suicide. Also, the students who were interviewed believe that structural socio-economic changes are mostly related as risk factor of deviant behavior with gambling.

4. CONCLUSION

The study that was done proved to be useful in providing insight into one of the least researched issues in the sociopathological science in the Republic of Macedonia and that is the research of relatedness of risk factors of deviant behaviour amongst youth with different sociopathological phenomena. In this sense, the results that were obtained by surveying the attitudes of students from Faculty of Security Skopje although limited in some methodological aspects, nevertheless can give valuable knowledge on the opinions and perceptions of youth to the problems that some of their peers confront with. It is interesting to note that some of the answers are quite expected and they correspond with what sociopathological science has determined so far, but, very few of the answers also significantly differ from expected answers. Though the differences are stark in those few answers, they have to be taken with due respect and precaution, especially when having in mind the new societal setting and age in which young people are living. So, their answers, irrespective of their incompatibility with the research done so far, have to be thoroughly reconsidered and checked through further research.

Speaking of the usefulness of the survey for some possible proposals and recommendations concerning societal reaction, control, and prevention of the risk factors to some sociopathological phenomena, we can single out the following:

- Most of the answers are identical or similar to findings in some recent scientific research on this topic, especially visible in relatedness of inherited deviant potential and distorted family relations with alcoholism, relatedness of inappropriate close societal setting with drug addiction, distorted system of societal values and structural socio-economic changes with prostitution and gambling, as well as relatedness of frustrations caused by nonprosperity and physical and psychological vulnerability of the youth population with suicide;
- Relatedness between unfavorable media influence and vagrancy is one correlation that stands out from the rest, in terms of its level of mismatch with similar relevant studies done recently;
- The results of the study has shown the usefulness of risk vs. protective theory, theory of social disorganization and some interactions theories (labeling theory, control theory, theory of negative cultural transfer) to be suitable and satisfactory in explaining and understanding the relations between risk factors and sociopathological phenomena; We can observe relatively even distribution of relatedness between the risk factors and sociopathological phenomena among youth according to the highest obtained answers;
- The results of the study should be taken seriously, irrespective of some methodological limitations, especially when constructing or choosing from the most appropriate measures of prevention and control (focusing on primary prevention, positive prevention, informal control and timely societal reaction could possibly diminish the negative impact of risk factors and increase the positive impact of protective factors of behavior amongst youth).

5. REFERENCES

1. Bauman, Zigmund (2016), *Fluid times: life in times of insecurity*, Skopje: Slovo
2. Bašić, J., Ferić, M., Kranţelić, V. (2002), *From primary prevention to early intervention*, Zagreb: Education and Rehabilitation Faculty at the University of Zagreb
3. Becker, Howard (1963), *Outsiders: Studies in the Sociology of Deviance*, New York: The Free Press
4. Vrucinic, Zhana (2016), Etiology factors and prevention of the risky behaviour of children and youth, *Security, Police, Citizens*, Year 12, No. 1, p: 171 - 186
5. Vujović, Tatjana (2010), "Competitiveness of the social system and sociopathological phenomena", *Sociološka luča*, IV/2, pp. 54 - 69
6. Gerasimoski, Saše (2015), "Risk Factors of Deviant Behavior Among Youth in the Republic of Macedonia: A Survey of Student's Value Attitudes", *Proceedings of the International Scientific Conference, Researching Security: Approaches, Concepts and Policies*, Skopje: Faculty of Security, Vol. 5, pp. 39 - 54
7. Gerasimoski, Saše (2013), "Risk factors of violent behaviour among the youth in Republic of Macedonia with emphasis on peer group violence", *Zbornik radova Međunarodne naučno-stručne Konferencije Vršnjačko nasilje (etiologija, fenomenologija, načini prevazilaženja, komparativna iskustva),* Banja Luka: Visoka škola unutrašjnih poslova, pp. 157 - 170
8. Durkheim, Emile (1982), *The Rules of Sociological Method*, New York: The Free Press
9. Jakimovski Jorde, Serafimovska Eleonora, Markovic Marijana, Topuzovska - Latkovic Marija, Cekic Aneta, Zabijakin - Chatleska Vesna, Babunski Klime (2014), *Youth trends in the Republic of Macedonia*, Skopje: ISPPI
10. Clinard, Marshall B. & Meier, Robert F. (2011), *Sociology of Deviant Behavior*, Belmont CA: Wadsworth Cengage Learning
11. Loeber, Rolf (1990), "Development and Risk Factors of Juvenile Antisocial Behavior and Delinquency", *Clinical Psychology Review*, Vol.10, pp: 1 - 41
12. Mead, George Herbert (1925), "The Genesis of the Self and Social Control", *International Journal of Ethics*, Vol. 35, Issue 3, pp: 251 - 277
13. Merton, Robert K. (1938), "Social Structure and Anomie", *American Sociological Review*, Vol. 3., Issue 5, pp: 672 - 682
14. Popović-Ćitić, B. & Ţunić-Pavlović, V. (2005), *Prevention of child and youth delinquency*, Belgrade: Ministry of Education and Sport of the Republic of Serbia
15. Raleva, Marija (2006), *Adolescence, crisis, family*, Skopje: Magor
16. Spaseski Jordan, Aslimoski Pere, Bachanovic Oliver (2009), *Pedagogical Sociopathology*, Bitola: Faculty of Pedagogy
17. Sugar Jonathan A., Kleinman Arthur and Heggenhougen Kristian (1991), "Development's 'Downside': Social and Psychological Pathology in Countries Undergoing Social Change", *Health Transition Review*, Vol. 1, No. 2, pp: 211 - 219
18. Tasheva, Marija (1999), *Sociological theories*, Skopje, St. Kliment and Methodius University
19. Topuzovska - Latkovic Marija, Borota - Popovska Mirjana, Cacanovska Ruzhica, Jakimovski Jorde, Sasajkovski Slavejko, Simoska Emilija, Zabijakin - Chatleska Vesna (2016), *A study on Youth in the Republic of Macedonia*, Skopje: ISPPI

20. Topuzovska - Latkovic Marija, Borota - Popovska Mirjana, Serafimovska Eleonora, Cekic Aneta (2013), *A study on Youth in the Republic of Macedonia*, Skopje: ISPPI and the Foundation of Fredric Ebert
21. UNICEF (2010), *Justice for Children: Handbook*, Skopje: UNICEF
22. Shoemaker, Donald J. (2010), *Theories of Delinquency: An Examination of Explanations of Delinquent Behavior*, Oxford: Oxford University Press

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CORRUPTION AS EXTERNAL THREAT AND INTERNAL WEAKNESS OF A STATE – WILL THE INTEGRITY AND PREVENTION OF CORRUPTION AMENDING ACT BE SUFFICIENT?

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INTRODUCTION OR CORRUPTION IS...

According to the simplest explanation that can be derived from the legal definition, corruption is every breach of duty in order to obtain the benefit for one's self or for another person. The Integrity and Prevention of Corruption Act (2011) (hereinafter IPCA) defines it in Article 4 as follows: "Any violation of the conduct of responsible persons and officials in the public or private sector, as well as the conduct of persons who are the initiators of infringements or persons who may benefit from the violation due to directly or indirectly promised, offered, or given, demanded, accepted or expected benefits for themselves or for the others." For a long time the only regulation in the Republic of Slovenia on corruption was the substantive criminal law regulation that defined criminal offenses with elements of corruption. In 2004 Slovenia began to adopt special legal acts on corruption. Firstly, it adopted a special law, then the national anti-corruption strategy, and the rules of procedure of the Commission followed by various regulations based on the adopted legal acts (Dobovšek, 2005; Slovenian legal acts). The field of corruption is also defined in a number of other international acts, some of which are explicitly related to the Republic of Slovenia, while some others that are not mandatory represent non-compulsory guidelines for the work of countries in the prevention and suppression of corruption. The most active international organizations in the fight against corruption are the Council of Europe organisation GRECO, the Organization for Economic Co-operation and Development - OECD and the United Nations (Dobovšek, 2012; International Legal Acts). In all actions that are perceived as corruption, the "corruptive purpose" is essential. 'The term "corruptive purpose" is present when the benefit is promised or given in order to encourage or reward the violation of conduct or when benefit is accepted as a repayment of obligatory action. It is necessary to establish zero tolerance and consider all corruptive practices unacceptable. Even small acts of corruption affect the demolition of law and create the possibility of more serious forms of violation (Corruption is…)

1. COMMISSION FOR PREVENTION OF CORRUPTION AND SECTORAL LEGISLATION

The Commission for Prevention of Corruption (hereinafter the Commission) was established in 2004 (the Commission's predecessor was the Government Office for the Prevention of Corruption that was established in 2001 on the recommendation of the

Council of Europe's GRECO organization) and is an independent state body, similar to the Ombudsman, the Information Commissioner or the Court of Auditors. Its purpose is to limit corruption, strengthen the rule of law, integrity and transparency. The rule of law, impartiality and ethics are the basis of Commission's work. Although it is part of the public sector, the Commission is not subordinate and does not receive instructions or guidelines for work by the Government or the National Assembly. In its work it is bound only to the Constitution and legislation. The Commission is not a body for the detection and prosecution of pre-trial or criminal proceedings, but it has certain executive, supervisory and investigative powers.The independence of the Commission is additionally ensured by the appointment procedure of its leadership. The Chief Commissioner is appointed by the President of the State for a period of six years following a nomination by the special selection board which includes representatives of all three branches of the government and civil society. The Commission has three members - the President and two Deputies - who decide on substantive issues at meetings. The Commission in its broader sense is represented by a state body, employees of the Commission's Office, the Monitoring and Investigation Service and the Center for Integrity and Prevention. The Commission was established on the basis of the Integrity and Prevention of Corruption Amending Act and the United Nations Convention against Corruption, which recommended Member States to set up an independent authority to limit corruption (Commission for the Prevention of Corruption). In 2004, the Republic of Slovenia adopted special legal acts for the prevention of corruption. Firstly, a law was adopted (the Anti-Corruption Act, 2004), followed by the State Anti-Corruption Strategy (Resolution on the Prevention of Corruption in Slovenia, 2004) and the Commission's Rules of Procedure. The current IPCA which was implemented in 2010 and updated twice in 2011 introduced several amendments and supplements (Integrity and Prevention of Corruption Amending Act, 2016, hereinafter IPCA-C Proposal). IPCA determined, inter alia, the Commission’s cooperation with non-governmental organizations in the area of corruption prevention, expanded the circle of taxpayers to report on the property situation, re-arranged the protection of whistleblowers, laid down the conditions and supervision of lobbying, set the obligation to include the anti-corruption provision in the contracts of representatives of public authorities and introduced nullity of the contract concluded with corruption purposes (Commission for the Prevention of Corruption). In addition, IPCA (2011) regulates a temporary ban on the cooperation of persons with former functions in state bodies with these bodies and the law grants the Commission the powers of misdemeanour body. Offenses may be imposed on individuals, responsible persons, the representatives of public authorities and other legal persons of public or private law and of interest organizations. If, in its work, the Commission suspects corruption offenses, it shall inform the police and the prosecutor's office about this.

2. CORRUPTION AND BAROMETER PERCEPTION INDEX

The corruption perception index is a methodology that was developed in 1995 for the first time in the international space by the non-governmental organization in the field of corruption prevention Transparency International. The index shows the public perception of corruption in public sector in 176 countries of the world (Assessment of the situation 2016, 2017). The index ranges from 0 to 100, where the score "0" means high corruption of the state, and score "100" a "very clean" country (Research and Indices).

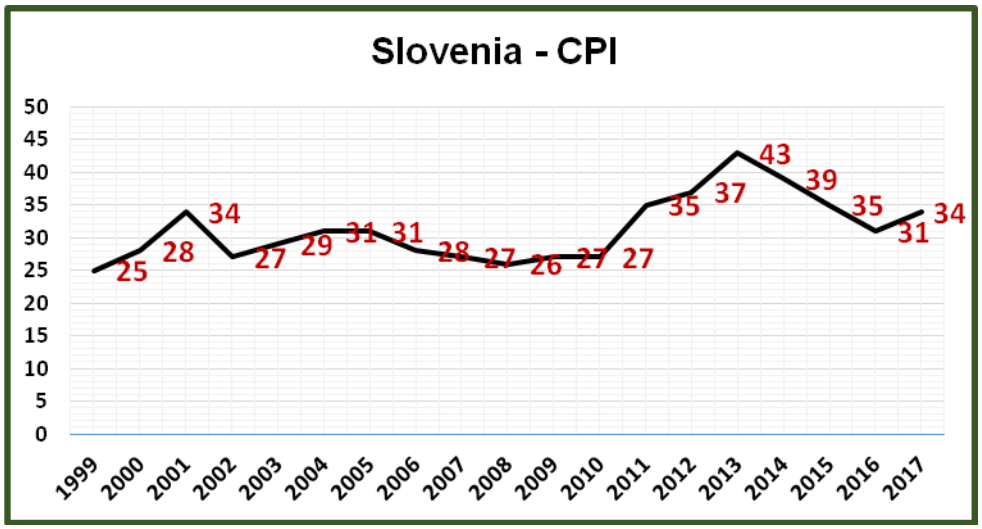

Figure 1: Corruption Perception Index in Slovenia from 1999 to 2017 (Corruption Perception Index 2017; Assessment of the situation, 2016; Research and Indices)

Slovenia's recently released Assessment of Corruption Perception Index for 2017 shows that Slovenia has not yet made clear progress in the area of prevention and prosecution which would bring it closer to more developed countries. This year Slovenia has reached 34th place among 180 countries. Compared with the previous year, the rating remains the same, while on a comparable scale of countries; Slovenia has lost three places (Corruption Perception Index, 2017; Corruption Perception for years without significant progress, 2018).

At the launch of two special barometers to detect corruption, Transparency International Slovenia estimates that there are few positive trends which would indicate a significantly better assessment of the situation in the fight against corruption in Slovenia by citizens (Slovenes remains critical of corruption, 2017). The global barometer of corruption is the most comprehensive public opinion survey on the current state of corruption in the public sector. It is a public opinion survey that measures the perception of corruption among public, the public's own experience of corruption, and the willingness to take action against corruption (Slovenes still critical of the inaction of those responsible for the fight against corruption, 2016). From the latter it is clear that individuals are still very critical of the occurrence of corruption since 77% of respondents think corruption is unacceptable. 89% of them think that corruption is widespread, and 57% say it has spread in the last three years. This impression is certainly a consequence of the prevailing feeling that the prosecution of corruption is insufficient although the barometer has detected a significant improvement with respect to the previous measurement. However, the greatest concern is the 11% increase of people who see themselves as victims of corruption. Despite improvements in relation to the previous measurement, a large number of respondents still believe that the government does too little to prevent corruption. Compared with previous measurements, 18% less people trust the Commission for the Prevention of Corruption, and there is a drop in the share of people who know where to report corruption if they witness it. There is also an indication that 76% of citizens see corruption as part of business culture. On the other hand, companies do not consider corruption as one of the biggest business barriers although, as in the case of citizens, three-

quarters of them still regard it a widespread problem (Businesses' attitudes towards corruption in the EU, 2017; Slovenians remain critical of corruption, 2017). Transparency International Slovenia warns that not enough progress has been made in the field of key systemic solutions. Lack of progress is also noticeable in establishing the integrity of the highest representatives of authorities. The failure to comply with international recommendations and commitments in the field of integrity and prevention of corruption casts poor light on all public institutions, and mistrust is further deepened by scandals (Corruption Perceptions Index 2017; Slovenes remain critical of corruption, 2017).

The fight against corruption and the analysis of the situation used to be under the exclusive jurisdiction of the Commission. Other bodies and public sector organizations have had difficulties accepting the fact that, due to their complexity, this phenomenon necessarily extends to their areas of competence and functioning. It is only in recent years that the awareness of the existence of the Assessment of the situation has increased, also due to the Commission's increased activity in drawing attention to the necessary measures and its demands for regular, annual reports (Assessment of the situation 2016, 2017). Nevertheless, it cannot be said that the public sector bodies and organizations actually accepted its importance and intentionally enhanced the integrity and transparency of their operations and the prevention of conflicts of interest, as is apparent from the Public Administration Development Strategy 2015-2020 (2015).

3. NEW LEGISLATION - NEW SOLUTIONS?

According to the indices and barometers presented in the previous chapter the Commission believes that such kinds of indicators can provide a possibility of self-assessment of the state while the comparison with other countries is less important. According to the Commission, the conditions are not ideal and are at least partially related to the Acts, which provides the legal basis for the functioning of the commission (IPCA-C Proposal, 2016). At the end of February, at the first reading in the National Assembly the amendments to the Integrity and Prevention of Corruption Act were passed. It had been waited too long for this novel. The concerns about the protection of political independence of the Commission’s work were also expressed in the letter to the Prime Minister of the Republic of Slovenia and the President of the Republic this year by the OECD Working Group on Bribery in International, Cross-border Business Transactions. The Working Group expressed its concerns over the functioning and the position of the Commission, in particular in terms of its effectiveness, independence and adequate working conditions, as well as the state of affairs in the field of amending legislation in the area of the prevention and prosecution of corruptive acts. In its annual report, the Commission itself warned, thus it stated in the Annual Report 2012 the fact that the important instruments of both the laws of the previous Anti-Corruption Law (2004) and the applicable IPCA (2011), as well as the control over property, interests, business restrictions, integrity plans and others for some years - also due to staff and financial malnutrition and other priorities of the Commission - were not effectively enforced. With the recognition of the Commission as an important stakeholder in the preparation of the plan of measures in this field, the Government of the Republic of Slovenia, in order to deal with the current corruption problems of Slovenia, adopted most of the proposals by the Commission's management, which were publicly announced on 13 December 2013 (Public Letter of the Senate of the Commission for the Prevention of Corruption, 2013) and summarized them in the Program of measures of the Government to prevent Corruption (2014). One of the proposals is, of course, a change of

sectoral legislation. The amendment to the IPCA-C (2016) modifies and complements only those provisions of the current IPCA, which in a certain segment increase the efficiency of the Commission while preserving its role as an independent and autonomous state body. The need to change IPCA was already mentioned by the Commission's warning when, in a public letter dated 3 December 2013 the Commission pointed out that the amendments to the IPCA were necessary, and later on the proposal of the President of the Republic, the Commission also wrote and substantiated its proposal for the amendment to the IPCA. The starting point of the discussion in the direction of increasing the efficiency of the Commission's activities has gradually and subtly started to divert from that point on. The reasons for the change of IPCA are also in certain problems in practice which arose due to the incomplete and insufficient provisions of the IPCA in relation to the procedure for appointing Commission officials in 2014, their reporting to the National Assembly and the supervision of the National Assembly over the officials of the Commission. In 2014, certain issues arose also when appointing the management of the Commission, according to which criteria the selection board assesses the suitability of candidates and how many candidates are nominated to the President of the Republic. The public was shocked by the destruction of the documentation of the selection process which raised another transparency issue of the procedure (IPCA-C Proposal, 2016).

According to the assessment of the situation, it was found that the existing anti-corruption legislation needed certain corrections / amendments, but this does not mean that the current arrangement is so bad that a new law has to be adopted. In the 2014 Anti-Corruption Report by the European Commission it is also noted that Slovenia generally has a good legal and institutional framework for the integrity and prevention of corruption (IPCA-C Proposal, 2016; Report of the Commission to the Council and the European Parliament on the fight against corruption in the EU, 2014).The proposal for the amendment to the IPCA - C invokes four substantive amendments to the law relating to (IPCA - C, 2016) the scope of the law in relation to other laws governing similar institutions such as IPCA; Procedures conducted by Commission for the Prevention of Corruption; The institute of conflicts of interest and; The institute of registration, control and publication of data on the property situation in the law of designated officials.

The main solutions to the draft amendment are (IPCA-C Proposal, 2016):

- **Vacatio legis of the Act**: Due to a uniform / systematic treatment of the same circumstances in the same way, it is reasonable to unify the usage of the IPCA institutes equally for all civil cervants as well as all comparable categories for all officials.
- **Conditions for appointing Commission officials:** In the amended provision of Paragraph 9, the experience and competences and references required for the performance of tasks in the field of work and the framework of competences of the Commission, as well as their demonstration and evaluation, are more precisely defined. At the same time, it is worth mentioning that, according to the Act Amending the Judicial Service Act (2015), a condition of personal suitability is added to the content conditions for the appointment of officials.
- **Candidacy procedure and appointment procedure**: The procedures are clearly separated from one another, the tasks of the Office of the President of the Republic, the Commission of Appeal and the powers of the President of the Republic in relation to the procedure for appointing Commission officials are more precisely defined.

- **Commission operation method**: The main novelty introduced by the amended Article 11 of the IPCA is the reorganization of the Commission's functioning as a collegiate, and it is in the novelty that the Commission, as a collegiate body, should only decide on matters that are legislatively determined by law and on matters, for which the President of the Commission will decide whether or not, due to their (substantive, formal or factual) importance, they require collegiate decision-making.
- **Jurisdiction of the commission in case of violation of the law**: The powers of the Commission in the event of suspected violations of IPCA are fully regulated in its entirety, with the essence of a new approach being the concretization of proceedings in the event of suspicion of individual violation of the IPCA provisions under the responsibility of the Commission.
- **Additional measures of the Commission**: The existing and some additional measures of the Commission for strengthening the integrity and prevention of corruption, such as systemic oversight, proposal for dismissal and initiative of the head of action, are being defined.
- **Discussion at the commission meeting and gathering information from people**: In addition, the invitation and the course of the discussion in front of the Commission are concretized in the direction of a clear definition of how, when and why someone is invited to an interview with the Commission and what are his/her rights.
- **Cooperation with non-profit private sector organizations in the field of corruption prevention**: The Commission with non-profit private sector anti-corruption organizations strengthens the network of links with and between civil society.
- **Supervision of the Commission's operations**: By supplementing the provisions on the supervision of the National Assembly over the work of the Commission, the duties of the Commission officials with the obligations of other officials at the same institutes that apply to one and the other, are unified. By doing so, the legal vacuum for dealing with and punishing violations is eliminated.
- **Dismissal of the Commission's officials:** In accordance with the supplementing of the conditions for the appointment of officials, the process of dismissal of the Commission's officials is being upgraded and also editorial coordinated.
- **Controversy of interests**: The renewal of the institution of conflict of interest concerns the unification of the provisions on conflicts of interest for the entire public sector, with the aim of establishing the basis for the development of a uniform practice of (not) admissible conduct for all officials. The latter is also approved by Ribičič, Pirnat and Čebulj (2014).
- **Reporting of assets and control of property situation and online data publication**: A good system of asset control can significantly contribute to greater transparency and trust in the entire public administration, as disclosure of officials shows and proves that they act in the public interest.
- **Lobbying**: A new obligation to report lobbying is also being introduced for legitimate and authorized representatives of interest organizations, and hence lobbying is reported to all involved in lobbying activities.
- **Record of public sector financial transactions:** Application of financial transactions charged to budget users of the Commission by Erar. Since June 2016,

the application provides an insight into the operation of e-invoices, data related to business restrictions and received gifts, and the display of foreign bank accounts of business entities.

According to the representatives of Transparency International, the novelty otherwise adequately regulates some of the key dilemmas, but the overall arrangement still lacks the field of lobbying, prevention of the emergence of rotating doors and the protection of whistleblowers (Corruption perception for years without significant progress, 2018). The Commission, however, is convinced that the draft Act reduces the competences of the commission and hence makes it difficult to fight corruption in Slovenia, but does not offer a comprehensive solution to address the problem of corruption and integrity in the country.The Commission estimates that the major disadvantage of the amending act is also the fact that Commission officials decide on and take responsibility of some cases that are subject to decision-making of the Commission as a collegiate body. At the same time, the Commission notes that the problem of identifying lobbying contacts for all stakeholders implies additional unnecessary administrative obstacles both in reporting and in the process of carrying out supervision over lobbying. It further notes that the provisions of the IPCA-C (2016) amendment, which regulate the field of gifts or donations, are inconsistent and undeniable for all official persons, especially in the part referring to donations. In this regard, the Commission notes that the inclusion of donation provisions entails the transfer of powers from the Court of Audit of the Republic of Slovenia to the Commission for the control of the dedicated use of donations. The amendment IPCA-C regulates the area of gifts uniformly for all officials, but for the Commission, in particular in the administrative and, consequently, human resources and financial terms, the latter states unforseen and unplanned workload regarding financial and personnel plan. Even the personnel plan for 2018 and 2019 is not compliant with the proposed reinforcements of staff for the exercise of jurisdictions and duties which are spread with the proposal for the amendment IPCA-C for the Commission. In view of the scope of amendments and additions to the amendment to the IPCA-C, the Commission agrees with the opinion of the Government Office for Legislation, no. 231-3 / 2017/4 of 13 6 2017 in which it is stated that due to such large-scale changes and amendments the field of the fight against corruption in Slovenia should be regulated by the new Act. At the same time, according to the Commission, it became indisputable that systemic corruption in Slovenia is relatively deeply rooted and would necessarily require a systematic and convincing treatment. The Commission is convinced that the systematic eradication of corruption in the country would also contribute to its involvement in legislative processes, with the support of the relevant legislation, which has been waiting for two years (The Commission's content reservations regarding The Integrity and Prevention of Corruption Amending Act, 2018). Everyone can contribute to the idea of zero tolerance of corruption, while normalization of corruption phenomena in the society should be subject to harsh condemnations.

4. CONCLUSION

In accordance with the coalition agreement of the Government of the Republic of Slovenia, the mission of the Government of the Republic of Slovenia is to restore the confidence of people in the country and its fundamental pillars of state-building activity, with its fundamental starting points being a decisive fight against corruption and zero tolerance of corruption. This would make a significant contribution to the continued and transparent exercise of public tasks and to the enhancement of citizens' confidence in the

rule of law. The duty of preventing corruption arises from the general principle of the legality of the functioning of state bodies and their officials as one of the principles of the rule of law. In spite of the fact that, in the EU Report on the fight against corruption (2014), the European Commission notes that Slovenia is among the countries of Central and Eastern Europe most active in the fight against corruption, since it has a well-developed legal and institutional anti-corruption framework. But at the same time the European Commission proposes dissuasive penalties for elected and appointed officials in Slovenia, if they violate the requirements for reporting property and conflicts of interest, the adoption of additional measures to strengthen the standards of accountability of elected officials, and the protection of operational independence and sources of anti-corruption bodies. Responsibility for the rule of law begins in politics and administration. Therefore, the task of the politics is to formulate and improve the anti-corruption legal framework, creating other conditions and circumstances that enable the Commission to work more efficiently or a legal framework, other conditions and circumstances in which values and principles such as integrity, accountability, transparency, governance law, public interest, are a guide for both politicians and the administration in their work and the implementation of these policies.

5. REFERENCES

- Assessment of the situation 2016 (2017). The Commission for Prevention of Corruption. Available online: https://www.kpk-rs.si/download/t_datoteke/13835 (accessed on 4. 10. 2017).
- Businesses' attitudes towards corruption in the EU (2017), European Commission, Directorate-General for Migration and Home Affairs. Available online: http://data.europa.eu/euodp/en/data/dataset/S2177_457_ENG (accessed on 5. 1. 5. 1. 2018).
- Commission for the Prevention of Corruption (official web – page). Available online: https://www.kpk-rs.si/sl/komisija (accessed on 5. 1. 2018).
- Corruption is….The Commission for the Prevention of Corruption.Available online: https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika (accessed on 5. 1. 2018)
- Corruption Perception Index (2017) Transparency International. Available online: https://www.transparency.org/news/feature/corruption_perceptions_index_2017(accessed on 26. 2. 2018).
- Corruption Perceptions Index (2017). Transpareny International. Available online: https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (accessed on 24. 2. 2018).
- Corruption perception for years without significant progress (2018). Transparency international. Available online: http://www.transparency.si/8-novice/371-zaznava-korupcije-v-sloveniji-ze-leta-brez-izrazitega-napredka. (accessed on 5. 1. 2018).
- Dobovšek, Bojan (2012) Corruption in Transition: study material. Ljubljana: Fakulteta za varnostne vede.
- Dobovšek, B. (2005). Corruption and politics. Ljubljana: Ministry of the Interior of the Republic of Slovenia. General Police Directorate, Criminal Police Directorate.
- Integrity and Prevention of Corruption Act (IPCA-UPB2). Official Gazette of the Republic of Slovenia Nr. 69/2011).

- Integrity and Prevention of Corruption Amending Act (IPCA-C Proposal), (2016). Available online: http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2018/ZIntPK-C_DZ.pdf. (accessed on 25. 6. 2017).
- International legal acts. The Commission for the Prevention of Corruption.Available online: https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/protikorupcijska-zakonodaja-in-strateski-dokumenti/mednarodni-pravni-akti (accessed on 5. 1. 2018).
- Public Letter of the Senate of the Commission for the Prevention of Corruption (2013). The Commission for the Prevention of Corruption. Available online: https://www.kpk-rs.si/upload/t_datoteke/Javno_pismo_KPK_3.12.2013.pdf(accessed on 5. 1. 2018).
- Public Administration Development Strategy 2015-2020. Ministry of Public Administration of the Government of the Republic of Slovenia. Available online: http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/JAVNA_UPRAVA/Kakovost/Strategija_razvoja_SLO_final_web.pdf (accessed on 4. 10. 2017).
- Research and Indices, official web – page Transparency International. Available online: http://www.transparency.si/dejavnosti/raziskave-in-indeksi (accessed on 11. 12. 2017).
- Ribičič C., Pirnat R., Čebulj J. (2014). Constitutional analysis of proposals for changes to legislation in the area of prevention of corruption (2014) . Institute of Administrative Law: Ljubljana. Available online: http://ustava.si/wp-content/uploads/2014/02/Ustavnopravna-analiza-novele-ZINTPK_Pravno-mnenje-IUP_14-22014.pdf (accessed on 5. 1. 2018).
- Report of the Commission to the Council and the European Parliament on the fight against corruption in the EU, Bruselj, 3.2.2014 COM (2014). Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_sl.pdf (accessed on 5. 1. 2018).
- Resolution on the Prevention of Corruption in Slovenia (2004) Official Gazette of the Republic of Slovenia No. 85/04.
- Slovenes remains critical of corruption (2017). Transparency International. Transparency international. Available online: hhttp://www.transparency.si/8-novice/366-slovenci-ostajajo-kriticni-do-korupcije (accessed on 5. 1. 2018).
- Slovenes still critical of the inaction of those responsible for the fight against corruption (2016). Transparency International. Available online: http://www.transparency.si/8novice/285-slovenci-se-vedno-izjemno-kriticno-do-nedejavnosti-odgovornih-pri-boju-proti-korupcijii (accessed on 5. 1. 2018).
- Slovenian legal acts. The Commission for the Prevention of Corruption. Available online: hhttps://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/protikorupcijska-zakonodaja-in-strateski-dokumenti/slovenski-pravni-akti. (accessed on 5. 1. 2018).
- The Anti-Corruption Act (2004). Official Gazette of the Republic of Slovenia Nr.2/04
- The Commission's content reservations regarding The Integrity and Prevention of Corruption Amending Act, (2018). The Commission for the Prevention of Corruption. Available online: https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/novice/02/2018/vsebinski-zadrzki-komisije-glede-predloga-novele-protikorupcijskega-zakona(accessed on 5. 1. 2018).

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FINANCIAL INCLUSION AS PART OF ANTI-MONEY LAUNDERING SYSTEM

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Abstract

The risk-based approach is a main pillar of an effective anti-money laundering and terrorist financing system. It implies identification, assessing, and understanding the money laundering and terrorist financing risks, based on obliged entities' own "risk appetite". Under a high risk circumstances the "risk appetite" of the financial institutions can be underestimated, based on the fact that they can terminate or restrict business relationships with clients or categories of clients to avoid, rather than manage, the established risk. Furthermore, under the term "de-risking", that kind of customers may shift to less regulated or unregulated channels, thereby potentially increasing national and global financial integrity risks as well as other risks of financial exclusion. Vice versa, there are already 2.5 billion adults worldwide who are part of an informal, unregulated and unmonitored system, and potentially subjects of financial inclusion which imply application a simplified customer due diligence in a scope of the formal and protected financial system. Despite the fact that subjects of risk assessment are low risk customers, financial inclusion is a contemporary aspect of the fight to counter money laundering and terrorist financing, emphasising the relevance of its causes, modalities of appearance, repercussions, and potential opportunities to tackle this challenge.

***Key words**: money laundering, risk assessment, financial inclusion, de-risking, due diligence*

INTRODUCTION

Money laundering is a business which operates by the same rules and motivations as all other business [1] using innumerable, diverse, complex, subtle, and secret techniques. By its nature it is a process rather than a single act, consists of concealing the true nature, source, or ownership of criminal activity proceeds. Additionally, the process of money laundering allows a criminal to spend the money safely, avoiding suspicion, detection, confiscation and forfeiture [2]. Based on the mentioned, anti-money laundering schemes have to be focused on three common features: launderers need to conceal the true ownership and origin of the proceeds, maintain control of the proceeds, and change their form in a scope of three-phased money laundering process [3].

The pillar principle of the anti-money laundering and terrorist financing strategy is a holistic type of risk-based approach, an evidence-based decision-making process. According to revised FATF Recommendations 2012, the risk-based approach implies identification, assessing, and understanding the money laundering and terrorist financing risks. By adopting it, competent authorities, financial institutions, and designated non-financial business and profession should be able to ensure application of measures to

prevent or mitigate money laundering and terrorist financing which are commensurate with the risks identified, and make decisions on how to allocate their own resources in the most effective way. Each individual profession shall decide upon the risk acceptability, based on its own "risk appetite" [4].

As an effective way of mitigation of money laundering and terrorist financing risk, the risk based approach presents an opportunity to ensure that compliance resources are focused as efficiently as possible. On the other hand, it can be understood as the procedure which threatens complexity and uncertainty, where the risk of legal penalty, regulatory censure, damaged reputation and loss of revenue through uncompetitive process wait the unsuspecting. Nevertheless, it is not a specific thing, tangible, predetermined work plan. Rather, it is a state of mind [5], and its effective application depends on the appropriate incorporation overall complex organization's culture: policies, structures, principles [6], controls and procedures.

Considering Directive (EU) 2015/849 [7] the term "policies, controls, and procedures" refers to development of the internal policies, controls and procedures, including model risk management practices, customer due diligence, reporting, record-keeping, internal control, compliance management, as well as the appointment of a compliance officer at management level and employee screening. Where appropriate with regard to the size and nature of the business, it comprises even an independent audit function to test the internal policies, controls and procedures in regards to mentioned procedures.

Based on the mentioned, the risk based approach should be an essential foundation to efficient allocation of resources in terms of application of enhanced or simplified customer due to diligence measures [8]. However, it is important to highlight that it is not a "zero failure" approach, although there may be occasions where an institution has taken all reasonable measures to identify and mitigate anti-money laundering and terrorist financing risks. Yet, it is still used for money laundering and terrorist financing purposes [9].

The subject of this paper is the term financial inclusion as a new challenge within a scope of anti-money laundering and terrorist financing measures. At the introduction part, the paper provides vulnerability of risk based approach as an essential foundation to efficient allocation of resources in terms of application enhanced or simplified customer due diligence. In the second part, the importance of appropriate risk assessment application is outlined. The third part of the paper presents the interpretation of the term de-risking, while the fourth part analyses the specific nature of financial inclusion concept. The conclusion can be found at the end of the paper as well as discussion in a form of concluding considerations and open issues of the de-risking process and financial inclusion impact on the effective implementation of anti-money laundering and terrorist financing measures.

1. RISK ASSESSMENT IN ANTI-MONEY LAUNDERING PROCEDURES

The risk assessment provides the basis for the risk-sensitive application of anti-money laundering and terrorist financing measures. According to Article 6 of Directive (EU) 2015/849 risk assessment includes: improving anti-money laundering and terrorist financing regime; identifying sectors or areas of lower or greater risk; using it to assist in the allocation and prioritisation of resources to combat money laundering and terrorist financing; using it to ensure that appropriate rules are drawn up for each sector or area; and

make appropriate information available promptly to obliged entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments.

The essential requirement to obliged entities is an examination of the background and purpose of all complex and unusually large transactions, all unusual patterns of transactions which have no apparent economic or lawful purpose, as well as suspicious transactions or activities of investigation and reporting. That kind of reporting obligation is usually called "active" duty to inform competent authorities, in contrast to their "passive" duty to furnish those authorities, at their request, with all necessary information [10]. Nevertheless, the consequence of a duty to report unusual or suspicious transaction is the obligation of credit and financial institutions, also designated non-financial businesses and professions within their limited range of activity, to establish due diligence in their transactions.

The extent of customer due diligence measures relates to the risk of money laundering and terrorist financing and depends on the type of customers, countries or geographic areas, products, services, transactions or delivery channels. According to the stated, financial institution should take into account risk variables relating to these risk categories. Mentioned variables, either separately or in combination, may increase or decrease the potential risk posed, thus impacting the appropriate level of customer due diligence measures, such as: the purpose of an account or relationship, the level of assets to be deposited by a customer or the size of transactions undertaken, and the regularity or duration of the business relationship [11].

The importance given to these risk categories in assessing the overall risk of money laundering or terrorist financing may vary from one institution to another, depending on their respective circumstances [12]. However, for many organizations, anti-money laundering professionals follow indicators and adjust future processes based on past results rather than make adjustments in anticipation of the future needs. More precisely, focus has to be on stopping future events, rather than constantly spending it trying to recover from successful shames [13]. Generally, money launderers are seeking out countries or sectors in which there is a low risk of detection due to week or ineffective anti-money laundering program, moving funds through stable financial systems [14].

Directive (EU) 2015/849 highlights that risk itself is variable in nature, and the variables may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventative measures, such as customer due diligence. Therefore, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate. In both mentioned situation, risk assessment is a mandatory procedure regardless of risk level.

In the end, the risk-based approach should be the cornerstone of an effective anti-money laundering and terrorist financing preventative system, and is essential to properly managing risks. According to mentioned, financial institutions have to identify, assess and understand their money laundering and terrorist financing risks, and take commensurate measures in order to mitigate them [15].

2. THREATS AND CHALLENGES OF THE DE-RISKING PROCESS

As a consequence of 2008 financial crisis and increasing concerns on profitability, reputational or liability risks, prudential requirements, as well as changes in banks' financial risk appetites, financial institutions began to create a system where risk management were replaced with risk avoidance. That kind of "de-risking" lead to

avoidance of a risk-based approach implementation and, consequently, may drive financial transactions into less or non-regulated channels, reducing transparency of financial flows and creating financial exclusion, thereby increasing exposure to money laundering and terrorist financing risks [16]. Some risk factors which drive financial institutions to consider withdrawing from or reducing their risk exposure are considered as: clients coming from the so-called tax havens, cash intensive businesses, virtual currencies and gambling [17]. Effectively cutting off access to finances, it further isolating communities from the global financial system, exacerbating political tensions, and potentially facilitating the development of parallel underground "shadow markets". Except its financial consequences, that kind of business termination has significant humanitarian, economic, political, and security implications [18].

As the phenomenon of de-risking not unduly marginalized in their expediency, it has to be highlight that Recommendation 10 encourages financial institutions which are unable to comply with the risk assessment requirements on decision that not to open the account, commence business relations, perform the transaction or terminate the business relationship, and accordingly make a suspicious transaction report. The main goal of these requirements is applying, basically, to all new customers, even to existing customers on the basis of established risk, as well as conduct due diligence on such existing relationships at appropriate times.

Consequently it can be concluded that mentioned de-risking actions may not only undermine financial inclusion but also potentially hold broader implications for the global financial system. The termination of correspondent banking relationships may lead to restricted access to the global banking system with potentially significant implication for poverty reduction and economic development efforts. These closures may result in customers shifting to less regulated or unregulated channels, thereby potentially increasing national and global financial integrity risks as well as other risks of financial exclusion [19].

3. COMPLEXITY OF FINANCIAL INCLUSION

It is an undeniable fact that anti-money laundering program should focus on high-risk customers, product, service, transaction, delivery channel, and high geographical risk areas based on red flags pursuant on three factors: the geography or the account, the business and the products or services the client is using along with their anticipated usage [20]. Nevertheless, there are low risk areas, business relationships, or transactions which present a lower risk degree as a subject of simplified customer due diligence measures application, such as financial inclusion product and services.

The lower risk level is determined by the national or local context and the specific environment of the customer. In most cases, a combination of several factors such as the client's level of income, the type of business sector, the region's exposure etc., rather than a single element will be required [21]. Nevertheless, financial institutions are obliged to monitor low risk customer and accounts which allows a more efficient allocation of resources, permitting financial institutions to focus their compliance resources on higher risk threats.

The process of financial inclusion represents a recent threat to effective risk based approach application in a scope of simplified customer due diligence procedures. The term "financial inclusion" involves providing access to an adequate rang of safe, convenient and affordable financial services to disadvantaged and other vulnerable groups,

including low income, rural and undocumented persons, who have been underserved or excluded from the formal financial sector [22]. It also refers to process of ensuring access to appropriate financial products and services at an affordable cost in a fair and transparent manner through regulated financial institutions [23]. At the macroeconomic level it is correlated with economic growth and development.

Despite the significant efforts, approximately 2.5 billion adults worldwide are still excluded from formal financial service, while in emerging markets almost three in four adults lack access to formal bank account. In that ratio, women are less likely to own an account than their male counterparts in every region of the world, but the size of the account ownership gap differs among regions, especially in the Middle East, North Africa and in South Asia [24]. Including individuals, the problem of financial exclusion comprising about 200 million formal and informal micro, small, and medium enterprises in developing economies with lack access to leans or lines of credit [25].

According to anti-money laundering standards, the process of increasing financial inclusion will change the nature and established risk level in connection to characteristics of currently financially excluded customers, as well as the nature of the products, services, and providers capable of reaching them [26]. Financial inclusion can also promote financial integrity by introducing now customers and more transactions from cash into monitored formal financial services, applying a progressive approach to meeting customer due diligence requirements [27]. The overview of that phenomenon indicates threats not only to financial integrity and international security, rather than social, political, and even potentially financial stability.

The nature of customer due diligence points out that simplified due diligence procedure never means an exemption from prescribed measures. In the line with the FATF Recommendation 10, all four components have to be included: identification/verification of customer and beneficial owner, understanding the purpose and nature of relationship, and ongoing monitoring of the same relationship, depending on the risk level. Though, risk can be seen as a function of three factors: threat, vulnerability and consequence.

The level of risk may depend on the digital nature of a product or service concerned too, including products involving new technologies, or distribution channel used. With regards to products and services provided through new technologies and services, including online banking, the risk assessment will have to consider factors such as the non face-to-face relationships, the geographical reach, the methods of funding and the access to cash as well as the possible segmentation of services between several parties for the execution of using [28].

In that regard, digital financial inclusion refers to the use of digital financial services to advance financial inclusion. It starts with a transactional platform that combines the functionality of a payment instrument with that of a value-storage account and has the potential to be accessed by customers through potentially any retail establishment. Via such platforms, a rapidly widening array of financial services, specifically targeting excluded and underserved market segments, are being offered, such as savings, credit, insurance, even investment products [29].

Application of a risk based approach to terrorist financing has both similarities and differences compared to money laundering. Both require a process for identifying, understanding and assessing risk, although an risk may be difficult to assess and the implementation strategies is challenging due to the fact the value of transactions connected to terrorist financing may be low and funds can come from legal sources.

4. DISCUSSION

The revised FATF Recommendations (2012) established the risk based approach as a fundamental principle and required from reporting entities to understand, identify and assess the money laundering and terrorist financing risks for different market segments, intermediaries, and products. The best way of conducting such assessments depends of each country separately due to the specific nature of the process and inability to set universal limits and define proceedings. However, FATF Recommendation 10 requires from financial institutions that are unable to comply with the risk assessment requirements not to open the account, commence business relations or perform the transaction, or requires from them to terminate the business relationship. That kind of de-risking is a very dangerous excuse for a bank to avoid implementing a risk-based approach, rather than terminate customer relationships, on a case-by-case basis, where money laundering and terrorist financing risks cannot be mitigated.

Despite the fact that de-risking can be a result of different causes such as concerns about profitability, prudential requirements, lower-risk appetites of banks, an anxiety after a global financial crisis, increasing number of sanctions regimes, reputational or liability risks etc., it may have negative consequences on anti-money laundering and counter-terrorist financing requirements. In addition to the aforementioned, it could undermine the financial system resilience, hinder competition, create obstacles to trade, cause financial exclusion, and promote underground financial channels that will be misused by criminals or terrorists. Consequently, de-risking and financial inclusion issues are very important segments with a direct impact on the efficiency of implementing anti-money laundering measures, with an emphasis on possible risks of simplified due diligence underestimation, as well as overestimation of the seriousness of enhanced due diligence.

CONCLUSION

The risk based approach is focused on appropriate, timely and comprehensive application of enhanced or simplified risk assessment measures in accordance with situations of higher or lower risk of money laundering and terrorist financing. The risk assessment necessarily requires a holistic approach in relation to referred customers, countries or geographic areas, as well as products, services, transactions or delivery channels.

In some circumstances that are the result of financial inclusion efforts where the risk of money laundering and terrorist financing is lower, the implementation of basic or minimal customer due diligence measures, including customer relationship and transaction components assessment, is still required. On the other hand, when a financial institution is unable to comply with the risk assessment requirements and make decisions on de-risking rather than application of enhanced due diligence measures, it has negative effects not only to national and global financial integrity but on macroeconomic stability and financial exclusion as well.

Considering that banks have become more selective and cautious beginning a business relationship with high-risk customers or jurisdictions, as well as prohibit or limit defined products/services for certain countries/customer sectors or terminate existing business relationships with high risk customers, it is indisputable that the process of de-risking aggravates implementation of anti-money laundering or countering the financing of terrorism measures. Due to the fact that the main cause of de-risking decision is the level of potential sanctions and reputational risk, the significant step for efficient

implementation of appropriate anti-money laundering measures such as due diligence and risk based approach altogether is a revision of relevant standards for its adoption.

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REFERENCES

[1] Turner, J. E. *Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud*, John Wiley & Sons, Inc: New Jersey, United States of America, 2011; pp. 129.

[2] Graham, T., Bell, E., Eliot, N. *Money laundering*, LexisNexis Butterworths: London, United Kingdom, 2003; pp. 4.

[3] Gilmore, W. C., *Dirty Money, The Evolution of International Measures to Counter Money Laundering and The Financing of Terrorism*, Council of Europe: Strasbourg, France, 2004; pp. 32.

[4] Gough, T. *Anti-Money Laundering: A Guide for Financial Services Firms*, Risk Books: London, Great Britain, 2005; pp. 47, 61.

[5] Ibidem

[6] Hopton, D. *Money Laundering, A Concise Guide for All Business*, Gower Publishing Ltd.: Hampshire, England, 2006; pp. 84.

[7] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC *(OJ L 141, 5.6.2015, p. 73 – 117).*

[8] FATF Financial Action Task Force (2012), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations*, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (accessed on 27 December 2017)

[9] FATF Financial Action Task Force (2014), *Guidance for a Risk-Based Approach, the Banking Sector*, http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf (accessed on 27 December 2017)

[10] Mitsilegas, V. *Money Laundering Counter-Measures in the European Union: a New Paradigm of Security Governance Versus Fundamental Legal Principles*, Kluwer Law International: London, Great Britain, 2003; pp. 72-73.

[11] FATF Financial Action Task Force (2017), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, The FATF Recommendations. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf (accessed on 17 January 2018)

[12] Esoimeme, E. E. *The Risk-Based Approach to Combating Money Laundering and Terrorist Financing*, Eric Press, United States of America, 2015; pp. 15.

[13] Turner, J. E. *Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud*, John Wiley & Sons, Inc: New Jersey, United States of America, 2011; pp. 129.

[14] Weismann, M. F. *Money laundering, Legislation, Regulation & Enforcement*, American Bar Association: Chicago, United States of America, 2014; pp. 2.

[15] MONEYVAL Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (2015), *Report "De-Risking" within MONEYVAL States and Territories*, https://www.coe.int/en/web/moneyval/implementation/de-risking (accessed on 13 January 2018)

[16] FATF Financial Action Task Force (2016), *Guidance Correspondent Banking Services*, http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Correspondent-Banking-Services.pdf (accessed on 27 December 2017)

[17] MONEYVAL Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (2015), *Report "De-Risking" within MONEYVAL States and Territories*, https://www.coe.int/en/web/moneyval/implementation/de-risking (accessed on 13 January 2018)

[18] Durner T., Shetret L. (2015), *Understanding Bank De-risking and its Effects on Financial Inclusion,* http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf (accessed on 30 December 2017)

[19] Global Partnership for Financial Inclusion & Consultative Group to Assist the Poor (GPFI&CGAP) (2012), *Global standard-Setting Bodies and Financial Inclusion for the Poor*, http://www.gpfi.org/sites/default/files/documents/CGAP.pdf (accessed on 25 January 2018)

[20] Odeh, I. A. *Anti-Money laundering and Combating Terrorist Financing for Financial Institutions*, Dorrance Publishing Co., Inc: Pittsburgh, United States of America, 2010; pp. 83.

[21] FATF, APG & The World Bank (2013), *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion*, http://www.fatf-gafi.org/media/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf (accessed on 4 January 2018)

[22] FATF Financial Action Task Force (2017), *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion*,http://www.fatf-gafi.org/media/fatf/content/images/Updated-2017-FATF-2013-Guidance.pdf(accessed on 20 January 2018)

[23] FATF, APG & The World Bank (2013), *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion*, http://www.fatf-gafi.org/media/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf (accessed on 4 January 2018)

[24] ACCION Center for Financial Inclusion, Commentary on Basel Committee (2016), *Guidance on Financial Inclusion*,http://www.centerforfinancialinclusion.org/storage/documents/Commentary_on_Basel_Committee_Guidance_on_Financial_Inclusion.pdf (accessed on 4 January 2018)

[25] Consultative Group to Assist the Poor& International Financial Corporation CGAP&IFC (2013), *Financial Inclusion Targets and Goals: Landscape and GPFI View,A note to the Global Partnership for Financial*

Inclusion,http://www.gpfi.org/sites/default/files/documents/Financial%20Inclusion%20Targets%20and%20Goals.pdf(accessed on 4 January 2018)

[26] Global Partnership for Financial Inclusion GPFI (2017) Global Standard-Setting Bodies and Financial Inclusion The Evolving Landscape, http://www.gpfi.org/sites/default/files/documents/GPFI_WhitePaper_Mar2016.pdf (accessed on 4 February 2018

[27] Pearce, D. & Ruiz Ortega, K. (2012), *World Bank: Financial Inclusion Strategies - Reference Framework,* http://www.worldbank.org/en/topic/financialinclusion (accessed on 17 January 2018)

[28] FATF Financial Action Task Force (2017), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, The FATF Recommendations. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf (accessed on 17 January 2018)

[29] Global Partnership for Financial Inclusion GPFI (2017) Global Standard-Setting Bodies and Financial Inclusion the Evolving Landscape, http://www.gpfi.org/sites/default/files/documents/GPFI_WhitePaper_Mar2016.pdf (accessed on 4 February 2018)

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ADMINISTRATIVE AND POLITICAL COOPERATION BETWEEN ALBANIA AND TURKEY AFTER THE END OF THE COLD WAR: A REVIEW OF THE IMPACT OF THE DOCTRINE OF STRATEGIC DEPTH AND ISLAM IN TURKISH-ALBANIAN RELATIONS

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Abstract

The epicenter of this scientific paper is put on an extremely important component, the manifestation of Turkey's foreign policy, which is based on the doctrine of strategic depth and reflections of this vision in the relations between Albania and Turkey, as well as the influence of Islam in the dimensioning of such relations. This paper first presents a sublimated historical overview of the Albanian-Turkish relations after the end of the Cold War, consequently using descriptive, analytical, induction, deduction, and comparative methods defining the new vision in Turkish foreign policy by presenting the elementary principles of the doctrine of strategic depth. The basic parameters of the political, economic, cultural-educational, and religious reflections on this vision in the Turkish-Albanian relations will also be analyzed. Consequently, we give an insight into the Turkish foreign policy at the beginning of the 21st century, which reflects the economic trends between the two countries and highlights the degree of geopolitical and socio-cultural influences on the relations between Turkey and Albania based on the Turkish foreign policy doctrine and Islam as determinant benchmarks of the new direction. The main purpose of this scientific paper is to emphasize the general conceptual reorientation of the Turkish-Albanian relations dimensioned from the prism of Eurotalivism to Islamic solidarity and neo-Otomanism.

Key words: Turkey, Albania, Strategic Depth, Islam, International Relations

1. INTRODUCTION

Although relations between the Turkish and Albanian people have deep historical roots, which has been noted since the time of the rule of the Ottoman Empire, relations between Turkey and Albania date back to the 20th century. During the Cold War, actually until the 1990s, relations between Turkey and Albania were not characterized with a significant development. Yet, with the fall of the Berlin Wall and the collapse of communism in Eastern Europe a new era of bilateral relations began. This period was different from the period of the intense engagement of official Tirana to strengthen its ties

with the most vital centers of Western political and military structures. For this reason, the development of relations with official Ankara was of particular importance, given that Turkey was one of the most prominent NATO members positioned as one of the strongest strategic allies in the West, and thus increasing its factorization in the Balkan region on a daily basis.

In that constellation, we will present some of the most significant moments in the period immediately following the fall of the Berlin Wall, and we will also discuss some of the crucial issues that represent an external dynamic variable in determining the relations between Albania and Turkey. We will more precisely try to solve several segments. First, how were the relationship between Turkey and Albania dimensioned historically? Second, what essential factors contributed to such a contextualization after the end of the Cold War? Third, what characterizes the era of relations after Recep Tayyip Erdogan's reign and AKP, the new doctrine of strategic depth? Fourth, how is it reflected in the economic and cultural sphere and what are the sectors and fields of reflection of such a ratio? And finally, what are the elementary points in the correlation between Turkey and Albania and what is the impact of Islam in such a ratio?

2. HISTORICAL REVIEW OF THE RELATIONS BETWEEN TURKEY AND ALBANIA AFTER THE END OF THE COLD WAR

In the wake of the fall of the Warsaw Pact and the communism as a political system of governance, whereby the world political order of bipolar turned into political unipolarism, the Balkans became the center for the implementation of new American strategies and policies in order to preserve state interests. On the other hand, as a result of the threats and risks for Turkey coming from the Russian factor, Turkey, based on their ever-growing economy and a strong army as well as the great influence, began a new diplomatic offensive in the Balkans. One of the most influential factors affecting Turkey's foreign policy towards the Balkans in the 1990s was the strategy of the American diplomacy for the region. The above period witnessed the American influence as a result of the country's political and military intervention in addressing the newly formed crises and tensions. At the same time, the new diplomatic orientation of the new Balkan countries towards the western countries, and especially towards the United States, was an additional factor for the American factorization in this region. In this period, apart from the United States, Germany and Russia emerged as influential factors which, with their policies and strategies, tried to factorize this region with vital strategies in their geopolitical orientation. In the 1990s, Turkey and the American foreign policy for the Balkan region had common strategic interests. The approach and conflict of the common interests of the two countries in the Balkans were determined by a number of factor.

a. Factors in shaping Turkey's foreign policy towards Albania after Cold War

Let us now see the most important factors and variables that influenced the creation, conception, and the dimension of the Turkish foreign policy towards the Balkans and consequently towards the Republic of Albania. Firstly, one of the most important factors influencing Turkey's foreign policy towards the Balkans in the 1990s was the strategy of the American diplomacy for the region, i.e., the Euro-Atlantic discourse. The stated period witnessed the American influence as a result of the country's political and military intervention in addressing the newly formed crises and tensions. At the same time,

the new diplomatic orientation of the new Balkan states towards west, especially towards the United States, was an additional factor for American factorization in this region. In this period, apart from the United States, Germany and Russia emerged as influential factors which, with their policies and strategies, tried to factorize this region with vital strategies in their geopolitical orientation. In the 1990s, Turkey and the American foreign policy for the Balkan region had common strategic interests. The approach and conflict of the common interests of the two countries in the Balkans were determined by a number of factors.

Secondly, the extremely important dimension of the next factor contributing to the approximation of these policies was the aspiration of the newly established Balkan states, which, precisely through the development of the relations with Turkey, which traditionally have strategic relations with the United States, aim to develop relations with the leader of the international scene. Also, the American strategy for factorization through the use of Turkey's religious, cultural, and historical ties in this region is considered to be the second factor in a common policy for moving closer to maintaining common state interests. The problem of relations between the European Union and Turkey, the abolition of Turkey from the European plans for continental security and the rivalry between Europe (Germany) within NATO were additional bases for intensive cooperation between Turkey and the United States in the Balkan region (Lütem & Coşkun, 2001, p. 23 - 24). Thirdly, apart from the American foreign policy towards the Balkans, Greece was an important influential factor in the last decade of the last century, which defined Turkish diplomacy to this region. Greece, with its lobbying group in the United States, had significant effects during the State Department's decision-making process with its position in the politics of this region and the deepening of the relations with Russia, Armenia, Iran, and Syria in order to weaken the Turkish position that had acute effects on the course of the Turkish foreign policy in the Balkans. As a result of the ties established in the 1990s, Turkey has made strong efforts to develop its relations with the Balkan countries, especially with Bulgaria, Macedonia, and Albania (Lütem & Coşkun, 2001, p. 24 - 28).

b. Administrative-political, military and economic cooperation

During the 1990s, relations between Turkey and Albania entered a stage characterized by the development of reciprocal relations in the political, economic, and military spheres. During this period, the departure of the regime in Albania and the factoring of Turkey to the Balkans after the end of the Cold War gave additional contribution and incentive in the process of developing mutual relations. It should be noted that in the framework of the strengthening of the relations between Turkey and Albania in June 1992, the Treaty of Friendship and Cooperation was signed. After a month, Tirana and Ankara signed an agreement on military cooperation, which gave an additional and intensified intensity of interstate relations. Under this agreement, Turkey has taken the incentive to modernize the Albanian army and develop combat forces for the needs of Albania. Also, in November of the same year, the two countries signed the second military agreement for joint warfare (as needed). In the 1990s, Turkey's support for Albania's membership in regional and international organizations (Tonovski, 2006), such as its membership in the Black Sea Economic Cooperation Organization, greatly contributed to the process of strengthening interstate relations, and the same referred to the Albanian membership in the Organization of the Islamic Conference (Aydoğmuş, 2008, p. 81 - 82; Kir, 2008, p. 27 - 29).

Despite the challenge of Greece in 1995 in the relations between Turkey and Albania in the same year in New York, the presidents of the two countries in Macedonia and Bulgaria agreed on the construction of the East-West Road, known as Corridor-8, whose construction was envisaged for improving transport between these countries. It should be noted that an important impulse in the diplomatic relations between Turkey and Albania was Turkey's decision to send 779 Turkish troops to Albania within the International Security Forces (ALBA), formed by a decision of the UN Security Council with the intention of preventing the riots in this country caused by a banking scandal (Aydoğmuş, 2008, p. 82; Kir, 2008, p. 4). In 1998, a Protocol for modernization of the military base and the construction of a military academy by Turkey in Albania was signed in 1998 between chiefs of the general staff of the two countries. From this we can conclude that with the change of the regime in Albania, the relations between Turkey and Albania entered a new phase, which was highlighted with the development of political and economic relations and the strengthening of military cooperation between the two countries.

3. DOCTRINE OF STRATEGIC DEPTH AND THE RELATIONS BETWEEN TURKEY AND ALBANIA AFTER 2000

The strengthening of the political, economic, trade, socio-cultural, and administrative relations between Albania and Turkey began to receive an important dimension at the beginning of 2000. At the same time, after the 2000s in the Balkans, Turkish-American relations entered a new era that was characterized by deepening of the common interests in this region. Bash's conclusions in that direction are relevant, noting that in this new phase, the Balkan states through their ties with Turkey, were on one hand putting a lot of pressure on deepening relations with Turkey's traditional ally (the United States), and on the other hand, the United States, were using historical and religious relations of Turkey in the Balkans, in order to intensify its influence and presence in this vital region. (Baş, 2009, p. 74)

3.1. Doctrine of strategic depth

The new proactive and multidimensional concept of Turkish diplomacy is based on the AKP that regulates the diplomatic strategies that were designed by then-Turkish Foreign Minister Ahmet Davutoglu. Davutoglu's appointment as the most important function of the Turkish foreign policy over the past decade was a great success for the effective implementation of his doctrine known as Strategic Deep Doctrine, and in some vocabulary, and often, the pious connotations as a neo-Ottomanism. This new Turkish foreign policy of the last decade was largely based on the doctrine of strategic depth, which still had important considerations of the country's diplomatic activities in international balances and the balancing of political interests and activities towards the Balkans, the EU and the Middle East. Hence, the Balkan Peninsula, a very important segment for the Turkish region, can be considered as the most important area that reflects the political, economic and cultural effects of this new vision of Turkish diplomacy.

Cogos notes that in accordance with this doctrine, Davutoglu perceived Turkey in obtaining a new geopolitical status, which should be seen as a "means of gradually opening to the world and transformation into regional influence", and such a concept it rests on two main elements: geographical and historical depth (Cogos, 2013, p. 133 - 141).

Consequently, according to Davutoglu, Turkey's strategic history and its geographical position are among the world's central powers, hence Turkey should outstrip its regional role and expand across the international community. (Sayari, 2000, p. 144) A key element in such positioning is Turkey's Ottoman heritage and the protection and promotion of Muslim interests, as well as care for the preservation of the Islamic heritage based on the Ottoman influence in the regions of the former empire. In this regard, Yavuz noted that such a policy would be implemented with the soft power potential. (Yavuz, 1998, p. 17) Therefore, as Davutoglu notes, Turkey should establish a proactive policy in accordance with its geographical and historical depth, based on its Ottoman heritage, and for the realization of these interests, its soft power should be used. In its essence, this signifies that soft power is postulated by the cultural, spiritual and historical ties that Turkey had with the respective regions, and today it is based on protests and stable institutions with democratic orientation and market economy. Analogously, this would imply that the country must abandon its militaristic image, the strong influence of the military and its tutoring in creating the Turkish policy, and focus on resolving regional problems and economic cooperation and preventing the intervention of the major powers in the targeted regions (Yavuz, 1998, p. 17).

Balkan countries are one of the main contours in the doctrine of strategic depth, that is, Neo-Ottomanism as the primary concept of such ideological proliferation. Tase in this direction points out that while Davutoglu's opponents bowed to such concepts, calling them colonialist, however, a positive influence of this Turkish foreign policy on these countries is noticeable. Albania, Kosovo, Bosnia and Herzegovina, and Macedonia are perceived as "the central place in neo-Ottoman authors of Turkish identity" and are therefore crucial for the formation of the Neo-Ottoman concept and policy. Such a Turkish foreign policy revolves around exploiting the prevailing unstable states in an attempt to redefine its status in the new world system after the end of the Cold War (Tase, 2013, p. 10). As a fundamental backing of such claims, Davutoglu said at the 2009 Summit, entitled "Ottoman Legacy and Muslim Communities in the Balkans," that the Balkans represented a "geopolitical tampon zone" that surpassed this position to become the center of the 16th century in the world politics. He promised that Turkey would restore and re-establish this era in the Balkans, and Turkey aims to establish order in the Balkans, the Caucasus, and the Middle East as the center of world politics in the future (Petrovic & Relevic, 2011, p. 161 - 162) .

3.2. The influence of the doctrine strategic depth: intensifying the Turkish-Albanian cooperation

Frequent visits between senior officials from both countries are a hallmark of the Turkish-Albanian relations. Apart from official relations, the attitude of Albanian citizens to Turkey for various reasons (such as education, recovery in Turkish hospitals, employment in Turkish companies, etc.) and vice versa, the attitude of Turkish citizens in Albania to open up new businesses or employment among the largest Turkish companies investing in Albania are some of the key factors contributing to the development of bilateral relations. On the other hand, one should not forget that Turkey was a strong supporter of the Albanian Euro-Atlantic integration. The support provided during the Albanian integration into NATO clearly demonstrates the constructive Turkish policy of Albania's integration into Western political and military structures. Turkish assistance for the modernization and development of the Albanian armed forces and the activity of

Albanian soldiers in Afghanistan within the Tuqija military units is an additional evidence of the level of political-military relations between Turkey and Albania (Ministry of Foreign Affairs of the Republic of Turkey, 2013). Having in mind such constellations, Ali rightly notes that in the new concept of Turkish foreign policy towards the Balkans, it must balance the international strategic dimensions with the United States, the EU, Japan, China and Russia in this region. In this context, according to this vision, Turkey is committed to strengthening bilateral relations with the Balkan states, especially the NATO members, or claiming to join in order to strengthen the Turkish position within the NATO alliance (Ali, 2010, p. 151 - 152).

In that direction, the Doctrine of Strategic Depth, the Neo-Otomanism and the Islamic Solidarity is gaining stronger stimulation after the successful integration into the structures of the North Atlantic Alliance, leaving room for new horizons of legitimization of mutual cooperation on the one hand and the Turkish influence on the other. As Davutoglu notes, according to the new concept of Turkish foreign policy, Turkey, as the successor of the Ottoman Empire, is bound to protect the interests of the Turkish and Muslim minorities in this region (Davutoğlu, 2004, p. 123). Consequently, the Muslim countries in the Western Balkans according to the doctrinal strategic depth should have a vital role. Cogos rightly concludes that the enhanced role of Albania in the Western Balkans has its merits precisely on the doctrine of Davutoglu for strategic depth (Cogos 2013, p. 133). Keyman and Gumuscu note the most significant point in the transformation of the Turkish foreign policy under the leadership of AKP and neo-Ottomanism. While the foreign policy activity in the 1990s was strictly concentrated in a state-centric managerial apparatus, excluding think tanks and other actors from public debate, the AKP transformed the nature of such pro-activism by overcoming previous conditions by involving the actors concerned (civil and economic) and representing their interests and demands (Keyman & Gumuscu, 2014, p. 73).

Guided by such postulates, the economy and socio-cultural dimension have become extremely important parts of the bilateral relations between Turkey and Albania and have the following characteristics. Firstly, Turkey's economic investment exceeds one billion euros, Turkey is also considered Albania's second trading partner for its trade capacity with which this country is ranked on the list of the most important economic and trade partners in Albania (from 61,3 million dollars of export and 2,8 in import in 2000, 79,76 in export and 3,97 in import in 2002, rapidly rising to 161 in exports and 15,53 million dollars of import, in 2007 to reach 234 in export and 22,40 million USD in import) (Ministry of Foreign Affairs of Turkey, 2013). Secondly, Turkish companies are active in the construction sector (ENKA, Gintaş, Armada, Metal Yapı, Aldemir, Servomatik), telecommunications (Çalık Holding / Türk Telekom, Makro-Tel / Hes Kablo), transport (Albanian Airlines Evsen) and also investment in the Banking System (Çalıkbank / Şekerbank-BKT) in the field of health (Universal Hastaneler Grubu, Univers-Alb) and higher education (Beder University, Epoka University, etc.) (Ministry of Foreign Affairs of the Republic of Turkey, 2013) Thirdly, Turkish cultural and social activities in Albania in the last period should also be highlighted. The opening of the Turkish Cultural Center known as Yunus Emre, the spread of Turkish culture and language, the socio-cultural activities of the Turkish Co-operation and Development Agency (TIKA) and the cooperation of Albanian cities with those of Turkey (Ministry of Foreign Affairs of the

Republic of Turkey, 2013) play a key role in promoting Turkish-Albanian relations after the 2000s.

4. THE ROLE OF ISLAM AS A NEW FACTOR

The dimensioning of Islam as a new factor in the creation and management of the Turkish foreign policy is inextricably linked to the Ottoman heritage of Turkey, analogous to the doctrinal strategic depth concept on the one hand, and the existence of the pro-Islamic peculiarities of AKP as an actor in such a process on the other hand. Compared to the 1990s, when Turkish foreign policy activities were generally Euro-Atlantic and nationally determined, now Islam became a marginal in the core segment of Turkey's foreign policy activities and priorities.

We would highlight a few key moments that traced the direction. First, logically and conservatively, a by-product of the doctrine of strategic depth is the Islamic articulation due to historical motives. It should be noted that the Ottoman Empire, as a strictly religious state, in its political milieu evaluated Islam and perceived it as an agent for the mobilization and political legitimization of the order. The Sultan wore the title Caliph (the leader of the Muslims), Emir Al-Mumin (leader of the right-believers) and Sheikh ul-Islam (regulator of Islamic religious issues), until the abolition of the sultanate and the proclamation of the Republic, according to the Turkish nationalist worldview aimed at European discourse of the new urban population (Schulze, 2000, p. 53). Second, with the intensification of the rival perspective and the conflict of interests of the regional powers (Saudi Arabia and Iran) their factoring in the countries with Muslim population is noticeable. As Tanaskovic notes, although the presence and the influence of Arab (Wahhabi) Islam and Iranian (Shiism) are visible, however, addressing Turkey as a number one player for Balkan Muslims is unambiguous for all relevant experts. Yet, there is some marked impatience in the diplomatic contacts on the part of Iran due to the Turkish activism in these areas (Tanaskovic 2013, p. 36). The same can be said, albeit latently, for Saudi Arabia. In this direction, apologizing with its positions regarding the Islamic perspective, Turkey monitors the continuity of the ex-Minister Ciller's statement that there is a model of radical Islam and a model of Turkish Islam in the Islamic world, and the Balkan Muslims should choose the Turkish model (Korkut 2010, 117). Thirdly, the intensified institutionalization and the expanded statement of the Directorate for Religious Affairs (Diyanet), although established in 1924 as a subtotal of the abolished caliphate in the Kemalist era, with the arrival of the AKP it has expressed a pronounced significant dimension in the social life and absolute control by AKP activists and the former banned Welfare Party (Refah). In this regard, Axiarlis emphasizes that the conservative attitude of the AKP is demonstrated by the ethical attitude towards religious beliefs and the long-standing insistence on controlling this institution (Axiarlis, 2014, p. 83). On the other hand, as Lami reports, the statement of the former Turkish President Abdullah Gul that undoubtedly, the role of the Diyanet is to teach our people to religion in the most accurate way (Lami 2017, p. 32) reflects exactly the congruence of the Turkish state with the Islamic religion and its factorization.

On the other hand, Islamic AKP proliferations have significantly shaped Islam as one of the crucial elements in political acting. However, it should primarily be noted what Demiri states, that the AKP has never advocated the establishment of a theocratical Islamic

system, but only insists on respecting religious freedoms and rights. (Demiri, 2009, p. 133) However, its pro-Islamic commitments are visible in several cultural segments such as the abolition of the ban on the hijab and its public manifestation, the ban on the sale of alcohol after a certain period of time, the appearance of the president of the Jumu'ah salat, the equalization of religious schools (Imam-Hatip) with another state schools, the attempt to neglect or suppress the Alevi minority, etc. (Hale & Özbudun, 2010, p. 68 - 78) In addition to the cultural segment and the political narrative of the AKP and President Erdogan, he abounds with Islamic manifestations, such as the call to his supporters to "do not heed what Europe says, but to listen to what Allah says" (Sulaivany, 2016), encouraging more children in family, so the announcement of restrictions on abortion, and noticing that only the Most Merciful Allah gives sadaqah (Dubai News Portal, 2014), the call of the Muslim community more often to visit the Al Aqsa Mosque in Jerusalem and the insult of the Israeli occupation of Jerusalem (Daily Sabah, 2017), as well as a statement after the rains from the restoration of the great Yildiz Mosque in Ankara, that with the help of Allah no one will be able to silence the Adhan (the call for prayer) (President of the Republic of Turkey 2017). In addition, the party program explicitly states that "everything will be better with us, with the help of Allah" (Demiri, 2009, p. 130).

It is crucial to emphasize that this variable, i.e., such a pro-Islamic dimension, has been embodied in the relations with the Republic of Albania in two key segments of social action. First, in religious education, enabling many students from Albania to attend and study theological teaching in Turkey. And secondly, the revitalization of Islamic life in Albania, by helping to organize the Hajj, the reconstruction of mosques, including the investment in the Great Mosque in Tirana that will be the largest in the Balkans with 50 meter minarets and a dome of 30 meters, located on 10,000 square meters, near the building of the Albanian Assembly, and with a capacity of 4,500 prayers (Bishku, 2013, p. 87).

5. CONCLUSION

The factoring of Turkey on the regional and international scene, as well as its rapid military and economic growth, played a significant role in the intensification of Turkish-Albanian relations. On the other hand, the opening of Albania towards Euro-Atlantic integrations, as well as the historical and cultural heritage of this country, causally and consequently made the state a political, strategic, military, and economic strong partner to Turkey. On the basis of the above, we could identify several essential concluding observations.

First, the historical dimension of Turkish-Albanian relations is reflected in the common cultural heritage and tradition within the Ottoman Empire. On the other hand is the stagnation during the communist regime in Albania, and the fact that consecutively, its economic and political opening gave a considerable momentum after the fall of the Berlin Wall and NATO and the EU orientation with Turkey appearing as a key supporter for Albanian aspirations in that domain.

Second, the essential factors that determined this setting in the 90s of the last century lie in the interests and the establishment of a sphere of influence of the United States, and consequently their agenda for integration of the region in the Euro-Atlantic

structures. On the other hand, the attempt to deflect and prevent Greek influence gave a significant impetus to the intensity of relations between Albania and Turkey.

Third, the Turkish - Albanian relations in the period since the beginning of 2000 marked a significant progression, but they also experienced an essential metamorphosis based on the new vision of the Turkish foreign policy of the 21st century, mainly based on the doctrine of strategic depth, which has a vital influence on the diplomatic activities of the state in the international community. The Balkan Peninsula, in particular Albania, is a very important segment for Turkey, which can be considered as one of the most important countries. This provides a clear and visible signal for all the political effects, as well as the economic and cultural life of this new vision of Turkish diplomacy. This doctrine rests on the renewal of Turkey's political, economic, and cultural influence in the countries of the former Ottoman Empire, transferring itself from a regional to a global actor on the international stage. Fourth, the reflections on doctrinal strategic depth are visible in the economic and cultural sphere, expressed with the rapid increase in trade, investment in the construction sector, health care, education, as well as the range of cultural centers for cooperation provided and financed through the agency TIKA. And finally, consequently on the previous segment, Islam emerges as a new essential factor in the dynamism of the relationship based on the doctrine of strategic depth which in its axiology implies concern for the Muslim peoples in the respective spheres of influence, encouraging their cooperation, relativizing other Islamic regional players from their influence in the Balkans and Albania, as well as the encouragement and revitalization of religious life through the construction of religious schools, mosques and other elements of a religious conifer. Such connotations point to a clear and unambiguous conclusion that relations between Turkey and Albania are experiencing a shift from Euro-Atlantic (after Albania's successful integration into NATO) into neo-Ottoman, based on the Islamic solidarity.

6. REFERENCES

1. Ali, M. (2010) "Stratejik Derinlik Doktrini Ve Bu Doktrinin Balkanlara Yansımaları", Balkan Araştırmaları Dergisi. Bursa: Bursa Akademi

2. Axiarlis, A. (2014)Political Islam and the secular state in Turkey: Democracy, reform and the justice and development party. *London : I.B. Tauris & Co. Ltd*

3. Aydoğmuş, F. (2009) Soğuk Savaş Sonrası Türkiye'nin Balkanlar Üzerindeki Etkisi (punim masteri). İstanbul: Y.Ü. Atatürk İlkeleri Ve İnkilap Tarihi Enstitüsü.

4. Baş, N. (2009) Kosova Sorununun Ortaya Çıkışı Ve Balkanlar Üzerine Etkileri (punim masteri). Isparta: S.D.Ü. Sosyal Bilimler Enstitüsü.

5. Bishku, M. (2013) "Albania and the Middle East" Mediterranean Quarterly, Vol. 24, 2nd edition

6. Cogos, K. (2013) "Turkish and Muslim minorities in A. Davutoglu's geopolitical thought" Civitas Gentium. Vol. 3, No. 1

7. Davutoğlu, A. (2004) Stratejik Derinlik. Istanbul: Küre Yayınları.

8. Daily Sabah. (2017) Erdogan urges Muslim to visit Al-Aqsa to protect the mosque's Islamic identity. Diplomacy, May. https://www.dailysabah.com/diplomacy/2017/05/08/erdogan-urges-muslims-to-visit-al-aqsa-to-protect-the-mosques-islamic-identity

9. Demiri, B. (2009) Islam i Politika: Political experience of Muslims. Skopje: Logos-A

10. Dubai News Portal (2014). Erdogan: Everybody should have at least four children. Vozviseniot Allah e toj sto dava nafaka. December. http://dubai-portal.com.mk/?p=40554

11. Hale, W. & Özbudun, E. (2010) Islamism, Democracy and Liberalism: The Case of AKP. New York: Routledge, Taylor & Francis Group

12. Keyman, F. & Gumuscu, S. (2014) Democracy, Identity and Foreign Policy in Turkey Hegemony Through Transformation, London: Palgrave Macmillan

13. Kır, A. (2008) Türkiye'nin Makedonya Politikasının Balkan Politikası İçerisindeki Yeri (punim masteri). Istanbul:H.A.K. Stratejik Araştırmalar Enstitüsü.

14. Korkut, S. (2010). The Diyanet of Turkey and Its Activities in Eurasia after the Cold War Acta Slavica Iaponica, Tommus 28 http://eprints.lib.hokudai.ac.jp/dspace/bitstream/2115/47624/1/ASI28_006.pdf

15. Lami, B. (2017) "Geo-Culture as aTurkish Foreign Policy Tool for Influence in Albania" International Journal of Academic Research and Reflection, Vol. 5 No. 1

16. Lesser, O. Ian et. al., Balkanlar'dan Batı Çin'e Türkiye'nin Yeni Jeopolitik Konumu, Alfa Yayınları, İstanbul 2000.

17. Lütem, E. Ö. & Coşkun, B. D. (2001) Balkan Diplomasisi. Ankara: ASAM Yayınlari.

18. Ministry of Economy of Republic of Turkey www.musavirlikler.gov.tr

19. Ministry of Foreign Affairs of Republic of Turkey (2013) Relations between Turkey and Albania, June. http://www.mfa.gov.tr/relations-between-turkey-and-albania.en.mfa

20. Petrovic, Z. & Reljic, D. (2011) "Turkish Interest and Involvment in the Western Balkans: A Score-Card" Insight Turkey, Vol. 13, No. 3

21. President of the Republic of Turkey (2017) President Erdogan Inaugurates Yildiz Hamidiye Mosque, August. https://www.tccb.gov.tr/en/news/542/80091/president-erdogan-inaugurates-yildiz-hamidiye-mosque.html

22. Sayari, S. (2000) "Turkish Foreign Policy in the Post-Cold War Era: The Challenges of Multi-Regionalism" Journal of International Affairs, Vol. 54, No. 1

23. Schulze, R. (2002) A Modern History of Islamic World. New York: LB. Tauris Publishers

24. Sulaivany, K. (2016). Erdogan: Don't heed what Europe says, listen to what Allah says. Kurdistan 24, November. http://www.kurdistan24.net/en/news/40aff5c5-63bd-4bbe-9c7f-9e56180e4f69/Erdogan--Don-t-heed-what-Europe-says--listen-to-what-Allah-says

25. Tanaskovic, D. (2013) "The Balkans and the Islamization: Turkey's Regional Priorities". The Balkans and the Middle East: Are They Mirroring Each Other. Belgrade: Faculty of Security

26. Tase, P. (2013) "Turkey: Albania's strategic partner in the Balkans. Spero News. April

27. Tonovski Gj. (2006). Megjunarodni organizacii. Skopje: Evropski Univerzitet

28. Turkish Asian Center for Strategic Studies. www.tasam.org

29. Yavuz, H. (1998) "Turkish Identity and Foreign Policy in Flux: The Rise of Neo-Ottomanism" Middle East Critique, Vol. 7.No. 12

UDK:930.85-049.65:340.13(497.7)

PROTECTION OF THE CULTURAL HERITAGE

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1. INTRODUCTION

From legal aspect, cultural heritage refers to tangible and intangible properties, as an expression or testimony of human creativity in the past and present or as combined works of people and nature, due to their archaeological, ethnological, historical, artistic, architectural, urban, ambient, technical, sociological and other scientific or cultural values, properties, contents or functions, have cultural and historical significance, and because of their protection and use they are under legal regime in accordance with the Law on Protection of Cultural Heritage as well as other laws.

The territory of the Republic of Macedonia, although small in size, abounds with cultural heritage of different types and different periods, from the earliest stages of the existence of mankind to the present day, which is probably the reason for the great interest of different groups of subjects for this small piece of land.

The cultural heritage on the territory of the Republic of Macedonia under the Law on Protection of Cultural Heritage is divided into three categories: movable, immovable and intangible.[1]

The movable cultural heritage encompasses archaeological, ethnological, or historical arts, items of art and technical items, library goods, audiovisual, or phonogram archives goods.

Immovable cultural heritage is the material goods with a status of cultural heritage erected on land or dependent on it, as well as goods which, according to their physical properties, are movable, but for justified reasons, they are part of some immovable good, such as: installations, ornamental elements, and such. These also include monuments and monumental units as well as cultural landscapes.

Folklore goods, language and names represent intangible cultural heritage.

According to the significance, the cultural heritage in Macedonia is divided into two categories and it can be of particular or of other cultural and historical significance, i.e. especial cultural heritage. Cultural heritage of especial importance, according to the law, is the property which has exceptional and other special values and characteristics. It is of public interest and enjoys special protection, and it is divided into two subcategories.

In the first sub-category, cultural heritage of exceptional significance is any property that has the highest national significance and universal values for humanity.

The second sub-category, a cultural heritage of great significance, refers to any property that has a great significance for the national history, culture, art, science, or technical development.

The significant cultural heritage is part of the cultural heritage that does not fall into the category of special importance as a lasting value and it is protected by law.

[1] Official Gazette of the Republic of Macedonia No. 20/04 from 02. 04. 2004

This categorization covers immovable properties, as well as movable content related to archeology.

2. CULTURAL HERITAGE IN DANGER

In order to protect the cultural heritage, we will elaborate the causes that contribute to its damage and destruction. Some of the causes for the destruction of cultural heritage may occur rarely and occasionally, and they would include natural disasters such as torrential rains, fires, strong storms and earthquakes that are a risk factor that would cause the destruction of cultural heritage.

Other threats to the destruction of cultural heritage occur constantly and on a daily basis. Here we would emphasize the daily deterioration of the existing state of cultural heritage, both the movable and the immovable. One of the reasons is the lack of sufficient information on the current state of cultural heritage that could lead to its accelerated destruction, as well as insufficient concern for it. We are witnesses of everyday attacks and different types of attacks on cultural heritage.

Nowadays, criminal activities can be linked not only to domestic, but also to international criminal groups dealing with crime of cultural heritage. Those criminal groups are networks of trusted partners from those who illegally carry out excavations, up to the customs offices and the resale on the black market to auction houses or the Internet. Today, there is great and real concern about sales that take place online. This way of sale involves many countries because the shipment usually passes several countries to its final destination. Often, different countries have differently regulated cultural heritage laws, thus becoming disputed about the characterization of crime, i.e. the extent of the criminal act. The need for global involvement of a number of countries in the joint struggle against the crime of cultural heritage arises precisely from this view and from the problem that as independent national institutions are not powerful enough to cope with international crime.

Dangers, i.e. daily threats are the illegal excavations, thefts, concealment, appropriation, illicit trafficking, and fraud. All these unlawful acts are usually led by certain organized groups or individuals who plan, prepare, order or commit crimes of various motives and causes.

In addition to the criminal acts in peacetime, we should pay special attention to crime done in times of war, which would say that the political situation affects the crime of cultural heritage.

The UNESCO Convention on the Protection of Cultural Property in the event of an armed conflict adopted at The Hague on 14 May 1954 has been ratified in Macedonia. We are witnesses of the 2001 armed conflict in Macedonia. Terrorist armies of Albanian terrorists - UÇK used many religious Christian religious buildings as a living shield, using them as the headquarters and ammunition headquarters. Of the many desecrated churches we would mention the Monastery of the Most Holy Mother of God in the village of Matejce - Kumanovo.[2] The original church dates back to the 11th century and has been restored in the 14th century. The frescoes of rich and with high artistic and historical value dating back to the 14th century were mercilessly ruined in it.

[2]Calamus Publishers, Matejce Monastery, Skopje 2002

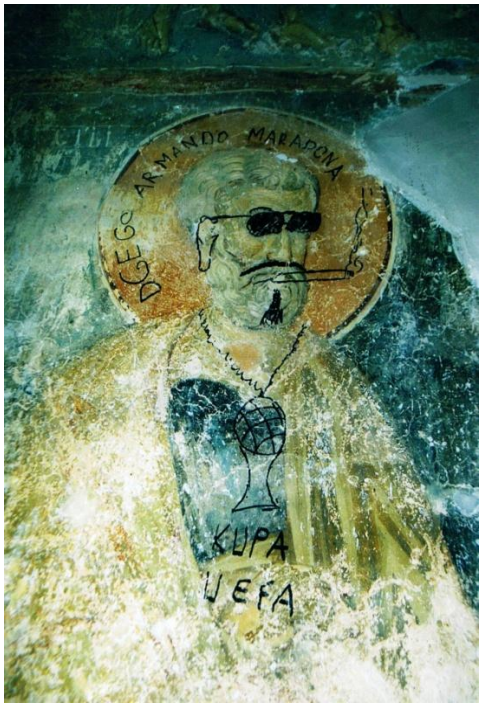

Figure 1: Damaged fresco painting in Monastery of the Most Holy Mother of God, Matejce - Kumanovo. (Directorate for Protection of Cultural Heritage, 2001)

Figure 2: Restored fresco painting in Monastery of the Most Holy Mother of God, Matejce - Kumanovo. (Directorate for Protection of Cultural Heritage)

Figure 3: Monastery of the Most Holy Mother of God in the village of Matejce – Kumanovo, (Directorate for Protection of Cultural Heritage).

The Monastery Church St. Athanasius in Leshok - Tetovo in 2001 was mined and destroyed to the ground. Also, the old medieval church of St. Athanasius in Leshok suffered from vandalism, desecration of frescoes from UÇK 's terrorist armies, and it was as a munitions depot and headquarters for the terrorist armies.

Until the 80s and the 90s of the last century, the current illegal acts were the thefts of icons and the desecration of sacred objects as a result of the political situation and religious intolerance among the groups of citizens on the territory of the Republic of Macedonia. There are also examples of the destruction of memorial monuments. Nowadays among the most serious problems is the illegal import and export of cultural properties and illicit trade.

Figure 4: Destroyed Monastery church "St. Athanasius" in Leshok-Tetovo, 2001

Figure 5: Damaged fresco painting, Church St. Athanasius in Leshok-Tetovo (Directorate for Protection of Cultural Heritage, 2001)

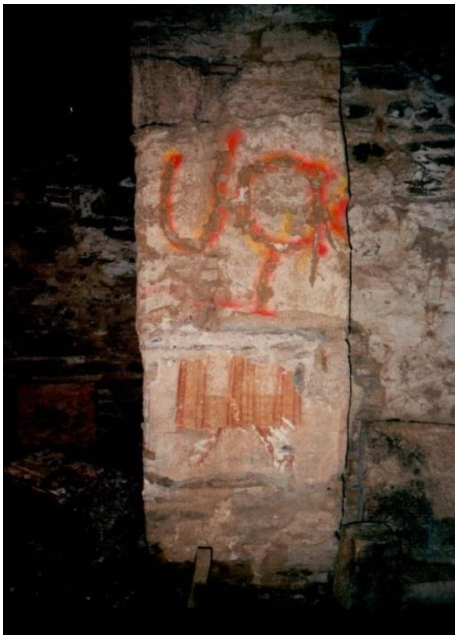

Figure 6: Damaged fresco painting, Church St. Athanasius in Leshok-Tetovo (Directorate for Protection of Cultural Heritage, 2001)

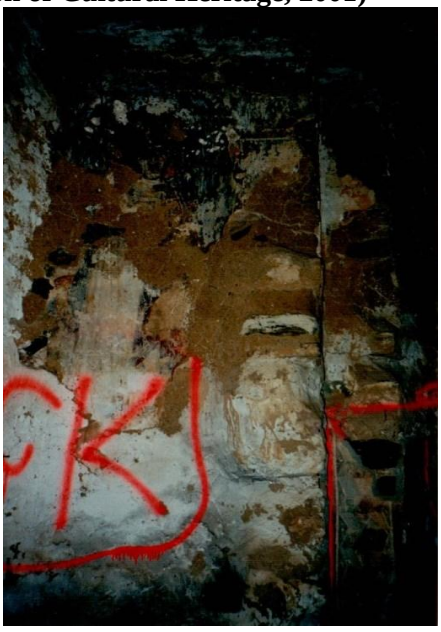

Figure 7: Damaged fresco painting, Church St. Athanasius in Leshok-Tetovo (Directorate for Protection of Cultural Heritage, 2001)

The Convention on measures which should be taken to prohibit and prevent illegal import, export, and transfer of ownership of cultural property adopted in Paris on 14 November 1970, has been ratified by the Republic of Macedonia and the measures envisaged therein are incorporated in the legislation. Nevertheless, in recent years we have witnessed many illegal excavations, the destruction of a large number of archaeological sites and even theft of archaeological objects from the Museum of Macedonia in Skopje.

As a consequence of these actions, we are facing impoverished national and cultural treasures, because in most cases the cultural properties have not been recovered, and with the loss of cultural heritage we are losing the identity of the state.

This risk is not only national but also international. All countries face unlawful actions with damage to the cultural heritage. Areas with greater diversity in cultures and the time periods they belong to are most commonly targeted by criminal groups.

All of these actions, or we can call them weaknesses, arise and are evident on the issue of security and protection of cultural heritage. But, we can regretfully conclude that they arise from the most likely inadequate practical realization of the care for the cultural heritage.

3. MEASURES FOR THE PROTECTION OF CULTURAL HERITAGE

With the growing interest in the cultural heritage of the Republic of Macedonia, the dangers are also increasing. In parallel, we should develop and increase the protection measures, emphasize the need for cooperation with the institutions in the country and internationally, of course, since none of the countries is excluded from illegal and criminal activities. Responsibility on the issue of security, prevention, and protection of cultural heritage is a burden on the institutions of the state.

When we talk about institutions in the state responsible for cultural heritage, we mean: Ministries, Directorate for Protection of Cultural Heritage, Cultural Heritage Protection Institutions, museums, libraries, film archives, conservation centers, and galleries.

The rich cultural heritage that Macedonia possesses deserves special attention and treatment, which the competent institutions for protection, as well as the Directorate for Protection of Cultural Heritage as a legal entity for performing administrative and professional matters, should have as an imperative in their work and activities.

The protection of the cultural heritage is a very complex activity, i.e. the actions of the institutions in the country according to a number of regulations, laws and bylaws established in the Macedonian legislation, as well as international agreements and conventions that the Republic of Macedonia has signed, ratified, or accepted, and which should be respected for the purpose of preserving from damage, destruction, and ultimately loss of cultural heritage. It implies a level of awareness of protection in accordance with the legal norms, expert-scientific, administrative, technical, technological, security, financial, educational and lots of preventive and corrective measures that are of public interest and preserves the intangible and material properties of cultural, historical, artistic, scientific and other significance as a lasting value and their transfer to future generations.

The system for protection of cultural heritage as a whole appears as a coherent set of legal norms, which, in a special way, regulate the social relations regarding the cultural heritage and its protection and use. For the first time, the protection of cultural heritage as a constitutional category was accepted in the Weimar Constitution of 1919, according to which, the historical, artistic and natural monuments enjoyed the protection and benevolence of the state, as well as the duty of the Reich to hinder the export of German artistic treasure[3].

When we talk about an independent and sovereign Republic of Macedonia, we can say that with the Constitution of the Republic of Macedonia of 1991, the protection of

[3] D-r Ljubica Kandic, *Odabrani izbori iz istorije drzave i prava,* Belgrade, 1979, p. 335 - 358

cultural heritage has been guaranteed. The constitutional amendments in 2001, the subject to guaranteed protection include: the historical and artistic treasure of Macedonia as a whole, the historical and artistic wealth of all ethnic communities in Macedonia, the separate and the goods that constitute the constitutional categories of historical and artistic treasure[4].

The domestic law that is acted upon when it comes to cultural heritage in the Republic of Macedonia is the Law on Protection of Cultural Heritage from 2004, unless otherwise regulated by it, as well as by rulebooks and by-laws.[5] In the drafting of the Law on the Protection of Cultural Heritage, it was intended to include provisions that are compatible with the relevant provisions for the protection of cultural heritage arising from the ratified international conventions and acts of the European Union, the Council of Europe, UNESCO, UNIDROIT, INTERPOL and ICOMOS.

The cooperation with the institutions is undoubtedly not excluded, i.e. state bodies that have a connection with cultural heritage such as customs, police, prosecution, court.

The 2004 Law on Protection of Cultural Heritage properties, which has been amended several times, is the basis for the legal protection of cultural goods on the territory of Macedonia. One of the main features is security protection as a special form of protection of cultural heritage with specially embedded provisions. Another feature of the Law on Protection of Cultural Heritage is the embedded organizational units at the national level. These include the National Council for Cultural Heritage and the Directorate for Protection of Cultural Heritage. The National Council is a coordinative body of the Government of the Republic of Macedonia, which has a coordinating committee for security protection and prevention of prohibited or illegal actions.

Since 2004, there is also the Directorate for Protection of Cultural Heritage. This state body has the capacity of a legal entity within the Ministry of Culture and performs administrative, professional and other activities in the field of cultural heritage protection. The Directorate includes several departments for different areas of activity. One of them is the department for prevention and inspection. Authorized officials have the right to collect data on the security of the cultural heritage, to control the implementation of the prescribed protection measures, to conduct safety insights and, of course, to cooperate with the police, the customs, the prosecution and other relevant services.

Another important thing that highlights the law is the protection instruments. First of all, here we include the National Strategy for the protection and use of cultural heritage which envisages a multi-annual plan for the protection and management of cultural heritage and where the priorities of the security protection policy and measures for the prevention of unwanted unlawful actions are established. The National Strategy for the protection and use of cultural heritage is one of the key instruments for protection; it is a strategic document that contains long-term bases of the policy for protection and use of cultural heritage. The government of the Republic of Macedonia adopts the National Strategy on the proposal of the National Council for Cultural Heritage. The National Strategy is also coordinated with the strategies for the protection of the common cultural heritage of Europe.

[4]*Amendment IX of the Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 91 / 10*

[5]Official Gazette of the Republic of Macedonia, No. 20/04 from 02. 04. 2004

The legal obligation applies primarily to the three European strategies, including the Integrated Protection Strategy, the Sustainable Development Strategy and the European Integration Strategy, the so-called transverse strategies of protection. The ultimate goal of the National Strategy is to preserve the cultural heritage in its original state, to create favorable conditions for its survival and sustainable use within the scientific baseline, taking into account that it has an irreplaceable role in terms of cultural identification, i.e. cultural identity and development of the human person. The determination of the basic goals is in direct dependence on the perception of the existing situation in the field of cultural heritage protection and the policy of priorities and it implies determinations regarding the number, the type of the basic goals, and the deadline for the realization of the objectives.

The law extended the absolute measures for legal prohibition of damage, destruction, appropriation, concealment, evasion, usurpation of cultural heritage, prohibition of alienation of state cultural heritage of particular importance, prohibition of the export of cultural heritage, prohibition of import of illegally acquired cultural legacy, prohibition of exploring, repression, attack, and use of cultural heritage for military purposes. All of these bans are appropriately treated in the Criminal Code. As instruments for the protection of cultural heritage there are also the security plans, i.e. the Plan for preventive protection of cultural heritage from unlawful actions and the Plan for emergency action in case of unlawful actions.

These plans are prepared according to previously prepared reports, prepared by the Directorate for Protection of Cultural Heritage, and approved by the Minister of Culture.

Other protection instruments used in the Macedonian legislation are the classification of cultural heritage, inventory, protection records, valorization, categorization and revalorization, registration, international register of cultural goods under special protection.

The security elements contained in the Law on the Protection of Cultural Heritage are in accordance with the recommendations of the Convention on measures to be taken to prohibit and prevent illegal import, export and transfer of ownership of cultural property, adopted in Paris on 14 November 1970. Legislation in the law on protection of cultural heritage regulates several categories of properties: properties under temporary protection, reserved archeological zone, cultural heritage in danger, and national wealth. Under temporary protection are immovable and movable properties for which they are presumed to be cultural heritage and for which the provisions of this Law are applied and whose protection is established in a manner determined by law.

A reserved archeological zone is a spatially restricted area that contains any traces of human existence in the past eras, including places where there are no visible remains on land or under water, whose excavation and exploration, in order to protect such material residues, is left to the future generations. The reserved archaeological zone may be an area that may contain one or more archaeological sites whose archaeological contents are not sufficiently identified to be protected in a regular way. The provisions of the Law on Protection of Cultural Heritage related to the cultural heritage of special importance shall apply to the reserved archaeological zone.

Cultural heritage in danger, according to the legal legislation, is the one that is threatened with damage, destruction, or serious violation of its integrity, i.e. goods that are at increased risk that could have harmful effects on their essential characteristics.

Regardless of the type and category, the cultural heritage in danger is given priority in the implementation of the protection measures.

4. CONCLUSION

The Republic of Macedonia, as well as other EU Member States and those that have ratified the provisions of the UNESCO Charters, UNIDROIT, INTERPOL, and other Cultural Heritage Protection Conferences, endeavor to harmonize the laws of the individual states with the envisaged provisions for more effective protection of the cultural heritage. Yet, it is still obvious that the fight against the criminality is difficult and long. All criminal, i.e. unlawful acts should be punishable proportionally and with effective sanctions to be applied against all individuals and groups or entities participating in any stage of the crime of cultural heritage. With regard to the lack of data and the stand of the international community for transnational trade of cultural goods, international organizations should review and make studies and research on the same issue in order to increase and strengthen the capacity to collect data on the issue of cultural heritage crime. In conclusion, a closer systematic cooperation between states and international organizations can be in principle aimed at preserving cultural heritage as a country's culture and identity.

Inevitably, there is a revision of the national legislation in the work of the institutions in the country, as well as strengthening the export and import controls, especially through the free zones, i.e. waterways. A database should be developed as the primary tool for investigating stolen objects. We should improve the capacities of the country itself, thus involving experts in the field of cultural heritage in the process of investigation, damage assessment, documentation. Strengthening judicial authorities and increasing international co-operation measures to investigate and co-operate in the area of the justice system in the fight against crime with cultural heritage would be a step forward. We should work to reinforce the police force and to introduce specialized police units that will work exclusively on cultural heritage trafficking through the national Interpol-related database. Of course, it is necessary to specialize and strengthen the customs service, and we should not fail in the field of conducting financial investigation.

As one of the basic measures we need to work on is continuously raising public awareness about the importance of cultural heritage. The development of protector awareness is an obligation of the public institutions for education, science, upbringing and information that should anticipate contents that will build a proper and active relation to cultural heritage and its protection.

In this context, protection of cultural heritage is a complex matter and the best results could be obtained with coordinated work and cooperation of the relevant entities in the country and abroad.

5. REFERENCES

1. D-r Ljubica Kandic, *Odabrani izbori iz istorije drzave i prava*, Belgrade, 1979, p. 335 - 358

2. *Amendment IX of the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No.91 / 10).*

3. Calamus Publishers, Matejce Monastery, Skopje 2002.

4. Official Gazette of the Republic of Macedonia, No. 20/04 from 02. 04. 2004

UDK:343:004.77]:316.344.5

SOCIAL MEDIA AND OPSEC / AN ANALYSIS THROUGH SOCIOLOGY OF SECURITY

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Abstract

When virtual social relations and online interactions have increased in our age, media also experienced transformation. Social media are a phenomenon which came with the wide usage of internet by the modern society and individuals. On one hand, it has created opportunities for a more democratic way of communication, participation and dialogue between members of different socio-cultural groups, communities, friends and family members, colleagues, etc.; on the other hand this new version of media has caused criminal risks, security gaps and vulnerabilities to contemporary threats varied from fraud to cyber-attacks, terrorism, identity theft, ransomwares, etc. Even the "old types" of crimes in real life can begin from social media and virtual reality. All these problems are related to several sub-disciplines of sociology: sociology of communication, sociology of crime, and sociology of security are among them. In this paper we will analyze the topic though the sociology of security's prism. Also, we will discuss what can be the functionality of OPSEC as a measure, which has military background and widely used later on by civilian sectors including corporate security as well.

Keywords: *sociology of security, cyber security, OPSEC, social media, cybercrime*

1. INTRODUCTION

In the history of the internet "The first recorded description of the social interactions that could be enabled through networking was a series of memos written by J.C.R. Licklider of MIT in August 1962" and he was discussing here his concept of "Galactic Network" [1] (p. 1). Licklider foresaw that "the future of computing would evolve into a gigantic network: an Intergalactic Network" [2], although the real naming would be more humble as "world wide web" compare to "intergalactic" dimensions. He successfully "envisioned a globally interconnected set of computers" which provides individuals ability for "quickly access data and programs from any site. In spirit, the concept was very much like the Internet of today" [1] (p. 1). Of course, from this early history of conception until 21st century a big progress happened.

Figure 1. J.C.R. Licklider

After the wide-spread and availability of "pervasive networking" with affordable ways of communication "a new paradigm of nomadic computing and communications" has been possible [1] (p. 17). Social media were the sequacious result of the “internet” and its “new paradigm of communication”. As social media are a part of society and include its general dangers as well, it was under risk (crimes, terror) and also its specific features were providing unique ways of vulnerabilities. People who are not confronted face to face could be as harmful as individuals facing in physical situations.

In this paper we are going to focus on the functionality of OPSEC (Operations Security) concepts in order to protect society, organizations, and individuals from dangers and risks which can emerge in social media. OPSEC has a military origin. However, its model is pretty applicable into all social fields, including social media as well. Let us have a look of what kind of dangers appear in social media and which ways of solutions / precautions can be provided from the OPSEC perspective. This sociological analysis would show us the ways to have safer social networks in contemporary society.

2. SOCIAL MEDIA AND VULNERABILITIES

Social media can be defined as the media through which people can socialize, share different contents, information, images, etc. with other people [3] (p. 8). The history of social media is as old as the spread of the internet, even before there were prototypes as based on “telephones” [3] (p. 9 - 10). After 1991, with the public access to the internet, the basis for social media as we know today was established. In 1990s IRC (Internet Relay Chats) and ICQ (“I Seek You”) spread and later it turned into IM (Instant Messenger) [3] (p. 13 - 15), [4]. In late 90s blogs began to be used and between 1997 - 2003 social networking websites launched [3] (p. 18 - 23). Today, with many different variations, social media are in the highest level of history. Socialization and interactive mobility in

cyber social networks take more place than the speed and intensity of real-world social activities.

Figure 2. Social Media

We can ask why social media have been so influential and wide-spread. In order to understand this, we have to look at the advantages of social media compare to traditional variations of media. The features which make social media more powerful are the followings:

- accessibility: social media are accessible for free or with minimum costs. So, this makes it more preferable for clients.
- speed: the speed of social media is almost instantaneous. This advantage makes it very appealing.
- interactivity: multiple or numerous parties can socialize in social media in an efficiently interactive way.
- longevity and volatility: social media allow users to keep their messages as long as they want to keep them permanently or change it in any direction whenever they want.
- reach: There is an unlimited access to materials in the internet and social media users can decide their communication ways, audiences and who can reach to their messages [3] (p. 28 - 29).

All these characteristics have made social media more preferable and advantageous to the majority of individuals, social groups and societies today. Social media is an inevitable part of the society.

Max Weber considered “action” in terms of sociology “as the acting individual attaches a subjective meaning to their behaviour - be it overt or covert, omission or

acquiescence. Action is 'social' insofar as its subjective meaning takes account of the behaviour of others and is thereby oriented in its course" [5] (p. 256). Today "social action" has the image of virtual reality and cyber communication as well. Subjective meanings "take account of the behaviours of others" in channels are provided by social media. This new way of social action of course creates new levels of risks.

Figure 3. Threat

In social media there are many risks in terms of "privacy and security of information" [6] (p. 13) and this requires to be more cautious when using this kind of communication. "Identity theft" and "phishing attacks" are among several main dangers of the internet in 21st century and the architecture / design of social media websites create some vulnerabilities: "the centralized structure and the huge repository of private information gives rise to huge security gaps" [6] (p. 13). These risky structural issues must be analysed properly to find effective solutions. Educating people and decentralization of information storage are recommended as a solution for the security problems in the social networks [6] (p. 15). However, it is very arguable whether educating people on possible risks and threats of social media and the internet is enough to reduce vulnerability. Because, we are already over-informed on all threats: viruses, Trojans, ransomwares, phishing, mining cryptocurrencies [7], etc. Therefore, knowing all these threats does not stop them. Then, what is really needed is to set and maintain powerful strategies and methodologies in positive ways. OPSEC, in this sense, can be among effective solutions towards safer and more secure social media interactions.

3. WHAT IS OPSEC?

OPSEC (Operations Security) cannot be defined as a "security discipline" by itself. "Rather, as the name implies, it is an operations discipline that may be applied to any

venture, task or effort" [8]. This is a methodology to understand risk environment and create practical / functional alternatives to eliminate risks as much as possible. OPSEC is working "together" with the conventional security programs and models; "A strong, comprehensive OPSEC program can ensure that the traditional security programs are protecting against the actual threats while reducing risk to an organization by identifying countermeasures that would have been otherwise neglected" [8]. In order to understand how OPSEC provides this solution we need to look at its 5 core steps.

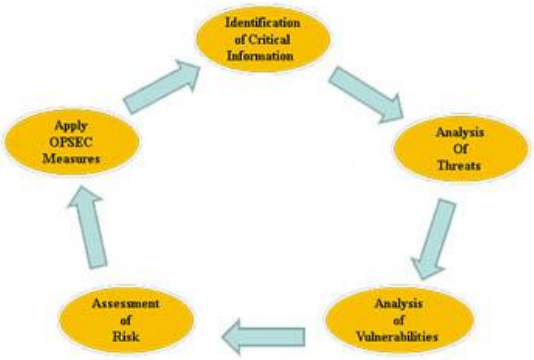

Figure 4. OPSEC Process [9]

- **Identifying critical information:** In the first step OPSEC practitioner needs to understand what is the critical information of an organization, institution, company, group, community, individual, etc. When you are aware of what is critical, you can move forward towards next steps.
- **Analysing the threats**: This level requires thinking of who or what can create harm in case of accessing critical information. These actors with whom you would not like to share your critical information are main threats for your organization or any social entity.
- **Vulnerability analysis:** After learning which your threats are, you should look at deeply to your organization or operations / activities to see what is vulnerable in case of possible attacks. For this purpose OPSEC practitioner has to look herself / himself and her / his organization from the perspective of adversaries.
- **Assessment of risk**: Then, the risk level has to be assessed and a risk matrix to be created in order to see how possible a risk against vulnerable points which were detected in previous level.
- **Countermeasures:** In the final step of OPSEC process countermeasures are applied against threats and for protecting vulnerable points of your organization / social environment. The most vulnerable parts have the highest priority for applying countermeasures [9].

These five steps were first used in securing military operations. After that it has been seen that this methodology and protective model is very applicable to civil sectors as well. OPSEC has found its position in corporate security. Many companies in the West have used the concept of OPSEC in their security management strategies. It can be effective if the plans are really and properly applied in reality; without applying OPSEC

plans success cannot be achieved [10]. Short and intensive OPSEC trainings may maintain successful applications.

In the military operations "Leaders must understand the risk to the mission and then determine which OPSEC measures are required" [11]. Essentially, it is the same for private companies' business activities or an individual's safeguarding her / his everyday life. Understanding risk is really crucial in the contemporary world and its challenges.

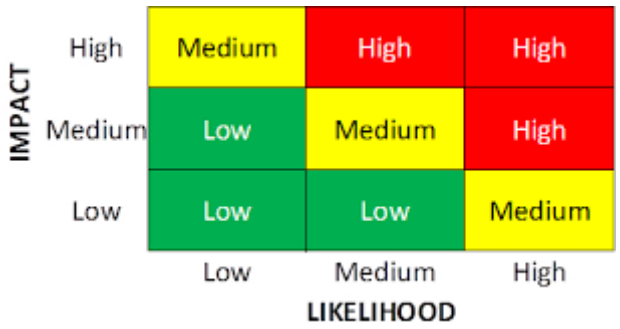

Figure 5. Risk Matrix Chart

Social media have all the risks of the internet, plus specific vulnerabilities created in the unique nature of the social media communication technologies and particular social aspects. Losses can be ranged from financial, criminal incidents, to psychological damages. In the next part of the paper we will focus on the potential benefits of the OPSEC concept in social media interactions.

4. SECURING SOCIAL MEDIA

For people in the contemporary world, social media are as important as the so-called "real life"; actually the "reality" of internet and cyber societal relations / social actions have their inevitable roles and functions in the society: "Social networking communities are an inherent part of today's Internet. People love using them to stay in contact with friends, exchange pictures, or just to spend time when bored. Companies have also discovered social media as a new way of targeting their customers with relevant information [12]. In our worlds "social media affect how we use the word 'friend'; social media affect how we think about our offline social networks; social media affect how we present ourselves; social media affect how others perceive us; social media affect our identity; social media affect relationship maintenance behaviours; social media affect our privacy" [15] (p. 137). They have a big role in our social life; however, we have to be always aware that there are risks in social networking sometimes you can foresee, but sometimes beyond your most terrible nightmares.

What can be effective safeguard techniques for social media? Each step of OPSEC is applicable to social networking websites and platforms: *identifying your critical information, analysis of threats, analysing your vulnerabilities, assessing risks* and *applying countermeasures.* These general concepts of OPSEC can be applied to social media in a more specific way:

- to follow the guidelines for computer security

- not sign in to insecure locations
- searching your profile from an opposite perspective
- secure your passwords
- not rely on the website for confidentiality
- be careful with the web-links and electronic files
- be sceptical about add-ons
- do not post any critical information
- check what your friends post about you in their profiles
- verify from other ways of communication friendship requests [13] (p. 13 - 14).

On the Internet, "Criminals and terrorists use personal information posted on public websites to target individuals. In most cases, applying countermeasures to safeguard against exploitation of sensitive information is very simple" [14] (p. 54). In fact, not only in military, police, corporate security, and other contexts; also in simple and basic level of our social, daily lives it is a very smooth process to apply OPSEC model to have a safe social networking experience. OPSEC has its role in general social institution of security.

Security is a comprehensive social institution which needs to be maintained and fortified in all levels of society, regardless if in the physical world or cyber social networks. Sociology of security is the sub-discipline of sociology that focuses on our societal need for securing social environments, through which components this need is responded and how is evolving our understanding security in society. Internet security and countermeasures towards creating solutions to different kind of threats have sociological aspects definitely. Socio-cultural, socio-political and ideological issues are highly related to the kind of security concepts realized in a society. So, application of OPSEC would change for sure from one society to the other.

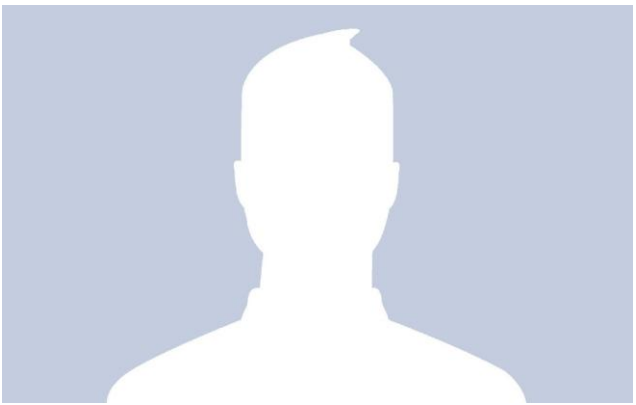

Figure. 6

The first step of OPSEC process is where we need to start: what is critical information and not open to share with others? We may say that your profile photo and name are not critical information. However, all components of this process depend on your social, professional, cultural, political, and similar positions and roles. Sometimes face can be critical, or just a simple part of the profile photo can be harmful for your professional or social activities. Let me give you a simple and explanatory example:

Let us imagine that you are applying to a job post for a managerial position in a company which is producing and marketing foods for vegetarian customers. You have written all your relevant background related experience, trainings, Etc. in your CV. You are not vegetarian and you know that it can be tolerable for a professional with your background although it is not necessary to emphasize it. Everything seems OK, except of your social profile! You have a profile photo, with a friendly smile on your face which is taken in a restaurant. Unless you do not really look carefully the small logo behind is not so clear to notice at the first sight. What is it? This is your critical information in this example. It is the logo of the local steak-house in your area which is among your favourite restaurants. After some months from the interview there is no call-back from the company. One day, when you are having lunch with colleagues in your favourite steak-house all pieces are settled to the right place in your mind: the vegetarian HR director of the company was more attentive than you have supposed!

Many more examples can be given. Even without examples if you analyse your professional and social life through these five steps you can see that some of the failures in your life history merely happened due to lack of OPSEC. These principles and methodology are applicable to any kind of social media. As for countermeasures, it depends on the structure of risk matrix and priorities. The most critical information has to be safeguarded in the highest levels.

5. CONCLUSION

OPSEC has started as a military concept in the US. In the process of globalization it has been used by military and security authorities of other regions and countries as well. It was not just limited on the military field and corporate security strategies functionally and effectively used OPSEC as well.

Social media and networking are creating every day new risks to contemporary individuals. Mostly, people are not aware what is critical and where they are vulnerable. Also, they do not carefully focus on threats and potential risks. OPSEC model provides us a methodology to understand all these processes and create effective countermeasures for a safer and more secure social life, both in real world and virtual reality. At the end of the day we have one and whole life; all other components (physical, cyber, virtual, etc.) are only elements of the same life. Problems in one level would affect the other parts as well inevitably. So, securing social media implies to having a more secure life in general.

6. REFERENCES

1. Leiner, B. M.; Cerf, V. G.; Clark, D.D. and others, Brief History of the Internet, Publisher: Internet Society, USA / Switzerland, 1997.
2. Pelkey, James, Entrepreneurial Capitalism and Innovation: A History of Computer Communications 1968-1988, Publisher: www.historyofcomputercommunications.info, See URL, (accessed on 01.03.2018)
3. Tapriyal, V.; Kanwar, P., Understanding Social Media, Publisher: Ventus Publishing ApS, 2012.
4. Business Dictionary. Available online: www.businessdictionary.com/definition/ICQ.html (accessed on: 01.03.2018)
5. Swedberg, R.; Agevall, O., The Max Weber Dictionary: Key Words and Central Concepts, Publisher: Stanford University Press, California, USA, 2005.

6. Hiatt, D.; Choi, Y. B., “Role of Security in Social Networking”, (IJACSA) International Journal of Advanced Computer Science and Applications, Vol. 7, No. 2, 2016; pp. 12 - 15.
7. Technology Review. “Six Cyber Threats to Really Worry About in 2018”, Available online: www.technologyreview.com/s/609641/six-cyber-threats-to-really-worry-about-in-2018 (accessed on: 01.03.2018)
8. OSPA. “OPSEC Challenges to the Information Technology Sector”, Available online: www.opsecprofessionals.org/opsec-challenges-to-the-information-technology-sector (accessed on: 01.03.2018)
9. OSPA. “The OPSEC Process”, Available online: www.opsecprofessionals.org/process.html (accessed on: 01.03.2018)
10. TechRepublic. “The five military OPSEC steps that businesses can learn from”, Available online: www.techrepublic.com/article/the-five-military-opsec-steps-that-businesses-can-learn-from (accessed on: 01.03.2018)
11. Range Operations Group / Operations Security Committee, Operations Security Guide, Publisher: Secretariat Range Commanders Council U.S. Army White Sands Missile Range, New Mexico, 2011.
12. Wüest, Candid, Risks of Social Networking, Publisher: Symantec / Security Response.
13. U.S. Army, OPSEC and Safe Social Networking, Publisher: www.army.mil
14. U.S. Navy, Operations Security (OPSEC), Publisher: Department of the Navy, U.S. Marine Corps, 2009
15. Vevere, Velga, Impact of Social Media in Interpersonal Communication, Socialinių mokslų studijos. 2015, 7(1); pp. 124 – 138

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THE CONSTITUTIONALIZATION OF THE INTELLECTUAL PROPERTY RIGHTS

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Abstract

We live in an era of global development of the 4th industrial revolution, which brings opportunities for global growth, but also challenges. In this new reality, the new threat to the national security, the Intellectual Property Theft, must be recognized, especially in the part that comes out of the race for innovative growth and development of the countries. In terms of the new global economic reality, the governments must not leave to chance the responsibility to promote security and stability. In this paper the highlight is on the Intellectual Property and the Constitution. International Treaties and their constitutional influence will be overviewed. The research will try to show the need for improvement on Constitutional clauses in terms of the Intellectual Property in the Constitution of Republic of Macedonia. The Constitution, as the highest law, according to which all other legal acts are harmonized, must preserve the legal order, but also protect the human rights and stability of the society as a whole.

Key Words: *Intellectual Property, Constitution, Intellectual Property Theft, European Union, Security*

1. INTRODUCTION

We live in an era of global development of technological and technical achievements, especially in the part of the internet economy which brings opportunities, but also challenges to global growth. In this new reality new threats to national security must be recognized, especially in the part of the race for innovative economic growth and development of countries. In conditions of the new world economic reality which already lives the era of the 4th Industrial Revolution[6], the countries must not leave the responsibility for promoting security, stability and economic connections with other nations to coincidence. This immediately leads to the conclusion that countries in their cooperation must provide protection against unfair competition, especially in the area of intellectual property theft, innovations, trade secrets and the like. After the cyber security, a great exclamation mark in the new economic and technological developmental reality of the new era in the developing world is placed on the protection and defense of intellectual property thieves. The United Nations in 2015 prepared a Report in the field of informatics and telecommunications in the context of the international security, international law, and especially in the UN Charter, which refers to the state behavior in the use of information and communication technologies[7] and are committed to the position that all countries should respect the norms of responsible behavior of the state in the use of information and

[6] Summit in Davos, 2016
[7] Information and communications technologies (ICTs).

communication technologies, in accordance with United Nations resolution A / C.1 / 70 / L.45[8]. The challenge of the new interests of the modern strategy of national security should be to provide an environment in which the benefits of innovation, the rights of new intellectual rights will be enjoyed, based on the safe use of the Internet information space and information and communication technologies.

As contemporary digital technology continues to develop creating new industries while pushing the borders of old industries, understanding of the role of intellectual property in the society is becoming increasingly important. A major focus is placed on how large companies have a benefit and what is the contribution of the legal protection of intellectual property in order to achieve their goals. But, in order to understand the legal protection of the intellectual property outside of the usual rhetoric it is also important to understand its place in the law and its purpose.

2. CONSTITUTIONALITY

Constitution and laws are the most important forms through which the rule of law and the functioning of the state of law are ensured, and therefore, it can be said that constitutionality and legality are closely related to what the rule of law and a state of law mean. Respect for constitutionality and legality, that is, behavior in accordance with the legal system, are the basic means of the citizens, enterprises, institutions and other entities to exercise their rights and interests, while at the same time constituting the basic means for protection of the state and society, and maintenance of the legal order. Violation of constitutionality and legality is contrary to the legal order, because this endangers the stability of the society and makes the achievement of the goals of society difficult or even impossible.

Like other laws, laws related to the intellectual property rights are also a result of a balanced process in which human rights are taken ex ante in the creation of the laws on copyright, patents, trademarks, etc. and are expressed through internally balanced rights related to the protection of the item, the term, certain exceptions, restrictions, etc. Labor contributes and focuses on the constitutional norms in the direction of intellectual property rights. New entrepreneurship opportunities appear each day. New ideas, art and technology dominate a thriving economy for innovation. However, in the era of constant innovative evolution, one thing stands firmly in the center: intellectual property rights. Intellectual property rights serve as a catalyst for innovations for the developed countries.

The fundamental human rights embodied in the Constitutions can be said to include the following rights that can be considered to play a role in the application of the intellectual property right: privacy; freedom of expression; property; free access to information. The question arises as to whether intellectual property enjoys protection under the Constitution as a fundamental human right or otherwise. Is intellectual property also a fundamental human right? How does the Constitution affect the protection of the intellectual property right, and thus the protection against the contemporary threats to national security known as intellectual property thieves? The balance between the rights of intellectual property and fundamental human rights is possible and should exist. The interpretation and implementation of the intellectual property in the spirit of fundamental human rights, together with their inclusion in the intellectual property conventions, as well as the Constitutions, shows that coordination and harmonization has been achieved.

[8] Link: http://undocs.org/A/C.1/70/L.45.

Intellectual property rights serve to boost innovation, which, without an economic award, will not occur. Surely, when a conflict arises, human rights should prevail, but the legitimate interests of the owner or inventor should be preserved. Interpretation and implementation are two key areas through which intellectual property indirectly protects the human rights. There is no doubt that there may be a conflict between them: one (intellectual property rights) is an answer to the logic of the economy, others (human rights) are essentially socially oriented. But this does not mean that they cannot reconcile: indeed, the challenge of adjusting the economic, social and environmental aspects is part of a new principle, that is, sustainable development.

3. CONSTITUTION OF THE UNITED STATES OF AMERICA

The United States of America has always been a country of innovators and inventors. Patents provide protection and incentive (in financial terms and otherwise) for taking risks. They protect various inventions, such as industrial designs, manufacturing processes, high-tech products, and molecular compounds. However, even in the United States the idea of protecting the intellectual property for part of the American public remains abstract. The practicality of implementing this constitutionally protected right becomes clear when examining specific cases. Contrary to the constitutionally protected intellectual property in the United States, in societies such as developing countries, where intellectual property is not protected, there is a possibility to stifle genius, and hence to jeopardize progress. Protection of intellectual property is important in the highest act - the Constitution.

The Constitution of the United States of America, in Article I, Section 8, Clause 8[9], gives the Congress the power to promote "the advancement of science and useful arts" by providing inventors a limited, but exclusive right to their discoveries. This concerns copyrights and patents with trademarks similarly protected by the Congress under the Trade Clause in Article I, Section 8, Clause 3[10]. Together, they are all protected under the umbrella of the intellectual property. According to Anthony Wayne, former Assistant Secretary of State for economic and business affairs, whose views are published in a US Department publication[11] focusing on intellectual property rights (2008), the basic concept for the protection of intellectual property is that inventors, innovators, artists and others should be able to enjoy the fruits of their creativity and labor for a certain period of time, after which the material will become available for public use. He further says: "Society has a benefit because this incentive to create will bring a rich and varied cultural menu for its citizens. Indeed, it can be said that copyright protection is a necessary ingredient for securing cultural wealth in our societies." It can be said that there is a close connection between intellectual property rights provided by the US Constitution and the US free-market system and companies.

Most contemporary American concepts of the intellectual property right find their roots in English customary law. The English 17th century philosopher, John Locke, and the 18th century legal scholar, Sir William Blackstone, are considered to be an inspiration to

[9] The United States Constitution,Article 1, Section 8, Clause 8: To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

[10] The United States Constitution,Article 1 Section 8 Clause 3 of the constitution says: to regulate commerce with foreign nations, states and the Indian Tribes.

[11] Focus on Intellectual Property Rights, U. S. DEPARTMENT OF STATE, 2008.

this part of the US Constitution, where their theories of natural rights and natural law have contributed to how the US Constitution views the private property. By recognizing the natural right of the person to use the fruits of their creative work, a system has been created in the United States that protects and encourages the intellectual property. The owner of the intellectual property right under this system can then license or sell the right, or use it as a means of raising capital for his project. In a critical approach, the intellectual property laws can be seen as granting exclusive rights to methods or contents, as a way to limit human progress, yet the protection of intellectual property does not give monopoly on resources - material goods, natural resources that are transformed to create a new product. Instead, the intellectual property right in a free enterprise system rewards the genius, the genius person and human work needed to transform those resources. The right of exchange is a necessary ingredient in the ownership of the property, that is, the invention.[12]

Undoubtedly, the status of the intellectual property as interchangeable capital is based on the understanding that copyrights and patent rights are unique forms of private ownership. The freedom of the contract is necessary to maximize the enjoyment and value of the intellectual property rights. Thus, the authors of the US Constitution protect the intellectual rights in order to promote the advancement of science and art, as well as to regulate interstate trade. Another important consequence of the Constitution's policy of favoring unified federal laws on the protection of copyright and patent rights is that it restrain the states from direct regulation in those areas, in accordance with the general jurisdiction of the states.[13] During the constitutional convention in 1787, an Intellectual Property Clause (Article I, Section 8, Clause 8) was drafted, which federalized the intellectual property rights. The assignment of intellectual property rights "to the advancement of science and useful arts" was an integral part of the boost of the trade in the United States. Intellectual property rights are fundamental human rights. Through its Constitution, the United States recognizes the right to protect the work of innovators through a robust intellectual property system of patents, trademarks, copyrights, and trade secrets. American scientists and researchers produce drugs, American artists write long-lasting literary works. American brands capture their essence through colorful logos and slogans. American companies create entire empires on one special secret ingredient. All rely on the protection of intellectual property. It is true that the protection of intellectual property rewards these innovators for the fruits of their labor by providing fair profit, but the assumption is not entirely correct. The protection of intellectual property is better described as roots that enable the fruits of labor for innovators to grow and ripen. Protection of the intellectual property induces the innovators to get engaged in innovation by providing tangible support during their trip. When the clock is ticking and the costs are high, intellectual property rights offer incredible confidence that the investments of the innovators are really valuable. The patent system adds fuel of interest to the fire of the genius - Abraham Lincoln. The Intellectual Property Clause in the US Constitution sends a message that innovation is welcomed. The US has realized that in order to achieve incomparable innovations, the country will have to incorporate unacceptable intellectual property rights. And incomparable innovations have been achieved: from the man landing on the Moon, to the pioneering of the mobile phone and the Internet; treatment of fatal

[12] "The right to exchange is a necessary ingredient of property ownership," Seth Cooper, senior fellow at the Free State Foundation, interview for Watchdog.org.

13 *Randolph J. May, Seth Cooper, Liberty of Contract and the Free Market Foundations of Intellectual Property, Vol. 11, No. 27, Jul 2016.*

diseases, etc. The United States has created a legacy of innovations which no other nation can compare with. It is no coincidence that the American tradition of protecting intellectual property rights has created and nurtured the American tradition of innovation. Today, as we celebrate the Day of the Constitution, let's celebrate the protection of the intellectual property and the innumerable innovations they have brought. All intellectual property protections give fuel to the fire of the American ingenuity.

4. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights[14] in Article 27[15], says: "Everyone has the right to the protection of the moral and material interests arising from any scientific, literary or artistic work of which he is the author". The Universal Declaration is a resolution of the General Assembly of the United Nations[16], adopted in 1948, which does not have binding force for the Member States , in the sense that it does not create applicable obligations for adherence to the declaration. This, however, is achieved through an international agreement, namely the International Covenant on Economic, Social and Cultural Rights[17], adopted in 1966, which is an international treaty binding on the United Nations Member States. The aforementioned article of the Universal Declaration is repeated in Article 15[18] of the International Covenant on Economic, Social and Cultural Rights. Given the widespread acceptance of the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights (together with the International Covenant on Civil and Political Rights[19] of 1966) as the embodiment of the fundamental human rights it can be argued that the right to intellectual property is a universally accepted fundamental right. The Republic of Macedonia has supported the

[14] The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948. Link: http://www.un.org/en/universal-declaration-human-rights/index.html

[15]Article 27 (1.Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.).

[16] The General Assembly is one of the six main organs of the United Nations, the only one in which all Member States have equal representation: one nation, one vote, link: http://www.un.org/en/ga/about/

[17] International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, link:https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV3&chapter=4&clang=_en. Republic of Macedonia had signed and ratified the Covenant on 8 August 1967 and 2 June 1971.

[18]Article 15 : 1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

[19] International Covenant on Civil and Political Rights New York, 16 December 1966. Link: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en. Republic of Macedonia had signed and ratified the Convenant on 8 August 1967 and 2 June 1971.

Universal Declaration, as well as signed and ratified the two aforementioned international treaties / international covenants.

5. EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The right to property is guaranteed by Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[20]. Article 1 of Protocol 1 contains three rules: The first is the right to protection of the property. It is contained in the first sentence of Article 1 of Protocol No. 1 referred to in the Convention ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions"). The second rule concerns the deprivation of property. It sets out the conditions and general principles for expropriations and is set out in the second sentence of Article 1 of Protocol No. 1 referred to in the Convention ("No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."). The third rule deals with the control of the use of property. It clarifies that obligations, such as tax duties, may be tied to property in the interest of the public. This rule is contained in the second paragraph of Article 1 of Protocol No. 1 referred to in the Convention ("The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.").

The so-called "constitutionalization", so-called by Gerg Geiger[21] is already taking place at the level of the European Union and by the EU Charter of Fundamental Rights which serves as a generator of a new force for the "constitutional engine". Constitutionalization is a process and the full effects remain to be seen in the coming years and it is probably difficult to assess them fully. The right to the protection of intellectual property is probably worthwhile for a society, just as the right to freedom of expression. The constitutionalization process should be expected to influence the manner in which the story of intellectual property is told, as well as the way in which it is viewed. The protection of intellectual property in the changing technological circumstances and social needs is also very problematic, and since legislative changes are so difficult to achieve in the current European Union system, the constitutional tools can actually help to ensure that the central values of the intellectual property rights are realized, as well as its purpose to serve the interests of the society as a whole, and not only to special interest groups.

[20]The European Convention on HumanRights,https://www.echr.coe.int/Documents/Convention_ENG.pdf.

[21] Geiger C, 'Constitutionalising' Intellectual Property Law? The Influence of Fundamental Rights on Intellectual Property in the European Union, International Review of Intellectual Property and Competition Law 2006 37(4) 371-406.

6. CONSTITUTION OF THE REPUBLIC OF MACEDONIA

In the part of the Constitution[22] referring to Guarantees for the basic freedoms and rights, i.e., Article 51 of the Constitution of the Republic of Macedonia, stipulates that "the laws must be in accordance with the Constitution, and all other regulations with the Constitution and law. Everyone is obligated to respect the Constitution and the laws." The Constitution is the highest law in the country and a law that is inconsistent with it is invalid. This provision creates a need to interpret the laws in accordance with the Constitution or its provisions should be declaredinvalid. On the other hand, Article 54 paragraph 1 of the Constitution stipulates that the rights may be restricted "The freedoms and rights of the individual and the citizen can be limited only in cases determined by the Constitution" i.e., to the extent that the restriction is reasonable and justified in and open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. The specific factors to be considered include the nature of the law, the importance of restriction, its nature and degree, the relationship between the restriction and its purpose, and any possible less restrictive means of achieving that aim. While Article 47 of the Constitution refers to the part of intellectual property: "The freedom of scientific, artistic and other types of creative work is guaranteed. The rights arising from scientific, artistic or other intellectual work are guaranteed." It is considered that the fact that the intellectual property is protected throughout the world and is comprehensively protected in the Republic of Macedonia, as well as the fact that the Republic of Macedonia is a member of numerous conventions, by which we are bound to respect them, in the context of the European Court of Human Rights[23], depending on the case and the law, international law must also be respected. As a result, it is necessary to achieve a balance between the principles of intellectual property law and the principle of constitutionality and legality, which allows the right to intellectual property to be interpreted in accordance with the accepted principles of this branch of law, as applied internationally, referred to in, and in accordance with the Constitution and ratified international agreements. However, the field of intellectual property may not have received consistent attention, and the growing importance of the intellectual property over the years suggests that constitutional challenges to state regulation in this area may emerge in the near future.

7. IMPORTANCE OF PROTECTION OF INTELLECTUAL PROPERTY RIGHTS: INTELLECTUAL PROPERTY THIEVES

In the US, but also in most of the countries of the European Union (UK), the problem of intellectual property thieves has already been declared a threat to the national security. Following the publication of the Report on Intellectual Property Thieves in 2013 by an authorized Commission[24] , in the United States this problem is included in national security. The report states that if the United States continues on its current path, with incitement erosion, innovation will decrease and the economy will stagnate. Precisely because of it, in this fundamental sense, the theft of intellectual property is positioned as a

[22] Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia No. 52 from 22.11.1992.

[23] European Court of Human Rights - ECHR, CEDH, link: https://echr.coe.int .

[24] Commission on the Theft of American Intellectual Property of the U.S. International Trade Commission released a report in May 2013, http://www.ipcommission.org/report/IP_Commission_Report_052213.pdf

security issue from a national level. The difficulty of assessing the value of the stolen IP, the difficulty of identifying appropriate import / export and the many legal issues that would trigger such an action make the issue of intellectual property thieves even more complicated and important. Therefore, there is a need for the establishment of intellectual property rights as basic human rights. In this way the authorities will have greater legal and constitutional power to act against this problem. It is worth mentioning that the previous President of the United States, Obama, announced on February 6, 2015, a new National Strategy, the second document of such kind published by his administration. The previous one was published in May 2010. The need for a new document, that is, a new National Security Strategy, resulted from redefining or re-formulating of certain terms and areas previously covered by the 2010 Strategy, which would emphasize the principles and priorities under which the United States will be led as a force and influence through the world.[25] The new National Security Strategy also sets new additional foci in order to improve the security of the system.[26] Besides the United States, the United Kingdomhas already established a new approach to the national security, introducing cyber security, especially in the part of intellectual property thieves, as an important link for protecting the development and progress of the national society (the state and the companies). This is especially highlighted at the Billington CyberSecurity Summit in Washington, USA, 2016.[27] The United Kingdom Government's task is to secure the protection of a highly digitized economy and, accordingly, the most exposed to the attacks of intellectual property thieves, trade secrets and other innovative advantages of the country. At the G20 summit held in 2016, the leaders of the G20 Member States agreed to say NO to cyber-economic espionage. The agreement reached and the Communique adopted is not binding, but it is nevertheless of great importance since the awareness of this type of danger that lurks national security today raises, as well as gives the countries the right to respond to the economically motivated cyber-espionage in the future.[28]

8. CONCLUSION

The potential threats to the national security of the states around the world are challenging security systems in the states. The question arises how national security can be harmonized and respond to the new reality. Protection against thieves of intellectual property and trade secrets means protecting the innovative process of growth and developing the economy of a country. The problem that all developed countries are faced with is to find a way how to ensure that these valuable intellectual property rights remain usable and how to ensure their value to be kept in conditions of ruthless violations and thefts worldwide. Intellectual property rights can not succeed in their basic economic function to foster innovation, if rights are neglected and if good legal and constitutional

[25] The 2010 NSS framed U.S. leadership in the world in terms of "galvanizing collective action," whereas the 2015 document frames U.S. leadership in terms of "leading with strength," "leading by example," "leading with capable partners," "leading with all the instruments of U.S. power," and "leading with a long - term perspective." This appears to be a shift in emphasis away from the U.S. role in the world being largely a catalyst for action by international institutions to more involved leadership both inside those institutions and between nations.

[26] The Obama Administration's new National Security Strategy (NSS), February 6, 2015.

[27] *Speech by Ciaran Martin, Director-General Cyber GCHQ, Billington Cyber Security Summit on 13 September 2016.*

[28] G20 Communiqué, G20 Summit on 4-5 September 2016 in Hangzhou, China.

protection is not ensured. Ineffective and non-functional regimes for protecting rights are worse than any rights. Therefore, there is a need to consider immediately giving greater importance and place to the intellectual property rights in the Constitution of the Republic of Macedonia, in the terms of the basic human rights. The full effect of the "constitutionalization" of intellectual property rights will be manifested in the coming years, and the process itself will have an impact on the practice of the courts and the legislator itself, especially in the part of the established interpretations of the rules and principles of intellectual property.

9. REFERENCES:

1. The Universal Declaration of Human Rights (UDHR), link: http://www.un.org/en/universal-declaration-human-rights/index.html .
2. International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, link:https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV3&chapter=4&clang=_en.
3. International Covenant on Civil and Political Rights New York, 16 December 1966. Link: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en.
4. The European Convention on Human Rights, link: https://www.echr.coe.int/Documents/Convention_ENG.pdf .
5. *TheUnited States Constitution, link:* https://www.senate.gov/civics/resources/pdf/US_Constitution-Senate_Publication_103-21.pdf.
6. Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia No. 52 from 22.11.1992.
7. Focus on Intellectual Property Rights, Bureau of International Information Programs, U. S. DEPARTMENT OF STATE, 2008.
8. Randolph J. May, Seth Cooper, Liberty of Contract and the Free Market Foundations of Intellectual Property, Vol. 11, No. 27, Jul 2016.
9. Geiger C, 'Constitutionalising' Intellectual Property Law? The Influence of Fundamental Rights on Intellectual Property in the European Union, International Review of Intellectual Property and Competition Law, 37(4) 371-406, 2006.
10. Commission on the Theft of American Intellectual Property of the U.S. International Trade Commission released a report in May 2013, link: http://www.ipcommission.org/report/IP_Commission_Report_052213.pdf.

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TERRORISM AND HUMAN RIGHTS

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Abstract

Terrorism existed long before legislative attempts to address it as a distinctive phenomenon. The question of whether terrorism systematically reduces human rights is yet unsettled. Efficiently dealing with terrorism implies enforcement mechanisms (particularly in the context of human rights) and measures, in its all diversity. In other words, abandon human rights norms in times of fear and crisis caused by of terrorism is shortsighted and self-defeating.

Key words: *terrorism, human rights*

1. INTRODUCTION

Terrorism existed long before legislative attempts to address it as a distinctive phenomenon. The question of whether terrorism systematically reduces human rights is yet unsettled. Governments mainly react to an increase in terrorism by constraining the freedom and privileges of their citizens. This change in constraints is potentially based on the demand for security for the majority of citizens. Stricter surveillance and controls impair terrorists' ability to plan attacks. The public is more willing to accept a decrease in the level of human rights in order to enhance the perceived level of security, especially in times of increased threat. This paper discusses the changing requirements in human rights, as result of contemporary terrorist threats. Observing contemporary global terrorist threats, it is necessary to improve the way in which the global society goes.

Dreher et all. "find that terrorism diminishes governments' respect for basic human rights such as the absence of extrajudicial killings, political imprisonment, and torture. These results are robust to how we measure terrorist attacks, to the method of estimation, and to the choice of countries in our sample. The restriction of human rights is quantitatively rather small, however. We find no effect of terrorism on empowerment rights such as political participation and freedom of movement or religion". (Dreher et all, 2010:66)

2. TERORRISM, GLOBAL PHENOMENON

"From a social development perspective, globalization is a complex phenomenon expressing the confluence of economic, political, social, and cultural factors interacting on a world scale thanks to expansion of knowledge, information, trade, and technology beyond geographical borders and poles of economic activity." (Morales-Gomez & Torres, 1995:3)

Globalization brings "a global equalization of expectations, resulting from improvements in education, global communication and transportation, which have all led to the spread and growing acceptance of such norms and values as equity, equality, and

human rights - civil and political as well as economic and social“ (Kaul, 1994:2) In today's global society territorial boundaries become permeable, and the threats to security are not just affecting the nation state, but also direct affect both individuals and global human rights.

As Turk (Turk, 2004:28) notices “Nationally and internationally, legal systems and procedures have been developed without anticipating the contingencies involved in dealing with modern terrorism. For the first time in history, terrorists are gaining access to weapons of mass destruction. Credible threats of worldwide terrorist campaigns are now regularly documented, attacks and attempts in various countries are frequently reported, and multination cooperation in countering terrorism is a growing reality”. Terrorism as global phenomenon reveals the need to design policies that deal with security and human rights.

All definitions of terrorism include a “harm” element, which implies the physical or economic harm that terrorism entails (or, possibly, threatens). Also, include an “intended purpose” element (which limits “terrorism” to acts done with the intention that they will produce particular results); and many include a “motivation” element. “Terrorism is a threatening, perhaps illegal, clandestine (avoiding conventional warfare) violence against human or nonhuman objects that is intended to change or maintain some belief, law, institution, or other social "norm" by inculcating fear in persons other than the immediate targets”. (Austin, 2004:284)

The terrorist's threat undermines our security and challenges the framework of international human rights and humanitarian law. “The fulfillment of universal human rights is essential to building a world in which terrorism will not undermine our freedom and security. The human rights framework does not inhibit legitimate and effective efforts to respond to terrorist attacks. The limits that international human rights law places on certain forms of executive power (e.g., the prohibition against torture) embody profound agreements about the values the international community in all of its diversity accepts as fundamental.” (Hoffman, 2004: 934)

So it is necessary to balance international human rights and humanitarian law on one side and international terrorist threat on the other side. “The word balance implies that the objectives of combating terrorism and protecting human rights warrant equal prominence in policy formulation. It creates a dangerous and fallacious picture of human rights relativity, and almost invariably implies intrusive surveillance and loss of privacy, restrictions on domestic and international movement, and deprivation of core rights and protections in the criminal justice system”. (Jones & Howard-Hassmann, 2005: 62 - 63)

3. RELATION BETWEEN DEMOCRACY AND TERRORISM

Terrorists’ threats have placed human rights, international law, and global governance under considerable strain. This situation initiates a debate. Enders and Sandier describe terrorism "as the premeditated use or threat to use violence by individuals or sub-national groups in order to obtain a political or social objective through the intimidation of a large audience beyond that of their immediate victims" (Enders & Sandier, 2006:3) and considered transnational terrorism "when an incident in one country involves perpetrators, victims, institutions, governments, or citizens of another country" (Enders & Sandier, 2006:7) and domestic "when an incident involves perpetrators, victims, and an audience of the country in which the incident occurs" (Enders & Sandier, 2006:6).

Democracy promotion has become important for much of the international community. Having a clear understanding of the link between democracy and terrorism is crucial. When we talk about the relationship between democracy and terrorism, literature presents two opposing views. In spite that, some authors (Ross, 1993, 317 - 329) argue that "democracies are less likely to experience transnational terrorist incidents" (Eyerman, 1998:151-170), while others think that "democracies are more likely to be targeted". (Li, 2005: 278-97).

Ignatieff has a "faith in the resiliency and effectiveness of democratic institutions: "pre-commitments" to democracy and the dynamics of "adversarial justification" will guard against unwarranted human rights infringements". (Ignatieff, 2004:53) While, many scholars have mentioned a positive link between democracy and transnational terrorism for many reasons:

1. Democracies provide freedom of organization, expression, and movement of their citizens, enable terrorist groups to undertake their illegal activities with relative ease (Engene, 2004; Hamilton & Hamilton 1983:39-54);
2. Freedom of press, as Crenshaw (Crenshaw, 1981: 379-399) mentioned serves the interests of terrorist groups whose main goal is to advertise their cause to a wide audience and gain publicity and recognition. As many authors (Sandier, 1995: 97-122; Li, 2005: 278-97; Drakos & Gofas, 2006:114-135) mentioned in nondemocratic countries, restrictions on the media and heavy censorship by the government are less likely to be reported terrorist incidents;
3. Fair and frequent elections make the politicians in democracies more sensitive to the needs of the society and hence reduce overall grievances in the society (Savun & Phillips, 2009:881).
4. Liberal family and educational backgrounds may encourage openness to violence as a political option, few even of the most militant radicals become terrorists (Turk, 2004:279).

As Sánchez-Cuenca and de la Calle (Sanchez-Cuenca, 2009: 31-49) observe, there is a sharp division in the literature between domestic and international terrorism. "Compared to the number of large-sample-size studies on transnational terrorism, the number of systematic studies of domestic terrorism is quite low." Some scholars argue that the division between domestic and transnational terrorism is difficult to discern.

"If democracies are prone to transnational terrorism by design, then democracies should be vulnerable to domestic terrorism as well. Empirical assessment of domestic terrorism indicates that democracy is not a statistically significant predictor of domestic terrorism. And findings suggest that democracies are not necessarily more vulnerable to terrorism by their nature. What is important is how states behave toward other actors in the international system". (Savun & Phillips, 2009:896)

4. HUMAN RIGHTS - TWO SIDES

"History shows that when societies trade human rights for security, most often they get neither. Instead, minorities and other marginalized groups pay the price through violation of their human rights. Sometimes this trade-off comes in the form of mass murder or genocide, other times in the form of arbitrary arrest and imprisonment, or the suppression of speech or religion. Indeed, millions of lives have been destroyed in the last sixty years when human rights norms have not been observed". (Hoffman, 2004:934)

The Universal Declaration of Human Rights contains the promised basic rights for all the people of the world regardless of race, gender, religion, or any other status. All UN Member countries have adopted „The Millennium Development Goals to be achieved by 2015. These goals include: 1. Eradicating extreme poverty and hunger; 2. Achieving universal primary education; 3. Promoting gender equality and empowering women; 4. Reducing child mortality; 5. Improving maternal health; 6. Combating HIV/AIDS, malaria, and other diseases; 7. Ensuring environmental sustainability; 8. Developing goals (MDG).“[29] According to the World Bank, these goals were not achieved by the schedule, in part because of the "war on terrorism". "Analysis of transnational terrorism data showed that large rich countries are affected transitorily by terrorism, where economic growth suffers for a short time, but recovers"said Loayza, "however, smaller, less diversified countries are likely incur a larger economic cost" (Keefer & Loayza, 2008: 276).

"The human rights vision of the Universal Declaration of Human Rights, and the body of human rights norms it spawned, is even more relevant and important today than it was on 10 September 2001. The fulfillment of universal human rights is essential to building a world in which terrorism will not undermine our freedom and security. The human rights framework does not inhibit legitimate and effective efforts to respond to terrorist attacks. The limits that international human rights law places on certain forms of executive power (e.g., the prohibition against torture) embody profound agreements about the values the international community in all of its diversity accepts as fundamental" (Hoffman, 2004:934).

Savun and Phillips noticed that "Civil liberties and nonviolent means of expression in democratic societies are considered the main factors as to why democracies should be less likely than other types of regimes to experience transnational terrorism." (Savun & Phillips, 2009:882). In addition, "On the positive side, granting inalienable rights such as freedom of speech, freedom of religion, the guarantee of impartial treatment in court, the protection from invasion of privacy, and—even more important - the absence of torture, extrajudicial killings, and political imprisonment enables citizens to live in freedom and safety and to express political critiques nonviolently. On the negative side, having more human rights increases a country's vulnerability to external and internal threats". (Dreher et all, 2010: 65) Obviously, as Dreher and all (Dreher et all, 2010: 68) mentioned "terrorist activity might increase governments' respect for human rights in some countries and years while decreasing it in other situations, especially if we take into account that every terrorism problem has its own specific origin". Results show that lower surveillance costs, which are possible because of a smaller population, allow the government to allocate more human rights. Moreover, higher levels of democracy reduce the government's ability to increase security by restraining rights (Drreher, 2010: 76).

Empirical results of Dreher, Gassebner and Siemers indicate that governments' response to terrorism is, on average, to restrict human rights. Their study supports anecdotal evidence suggesting that governments, when under the threat of terrorism, violate some of the very rights they want to protect in the first place (Dreher et all, 2010:88). But Piazza and Walsh highlight two conclusions. "The first is that, contrary to the concerns of many human rights advocates, governments do not always respond to terrorist attacks by restricting rights. It appears instead that the relationship is more complicated, with terrorist attacks prompting restrictions of some rights but not others. The

[29]We can End Poverty, Millennium Development Goals and Beyond 2015, Available: www.un.org/millenniumgoals/ (20.02.2018.)

second conclusion is that human rights abuses by governments conclusion is that human rights abuses by governments are a powerful predictor of subsequent terrorist attacks" (Piazza & Walsh, 2010: 407).

5. CONCLUSION

Terrorism may lead to restrictions in human rights. Of course, reverse causality is a problem that comes immediately to mind. In the case when people practice terrorist activities as a consequence of the human rights situation in their country, low levels of human rights might not be the consequence of terrorism but might instead be its cause. Moreover, democracy could also be endogenous to human rights, as identical and unidentified factors could lead to common cause interdependence.

The terrorism threat is real and cannot be ignored. True, it is the fundamental challenge to the rule of law and to the relevance of international human rights and humanitarian law standards. But, why is terrorism given more attention than the other causes of human insecurity; however, it must not blind states of the other scourge of violence and undermine human rights norms that offer a promise of human security for all human beings. In the fight against terrorism, contemporary core human rights principles can accommodate the appropriate balance between liberty and security, so its abandoning or restriction means self-defeating.

6. REFERENCES

- Austin T. (2004). Sociology of Terrorism. *Annual Review of Sociology*, Vol. 30, p. 271 - 286.
  Crenshaw, Martha. (1981). The causes of terrorism. *Comparative Politics* 13(4), p. 379 - 399.
- Dreher, A., Gassebner, M. and Siemers, Lars-H. (2010). Does Terrorism Threaten Human Rights? Evidence from Panel Data, *The Journal of Law & Economics*, Vol. 53, No. 1, p. 65 - 93.
- Enders, W., and Sandier T. (2006). *The political economy of terrorism*. Cambridge, UK: Cambridge University Press
- Engene, J. Oskar. (2004). *Terrorism in Western Europe: Explaining the trends since 1950*, Northampton, MA: Edward Elgar; Hamilton, Lawrence C, and James D. Hamilton (1983). *Dynamics of terrorism*, International Studies Quarterly 27 (1), p. 39 - 54.
- Eyerman, Joe. 1998. Terrorism and democratic states: Soft targets or accessible systems? *International Interactions* 24 (2), p. 151-170.; Ross, Jeffrey Ian. 1993. Structural causes of oppositional political terrorism: Towards a causal model. *Journal of Peace Research* 30 (3), p. 317 - 329.
- Hoffman, Paul (2004). Human Rights and Terrorism, Human Rights Quarterly, Vol. 26, p. 932-955.
- Ignatieff, Michael (2004). *The Lesser Evil: Political Ethics in an Age of Terror*, Toronto: Penguin.
- Jones, A. L, Howard-Hassmann R.E. (2005). Under Strain: Human Rights and International Law in the Post 9/11 Era, *Journal of Human Rights*, 4, p. 61 – 71.
- Kaul, I. (1994). Human security: The need for a new security council. *Roundtable on Global Change. Change: Social Conflict or Harmony?* United Nations

Development Programme (UNDP), Stockholm, Sweden. Participant Paper no. 32 (22–24 July), p.2.
- Keefer, P. Loayza N.(2008).*Terrorism, Economic Development, and Political Openness***,** Cambridge University Press, 2008, p. 276.
- Li, Quan. 2005. Does democracy promote or reduce transnational terrorist incidents? *Journal of Conflict Resolution* 49 (2), p. 278 - 97.
- Morales-Gomez, D.A., Torres, A.M. (1995). *Social Policy in a Global Society*, Otawa: IDRC, p. 3.
- Piazza, J.A and Walsh, J.I. (2010). Terrorism and Human Rights. *Political Science and Politics*, Vol. 43, No. 3, p. 407 - 409.
- Sánchez-Cuenca, I., and Juis de la Calle. (2009). Domestic terrorism: The hidden side of political violence. *Annual Review of Political Science*, 12, p. 31 - 49.
- Sandier, T. (1995). On the relationship between democracy and terrorism. *Terrorism and Political Violence* 12 (2), p. 97-122; Li, Q. (2005). Does democracy promote or reduce transnational terrorist incidents? *Journal of Conflict Resolution* 49 (2), p. 278-97; Drakos, K., and Gofas A. (2006). The devil you know but are afraid to face. *Journal of Conflict Resolution* 50, p. 714 - 135.
- Savun B. and Phillips B. J. (2009). Democracy, Foreign Policy, and Terrorism, *The Journal of Conflict Resolution*, Vol. 53, No. 6, p. 878 - 904.
- Turk, Austin T. (2004). Sociology of Terrorism. *Annual Review of Sociology*, Vol. 30, p. 271 - 286
- We can End Poverty, Millennium Development Goals and Beyond 2015, Available online: www.un.org/millenniumgoals/ (20.02.2018.)

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ACCESS TO INFORMATION IN THE REPUBLIC OF MACEDONIA: BETWEEN TRANSPARENCY AND SECRECY

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ABSTRACT

Certain information and personal data, held by the government, needs to be kept secret because its disclosure to the general public could jeopardize the operation of the state. On the other hand, the state should allow the public to have free access to all other state-held information. To ensure a balance between these two claims of modern democratic societies,there is a need to legally regulate this matter. The state should have a law on access to public information and alaw that will regulate the classification, access toand storage of information which should be keptsecret. This paper analyzes the global experiences in regulating this matter,with aparticular emphasis on the practice in the Republic ofMacedonia.

Keywords:*classified information, public information, national interest, public interest, Directorate for Security of Classified Information, Commission for Protection of the Right to Free Access to Public Information, Law on Classified Information and Law on Free Access to Public Information*

INTRODUCTION

The functioning of society in the modern world is based on interrelated national and international information infrastructures. There is a global trend for integration of communication and information technologies, thus enhancing their efficiency on the one hand and their vulnerability on the other. The possibility for failure of the system segments entails the danger of interrupting the performances of the system as a whole. The constant increase of the information importance makes the communication and information systems irreplaceable and, at the same time, suitable targets for attack by individuals, groups and states, whose aim is interruption of the normal rhythm of life and society. It is the reason why it is necessary to define a common and comprehensive policy and normative framework for the protection of information and communications.

Information infrastructures are an essential part of the overall infrastructure supporting modern society. These infrastructures and the services they support face increasing security threats. Ever more critical information technologies (IT) resources are supplied and operated in partnership between the public and private sectors and across national borders. In this way, IT and the marketplace for it, have become truly global, and

thus have security risks. Unauthorized disclosure, corruption, theft, disruption, or denials of IT resources have the potential to impact the public and private sectors and society as a whole. One of the objectives of every modern society is to promote the development of a culture of security across society. Among all information systems, some are critical because their disruption or destruction would have a serious impact on the health, safety, security, the economic well-being of citizens, or the effective functioning of government or the economy. These information systems constitute the critical information infrastructure (CII).

Commercial, government, and military secrets are part of the background of the modern system. Partly, this secrecy was imposed by governments, but scientists, on their own initiative, practiced self-censorshipon matters related to nuclear research. Along with "nuclear secrecy", came another fundamental category "information relating to the national security of the state". So some information that is of great importance for the country needs to be kept secret because its disclosure to the general public could jeopardize the operation of the state.

On the other hand, the state should allow citizens to have free access to all other information. Transparency is one of the linchpins of democracy. It is a particularly important factor for the success of the reforms in the security sector in the Republic of Macedonia. The security services are frequently said to be "a state within a state", and in some cases "a state above the state". Hence, it is very difficult to change anything until the system is open to public scrutiny. When combined with new people and practices, transparency increases the public interest in the way security is managed, and in this way it contributes to overcoming people's prejudices and fears concerning the security sector.

This Chapter analyzes the global experiences in regulating this matter,with aparticular emphasis on the practice in the Republic ofMacedonia. Furthermore, it suggests some changes that should be made in order to improve the current practice.

CRITICAL INFRASTRUCTURE VERSUS CRITICAL INFORMATION INFRASTRUCTURE

Critical infrastructure (CI) and critical information infrastructure protection have been in the focus of attention in many countries in recent years. Many developed countries generally define their critical infrastructure in terms of the criticality of particular sectors or services to the safety and security of their society, government and economy. While countries widely use the term "critical infrastructure", the term "critical information infrastructure" is less common in national policies, strategies and structures. However, "critical information infrastructure" has emerged as a somewhat neutral and general term in the international community although no formal attempt has been made to reach a common definition or understanding. The diversity of input across the different countries does not allow us for a single common formal definition. Most of the countries have formulated policies and developed good practices to safeguard the information systems and networks that can be considered as critical information infrastructure. However, there are different approaches to the problem (Auerswald, Branscomb, Porte, Michel-Kerjan, 2005).

Many factors such as policy, strategy, and the existing structure of authorities and agencies shape the way governments identify their critical information infrastructure and respond to the need to protect it. These factors reflect the priorities, style and culture of the country and government. They set the stage on which the protection of the critical infrastructure policy develops and operates. Likewise, these same factors provide the

context for interpreting the existing measures for the protection of the critical information infrastructures and for understanding how different governments respond to the various challenges they face therein.

Some countries describe their high-level critical information infrastructure policy and objectives in similar ways. In one way or another, all refer to events that could lead to loss of life, serious or grave impact on the health, safety, security, or economy of their citizens. Differences exist in the language and specific organisational frameworks adopted by each country rather than in the substance. Many countries have developed their critical information infrastructure strategy and policy objectives after identifying their critical infrastructure. Though their individual views of the risk may be different, the development of their strategies and policy objectives follow similar processes. The distribution of government responsibility has a significant influence on critical information infrastructure protection strategy and policy (Kataoka, 2007).

International co-operation and collaborative action are imperative to building the relationships needed to increase situational awareness and improve coordinated response to cyber incidents in the global cyber environment. All countries face difficulties in information sharing, particularly with respect to sensitive information, at the international level. In part this might be due to the link between critical information infrastructure, critical infrastructure and national security, which could lead to the tendency to protect the majority of all infrastructure information because of the need to protect a minority of sensitive infrastructure information. In this respect, international co-operation between governments on the protection of critical information infrastructure may benefit from adopting a more "open and only selectively closed" security model, as opposed to the traditional "closed and only selectively open" model. This could make infrastructure information sharing easier without compromising sensitive (classified) information.

PROTECTION OF CLASSIFIED INFORMATION AS PART OF CRITICAL INFORMATION INFRASTRUCTURE

Free access to public information held by state bodies means that every person can freely access the information held by persons liable to the law, except when some information is excluded from this rule. One of these exceptions is the information which has been designated as classified according to the law governing classified information. Hence, classified information is sensitive information to which access is restricted by law or regulation to particular classes of people that are engaged in the field of national security.

Securityis the condition of being protected against danger or loss. With respect to classified matter, security is a condition that prevents unauthorized persons from having access to official information that is safeguarded in the interests of national security. Protection of classified information is the process of protecting information from unauthorized access, use, disclosure, destruction, modification or disruption. Consequently, Protection of Classified Information (PCI) is part of national critical information infrastructure.

Protection and security of classified information is one single of the most important obstacles to sharing sensitive information. These obstacles can be from either: technical/infrastructural, legal, functional/operational or political/institutional nature, or a combination of some or all.

A formal security clearance is required to handle classified documents or access classified information. The clearance process requires a satisfactory background investigation. There are typically several levels of sensitivity, with different clearance requirements. Depending on the level of classification, there are different rules controlling the level of clearance needed to view such information and how it must be stored, transmitted, or destroyed. Additionally, access is restricted on a "need to know" basis. Simply possessing a clearance does not automatically authorize the individual to view all classified material. The individual must present a legitimate "need to know" in addition to the proper level of clearance.

This sort of hierarchical system of secrecy is used by virtually every national government. The act of assigning the level of sensitivity to information is called information classification. The purpose of classification is to protect information from being used to damage or endanger national security. Classification formalizes what constitutes a "national secret" and accords different levels of protection, based on the expected damage the information might cause in the wrong hands. Security classifications indicate the sensitivity of information and are applied in order to alert recipients to the need to ensure protection in proportion to the degree of damage that would occur from unauthorized access or disclosure. There are two main approaches to information classification. Procedures based on lists of classified information, attached to laws or regulations and procedures based on (generic) ruleson defining the level of sensitivity of information, written down in a law or regulation.

There are two main purposes of classification. The first is to keep certain advantages against competitors/enemies. And the second is to hide one's disadvantages, deficiency, and vulnerability from competitors/enemies. In addition, security classification specifies how people must protect the information and equipment that they handle. The classification system limits the access to that information and equipment through a series of procedural and/or physical barriers.

Classification must be correctly applied. Whereas under-classification could lead to potential compromises of sensitive information, over-classification of documents may result in a loss of credibility of the classification system. It also entails significant management costs. Selecting the most appropriate classification is critical because under-classifying can have the direct and obvious consequences of inadequately protected material. On the other side, over-classifying can mean unnecessary, expensive protection of material and misplacement of properly classified material among the improperly classified material. Over-classifying may stem from: genuine doubt about the classification prescriptions; personal uncertainty; and a tendency to play safe. The most effective measure to prevent over-classification is issuing detailed guidance on the correct use of classifications. The higher the classification, the more restrictions this causes to the use of means of communication and the more it complicates dissemination.

Information shall be designated as classified by an authorized person. Authorized persons are elected or appointed officials, authorized to classify and disclose information in accordance with the law or the regulation (presidents, ministers, directors of agencies etc.) and the employees to whom these persons have issued written authorization to classify information.

Confidentiality has been defined by different international organizations. For the International Organization for Standardization (ISO) confidentiality is "ensuring that information is accessible only to those authorized to have access". While for NATO confidentiality is "the property that information is not made available or disclosed to

unauthorised individuals or entities". The EU Security Regulations foresee that information should be classified only when necessary, and that the level of classification shall be determined by the level of sensitivity of its contents, in accordance with the definitions laid down in the Security Regulations.

There are certain norms, standards and methods in protection of classified information. They can be divided in four categories: NATO standards; EU norms; ISO norms and national standards.

National norms and standards are usually established by the body usually named National Security Authority (NSA). This body is the focal point for NATO and EU security of classified information in each country. It can be an already existing body or it can be established ad hoc. The National Security Authority usually has the following tasks: maintaining the security of NATO and EU classified information in national agencies and elements; ensuring that periodic and appropriate security inspections are carried out; ensuring that nationals are appropriately security cleared; ensuring that appropriate national emergency security plans are in place; authorising the establishment (or disestablishment) of national COSMIC Central Registries; being responsible for coordinating all matters concerning NATO and EU security policy in their nations; and monitoring the security policy implementation to ensure a common degree of protection.

Beside this national body responsible for protection of classified information, every state needs proper legislation to be effective as well. The law or regulation on classification should define: guidelines which types of information may be classified and how; categories of information which has to be classified and the conditions for its release posing an articulable threat to national security. In addition, the Law is expected to regulate how classified information has to be protected, handled, accessed, stored, disseminated, exchanged, transmitted and archived. Also, the issue of declassification should be regulated by law. Finally, who and which agency has the responsibility over the process must be regulated by the Law as well.

MACEDONIAN CRITICAL INFRASTRUCTURE PROTECTION

There is no legal document in Macedonia that contains a summarized list of designated critical infrastructure. Instead, the network of laws regarding the CIP encompass the Crisis Management Center (CMC), Ministry of Interior (MoI), Ministry of Defense (MoD), Ministry of Transport and Communication (MoTC), Ministry of Finance (MoF), Directorate for Security of Classified Information (DSCI) and Directorate for Protection and Rescue (DPR). Since there is no clear designated list of critical infrastructure, there is further legal segmentation with respect to the anticipated roles and service support for successful CIP. However, all of these documents include acts that define the responsibilities of the government authorities in case of emergencies, as well as legislation dealing with these issues (Hadji Janev, Slaveski, 2012).

International legislation (NATO and EU norms and standards) further facilitates legal background for CIP in Macedonia. This is understandable since cyber-security and information protection are on the security agenda in most of the international organizations to which Macedonia is a party.

Generally, Macedonian legislation on CIP does not centralize the responsibility only in one governmental authority. It consists of both provisions that directly locate the responsibility and the leading role of a specific agency and provisions that imply responsibility. Nevertheless, it could be argued that the legal basis for CIP in Macedonia

more or less draws on the organizational structure of governmental authorities involved in this process.

Legal regulation of secret information

There is a concern in the security community that the growing mountain of classified materials is unstable. The lack of a legal basis for classification places a major burden on the classification system and makes it difficult to provide a systematic understanding of the matter. Due to secrecy requirements, classifiers in different areas cannot communicate with each other, and each individual branch establishes its own concealment routines. Trade/business secrets are now viewed as a crucial part of national security. In the modern world for the first time in the U.S., such material has become the subject of legal regulation (Galison, 2004, p. 232).

The Constitution of the Republic of Macedonia (RM) does not contain a definition of the protection of classified information,[30] but a series of its provisions profile the protection of confidential information. Thus, for example, Article 16, paragraph 6 guarantees the media's right to protect the sources of their information. Until the adoption of the Law on Classified Information, this matter was only partially regulated.[31] Also, in a number of bylaws this issue has been treated in an unequal way, especially in terms of the imposing penalties. In addition, the 1996 Security Agreement between Macedonia and NATO, along with liabilities assumed under other international agreements, obliged RM to fully resolve this issue (Slaveski, 2003).

That is what the Republic of Macedonia did with the enactment of the Law on Classified Information in 2004. The purpose of the law was to ensure lawful use of classified information and to prevent any kind of illegal access to it. Adopting the Law not only combined the existing laws and regulations for the protection of classified information, but also added a new quality to its protection (Шанев, 2004, pp. 16-17). The law incorporated contemporary solutions for the security of classified information, harmonized with EU and NATO norms, criteria and standards. The law was submitted to NATO for a specialized review and received high marks from NATO and European Union experts before the Republic of Macedonia and the European Union signed the Agreement on Security Procedures for Exchanging Classified Information, which was ratified in 2005. Pursuant to thelaw, the Regulation on Administrative Security of Classified Information, the Regulation on the Physical Security of Classified Information and the Regulation on Security of the Users of Classified Information were adopted in November 2004, while the Regulation on Industrial Security and Classified Information and the Regulation on Information Security of Classified Information were adopted in March 2005. The legal framework was completed in September 2007, when amendments to the Law were adopted [32] under which full control was established not only over foreign, but also over national classified information, i.e. oversight over all state agencies and other entities and

[30]Classified information has been defined in the Law on Classified Information as information that is protected from unauthorized access or use and to which a certain level of classification is designated.

[31]For illustration it could be mentioned mention that the issue of confidential information was included in 17 laws, three regulations and dozen of instructions and decisions.

[32]"Official Gazette of RM", No. 113 /'07.

individuals was set up for consistent application of the Law on Classified Information.[33] National laws and regulations that govern the protection of classified information are in accordance with the security policies of the EU and NATO.[34]

Classification, duration of classification and exchange of secret information

For information to be classified as secret, there needs to be a legally prescribed procedure by which the process is implemented. The existence of such a procedure prevents the abuse of discretionary power by those who determine what information should be secret. It is therefore necessary for the laws related to confidentiality of information to provide a clear procedure under which only secret information will be classified. For example, the stipulation that only the highest-ranking decision-makers in the country may classify information that is a state secret is not the best solution, because the possibility of abuse of the discretionary power still remains. On the other hand, if certain information is classified as secret, it does not mean it will no longer be available to anyone.

In Article 9 of Macedonia's Law on Classified Information, classified information with the level "state secret" is designated by the President of the Republic, the Speaker of Parliament, the Prime Minister, the presiding judge of the Constitutional Court, the presiding judge of the Supreme Court, government ministers, the public prosecutor, the Chief of General Staff of the Army, the Director of the Intelligence Agency, the Director of the Directorate for Security of Classified Information, as well as another person who has a written authorization from any of the aforementioned persons. Although the Macedonian solution is quite restrictive in terms of the number of persons who can declare certain information a state secret, it allows the competent officials to delegate the authority to classify. This is especially important for the lower levels of classification, which are more numerous. It is a legal solution that is aligned with the best international practices, but how much it is applied in practice is another matter.

One of the biggest problems with secret information is the fact that some information, once declared to be secret, remains secret forever. Each item of information, no matter how important for the particular state, after the expiration of a specified period of time, should cease to be a secret. Today, in international law there is a trend of

[33] Other internal legal acts related to the protection of classified information in accordance with the security standards of NATO and the EU have also been adopted.In the area of information security of classified information, the Directorate developed the following guidelines for dealing with communication and information systems: Guidelines for organization and management of the security of communication and information systems; Guidelines for security accreditation of communication and information systems; Guidelines for assessing and managing security risk in information and communication systems; Guidelines for establishing a statement of security needs for communication and information systems and Guidelines about the structure and content of security operating procedures for communications and information systems.In the area of information security of classified information, for proper implementation of security operational procedures the Directorate has also developed: Guidelines for using a system for crypto-communication according to NATO / EU safety standards; Draft document for a Guideline for implementing policy for security of the IT system and guidelines for DSCI and TEMPEST zoning in the area of information security. These guidelines are required for use in the registers of the Directorate of the ministries and other state organs.

[34] Basic Security documents CM (2002) 49 and CM (2002) 50 and their accompanying directives, and amendments to the basic documents of NATO and of the EU Council decision br.2001/264/EC from 03.19.2001 and safety regulations in all aspects of safety and their amendments.

establishing the period within which the information will be considered secret, typically between ten and twenty years. For example, in the U.S., which is considered a leader in information security, classified information undergoes a classification review after ten years (Dearth, 1995, p. 18). In other words, it is checked to see whether it still needs to remain secret or may be made accessible to the general public. In exceptional cases, confidentiality of information can be extended beyond the expiry date. In such cases, it is especially important that the extension of such period be prescribed by law - that would be a tool to prevent the abuse of secret information.

Macedonia's law on secret information implements this principle for periodical evaluation of the need for classified information to remain secret for a longer period of time. In fact, Article 18 of the Law on Classified Information states that the originator/creator of the information specifies a time period or event before which the information cannot be reclassified or declassified. The time period or event before which the information cannot be declassified or reclassified shall not exceed a period of ten years, unless the information no longer needs protection as defined by the law. No information is available as to what extent this legal solution is applied in practice, but of course there is a need to open the archives and examine the protected information, to determine whether it still needs to be secret or may be declassified.

According to the international standards in the field of protection of classified information, the content, especially the information with higher level of classification, enters the restrictive sphere of regulation i.e. protection.[35] These standards permit access to classified information by a limited number of people, in accordance with the "need to know" principle, to enable them to perform their official duties or functions. This is a fundamental principle in international law, on the basis of which all aspects of security of classified information are determined (Стајић, 2005, pp. 115-127). This international principle is embodied in Article 37 of the Law on Classified Information.

Classified information as privileged and sensitive information is used according to domestic law, while in international exchanges its use is governed by international agreements concluded within the security programs, arrangements, decisions, resolutions, etc. adopted by international bodies. On the other hand, the beneficiaries of classified information shall be determined by its creator. It is used for the agreed purposes and cannot be handed over to "third parties" without the consent of the originator. Under Article 118 of the Constitution, international agreements ratified in accordance with the Constitution of the Republic of Macedonia are part of the internal legal order of the Republic of Macedonia and cannot be changed legislatively. So this international principle is embedded in the Macedonian legislation that regulates this matter. This issue is treated in greater detail in the Law on Classified Information in a separate chapter with two articles (21 and 22).

Access to secret information

Of course, there are people whose duties require them to have access to secret information, but these people have an obligation to keep the information secret. Those are generally the most important submitters of classification decisions in the state: the President, the Prime Minister, the Speaker of Parliament, etc. Other state officials may

[35]It is interesting to note that NATO standards in this area are of a restrictive nature, i.e. they are not allowed to be published. On the other hand, the European Union has published some of its standards in the Official Journal of the EU, while the other part, in particular, those relating to security, are not available to the public.

have access to secret information, as do individuals and entities that by the nature of their work must have access to information. These individuals must have special clearance. A particular problem that secrecy laws need to solve is the security check on these people.

Pursuant to the Law on Classified Information, in all state bodies, organizations, institutions or other entities that handle classified information in the Republic of Macedonia, measures and actions are taken for the trustworthiness of the persons who are users of classified information. These measures include the following: identification of persons authorized to process and handle classified information[36]; responsible handling of classified information; security check; issuance of security clearances; issuance of a permit to access classified information and to check and evaluate the ability to handle classified information.

Furthermore, the bodies in which classified information is handled determine the beneficiaries of classified information. A user of classified information is a public authority or another legal entity or individual in the country that has a security clearance, or a foreign state body or another foreign legal entity or individual that has a security clearance from the country of origin and permission to access classified information issued by the Directorate.The list of users of classified information is submitted to the Directorate for Security of Classified Information by the authorities. When dealing with classified information, the user of classified information needs: to take care to prevent unauthorized access to classified information; to notify the responsible person in authority of cases of unauthorized access; to notify the responsible person in authority of any change of data in the security questionnaire or about changes in the terms of obtaining a certificate and to notify the authorized person about classified information received from third parties. All these measures foreseen by the law should contribute to greater security of classified information.

Security checks

A security check is a process whereby checks are carried out on individuals in order to determine the security risk for access to secret (classified) information that is necessary for the performance of their official duties. In one form or another, security checks are carried out for almost all positions in the state administration. For example, every time an individual job applicant is asked about his/her criminal past, it is a kind of a security check. In the security sector, the security check is very rigorous and more comprehensive. When properly implemented, it is a vital part of intelligence (Woodhouse & Ramsbotham, 2005, pp. 139–156).

The security check is necessary to exclude from public office individuals who pose a threat to the state, because they: hold anti-constitutional attitudes; belong to terrorist groups, organized crime or groups for political pressure; or are subject to pressure, extortion or corruption. Also, the security check helps: to ensure the honesty and sincerity of the staff and to prevent fraud; to protect important and sensitive locations where classified information is processed and to discourage inappropriate individuals from applying for positions related to security.

Usually a security check is required for each individual who has access to sensitive information or locations, or has significant authority. The candidates for the following

[36] In the bodies which handle classified information, and depending on the need for efficient and coordinated execution of rights and obligations that arise from the law on classified information, one or more authorized persons may be appointed. These officials are determined by the head of the body.

positions almost always undergo security checks: staff working in key positions in the executive branch; members of the security sector (intelligence and security agencies, military, police and gendarmerie); staff of parliamentarians that have oversight over security arrangements; personnel who have physical access to sensitive locations and NGO personnel, such as employees of contractors or "think thank" groups that have access to classified information or are providing services to the government on national security.

In addition, some countries require a security check of elected officials who have access to sensitive information. Other countries consider that the public mandate accorded to an elected official constitutes a level of trust sufficient to justify the access to power and information. For example, in Germany a security check is required of those members of parliament who serve on the defense or intelligence committees. Such is not the case in the United States.[37]

Under Article 34 of the Law on Classified Information in the Republic of Macedonia, any user of classified information must possess a security clearance issued by the Directorate for Security of Classified Information. In order to receive the security certificate, among other things, it is necessary for certain security checks to be performed by the competent authorities. The Law on Classified Information envisages that certain high government officials would automatically (i.e. without having to undergo a prior security check) be granted a security clearance for access to and use of classified information at all levels. This provision applies to the President of the Republic, the President of Parliament, the Prime Minister, the Deputy Prime Minister of the Republic, the presiding judge of the Constitutional Court of the Republic and the presiding judge of the Supreme Court of the Republic of Macedonia, and lasts from the day they take office until the completion of their term of office.

When the legal solution was being drafted, there were proposals to expand the list of privileged persons. However, these proposals came under criticism from the competent NATO authorities. The law was prepared as an obligation undertaken in the Annual National Program for NATO membership. The Alliance suggested that this principle is not applicable in the NATO context and that it is discriminatory. We were advised that the list of persons who would be exempt from security checks must be reduced to a minimum and we were urged to draw on the experience of the existing NATO members. It turns out that NATO members, candidate members and aspiring states approach this issue very differently. In some countries, the laws on confidentiality do not have provisions for making exceptions or issuing a security certificate without prior security checks. Other countries (Slovenia, Czech Republic, Estonia, Slovakia and Bulgaria) permitted the issuance of security certificates without security checks to: heads of state, speakers of parliaments, heads of governments, legislators, presidents of constitutional courts, constitutional judges, presiding judges of supreme courts, ministers, prosecutors, attorneys, inspectors-general, and officials of similar rank. However, at the request of NATO and the EU, these countries have introduced provisions in their laws that apply these kinds of exceptions only for national security clearances, while for NATO or EU certificates, security checks are conducted. That is why the law is quite restrictive when it comes to exemption from security checks. From this distance (ten years after the adoption of the law), we can conclude that this is a good solution.

A security check is performed not only during initial hiring, but at regular intervals (usually at least every five or ten years), and whenever there are doubts about the

[37] www.ohchr.org/english/about/publications/docs/ruleoflaw-Vetting_en.pdf

reliability of the individual, an "extra check" is performed. Supervisors often receive training on how to recognize suspicious behavior, and colleagues are encouraged to report any unusual activity or other concerns. Moreover, if the duties of a member of staff change, managers must assess whether that individual still requires clearance. When jobs are changed, there may also be a need to make a security check to obtain a higher level clearance for the employee. Some countries may also require other governments to confirm that their citizens are professionally checked in certain joint activities related to security, such as international procurement and development of weapons. Such a process is usually codified with a memorandum of understanding or other agreements or contracts.

These standards are embedded in the Law on Classified Information of the Republic of Macedonia. The security certificate issued for information classified with the level "state secret" and "strictly confidential" is valid for five years and the certificate for the level of classified information "confidential" is valid for ten years. Based on the written notification of the Directorate for Security of Classified Information, the user of classified information is obliged to submit a new request for extension of the validity of the security certificate not later than six months before the expiry of its validity. The person applying for extension of validity of the security certificate is checked again by the competent authorities according to the level of classified information which is given to him/her to use. However, if it is found that the person does not handle classified information in accordance with the law or no longer meets any of the conditions on which the security certificate was issued, the Director shall issue a decision on the termination of the validity of the security certificate before the expiry of its validity. The decision does not give an explanation of the reasons for the termination of the validity of the security certificate. The Director may issue a decision for rejection of the request for issuance of a security certificate if the requirements of the Law on Classified Information are not fulfilled. The decision does not give a statement of reasons for denying the request for issuance of a security clearance. The person whose request is denied may appeal the decision to the competent Secondary Commission of the government. The appeal shall be filed within 15 days of receipt of the decision, via the authority that issued the decision, with the competent Secondary Commission of the government. The decision brought by the Commission is final.

It is interesting to note that an initiative was launched to assess the constitutionality of the articles of the law relating to the right of the Director to cancel the security certificate without explanation before the expiry of its validity. The Constitutional Court rejected this initiative on the grounds that the act does not regulate the rights and obligations of citizens, but regulates a specific matter in the security and defense area, and is aimed at supportingthe permanent, vital and important interests of the state.

Competent authorities to carry out security checks

In most cases, the individual or body which is responsible for performing security checks does not work together with those who are responsible for hiring. There are basically three different ways to organize the activities around the security check. For most services, the security check (or certain activities relating to the security check) is carried out by a central agency or unit. The security check may also be carried out by independent agencies or units that are decentralized. And it may even be outsourced, i.e. the security check or certain activities related to the security check will be performed by private security agencies (Harkleroad, 1996).

In most countries, most of the responsibilities for security checks are performed by security or intelligence services or specialized agencies. This centralized approach helps ensure that standardized procedures are followed. It also means that individual agencies do not have to develop their own capacities for security checking, thus allowing them to focus on their core tasks and optimal use of resources.

However, agencies can resist such a centralized approach in order to keep information about their staff secret and retain control over the security screening procedures and employment requirements. Hence, in some countries, each agency is responsible for the security checks of its own personnel. In Switzerland's decentralized system, each cantonal or federal agency conducts its own security check. When security checks of employees in government departments are carried out, the agency that they contract is responsible for it.

Some countries outsource tasks related to the security checks to private companies in order to cut costs. This usually includes activities such as checks regarding borrowing and criminal records, and they rely heavily on data collected and sold by private companies Most countries have a combined approach.

For example, in Canada[38], the entire security check for employees in government institutions is carried out by an agency, the Canadian Security and Intelligence Service, except for employees of the Royal Canadian Mounted Police, which itself performs security checks on its employees.

In Sweden[39], the majority of governmental activities for security checks, including checks in the electronic database, are carried out by the security police, while the other activities in the security check are carried out by other agencies. For example, the military does psychological testing of the candidates for officers.

In the United Kingdom[40], the agency for security check in the defense sector is responsible for checking the trustworthiness of the persons employed in the army, the civilian personnel of the Ministry of Defense, Defense Intelligence Staff and contractors with the defense sector and sensitive private industry, and they pay for this service. There are five other agencies that also provide services for security checks, including security checks of the staff.

In the United States, most of the security checks are conducted by several agencies. For example, the Federal Bureau of Investigation (FBI) conducts its own employment checks, and performs checks for other federal agencies, such as the White House, Department of Justice, Administrative Office of the U.S. Courts and certain committees of the Senate and the House of Representatives, as well as for the state and local officials who deal with law enforcement and who need access to reliable information and for the Office of Personnel Management. While for most of the other federal civilian agencies, sometimes the checks are done together with the Defense Department, there are other agencies, like the State Department and intelligence agencies, that perform checks of their own staff.[41]

However, regardless of who makes the security check, many countries are making efforts to ensure the existence of standardized security checks. In Germany and Switzerland, the guidelines for a security check are codified by law. In the United States, they are regulated by a presidential decree. Whatever the authority under which they are issued, they must ensure that standard procedures are applied at the level of the entire

[38] www.csis-scrs.gc.ca/en/priorities/security_screening.asp
[39] www.security.govt.nz/sigs/html/chapter5.html
[40] ww.mod.uk/DefenceInternet/AboutDefence/Organisation/AgenciesOrganisations/DVA/
[41] www.fas.org/sgp/library/moynihan/index.html

government, and there must be democratic protection against malpractice.[42] In many countries, as in the Middle East, where access to key positions and sensitive information is often through family ties and tribal affiliations, there may be no formal system for security checking. However, even in these systems, intelligence services can carry out surveillance of some individuals by using less formal mechanisms.

The Republic of Macedonia has a combined model for performing security checks. The issuance of security clearance for the use of classified information is centralized, with the clearance being issued by the Director of DSCI after previously conducted procedures under the provisions of the Law on Classified Information. Operational safety checks are decentralized. Upon the request of the Directorate of DSCI, these checks are performed by: the competent services of the Ministry of Defense for the military and civilian personnel serving in the Army of the Republic of Macedonia, and the competent services of the Ministry of Interior for all others. This legal decision, in our opinion, should be amended. In fact, the law does not specify who performs the checks on the military and civilian personnel serving in the Ministry of Defense. Nor does the law state whether it is within the competent department of the MoD or the competent department of the Interior Ministry. Furthermore, the Intelligence Agency (IA) should also be included in the process of performing operational security checks because the relevant departments of the MOD and MOI have no legal authority to do security checks on persons residing outside the Republic of Macedonia (private or official). That can be done by the IA, which has the legal powers to gather information abroad that is of interest to the state. Moreover, new entities have been formed in the security system of the Republic of Macedonia (for example, the Office for Prevention of Money Laundering and Terrorist Financing and the Office of Financial Police), which due to their legal responsibilities should be included in the operational security checks.

Bodies for the protection of secret information

Comparative legal experience shows that to prevent the misuse of secret information it is necessary to have a body that has the information at its disposal, protects it and examines it periodically to determine whether there is still a need for it to be kept secret. Comparative legal experience also shows that these bodies commonly constitute the organs of the executive branch, but the control over them may be entrusted not only to the executive, but to the parliament too.

The regulation of the issue of protection of secret (classified) information in the country went in parallel with the determination of the state to seek integration into Euro-Atlantic structures. The Republic of Macedonia has begun to take the necessary steps to move closer to NATO and the EU, which includes exchange of classified information.So, after the signing of the security agreement between Macedonia and NATO in 1996, an office for reciprocal security was formed in the Ministry of Defense, to protect the information exchanged between Macedonia and NATO. In March 2002, the Government announced the establishment of the National Security Authority, in view of meeting NATO requirements for an increased level of protection. With the adoption of the Law on Classified Information, a further step was taken and this professional service has grown into an independent state body: the Directorate for Security of Classified Information. If we analyze the ten-year period from its formation, the question arises whether the structure and authority of the directorate should be modified. Perhaps consideration should be given

[42] www.fas.org/sgp/isoo/guidelines.html

to having the director appointed by the Prime Minister and the President of the state. Such a solution would reduce the dependence of the Directorate on the Government and would increase the influence of the President, as a person who should have some impact/authority in the domain of security. Also, for certain issues it would be good for the Directorate to submit reports to the Parliament, in order to improve the parliamentary oversight of the security sector institutions.

The Law on Classified Information has obliged the state bodies, organizations, institutions and other entities to create the conditions necessary for the protection of classified information and to take measures to eliminate the negative consequences in the event of disclosure of the classified information. Moreover, for effective and coordinated enforcement of the rights and obligations pertaining to classified information, an authorized person must be designated to all entities using secret information.

The authorized person must possess an appropriate security clearance issued by the Directorate for Security of Classified Information. This obligation has been respected by all entities in the country. On the other hand, when discussing the protection of classified information, it should be noted that in the so-called "Spy" affair, former members of the security sector were accused of having revealed classified information to some foreign agencies, thus violating the law. This case is currently being tried, but the fact that there are people accused of unauthorized disclosure of classified information shows that there have been flaws in the work of the security services that are responsible for its protection/security.

Access to secret information by MPs (Members of Parliament)

In democratic practice, not a single area of state activity, including the security sector should be a "forbidden zone" for the parliament. It should be stressed that parliamentary oversight of the security and intelligence services is of recent date, even in the "old democracies". In the mid-seventies of the twentieth century, cases of abuses by security and intelligence agencies in liberal democratic systems began to come to light, becoming a major catalyst for parliamentary oversight around the world.[43]

This democratic practice is accepted in the Republic of Macedonia. Hence, some matters concerning the work of the Directorate for Security of Classified Information[44] are reviewed by the Commission for Defense and Security of the Parliament of the Republic of Macedonia. Furthermore, the Parliamentin accordance with its Rules of Procedure[45], appoints a Commission to supervise the work of the Security and Counterintelligence Directorate in the Ministry of Interior and the Intelligence Agency. This Commission has broad authority, which is regulated by the Law on Internal Affairs and the Law on the Intelligence Agency. These laws require that the directors of these institutions facilitate inspections and submit all the information and data relevant to the work of the Commission. All data and information presented to the Commission is classified "state secret", which leads to the conclusion that the authority of this parliamentary body is wide-

[43]Some countries, such as the U.S., Germany and the Netherlands, had institutionalized and legalized parliamentary oversight/control before the mid-seventies. Following the example of the U.S., Australia and Canada legislated oversight over intelligence after which the wave spread throughout Europe.

[44] In accordance with the international agreements signed, besides Parliament, authorized inspectors of foreign states and international organizations can exercise oversight over how classified information submitted to the competent authorities of the Republic of Macedonia is protected.

[45]Rulebook of the Parliament ("Official Gazette", no. 60/02).Деловникот за работа на Собранието на РМ („Службен весник на РМ", бр. 60/02).

ranging. On the other hand, under Article 34 of the Law on Classified Information, every user of classified information must possess a security certificate issued by the Directorate for Security of Classified Information. In order to receive the security certificate, *inter alia*, it is necessary for certain security checks to be performed by the competent services of the Ministry of Interior (Security and Counter-Intelligence Directorate).

Hence, there are several dilemmas (Slaveski & Shanev, 2006). First, is there a need to perform security checks on MPs? Second, doesn't it place the Parliament in a subordinate position in relation to the executive authority? And third, what if the results of the security checks are negative, i.e. if a security risk is brought to light?

Regarding the first dilemma, international practice is divided. In some countries, MPs are exempted from security checks and have unfettered access to all information. In other countries these checks are required. Regarding this issue, the extent of the Commission's oversight of the security and intelligence services is the decisive factor. If this commission has broad authority and access to sensitive information, then security checks are necessary (Born & Leigh, 2005). The Law on Classified Information has adopted this practice and is restrictive in terms of this issue. The list of exceptions is quite limited and it does not include MPs.

Whether the security checks on MPs places the Parliament in a subordinate role vis à vis the executive branch is the second dilemma. That is, whether by this requirement the executive controls the legislature rather than the opposite. This is somewhat inevitable because the security services are the only ones that are trained to perform these checks and provide an assessment of the security risk. But to avoid abuse, there must be public, clear and precise criteria and the checks must be carried out in accordance with them. In Macedonian practice, the criteria for performing operational security checks are specified in the Regulation on Security of Users of Classified Information. [46] The oversight of the work of the security services is two-fold. First, at the request of the Directorate for Security of Classified Information, the security services are required to submit the results of the operational security checks for a review (Article 8 of the Regulation). If necessary, the Directorate may require the services to perform additional checks. On the other hand, the members of the Parliamentary Commission for oversight of the work of these agencies can oversee their work. The right of appeal if the issuance of a security clearance has been refused is regulated in Article 55 of the Law on Classified Information.

This brings up the third dilemma in terms of issuing security certificates to MPs. Who will have the final word, the executive or legislative branch if the certificate is refused or revoked? In this matter, practice varies internationally. But the recommendation is for Parliament to decide whether there are some obstacles to the issuance of a security clearance to an MP. According to Article 55 of the Law on Classified Information, there is a right to appeal the decision to refuse the request for issuing a security certificate to the Government Commission of Second Instance,whose decision is final. In this way,the executive sets itself over the legislature. In our opinion, it would be useful for this policy be reviewed and aligned with the prevailing international practice.

[46] Regulation on Security of Users of Classified Information ("Official Gazette", no. 82/04). Уредба за безбедност на лица корисници на класифицирани информации („Службен весник на РМ", бр. 82/04).

THE NEED FOR BALANCE BETWEEN THE PUBLIC AND NATIONAL INTEREST

In order to achieve the desired level of transparency, there is a need to understand its importance and to understand the essence of transparency, as well as to find ways of achieving it (Banisar, 2006). It should be done by "balancing" both the citizens' right to free access to information and the state's interest in protecting classified information (B. Holzner & L. Holzner, 2006). In that sense, the particular legal right of access to information of confidential (classified) character aims to prevent security threats to the interests of the Republic of Macedonia concerning the security and defense of the state, its territorial integrity, sovereignty and constitutional order. On the other hand, transparency is important as a way to initiate a public debate on issues concerning the security sector, and as a result to gain public support for reform (Mendel, 2004).

The adoption of the Law on Classified Information and the Law on Free Access to Information of Public Character has created the legal basis for clearly defining the responsibilities of the institutions responsible for the implementation of these laws. To achieve the desired level of transparency, it is critical to make a balance between the freedom of information and the protection of information.

By definition, information should be public. Nevertheless, the holder of the information may decide that some information should be kept secret from the public, but there should be a legal basis for that decision (Slaveski, Bakreski & Miloshevska, 2012). The Law on Classified Information and the bylaws regulate the treatment of classified information in detail. Care is taken to ensure that a classification is retained only as long as it is needed and that it is reviewed at reasonable time intervals. There are seldom cases of information that is classified for a longer period of time. Such classification is typically reserved for the most vital state interests.

The balance between transparency and the national security of the country is regulated by Article 6 of the Law on Access to Public Information[47], which states that "information holders will allow access to information (which under the law is classified information with an appropriate level of confidentiality), if by publishing such information the effects that protect the interest are less than the public interest that would be achieved with the disclosure".

Accordingly, the person authorized to classify information should be trained to assess whether by the unauthorized disclosure damage would be done to the interests (permanent, vital, important) of the Republic of Macedonia or damage to the operations of the holder of the information. The interests of the state are defined in the National Security and Defense Concept and are relatively easy to recognize (Slaveski, 2004). Therefore, an assessment should be made as to whether the benefits of disclosure are greater than the possible harmful effects on the protected interest. If the public interest is greater, an access to information should be given. If the expected result is more harmful, the access should be rejected/refused.

Information concerning criminal investigations, science, research, technology, economy and finance should not be classified as secret unless such information directly affects the national security of the country. Problems arise when a person reveals

[47] The Law was published in the "Official Gazette" no. 13 of 1 February 2006 and entered into force on 1 September of the same year. Законот е објавен во „Службен весник на РМ" бр. 13 од 1 февруари 2006 година, а стапи на сила од 1 септември истата година

information that is classified as secret, and at the same time such disclosure is in the public interest. Here the question is "Which interest should prevail, public or state?". Under most laws, a person who leaks secret information will not be punished if by so doing s/he has revealed abuse or a crime.

In the Law on Classified Information, there is also a provision in favor of protecting the public interest. In fact, Article 20 of the Law states that "the information which is determined with a level of classification shall not be considered as classified information if it covers crimes, excesses or abuses of authority or any other illegal act or procedure." A similar provision exists in the Law on Access to Public Information. Article 38 stipulates that an employee in the state administration "will be released from responsibility for having disclosed protected information if it is important for detecting abuse of position and corrupt behavior". These provisions are protection mechanisms that safeguard laws and make them compatible with the international standards in this area.

The holder of information is left to assess whether greater harm is done by non-publication of the information or by its publication, i.e. its de-classification and its possible release to the public. Recently it was reported that the U.S. Defense Department had released certain confidential information to Iraq on the basis of the law on freedom of information. However, there has never been a case in which secret information has been declassified on the grounds that it is in the public interest to do so.

There were calls from some journalists for the trial in the "Spy" case to be open to the public, on the grounds that this would serve the public interest. However, the court ruled that the proceedings would be held in camera (Bogdanovski, Konevska, 2012). To achieve this balance, custodians of information need to be educated (about the criteria of classification and the importance of the public interest). There also needs to be an accumulation of experience in information management, plus a security culture, and pressure from journalists and the public.

CONCLUSION

We may conclude that in the ten years since the adoption of the Law on Classified Information in the Republic of Macedonia, it has been widely accepted and meets the standards of NATO and the EU in this area. It is also generally consistent with the "best practices" for supervision of the security and intelligence services. Some solutions have been recognized by the law and by international NGOs (Banisar, 2006), but it is necessary to examine them in detail so as to overcome certain problems that arise in the implementation of the law.

The Law on Access to Information of Public Characteralso meets the international standards in this area. This law should be fully implemented, given that many state agencies which have public information are not yet fully able or lack the will to allow access. Furthermore, the administrative capacity of the Commission to protect access to public information remains poor. Next, the amendments to the Code of Ethics for Civil Servants, which introduced an obligation to report illegal actions by state officials, have proved ineffective. This is a new law that has not yet been put into practice.

The Republic of Macedonia will need in due course to accurately determine the true relationship between the need for the society to be informed about the work of the security services and other bodies that produce classified information and the need to protect certain information that is of interest to the national security of the state. The greater transparency urged by NGOs and journalists could lead to the disclosure of

information detrimental to the interests of the state. On the other hand, if the holders of information are very restrictive and perform reclassification of information, then the public interest may be jeopardized. Democratic practices and a more broadly based culture of security is required to find the right balance.

REFERENCES

Archon, F., & Graham, M.,& Weil, D., (2007). *Full Disclosure: The Perils and Promise of Transparency*. Cambridge: Cambridge University Press.

Auerswald, P. & Branscomb, L. M. &LA Porte T. & Michel-Kerjan, E. (2005) "The Challenge of Protecting Critical Infrastructure", *Issues in Science and Technology*.

Banisar, D. (2006). *Comments on Legal regulations on Access to Information and State Secrets in Albania.* The Representative on Freedom of the Media/OSCE. Retrieved 20th of January, 2006 from http://www.privacyinternational.org/foi

Banisar, D. (2006). *Freedom of Information around the World 2006: A Global Survey of Access to Government Information Laws*. Retrieved 20th of January, 2006 from www.privacyinternational.org/foisurvey

Bogdanovski, A., & Konevska, C. (2012). *Transparency of the Security Sector in Macedonia*, Analytica Think Thank, Skopje. pp. 26-34.

Born, H. & Leigh, I. (2005). *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies.* Oslo: Publishing House Parliament of Norway.

Dearth,D. H. (1995). National Intelligence: Profession and Process," in Douglas H. Dearth and R. Thomas Goodden, eds., *Strategic Intelligence: Theory and Application*, Washington, DC: Joint Military Intelligence Training Center, 18.

Dunne, T.,& Nicholas, J. W. (Eds.). (1999). *Human Rights in Global Politics*. Cambridge: Cambridge University Press.

Galison, P. (2004). Removing Knowledge. *Critical Inquiry*, 220-241.

Hadji Janev M., & Slaveski, S. (2012). "Corporate Security and Critical Infrastructure Protection in the Republic of Macedonia", *Security Dialogs no. 4.*

Holzner, B. & Holzner, L. (2006). Transparency in Global Change: The Vanguard of the Open Society.

Kataoka, M. (2007). *GIS for Homeland Security*, ESRI Press.

Mendel, T. (2004). Freedom of Information: Comparative Law Review, Skopje: PRO MEDIA.

Paterson, S. (December 10, 2008). 'Call to extend freedom of information law'. The Herald.

Slaveski, S. (2003). Security of information – precondition for membership of the Republic of Macedonia inNATO, *Macedonia in NATO*, Skopje: Ministry of Defence of the Republic of Macedonia.

Slavevski, S. (2004). Transparency in Defence Policy. In *Transparency in defense policy, budgeting and procurement*. Skopje: the Parliament of RM.

Slavevski, S. Bakreski, O. & Miloshevska. T. (2012). Exclusion of private sector from the laws on free access to public information: Implications from the perspective of human rights. Proceedings EURM. Skopje: EURM.

Tomasevaki, K., (1987). Freedom of information: a history of failure(s). Retrieved 18th of February, 2009 from http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:349

Woodhouse, T. & Ramsbotham, O. Cosmopolitan. (2005). Peacekeeping and the Globalization of Security. *International Peacekeeping*, 12, 139–156.
Славески, С. & Шанев, Р. (2006). Пристапот до информациите: помеѓу транспарентноста и заштитата на националниот интерес, *Современа македонска одбрана*, 14, 140-156.
Стајиќ, М. (2005). Безбедноста и заштитата на класифицираните информации кои се чуваат, обработуваат и пренесуваат преку комуникациско-информатички системи. *Современа македонска одбрана*, 115-127.
Шанев, Р. (2004). Законот за класифицирани информации – новина во нашето законодавство, *Одбрана*, 96, 16-17.

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INCRIMINATION "PREPARATION OF A CRIMINAL OFFENSE" IN THE CRIMINAL LEGISLATION OF BOSNIA AND HERZEGOVINA (DE LEGE LATA AND DE LEGE FERENDA)

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Abstract

The reform of criminal law legislation of Bosnia and Herzegovina in 2003 produced several specific legal solutions. One of the most significant changes is related to iter criminis, i.e. the stage of its preparation. Although contemporary criminal law legislation is not unique in the choice of legal solutions relating to this criminal law institute, criminal law legislation in Bosnia and Herzegovina is considerably specific in terms of its regulation. Preparatory actions have been introduced in the provision of a special part of the Criminal Code as a punishable stage of the commission of a criminal offense and it is difficult to determine the *raison d'etre* that guided the legislator for such solution. The author gives a critical review of Article 248 of the Criminal Code of Bosnia and Herzegovina and the corresponding articles of the criminal codes of entities that contain an extremely unusual, and without exaggeration, a unique solution.

Keywords:criminal law, preparatory actions, criminal offense

1. INTRODUCTION

One of the most important rules regarding the criminal-political approach to draft of a criminal code is to take into account the balance between the necessary repression and the excessive interference in the private sphere of an individual.[48] It is just one of the most significant interventions in the reform of criminal legislation in Bosnia and Herzegovina in 2003 that concerns the aforementioned. These are the changes in the stage of preparation of the crime, in terms of which a drastic turn was made and this stage was practically made punishable.[49] Although criminal legislation of Bosnia and Herzegovina

[48]"During the writing of a criminal code, it is very important which criminal-political, and even broader, legal-philosophical approach will be chosen as the starting point," see Z. Stojanovic, "Characteristics of the Draft of the Criminal Code of Serbia", Branic, 1-2/2005, 8. Hamisch points out that criminal law "allows to intervene on the basis of danger before criminal activity is fully realized, but at the same time state intervention must not appear too early, in the sense that the freedoms of individuals are not respected, including above all the freedom of decision making, where the individual can change their mind and decide not to commit a criminal offense." S. Hamisch, "The Centrality of the act Requirement for Criminal Attempts", University of Toronto Law Journal; 51/2005, p. 401.

[49]In this way, and in the context of extension of the punishment zone, criminal legislation in Bosnia and Herzegovina adopted a solution that existed in the 1947 FNRJ Criminal Code. This was done in

remained on the line of criminal legislations that incriminates preparatory activities of a criminal offense in a special part of a code, with respect the French formula of *commencement d'exécution* when making a delimitation between the stage of preparation and attempting a criminal offense, the fact that it is a contemporary and maybe even a generally accepted criminal law solution, is just an illusion. The word is about the provision that makes criminal law in Bosnia and Herzegovina isolated and alone in terms of regulating the stage of the preparation of a criminal offense.

The Criminal Code of Bosnia and Herzegovina in Article 248 criminalizes preparatory actions with the following statement: "Whoever acquires or prepares funds or removes obstacles or undertakes any other act that creates conditions for direct execution, but is not part of the commission of a criminal offense prescribed by the law of Bosnia and Herzegovina for which imprisonment of three years or a more severe sanction can be sentenced, unless a more severe punishment is not prescribed for the preparation of a particular criminal offense, shall be punished by a fine or imprisonment up to three years".[50]

The existing solution in the criminal legislation of Bosnia and Herzegovina, which is inherent at first glance, necessarily implies certain issues. It is necessary to consider the place of this provision in the criminal code in general and also in the system of incriminations, then the formulation of the beings of this criminal offense, the prescribed penalties, the issue of concurrence, the scope of incriminations for which preparation can be punished, voluntary withdrawal from the commission of this criminal offense and a question regarding the complicity that may appear in relation to the crime that is being prepared.

2. PREPARATION OF A CRIMINAL OFFENSE (Articles 248, Article 333, and Article 339 of the Criminal Code of Bosnia and Herzegovina[51])

All criminal laws in Bosnia and Herzegovina, excluding the Criminal Code of the Republic of Srpska[52], have almost the same legislative-technical mode of regulating preparatory actions: these are provisions which contain preparatory actions found in article

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Art. 20. of the General Criminal Code, which stated: "For acts that prepare a serious criminal offense, if they are expressed in a particular form of acquisition or repairing of weapons and assets, creating favorable conditions for the commission of a criminal offense or seeking a person who would commit the intended criminal offense, the perpetrator is criminally responsible as for committed criminal offense", see ampl. F. Bačić, "About punishable preparatory actions", Proceedings of the Faculty of Law Zagreb, 1-2/1984, p. 157

[50]Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 10/03. The Law on Amendments to the Criminal Code of Republic of Srpska of 2012, in article 361a, identified the preparation of the criminal offense in a similar manner: "Whoever acquires or prepares funds or removes obstacles or undertakes any other action that creates conditions for direct action, but is not a part of doing a criminal offense determined by a law for which a sentence of imprisonment of five years or a more severe sentence may be imposed, if a more severe punishment is not prescribed for the preparation of a particular criminal offense, shall be punished by a fine or imprisonment up to three years. "Law on Amendments of the Criminal Code of the Republic of Srpska, Official Gazette of RS, No. 73/12

[51]Criminal Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation, No. 36/03

[52]Criminal Code of the Republic of Srpska ("Official Gazette of the Republic of Srpska", No. 47/17)

18 paragraph 3 of the former Criminal Code of the Socialist Federal Republic of Yugoslavia[53]. Nevertheless, in contrast to the solution which existed in the Criminal Code of the Socialist Federal Republic of Yugoslavia, in the criminal legislation of Bosnia and Herzegovina it is a provision of a special part which in its content generally reminds of a definition of a criminal law institute with an added punishment. Indeed, we cannot neglect the presence of provisions of a similar character also in the modern criminal codes. However, unlike the positive criminal legislation in Bosnia and Herzegovina, those provisions are placed in the general part, i.e. it exists as a criminal law institute. It is about contemporary criminal legislations that accept another model of legal regulation of the stage of preparation of a criminal offense, where it is regulated both in the provisions of the general part and also in the provisions of a special part.[54] In addition, not less controversial is the location of this incrimination in a special part of the criminal law. It is only in the Criminal Code of Bosnia and Herzegovina separated into a separate section, specifically in the area of criminal offenses from the twenty-second (XXII) section, under the title Agreement, Preparation, Association and Organized Crime.[55] In this group of criminal offenses there are incriminations named as Agreement for the commission of a criminal offense (Article 247), Preparation of a Criminal Offense (Article 248) and Association for the Purpose of Committing Crimes (Article 249).[56] In contrast to the above stated, in the Law on Amendments to the Criminal Code of the Republic of Srpska, the Criminal Code of Brchko District, and the Criminal Code of the Federation of Bosnia and Herzegovina, this provision is placed in the area of criminal offenses against the judiciary. It is difficult to justify such a legal solution, because by undertaking actions from Article

[53]Art. 18 para. 3. The Criminal Code of Socialist Federal Republic of Yugoslavia states: "when the law explicitly prescribes punishment for preparation of a particular criminal offense, preparation may consist of acquiring or repairing of means for the commission of a criminal offense, removing the obstacles to the commission of a criminal offense, arranging, planning or organizing with others the execution of a criminal offense, as well as of other acts that create conditions for immediate commission of a criminal offense, which do not constitute an act of execution."

[54]See Criminal Code of Russia (Articles 30 and 31) (Criminal Code of the Russian Federation, Federal Law RF, No.64-FZ); Criminal Code of Sweden (Chapter 23, Section 1, paragraphs 2 and 3) (Criminal Code of the Kingdom of Sweden, DS, 199: 36); Criminal Code of Bulgaria (Article 18) (Criminal Code of the Republic of Bulgaria, Publication State Gazette, No. 26 / 02.04.196); Art. 18 of the Criminal Code of Macedonia, Official Gazette of RM, No. 37/06; Netherlands Criminal Code (Article 46), see. Z. Stojanović, Criminal Law - general part, Official Gazette, Belgrade 2001, 222.

[55]In the criminal codes of the Federation of Bosnia and Herzegovina and the Brchko District of Bosnia and Herzegovina, these incriminations are placed in the group of criminal offenses against the judiciary. In the Criminal Code of the Republic of Srpska, the organization of criminal associations and the Agreement for commission of a criminal offense are placed in the group of criminal offenses against public order and peace. It remains unclear why the legislators in the Federation and the Brchko District systematized the preparation of a criminal offense into criminal offenses against the judiciary. It is widely recognized that the object of criminal law protection in criminal justice matters is the functioning of the judiciary, i.e. the judicial authorities. It is far from the correct view that this is an object of protection for incriminating the preparation of a criminal offense.

[56]Incrimination of organized crime is also positioned (Article 250). However, we cannot notice alleged incrimination actions that are preparatory in character, or formulations that indicate that it is a previous stage. If Articles 247, 248, and 249 are considered, the acts of the criminal offense determined by the formulations "... with other person's consent...", "... whoever acquires or prepares ...", "... undertakes any other action that creates conditions for ... "i.e. " who organizes ... for the purpose ... ", unlike Article 250, where the act is exhausted in the commission of criminal offenses prescribed by the law of Bosnia and Herzegovina in the capacity of members of an organized group. The fact is about that the criminal offense planned by the organization has already been incorporated into the legal of these criminal offenses, and which the law has already "curtailed" in the sentence, see ampl. M. Babić et al., Commentary on criminal law / criminal laws in Bosnia and Herzegovina, Council of Europe, Sarajevo 2005, 804.

361a of the Law on Amendments to the Criminal Code of Republic of Srpska, Article 333 of the Criminal Code of Brchko District and Article 339 of the Criminal Code of the Federation of Bosnia and Herzegovina, not a single segment of the judicial system was violated (it does not prevent and endanger the work of judicial authorities, the accomplishment of their tasks or implementation of their measures and decisions).[57]

Legislation determined that preparatory actions as an act of committing a criminal offense are related to the acquisition or preparation of means, removal of obstacles or undertaking another act that creates conditions for direct execution but is not part of the commission of a criminal offense. Preparatory actions which appear in the form of acquisition or preparation of funds, as well as removal of obstacles (together with an agreement for the commission of a criminal offense and with association) are precisely determined. On the contrary, the possibility of preparing a criminal offense through "any other action that creates conditions for direct execution but is not part of the commission of a criminal offense" is not precise. This is the so-called "General clause" through which the legislator sought to include in the preparatory actions all possible activities that create conditions for direct commission of a criminal offense. This is a result of the fact that preparatory actions cannot be listed exhaustively (exémpli causa), i.e that the legislator must necessarily use numerus clausus technique. Nevertheless, by specifying the usual activities and using the general clause, the legislator partially limited preparatory actions. These are, in the case of this incrimination, the procurement or preparation of means, removal of obstacles or undertaking of any other action that creates conditions for direct commission, but it is not part of the commission of a criminal offense. It should be noted that the "general clause", as a form of formulation of preparatory actions, is represented in all legislations which regulate the preparation of a criminal offense as a general institute. Thus, the Criminal Code of Russia, in Article 30 paragraph 1 determines that the preparation of a criminal offense is also considered to be "... any other creation of conditions", the Criminal Code of Sweden (Chapter 23 Section 1 paragraph 2) provides formulation "... or makes any other payment ..." i.e. "... undertake any other activity ...", the Criminal Code of Bulgaria in Article 17 paragraph 1 uses the formulation "... creating conditions for the commission of a criminal offense ...", the Criminal Code of Macedonia determines that preparation may contain "... in other activities creating the conditions for direct execution ...", while in the Criminal Code of Ukraine "... deliberate creation of conditions for a criminal offense in any other way" is also defined as a preparation of a criminal offence. It is understood that criminal legislation treats this "kind" of preparatory actions in a different way, somewhere emphasizing the subjective element, somewhere using the term "any other activity" and somewhere "creating of conditions". What is interesting is the fact that the most modern legislation in its provisions does not use the formulation that with the above-mentioned activities is contributed to the "direct execution" of a criminal offense. This implies that disregarding this formulation, preparatory actions which are even somewhat far away from the commencement of the

[57]This legal solution was especially questioned in the criminal legislation of the Republic of Srpska, because other "general" incriminations with the sign of preparatory actions (e.g. Agreement for the commission of a criminal offense or Organization of a Criminal Association) are traditionally found in the area of criminal offenses against the public order and peace. There would be a more convenient solution according to which this provision would find its place among these criminal offenses in the area of Criminal offenses against public order and peace.

criminal offense are punishable, what, as we will see, is not the case in the criminal legislation in Bosnia and Herzegovina.

Thus, and related to this incrimination, appears the question of determination of preparatory actions in the "deep" sense, too, i.e. we should answer to the question to what extent preparatory actions can be far from the commencement of the realization of a criminal offense. First of all, by the grammatical interpretation of the text of this provision, it is seen that in the positive legislation in Bosnia and Herzegovina the verbal form "acquire", "prepare", "remove"…. is applied, which leads to the conclusion that it is necessary to bring to the end the process of realization of preparatory actions.[58] Thus, in positive legislation in Bosnia and Herzegovina, at least according to this interpretation, the possibility of punishment for preparing a criminal offense has been reduced, which is also commendable in view of the fact that the punishments are sentenced in cases where an attempt is punishable. In the case of preparatory actions which are not precisely determined, the border is defined as "any other creation of conditions for the immediate commission of a criminal offense ...". Although in the former doctrine of the criminal law there were opinions that this kind of formulation of preparatory actions includes more distant preparatory actions[59], we should point out that this is not the case in the criminal legislation in Bosnia and Herzegovina. Since in this case the most common and most dangerous forms of preparatory actions are specified in the provisions of positive legislation and determined as a finalized process, it would not be justified to extend the limits of punishment beside this formulation. Moreover, we should agree with the opinions which point out that the aim of this formulation is exclusively of a legislative-technical nature.[60]

The last mentioned also implies the question of the material element; i.e. whether preparatory actions in terms of observed incrimination include only those actions that are directly related to the act of execution, or whether these are activities that signify a quick transition to the commission of a criminal offense. It seems that this is the case in the positive legislation in Bosnia and Herzegovina; primarily because it takes into account the fact that the legislator did not provide a provision that would limit punishment of preparatory actions to a "socially dangerous activities", i.e. when the law (explicitly) stipulates this because of the "*special social danger of the preparation itself*".[61]In this way, the material element of the preparatory actions is discarded, and preparatory actions become dangerous only when they are brought directly into connection with the prepared crime. Although this is a limitation of punishment for preparatory actions, we can point out that elimination of the explicit formulation that refers to the material element is debatable, since certain preparatory actions may contain a high degree of social danger without "leaning" on the act of committing the crime. In other words, one preparatory activity in

[58]The given formulation can be viewed from another aspect, which is that preparatory actions in positive legislation can be executed with only one action.

[59]Thus, Lazarevic points out that the legislator, by the provision from paragraph 3, "intended to include besides preliminary and preparatory actions that are somewhat more distant than a criminal offense, but which still create the conditions for the immediate commission of a criminal offense".

[60]See more M. Babić, 127.

[61]This was a legal and a criminal-political directive for a legislator, only preparation that is extremely socially dangerous can be punishable, See / Bačić / F. Bačić et al., Commentary of the Criminal Code of the Socialist Federal Republic of Yugoslavia, Contemporary Administration, Belgrade 1978, 96.

one situation can be socially dangerous, and not in the other situation, no matter in what time and space connection it is in relation to the action of execution, and only social danger can represent the basis for prescribing preparatory actions as punishable.[62]However, taking into account that criminal legislations in Bosnia and Herzegovina contain the so-called "standardized" criminal offenses of preparation where punishment can be sentenced for activities from the preparation stage which are further away (preparation of preparation), which at the same time constitute a special form of this criminal offense, Article 248 of the Criminal Code of Bosnia and Herzegovina (and the corresponding articles in the entities criminal legislation) in this part justifiably "binds" activities of preparation for acts that do not constitute the commission of a criminal offense and which are directly related to it.[63] Preparatory actions in the sense of this article should only be considered as activities that temporarily, materially, and functionally directly proceed to the action of the commission of a criminal offense.

When it comes to the persons who can commit this criminal offense, the legislator did not specify in detail in this provision to whom preparatory actions can be taken. This is interesting because for some incriminations with the sign of preparatory actions, the legislator uses a formulation "to give someone else" (for example, the creating and acquisition of weapon and means for the purpose of committing criminal offenses referred to Article 360 of the Criminal Code of the Republic of Srpska) or something similar. Considering that the preparatory actions from this provision create conditions for immediate execution of future criminal offense, we can conclude that these activities can be undertaken only by a person for the commission of his / her own criminal offense. Thus, the person who undertakes activities that create conditions for immediate execution of a specific criminal offense by another person will hardly have as a subjective element "only" awareness that acquired or prepared means can be used for the purpose of commitment "some" criminal offense (and thus prepare someone else's criminal offense), but by undertaking these activities, i.e. "by direct creation of conditions for commission of a criminal offense" by another person, has a clear idea of the criminal offense that will be committed and, consequently, has the status of the (unsuccessful) assistant.

In addition, the issue of criminal offenses where preparation is considered in this provision is also important. The legislators determined that these preparatory actions will be punishable if they are undertaken for the commission of criminal offenses for which a sentence of imprisonment of three years may be imposed (Criminal Code of Bosnia and Herzegovina, Criminal Code of the Federation of Bosnia and Herzegovina and Criminal Code of Brchko District of Bosnia and Herzegovina), or five years under the Law on Amendments to the Criminal Code of the Republic of Srpska. By this, the maxim of the rare punishing of preparatory actions is disrupted, which makes our legislation as one of the few which "regularly" punish for preparation of criminal offenses in the field of medium-heavy crime.[64]These criminal codes regulate criminal offenses for which, as shown, a sentence of three years of imprisonment or a more severe sentence can be imposed, i.e. almost all crimes. It would be different if the legislator determined the bound

[62]Compare M. Babić, 123.

[63]Kambovski describes these activities as preparatory actions in the stricto sensu, citing (unusual in the context of the incrimination that is the subject of the analysis) an example in which the status of preparatory actions is waived for the acts of purhasing firearms in order to commit assassination of the president of the state whoever would be elected in 2019 . See V. Kambovski, Criminal Law - general part, Skopje 2006, 458.

[64]For example, the Criminal Code of Ukraine (Vidovosti of the Verkhovna Rada of Ukraine (VRU) No 25 - 26/2001.)

of the punishability of preparatory actions in relation to the prescribed imprisonment, for example "for which a prison sentence is prescribed," or "for which a prison sentence is foreseen", for example, with a minimum of three or five years. In the last case, the legislator would punish preparation of serious and particularly serious crimes, which is in line with the international recommendations.[65]In this way, a great deal of extension of the punishment limit for preparatory actions and deviation from the principle impunity would be avoided.[66]

In the context of the above mentioned, the law makers in Bosnia and Herzegovina prescribed that this provision will not apply if a more severe or special punishment is prescribed for the preparation of a particular criminal offense. By this formulation, the preparation of a criminal offense is not in apparent concurrence only with the prepared crime (delicta preparata), but is also excluded in the case of undertaking preparatory actions for which a severe / special punishment is prescribed. Here, the legislators in the Federation of Bosnia and Herzegovina and the Brchko District of Bosnia and Herzegovina have chosen a practical solution and have excluded application of incrimination of preparation of a criminal offense in the case when a special sentence is prescribed for particular preparatory actions.

Furthermore, with regard to this criminal offense, the legislator did not provide a voluntary withdrawal provision. In such incrimination, the explicit provision on voluntary withdrawal is certainly justified (in analogy with the criminal legislations that regulate preparatory actions in the general part of the criminal law), primarily because the undertaking of the activity from this article brings the action to an end, i.e. the offense is completed and remains only an opportunity of "sincere regret". These activities, at least in the case of voluntary withdrawal, should not be regarded as formal offenses in the stricto sensu, which results in the inability to apply voluntary withdrawal, than naturally institute of sincere regret. Voluntary withdrawal is, of course, theoretically possible in this case also, but with the indication that this form of voluntary withdrawal should contain one constituent element. The word is about a real cancellation of the effects of the undertaken activity, which implies that the consequence of that action, which consists in creating the possibility of moving to a "higher stage of execution", is also annulled.[67]The provision of this character would specify the method of voluntary withdrawal and after the realized or completed preparatory actions, and at least an optional exemption from punishment could be predicted.[68]In this way, the attitude of the legislator would be soften, according to which the preparation stage is punishable (with respect to all criminal offenses), leaving the possibility of a "reward" to a person who stops at this stage of preparation and does not execute the prepared crime.

Lastly, it should be noted that, in view of the existence of complicity in certain stages of the commission of criminal offense, and thanks to this incrimination, the situation is rather vague and confusing. The question that arises is how to solve the situation if a

[65]„The Expanding Forms of Preparation and Participacion – Resolution Draft“ *Revue internationale de droit pénal (ERES),* 3/2007, 510.

[66]Regarding the above, Stojanovic correctly points out: "A criminal politics that would seek to extend the borders of criminal law by advocating for a broad incrimination of preparatory actions would not be a criminal politics that respects the principles of a state governed by law", See Z. Stojanovic, 221.

[67]I. Simović-Hiber, Voluntary withdrawal in criminal law - doctoral dissertation (unpublished); Faculty of Law, Belgrade 1987, 233.

[68]This is the case with Sweden's Criminal Code, where section 3 provides a voluntary withdrawal to be applied on a person associated with the means for commission a criminal offense who prevents the use of these means.

person who is incited to commit certain criminal offense only performs punitive preparatory actions. Bačić has yet noticed that, on the one hand, complicity may exist in the realized stage of the crime in similar cases, i.e. in the criminal offense of punitive preparatory actions, but nevertheless he opted for the view that in such cases there is complicity in the main criminal offense, which only came to the preparation phase.[69]By applying the first insight, enter in a punitive zone represent punishable preparatory actions as the previous stage. The above implies that unsuccessful incitement or assisting will exist only in cases where no punishable preparatory actions or an attempt of a criminal offense have been taken, or a criminal offense has not been completed. Considering that the punishable preparatory actions in our criminal legislation can be undertaken in almost all criminal offenses, their undertaking will exclude the existence of these institutes in a large number of cases. However, not even the eventual application of the first view brings anything better. Such solution can lead to the fact that if a person takes an act of incitement and the main perpetrator undertakes unpunishable preparatory actions, the instigator will be punished as for an attempt to commit a criminal offense to which he instigated; in contrast, if the main perpetrator has accomplished punishable preparatory actions, the instigator shall be punished for complicity in the criminal offense of punishable preparatory actions. Thus, if a person is instigated or someone is assisting him to accomplish any criminal offense for which a sentence of imprisonment of three years or more is prescribed (of course, if a more severe punishment is not prescribed for the preparation of a particular criminal offense), and the incited performs only preparatory actions (for example, Article 248 of the Criminal Code of Bosnia and Herzegovina) that represent the previous stage of this criminal offense, the instigator will be responsible under the rules of complicity for complicity in punishable preparatory actions, and not for unsuccessful incitement. This is a kind of negative quantitative excess which occurs when an incited person committed a crime lesser than the one to which he was incited. In such cases of existence of complicity actions it turns out that a person as an instigator can be "more" liable for "less" done, which suggests that further attention should be paid to this issue in the future.

3. PREPARATION OF CRIMINAL OFFENSE AND JURISPRUDENCE

The issue of the application of Article 248 of the Criminal Code of Bosnia and Herzegovina (and the relevant articles of the entities) is particularly relevant in the jurisprudence. It should be noted that in the judicial practice only two cases are found in which it has been prosecuted for the criminal offense referred to in this Article. These are the judgments of the Court of Bosnia and Herzegovina, among which the most important is the Judgment of the Appellate Panel of the Court of Bosnia and Herzegovina since 2009, in which there is a deviation from the formally-objective theory of delineation of preparatory actions and attempt of criminal offense.[70] The verdict given by the Appellate Panel of the Court of Bosnia and Herzegovina, which is important because of the alteration of the verdict that was made in relation to the legal qualification of the criminal offense (since a criminal offense under the title "preparation of a criminal offense" regulated in

[69]F. Bacic, "Complicity in Punitive Preparatory Actions", Our Legality, 4/77, 52.

[70]In criminal legislation in Bosnia and Herzegovina, an attempt to commit a criminal offense is determined by Article 26 of the Criminal Code of Bosnia and Herzegovina, with the formulation "Who with intention begins ...". The above implies that our legislator has adopted a formal-objective theory of delineation of preparatory actions and attempttion of criminal offense.

Article 248 of the Criminal Code of Bosnia and Herzegovina, for which two persons are convicted, was qualified as a criminal offense of "smuggling of a person's" under Article 189, paragraph 1 of the Criminal Code of Bosnia and Herzegovina in an attempt, based on the established facts by the Appellate Panel) appears to be based on an individual-objective theory.[71] In the explanation of the verdict it is underlined that the rating and evaluation of the undertaken actions is based primarily on the nature of the legal being of the concerned criminal offense and "the significance of the undertaken actions and their connection with the mere act of border crossing of one or more persons, conducted by gainfulness." Furthermore, it is stated in the verdict that, "having in mind all previously undertaken acts of preparatory character (previous agreements, planning and organizing with other persons of illegal transfer of Turkish citizens and handover of these persons out of the airport area), the actions of transporting smuggled persons to the agreed border crossing (whereby the most part of the route has been crossed) and already realized payment of the previously agreed service..... are, according to the Panel's assessment, such actions which are with the 'crossing' activity in such a relationship that they are objectively observed and on the basis of life experience are such functional interconnected that they represent one unity, which logically and by the nature of the matter, and especially having in mind the intent and plan of the accused, should be considered as an integral part of the act of the commission of the crime in question." In relation to the aforementioned opinion, there may appear a dilemma regarding the legal qualification of these actions, since the action of the criminal offense referred to in Article 248 of the Criminal Code of Bosnia and Herzegovina is placed quite indefinitely (such as the acquisition of funds, removal of obstacles or undertaking of some other activity that creates conditions for the immediate commission of a criminal offense ...), and the first instance court qualified those activities as a criminal offense under Article 248 of the Criminal Code of Bosnia and Herzegovina.

From the aforementioned opinion of the Appellate Division of the Court of Bosnia and Herzegovina, it is noted that preparatory actions undertaken in the context of the accomplishment of this criminal offense are also of organizational character (agreement, planning and organization), so we can ask why the first instance court found that only the being of the criminal offense from Article 248 of the Criminal Code of Bosnia and Herzegovina (and not, for example, from paragraph 5 of Article 189 of the Criminal Code of Bosnia and Herzegovina[72]) is accomplished and how the listed activities are qualified. It can be concluded that these activities are under the "general clause" framework, "... undertakes any other action that creates conditions for direct perpetration, but it is not a part of commission of a criminal offense ...". The segment in the aforementioned realized activities, by which the Appellate Panel was managed in respect of the alteration of the legal qualification of the criminal offense, relates to the transportation of migrants to the border crossing (during which most of the way was crossed) and the payment of the previously agreed service. By observing the first activity, which relates to the transportation of emigrants to the state border, it might be possible to raise the question of the justification of the existence of an attempt of this crime, and not preparatory actions, if there was no circumstance concerning the pre-paid service. The transportation of emigrants, which in this case does not consist in "crossing the state

[71]/Eser/ A. Schönke; H. Schröder, *Strafgesetzbuch Kommentar*, Verlag C. H. Beck, München 2010, 412.

[72]The paragraph states: "Who organizes a group of people or in any way manages a group of people with the aim of committing the criminal offense referred to in paragraph 1 or 2 of this Article, shall be punished by imprisonment for at least 10 years or by long-term imprisonment."

border", which is stated as the act of the being of the criminal offense referred to in Article 189 paragraph 1, can be characterized as a preparation of the criminal offense, however, it was also undertaken after the collection of the counter value. This implies that the criminal intention to commit the crime was strongly expressed and thus a objective element was compensated and, based on the foregoing, it can be justifiably assumed that due to all the circumstances that followed the activities of persons who participated in these activities, it was not possible to expect a voluntary withdrawal from the complete realization of the intended activities, and thus to determine that undertaken activities may be only preparatory actions. The pre-acquired gain in the form of cash collection (although it is a preparatory action in some legislations) here represents an element of the being of a criminal offense that is expressed in the incrimination by the term "profitability". The aforementioned activities which constitute a "criminal plan" and make a natural unity with the act of "transportation" across the state border on the one side, and partly the accomplishment of a being of criminal offense marked as "profitability" are that what guided the Appellate Panel during the qualification of this criminal offense, which justifiable concluded that this was an attempt to commit a criminal offense of smuggling a person.

4. CONCLUSION

It is envisaged that the regulation of the institution of preparation of a criminal offense in our criminal legislation, through the article 248 of the Criminal Code of Bosnia and Herzegovina and the relevant provisions in the entity criminal legislations, with the exception of the Republic of Srpska, was implemented in an unusual manner. This approach to incrimination of the stage of preparation of a crime constitutes a mosaic of exceptions to the solutions that are common in contemporary criminal legislation. The legislator has classified in a separate part of the criminal codes (Preparation of a criminal offense, article 248 of the Criminal Code of Bosnia and Herzegovina, article 339 of the Criminal Code of the Federation of Bosnia and Herzegovina, article 333 of the Criminal Code of the Brchko District of Bosnia and Herzegovina) a provision that is in the general part of other criminal codes. In addition, in the criminal codes of Federation of Bosnia and Herzegovina and the Brchko District of Bosnia and Herzegovina, this incrimination is in the field of criminal offenses against the judiciary. As this incrimination does not protect any segment of the judiciary, a more appropriate solution, if it can be said at all, was chosen by the legislator in the Criminal Code of Bosnia and Herzegovina, who placed such provision in a chapter called Arrangement, preparation, association and organized crime. Furthermore, regarding the zone of punishability of preparatory actions, it is evident that our legislator is not in line with contemporary criminal legislation and that the recommendations and standards are not respected in this regard. It is punishing for criminal offenses for which imprisonment for more than three years can be sentenced, in other words, almost for preparing of all criminal offenses. The absence of a material element, unlike the legal solution in the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia, is also evident, as well as the limitation of the action of execution, in terms of this incrimination, on activities that temporally, materially and functionally directly precede the act of commission of the criminal offense. There is a precise and explicit restriction imposed by lawmakers in application of this provision, i.e. the fact that it will not apply if a more severe/ special punishment is prescribed for the preparation of a particular criminal offense. Furthermore, a provision of this character implies the expressly

stated possibility of facultative exemption from punishment in the event of a withdrawal to realize preparatory actions. The issue of the existence and qualification of certain forms of complicity in the commission of a criminal offense is especially open. What else could be noticed in the context of Article 248 of the Criminal Code of Bosnia and Herzegovina is the deviation from the legally accepted formal-objective theory as the line of delimitation of the stages of preparation and execution of the criminal offense. Unlike the above, this is justified, especially if we take into account the fact that the theory in its original form is largely abandoned in modern criminal law.

5. LITERATURE

1. Babić, M. (1979). *Preparation of a criminal offense*. Master thesis (unpublished). University of Belgrade, Faculty of Law.
2. Babić, M. *et al.* (2006). *Commentary on Criminal / Penal Laws in Bosnia and Herzegovina*. Sarajevo: Council of Europe.
3. Bačić, F. *et al.* (1978). *Commentary of the SFRY Criminal Code.* Belgrade: Contemporary administration.
4. Bačić, F. (1984). About punishable preparatory actions. *Proceedings of the Faculty of Law Zagreb, 1-2/1984,* p. 155–172.
5. Bačić, F. (1977). Complicity in Punitive Preparatory Actions. *Our Legality 4/77, 50–54.*
6. Hamisch, S. (2005). The Centrality *of the act Requirement for Criminal Attempts. University of Toronto Law Journal, 51/2005, 399 – 424.*
7. Kambovski, V. (2006). *Criminal law - general part*. Skopje.
8. Müller, T. (2010). Bericht über die Verhandlungen der I. Sektion: Strafrecht Allgemeiner Teil: Erweiterte Formen der Vorbereitung und der Teilehme. *Zeitschrift für die gesamte Strafrechtswissenschaft,Vol.122, Issue 2, 453-457.*
9. Picotti, L.(2007). Expanding Forms of Preparation and Participation. *Revue internationale de droit penal, Vol. 78, p. 405-452.*
10. Stojanović, Z. (2001). *Criminal law - general part.* Belgrade, Official Gazette.
11. Stojanovic, Z. (2005). Characteristics of the Draft of the Criminal Code of Serbia. *Branic,1-2/2005, 5–25.*
12. Schönke, A.;. Schröder, H. (2010). *Strafgesetzbuch Kommentar*. München, Verlag C. H. Beck.
13. Simović-Hiber, I. (1987). *Voluntary withdrawal in criminal law.* Doctoral dissertation (unpublished). University of Belgrade, Faculty of Law.
14. Stephen, M. (2004). Criminal Attempts and the Subjectivism / Objectivism Debate. *Ratio Juris,3/2004, 328-345.*
15. Criminal Code of Bosnia and Herzegovina ("Official Gazette of BiH", No. 3/03, 32/03, 54/04, 61/04, 30/05, 53/06, 55/06 and 08/10).
16. Criminal Code of Republic of Srpska ("Official Gazette of RS", No. 47/17).
17. Law on Amendments to the Criminal Code of Republika Srpska ("Official Gazette of the Republic of Serbia", No. 73/10).
18. Law on Amendments to the Criminal Code of Republic of Srpska ("Official Gazette of RS", No. 67/13).
19. Criminal Code of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2007, 72/2009 and 111/2009).
20. Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No. 70/2004, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013).
21. Criminal Code of Croatia ("Official Gazette of the Republic of Croatia", No. 125/11).
22. Criminal Code of Macedonia ("Official Gazette of RM", No. 37/96).
23. www.sudbih.gov.ba
24. www.legislationline.com

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PROCEDURE FOR CRIMINAL PSYCHOLOGICAL PROFILING OF AN UNKNOWN PERPETRATOR

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Abstract

Criminal profiling is a relatively new method in criminology, which is used to detect certain crimes. Profiling is a procedure that determines the characteristics of the unknown perpetrator, such as: in what kind of mental state he/she was during the crime, age, ethnic and racial background, profession, marital status etc. Criminal psychological profiling is divided into inductive and deductive profiling, and the person involved in creating an account of an unknown perpetrator is called a profiler. Profiling has orientation-elimination significance in the discovery of the unknown perpetrator, where the circle of perpetrators narrows to the real perpetrator.

With this paper I will explain the procedure for profiling (assessment of the perpetrator's personality, assessment of the place of the event, assessment of autopsy findings, preparation of a profile and taking specific measures and actions). Furthermore, my goal is to show how profiling is important in the discovery of the unknown perpetrator of crimes (especially in the case of murders, rapes, robberies, kidnappings, etc.), and its related preventive significance. At the same time, I can conclude from my previous researchthat the employees of the Ministry of the Interior have too little knowledge of this method.

In my research, I will use the historical - comparative method, study of the literature both in Macedonia and abroad and on the Internet, and interviews with police employees and psychologists.

The conclusions of the paper, suggestions, and preventive profiling actions will be outlined in the final phase.

Keywords: profiling, profiler, inductive, deductive, perpetrator, victim.

INTRODUCTION

The criminal profiling of an unknown perpetrator is a relatively new method of detecting an unknown perpetrator of certain crimes. The purpose of criminological profiling is to criminalize the criminal offense by identifying a circle of suspects in order to direct and facilitate the further criminal activity of discovering and finding the real perpetrator of the crime. Criminal profiling is defined as a technique whereby the possible characteristics of the perpetrator are based on the exposure of the perpetrator. We need to know that profiling does not present the identity or image of a particular perpetrator, but

rather gives a general description of the perpetrator of the crime of murder, according to the adopted conclusions about the behavior during the commission of the crime.[73]
Profiling is creating a version of the unknown perpetrator, especially of his motives, character traits of the person, then general characteristics such as sex, age, ethnic and racial background, religious affiliation, profession, place of residence and constant movement, etc.

Creating the profile of the perpetrator of the crime of murder is based on the assumptions regarding the behavior and manner of execution (modus operandi) of the murder, and reflects a personality trait. For the creation of the profile of an unknown perpetrator of hysteria murder, our place should be our locus operandi because it is a reflection of the personality of the perpetrator. The manner in which the criminal act is committed points out characteristics similar to the characteristics of our home life. Although the concept of criminal profiling is being popularized as a revolutionary concept, the truth is that it is a significant old discovery from the enthusiasm of people who have always tried to grasp crime.[74]

Profiling is imposed as a necessary criminal method of criminalists in detecting an unknown perpetrator at the very beginning when they have no knowledge to resolve the case. These may be cases where there are many suspects, as well as cases where there are no suspects at all, or in cases where it is not possible to explain the motive of the perpetrator, that is, when there was no previous connectionbetween the victim and the perpetrator of the crime.[75] The process of creating a profile is an approach of conducting a thorough and expert investigation at the place of the conductor-based behavior and investigating crimes that express the characteristics of the perpetrator and provide data useful to the process of making a profile.[76]

With the found traces and objects and the way he/she acted, the offender leaves characteristics for himself and other information. The criminalist, with his arrival on the spot, first forms versions (at least two) and makes a thoughtful reconstruction of the path in which the perpetrator came and left, that is, puts himself in his/her role. Then profiling is performed. There is no "recipe" or formula for creating a profile that will reveal the biochemical perceptions of the investigation. In addition to the criminalist with criminal knowledge, the presence of persons with knowledge of other sciences, such as: a psychologist, a medical doctor, a psychiatrist, a forensic, a criminologist, etc., is of great importance at the scene of the event. Profiling requires a multidisciplinary approach and knowledge of other areas, such as: psychology, medicine, forensics, criminal law, etc. [77]

According to my Professor Metodija Angeloski, the term criminal profiling involves an assessment of the characteristics and manners of the type of personality of an unknown perpetrator, as well as an assessment of the location of someone's center of criminal activity on the basis of an analysis of data collected in the first operation when the

[73] Daniela Trajkovska, Master thesis: Procedure for criminal profiling in the detection of an unknown perpetrator of crime, First Private University FON, Skopje, 2016 page 23
[74] Criminal Profiling, Principles and Practice, Richard N. Kocsis, PhD, Forensic Psychologist , Humana Press , Totowa New Jersey, p. 26
[75] Silvana Ivanova, Specialist Labor, Profiling, FON University, Skopje
[76] Steward H. James, John J. Norby, Forensics: Introduction to Scientific and Guard Techniques Second Edition, Tabernacle 2009 page 616
[77] Daniela Trajkovska, Master thesis: Procedure for criminal profiling in the detection of an unknown perpetrator of a criminal act of murder, First Private University FON, Skopje, 2016 page 24

criminal proceedings are conducted in relation to a specific criminal offense, a crime, or a series of serious crimes.[78]
The conclusions on the personality traits and demographic characteristics are made on the following grounds:

- The manner of committing the crime - modus operandi;
- The place of committing the crime - locus operandi;
- Studying the personality of the victim and the relationship with the enforcement agent;
- Eyewitness reports;
- Consideration and study of other information and knowledge.

The person who performs the profiling is called a profile-maker. The profile-maker must be an experienced criminalist with knowledge of psychology.
The most important thing to note is that profiling is used not only for murders, but also for rape, terrorism, robberies, abductions, etc.

1.1. Psychological profiling

The application of psychological methods and approaches can significantly contribute to the improvement of the criminal investigation, in conjunction with the individual characteristics of the perpetrator, his previous conduct, during and after the crime, motivation, general mental status and other personal characteristics. Psychological portraiture or also called psychological profiling, is only part of the psychological diagnostics. Since its establishment up to date, it has been called by many names and has been practiced at many levels over the years. In dictionaries and encyclopedias we can find it as criminal profiling, criminal portraiture, psychological profiling or personal profiling.[79]
The beginning of criminal psychological profiling began in the distant 1820s of the 19thcentury, when Jack Fryes together with Cesare Lambroso laid the foundations of this teaching with their theories, and later, in the 20thcentury, it was supplemented by Krechmer with his theory of body types (physical construction on the body). According to Ressler and Burgess (1985), (Ressler, R. & Burgess, A, (1985), the FBI Law Enforcement Bulletin, psychological profiling helps in the investigation of crimes from 76% to 93% of the cases.

Psychological analysis means identification of special characteristics of an unknown, unidentified perpetrator, on the basis of the manner in which he/she committed the crime and his/her relations with the victim.

As a result, the profile can highlight one of more suspects, i.e. a well-designed profile can describe or recognize the perpetrator of the crime.

The development of the psychological profile reveals the following characteristics of the perpetrator: sex, race, (approximate) age, level of education, profession and work, abnormal behavior, mental stability, social status, criminal history, drug or alcohol addiction, and the like.[80]

[78] M. Angeleški, Criminalistic Theories, Skopje March 2014, page 45
[79] http://www.referati.org/psihologichno-profilirane-na-izvyrshiteli-na-iznasilvane/52666/ref/p4
[80] Daniela Trajkovska, Master thesis: Procedure for criminal profiling in the detection of an unknown perpetrator of a criminal act of murder, First Private University FON, Skopje, 2016 page 31

INTERVIEW

In an interview with an inspector from a police station, he answered my question "what profiling and whether you apply it", with another question: "What is your profiling, do you mean a photo robot?"
In an interview with a deputy commander of a police station, a faculty of lawgraduate, I was told "we do not have such a person-profiler".

In an interview with a psychiatrist from a psychiatric hospital to my question, "Do you go out on the spot for a crime of murder to make a profile of an unknown perpetrator," she replied that she did not go out, but that it was necessary for psychologists and psychiatrists to be kept familiar with the profiling of an unknown perpetrator. But a younger psychologist from the same hospital had not heard about profiling of an unknown perpetrator, just creating a patient's profile or perpetrator who is watching him.

Separation of psychological profiling

a) Deductive profiling

Deductive profilingis data analysis and conclusion on the characteristics of the perpetrator according to the traces found at the scene and the way in which the crime was committed.[81]The assumptions made with the deductive method are sufficiently realistic to direct the investigation to find the perpetrator of the crime.

Example: by creating profiles, a large number of FBI profilers come to the knowledge of gender, race and ethnicity, derived from the analysis of data obtained from statistical evidence.[82]

This kind of profiling has a multidimensional character and approach and requires a lot of experience, criminally supported by knowledge gained atthe Faculty of Security.Knowledge from other sciences, such as psychology, forensics, etc. is also necessary. The idea of a deductive profiling is to reduce the number of suspects, rather than emphasize one perpetrator.[83]

According to this, andto Serbian profiler Nemanja Popovikj, profiling is a mental and logical process, which with analysis, synthesis and evaluation of evidence (for the perpetrator, the place of the criminal event and the victim) aims to produce a profile of the general and special characteristics of the executor (motive, psychological coercion, modus operandi). The result of the profiling is a profile that always needs to be in writing ".[8485]

b) Inductive profiling

This kind of profiling is different from the deductive. It is about analyzing the committed and solved crimes of the same type. Thesetypes of analyses statistically cross each other, the psychological features of already detected perpetrators, with the same or similar characteristics. The psychological characteristics of the detected perpetrators of

[81] Metodija Angeleski, Introduction to Criminalistics, Skopje 2007, page 220
[82] https://www.scribd.com/doc/240624636/Uvod-u-Kriminalistiku-Separat-Kriminalisticko-Profilisanje-1
[83] http://www.psihoportal.com/index.php/hr/str-prilozi/904-uloga-psihologa-u-procesu-kriminalistickog-profilisanja
[84]http://www.psihoportal.com/index.php/hr/str-prilozi/904-uloga-psihologa-u-procesu-kriminalistickog-profilisanja
[85] Lecture at Hotel Porta Skopje, 2013 by Nemanja Popovikj for serial killings and profiling

criminal acts are recorded and placed in the electronic database according to the types of crimes and they are analyzed and statistically displayed. Thus, the psychological characteristics for specific types of crime and their perpetrators will be determined. Based on the inductive method, the perpetrators are classified into classes and groups according to certain criteria, for example, the perpetrator of a particular crime is placed in a group with respect to the place where he committed the crime, or aggressiveness, modus operandi (the manner of execution), tempus operandi (time of execution), instrumentum operandi (the weapon or the tool with which the crime was committed), the place of execution or locus operandi (dark streets, forest, house etc.), and so on.After the classification of the perpetrator according to the set of characteristics, mathematical operations for the performer's properties for each group are carried out, where the median value is requested. With empirical findings, assumptions are derived about certain characteristics of the perpetrator of a certain type of crime.

With this method, an attempt is made to connect one type of criminal act with certain behaviors of the perpetrator and to create the profile of the perpetrator with the theory of probability, which is of a great help in criminal processing.[86]

The opinion is primarily that the average value provides too little information about the perpetrator of a specific crime (in this case, the murder). At the same time, this type of profiling based on statistical generalization, although precisely elaborated,is generally incomplete because it covers only the average value of the recorded (arrested) crimes that are less in comparison to the total mass of a particular criminal type.[87]This method determines the general and not the special characteristics of the perpetrator of the crime, and can extend the circle to innocent people instead of narrowing it down. Inductive profiling does not require experienced people, unlike the deductive profiling method, because it is a computer-statistical search.

It is desirable to combine the two methods to get to the perpetrator of the crime. The deductive method is practical in psychological profiling, whilethe inductive is a scientific method based on the practices of the previous method.

FBI PROFILING

The FBI model of profiling is based on the evidence found on the spot. According to it, one can prove in what condition the perpetrator of the criminal act was, if he was organized or unorganized, about the manner of committing the crime, the means by which it was committed, and the similar. Organized perpetrators have previously visited the place where they plan to commit the murder, they express a high degree of professionalism and aggression, often involving the victim. This type of perpetrator of murder does not leave traces at the scene and hides or buries the corpse, and gets rid of the means by which he committed the murder. This perpetrator leaves false traces which will lead the investigation in the wrong direction.This type of perpetrator of murder possesses a high degree of

[86] Daniela Trajkovska, Master thesis: Procedure for criminal profiling in the detection of an unknown perpetrator of a murder, First Private University FON, Skopje, 2016 page 35

[8787]https://www.scribd.com/doc/240624636/Uvod-u-Kriminalistiku-Separat-Kriminalisticko-Profilisanje-1

intelligence, good material status, regular sex life, self-control and consumes alcohol before committing the murder. This type is a sociopath.[88]

The unorganized perpetrator of murder is theopposite to the organized, leaving traces at the scene, not hiding the corpse, using brutal and excessive force on the victim, leaving traces of urine and sperm at the scene, suffers from stress, being emotionally and sexually immature, etc. This type of perpetrator is ill with schizophrenia, an uneducated person and with reduced intelligence.

Table 1. Characteristics according to the scene of the criminal offense and characteristics of the crime perpetrator.[89]

Characteristics of the scene and the crime	
Organized executor	Unorganized executor
- previous planning - the place of execution is neat - no means of committing the murder can be found at the scene - the victim is unknown to the executor - moving of the killed victim - visible signs of aggression before the death of the victim - retention of the victim	- spontaneity of committing the crime and sudden violence - the place of execution is disorderly - the scene and the victim are known to the perpetrator - minimal retention of the victim - sexual act over the victim after the death of the victim - the killed victim is at the scene of the murder
Characteristics of the perpetrator of the crime	
Organized executor	Unorganized executor
- average to above-average intelligence - developed social skills - an older child in the family - has a partner - good worker - mobile - control over the emotions in committing the crime - potential use of alcohol - visits the scene of the crime to see how the investigation is progressing	- under-average intelligence - poorly developed social skills - no partner - younger child in the family - bad worker - no control over emotions in committing the crime - minimal use of alcohol - visits the scene of the crime in order to re-live it, i.e. to repeat the crime

In the United States, the post-graduate students attend professional courses conducted by the FBI, after which they can work in the profession of profilers.[90]

The purpose of the profiling is to help identify the seemingly hard-to-solve cases, such as serial, sexual and violent crimes. It is always fascinating to discover and predict the perpetrator.[91]

[88] http://www.istrazime.com/klinicka-psihologija/kriminalisticko-profiliranje-ii-dio-kako-uhvatiti-pocinitelja/

[89] http://www.istrazime.com/klinicka-psihologija/kriminalisticko-profiliranje-ii-dio-kako-uhvatiti-pocinitelja/

[90] Valentina Bachikj, Criminalistic psychology, script for students ... Sciences, Criminal Police Academy, Belgrade 2014 page 17

[91] Richard N. Kocsis ,PhD , Criminal Profiling, Principles and Praktical, Humana Press, Tetowa New Jersey, 16

THE PROFILING PROCESS

1. Studying the personality of the victim

The profiler must learn important facts about the victim's personality. The attempt to experimentally assess the criminal based on the scene of the crime (or more crime sites) involves primarily a detailed victimism. A chronological order of her/his movements is constructed, so the investigators examine and study all personal communication looking for signs of having met a potential suspect at some time.It is important to know the mental state and the state and history of the mental health, as well as the degree of risk (the risk of a prostitute is obviously higher than a girl in her own home).[92]Information on the life of the victim, (marital status, years,) profession, psychological characteristics, social status and the like are collected. In this segment, of great importance is the degree of victimhood, contactability, socialization and integration, love life and relations between the victim and the perpetrator.The more information about the victim, the more quickly the perpetrator of the crime can be discovered. The nature of the victim and perpetrator's relationship is often unknown. The characteristics of the scene ofthe crime and the lifestyle are precisely those things that suggest a possible motive, which is then used to identify possible suspects.[93]

The profiler should disclose the interpersonal relationships of the victim and the perpetrator, the pre-criminological situations, study the individual characteristics, and know how to act in every situation.

2. Assessment of the scene

Once the victim's details are revealed, the place of crime and the methodology of the perpetrator are assessed to determine how to best categorize him/her. Based on the idea that people are slaves to their psychology and will leave traces behind, profilers can assess whether a person is an organized predator who has planned and committed a crime or whether he committed an impulsive crime when he was given an opportunity and is not fully aware of what he did.[94]Profiling can be done based on one crime scene (as Robert R. Hazelwood's show in "The Evil That People Do"demonstrates), and since 70 to 75 percent of the killings are situational, it is useful to develop a way of profiling which does not use repeatingpatterns. Profiles were also made in cases of product sabotage, serial bombardment, serial rape, kidnappings and arson.[95]

What is common to all criminological clues is that a large number of crimes are carried out near the home of the perpetrator.[96]

By evaluating the scene you can get some results like:

- Determination of the physical, demographic and behavioral characteristics of the unknown perpetrator;
- Developing the perpetrator’s behavior after the offense and strategies for his capture;
- Developing interrogation strategies and strategies for capturing the perpetrator;
- Determination of the "signature" of the perpetrator;
- Determination of the place where there can be evidence[97].

[92] Criminal Profiling: Part 1 History and Method, by Katherine Ramsland, page 7
[93] Colin McKee, Study of Data and Forecasting Analysis, Collection of Understanding Data and Criminal Analysis, Tabernacle 2009, page 212
[94] Criminal Profiling: Part 1 History and Method, By Katherine Ramslandстрана 7
[95] Andrew RV and Julie M. Jackson, Science for Forensic Science, NAMPRESS Skopje 2009, page 22
[96] Michael Levi, Mike Megveer and Fiona Brookman, Oxford Handbook of Criminology, NAMPRES Skopje, 2010, page 543

1.2.1. Signature of the perpetrator

The modus operandi and the "signature" are not the same thing and some mix them too much. The signature of the killer, sometimes referred to as a psychological sign of recognition, is left at every crime scene in several murders.Therefore, thedetectives are trained to look for strange things i.e.features that make one murder different from another.[98]"The signature" also shows how he approached the victim, by checking the records for the same means used to committhe murder, etc. Many perpetrators of a murder are not satisfied with committing the murder only, but they try to do something to highlight their characteristics. The substance of the offender's signature always remains the same and does not change, unlike the mode of execution (modus operandi).Douglas described the nature of the "signature" as fantasies of a person that advance and contribute to the emergence of thoughts of a very violent behavior. When a murderer performs a murder, he reflects his fantasies, meaning that he fulfilled his fantasies, even more than that, and inflicts injuries that will cause death.

"Playing" is the "signature".[99] The cutting of the body, leavingmessages, mutilation, forcing the the victim to answer some questions, performing activities post mortem (urinating, ejaculating, spitting on the body, etc.), etc. are features of the "signature".

Assassins always satisfy their fantasies by moving from one victim to another.[100]

1.3 Autopsy assessment

This section assesses the findings on the body, (in the case of murder, internal and external injuries, bleeds), whether death occurred with a knife bite or a blow with a blunt object, the findings of the expert blood report, others biological traces such as semen, root fibers, papillary lines, urine, etc., and an assessment of the findings from the expertise of the objects found at the scene, such as bags, textiles, knives, weapons, and the like.

The autopsy information makes it possible to come to a conclusion about the psychological state of the perpetrator during the commission of the murder, and to determine the possible relationship with the victim.[101]The specified manner of acting of the killer is a significant grain in the making of the mosaic for successful implementation of the procedure of profiling the personality of the unknown perpetrator.[102]

Profile Making (PROFILING)

As I said before, the profile is not a picture, but a paper depicting the psychological characteristics and patterns of movement of the unknown perpetrator of crime. After all the afore-presented, the profile of the possible perpetrator of crime is developed with a profiling procedure.This profile may include the following parameters that indicate the perpetrator: sex, age, marital status, ethnicity, religious affiliation, social status, emotional

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[97] Stuart H. James, John J. Norbi, Introduction to forensics, introduction to scientific and research technique, Tabernakul 2009, page 605

[98] Stuard H. James, John J. Norbi, Introduction to forensics, introduction to scientific and research technique, Tabernakul 2009, page 607

[99] Ibid

[100] Ibid

[101] Metodija Angeleski, Introduction to Criminalistics, Skopje 2007, page 222

[102] Ibid

state, sexual urges, psychological state at the time of committing the crime, color of skin, height, place of movement and way of finding the victim, etc.

1.5 Undertaking specific measures and actions

The compiled profile with the characteristics of the unknown perpetrator of the crime of murder is the basis for undertaking specific operational and tactical measures and actions in order to narrow down the circle of suspects and find the real perpetrator of the criminal act or suspect other people who have the characteristics of the profile.

PROFILING AS A PREVENTIVE MEASURE

Profiling has a preventive effect because it establishes certain psychological and physical characteristics of the perpetrator or perpetrators of a particular crime or crimes. By using the detection of certain characteristics of the unknown perpetrator of a criminal act to create a profile and release these features in the public, we influence the population to keep an eye on a person with those characteristics, keep an eye on their movement, the time of movement, the places where they move and perform everyday activities, etc.At the same time, the citizens are those who know everything so if they know a person with the characteristics of the profile or come into contact with this person, or find somebody suspicious, they should report it, as it will help the police to locate the perpetrator and take measures and actions to prove the crime and deprive the possible perpetrator of liberty.[103]

Conclusion

This paper brings to the conclusion that psychological profiling, as a relatively new method, has a great importance in criminalistics and in the investigation of a specific crime. It is very little known and applied by us, but we saw that the FBI uses itextensively and no investigation is carried out without profiling.

The creation of a profile of a perpetrator is based on the assumption that the behavior, as well as the way in which the crime was committed is a reflection of a particular person.

This paper concludes that the perpetrator leavesa "signature" at the scene and that "the signature" and "modus operandi" are not the same. The profile is not a picture, but rather a paper presenting the personal characteristics of the unknown perpetrator.

In conclusion, I would just like to propose thatpolice inspectors need training by foreign profiling experts, more studies at the faculties of security and psychology. Furthermore, psychological profiling is ofgreat preventive significance.

Used literature:

Angelovski Metodija, Introduction to Criminalistics, Skopje 2007
Bachikj Valentina Criminalistic Psychology, Script for Students ... Sciences, Criminal Police Accadademy, Belgrade 2014
Andrew RV and Julie M. Jackson, Science for Forensic Science, NAMPRESS Skopje 2009
Ivanova Silvana, Specialist paper FON University Skopje

[103] I wrote the same in my Master's thesis.

Colin McKee, Data Analysis and Forecast Analysis, Intelligence Collection and Criminal Analysis, Tabernacle 2009
Mike Megveer, Roger Morgan and Robert Rainer, Oxford Handbook of Criminology, NAMPRESS Skopje 2010
Richard N. Kocsis ,PhD , Criminal Profiling, Principles and Praktical, Humana Press, Tetowa New Jersey
Trajkovska Daniela, Criminalistic profiling when revealing an unknown perpetrator of a murder, FON, Skopje 2016

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http://www.psihoportal.com
http://www.istrazime.com/

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THE REFORM OF THE MACEDONIAN OMBUDSMAN - BETWEEN THE SET UP GOALS AND THE REALITY

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Abstract

Beside the fact that the 2003 Law on Ombudsman has been subjected to three changes and amendments so far, the last version of its 2018 Draft - Law, reiterates the goal concerning the area of human rights. Namely, it points out that human rights should be strengthened in accordance to the standards of the Council of Europe and the other international standards, and supplements this goal with one more, i.e. support and protection of the victim should be provided and his / her interests should be presented in all procedures, through efficient and transparent investigation of the criminal acts and other illegal actions committed by the employees of the Ministry of Internal Affairs while using their police authorizations and also by the members of the Prison Police. While elaborating the content of the proposed novelties, the 2018 Draft - Law goes even further by headlining the Ombudsman's constitutional position, independence, recognition, experience, and practice, as well as its expanded competences, and by giving an expectation that this institution can realistically fulfil such competences.

Despite the legal framework, the Paper shall pay attention to the so-called "2015 Priebe's Report", especially to one of the remarks addressed to this institution, i.e. "the Ombudsman appears reluctant to use his mandate fully, probably as he is balancing between not upsetting the establishment too much in relation to concrete cases and his ability to carry out investigations into less politicized cases". Therefore, the Paper shall analyse the Ombudsman's current position in the country, especially from the aspect of whether this set up goals and broaden competences should be seen as "science fiction" or as reality that should be expected.

Keywords:*Ombudsman; the Republic of Macedonia; Competences; Reform.*

1. INTRODUCTION

The Ombudsman's position in the Macedonian legal system was defined for the first time by the Article 77 of the Constitution. According to its 1991 version, the Ombudsman protects the constitutional and legal rights of the citizens when being violated by the organs of state administration and by other organs and organizations with public authorities.[104] In 2001 the Article 77 was a subject of change by the Amendment XI, when among other things,[105] the Paragraph 2 was broadened by authorizing the Ombudsman to

[104] See: Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991).

[105] The Paragraph 1 of the Article 77, prescribing that the Assembly elects the Ombudsman, was also supplemented, i.e. the Ombudsman shall be elected by the Assembly with a majority vote of the total number

pay a particular attention to the protection of the principles of non-discrimination and appropriate and equitable representation of the members of communities in the organs of state government, organs of the units of the local self-government and in public institutions and services.

If the legal framework is taken into account, it can be seen that the conditions for election and dismissal, competence and manner of work of the Ombudsman were initially regulated on 13 February 1997 when the first Law on Ombudsman was adopted by the Assembly.[106] Few years later (10 September 2003), a new Law was adopted aiming to adjust its content to Amendment XI of the Constitution and to the Ohrid Framework Agreement.[107] So far, the Law has been a subject to three novelties (2009 and 2016 - two times),[108] with a note that the Macedonian Government in January 2018 submitted to the Assembly a new Draft - Law on changing and amending the Law on Ombudsman.[109]

2. REASONS TO CHANGE AND AMEND THE 2003 LAW

According to the 2009 Draft - Law on changing and amending the Law on Ombudsman ***(2009 Draft - Law***), the intent of the proposed provisions was to enhance the role of the Ombudsman as a competent organ for protection of the citizens' rights.[110] In essence, the first reason was the need to harmonize its provisions to the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).[111] Namely, the Article 4 of the Law on Ratification of OPCAT, prescribes that based on OPCAT's Article 17, the Republic of Macedonia gave a statement that the Ombudsman shall be designated to act as a National preventive mechanism (NPM). Also, in cooperation and upon a prior approval of the Ombudsman, non-governmental organizations registered in the Republic of Macedonia and organizations that have the status of humanitarian organizations in the Republic of Macedonia, may overtake some of the NPM's responsibilities. Since the Ombudsman's office was designated to act as a NPM concerning the protection of the persons deprived of their liberty, the need arise for strengthening its financial

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of parliamentarians, within which there must be a majority of votes of the total number of parliamentarians who belong to the communities that are not the majority in the Republic of Macedonia. See: Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII of the Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 91/2001).

[106] See: Law on Ombudsman ("Official Gazette of the Republic of Macedonia" No. 7/1997).

[107] In response to the constitutional and political changes after the signing of the Ohrid Framework Agreement, in 2003 a new Law on Ombudsman was enacted, by which the institution was decentralized and consequently regional offices were established (Memeti, 2012, p. 201).

[108] See: Law on Ombudsman ("Official Gazette of the Republic of Macedonia" No. 60/2003, 114/2009, 181/2016, 189/2016).

[109] See: Government of the Republic of Macedonia, January 2018.

[110] See: Government of the Republic of Macedonia, July 2009. Based on the 2009 Draft - Law, by-laws were planned to be drafted or to be changed and amended (Rulebook on the realization of regular preventive visits in the institutions in which the freedom of movement is deprived, Rules of procedure, Act on organization and systematization of the working positions).

[111] See: Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette of the Republic of Macedonia" No. 165/2008).

independence as prescribed in the Paris Principles,[112] meaning that the Ombudsman should be financially independent from the Governmental institutions towards which it is authorized to act.

The second reason for changing and amending the 2003 Law was the need to emphasize the special safeguards and care provided by the State towards the child by reason of his / her physical and mental immaturity. This means that its provisions should be compatible with the UN Convention on the Rights of the Child.[113] Finally, the third reason was the necessity for further protection of the disabled persons and their equal participation in the social life, which was concluded at the 43rd session of the Macedonian Government, held on 29 December 2008.

Seven years later, the new Draft - Law on changing and amending the Law on Ombudsman (***July 2016 Draft - Law***),[114] reiterated same of the reasons to novel its provisions. Namely, the benchmarks in the July 2016 Draft - Law were set up as following:

- to harmonize the Law on Ombudsman to the Paris Principles (the set up criteria to be fulfilled in order to be accredited with "A" status as a National human rights institution), Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015 (so-called "2015 Priebe's Report"),[115] and Urgent reform priorities;[116]
- to introduce a promotion of human freedoms and rights as well as to strengthen the Ombudsman's mandate;
- to enable pluralism and to strengthen the institution's independence;
- to distinct the termination of the function by force of law and by dismissal;
- to harmonize with the OPCAT's provisions (in the part of determining the prevention as an authorization, as well as fulfilling OPCAT's obligations that require a functional and operational independence of the NPM);[117]

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[112] The Paris Principles or Principles relating to the status and functioning of national institutions for protection and promotion of human rights were adopted by the UN General Assembly in 1993 with the Resolution 48/134.

More about the Paris Principles and the National Human Rights Institutions, see: Aichele, 2010; Krstevska, 2016.

According to the 2009 Draft - Law, the proposed provisions should cause fiscal implications in the Macedonian Budget in the section intended for the Ombudsman, since the necessity for new employments, procurement of equipment and assets, as well as financial means for hiring experts outside the institution. 2009 Draft - Law estimated that in order the proposed provisions to be implemented into the practice, additional financial means in the amount of 3.338.044,00 MKD should be provided in the Ombudsman's Budget.

[113] The Convention on the Rights of the Child was adopted by the UN General Assembly in 1989 with the Resolution 44/25. In addition, the former Yugoslavia signed and ratified the said Convention on 26 January 1990 and 3 January 1991.

[114] See: Government of the Republic of Macedonia, July 2016.

[115] See: European Commission, 2015 (so-called "2015 Priebe's Report").

[116] See: European Union, 2015.

[117] A new Paragraph 2, that was added within the Article 45 by the 2009 Law on changing and amending the Law on Ombudsman, stated that the Ombudsman should establish a separate division for protection of the rights of children and persons with special needs, division for protection of the discrimination and torture and other cruel, inhuman or degrading treatment or punishment, and division for equitable and appropriate representation of the citizens. This paragraph created a non-

- to further regulate the area "Funds for work of Ombudsman", in accordance to the obligations arising from the ratification of international documents.

The same as the previous Draft - Law, the proposed provisions according to July 2016 Draft - Law should cause fiscal implications into the Macedonian Budget, since the Ombudsman's mandate was planned to be broaden from the aspect of its introduction into the promotion of human freedoms and rights. Additional fiscal implications should occur for the OPCAT's obligations to be fulfilled, i.e. funds for work of the NPM should be provided in the Ombudsman's Budget as a separate budget subprogram.[118]

Based on the submitted documentation for accreditation to the International Coordinating Committee for National Human Rights Institutions (ICC), the Ombudsman in October 2011 was accredited with "B" status.[119] In the evaluation process, the Sub-Committee on Accreditation (SCA) noted that the Ombudsman had a wide-scope mandate for human rights protection, but not for human rights promotion. In addition, SCA gave a positive remark concerning the Ombudsman's activities in the promotion of human rights, and urged a broad mandate to be provided including a promotion of itself. Starting from this explanation, the July 2016 Draft - Law expanded the Ombudsman's mandate by introducing the promotion of human rights into its legal framework, meaning that the Ombudsman by promoting and protecting the constitutional and legal rights of citizens, should fulfil the conditions set by the Paris Principles.

The SCA also requested a pluralistic approach to be introduced in the selection process of the managerial functions in the institution, especially in the election of the Ombudsman's deputies. Further, SCA gave a recommendation for active lobbying of the institution in order a public selection to be enabled (vacancies to be publicised), the number of potential candidates to be maximised by including a wider range of social groups, a broad consultation and/or participation in the application, screening and selection process to be promoted, the pluralism in the composition of employees to be ensured, as well as the independence and public confidence towards the institution to be promoted. The SCA's observation that the Ombudsman's position has not been publicly advertised, was a reason the July 2016 Draft - Law to prescribe a public announcement for working positions of the Ombudsman and his deputies to be published.

With a purpose broader pluralism in the composition of the Ombudsman's deputies to be provided, the previous precondition for them to be only a graduated lawyers, was erased by the July 2016 Draft - Law.[120] The institution's independence, as underlined

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compliance with the OPCAT, which prescribes establishment of a mechanism for prevention of torture at domestic level. Therefore, the 2016 Draft - Law proposed a separate division for prevention of torture to be established.

[118]United Nations Human Rights Council - Working Group on the Universal Periodic Review, 2013, p. 5, noted that the 2013 Budget of the Ombudsman's Office had a separate budget line for the NPM.

[119] The "B" status, or not fully complied with the Paris Principles, means that the Ombudsman may act as a National human rights institution and may participate as an observer in the international and regional work and meetings of the other institutions, but it cannot vote. More about the accreditation process, see: Global Alliance of National Human Rights Institutions, 6 March 2017*;* Global Alliance of National Human Rights Institutions,26 May 2017; Pesic, 2012.

[120]While those appointed as Deputy Ombudspersons currently include ethnic Macedonians and Albanians, the SCA highlights that pluralism, in the context of Paris Principles, refers to broader representation of Macedonian society, not just ethnicity. The SCA notes that the Act provides that Deputy Ombudsman must be lawyers. It also provides that the Secretary General must be appointed

by the SCA's evaluation, should be achieved by amending the provisions on dismissal criteria and by strengthening the position of the managerial functions elected by the Macedonian Assembly through distinction of the termination of the function by force of law and by dismissal. Finally, with an aim to be fully compliant with the Paris Principles, the cooperation between the Ombudsman and international human rights system should be enhanced,[121] through encouraging, maintaining, communicating and reporting on the situation in the field of human rights.

As consequences that should arise from the proposed solutions, the July 2016 Draft - Law pointed out to findings and recommendations given in 2013 Progress Report (the Ombudsman is accredited as partly compliant with the Paris Principles relating to national human rights institutions, but further improvements are needed as regards to its funding and extending its mandate to human rights promotion as well as protection),[122] and in United Nations Universal Periodic Review (the Ombudsman should have full financial independence).

In September 2016, a group of parliamentarians submitted a Draft - Law on changing and amending the Law on Ombudsman,[123] which was supplemented in October 2016 (***October 2016 Draft - Law***), i.e. its October's version incorporated the amendments adopted by the Commission on Political System and Relations among the Communities (the session was held on 6 October 2016), and by the Legislative Commission (the session was held on 7 October 2016).[124] The parliamentarians argued that with the proposed novelties a further harmonization of the Law to the Paris Principles, 2015 Priebe's Report and Urgent reform priorities, should be carried out, as well as the area "Funds for work of Ombudsman" should be further regulated in accordance to the obligations arising from the ratification of the international documents. By doing so, the set criteria for obtaining "A" status for the National human rights institution should be fulfilled. Considering that it was not an extensive and complex law, the parliamentarians suggested the proposed draft - law to be adopted in a shortened procedure.[125]

'from among the managing civil servants'. These requirements may unduly narrow and restrict the diversity and plurality of the institution (International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 2011, p. 9-10).

[121] As international human rights system, SCA points to Human Rights Council and its mechanisms (Special Procedures and UPR), United Nations Human Rights Treaty Bodies, ICC, European Group of NHRIs, as well as international and national NGOs and civil society organizations. See: *Op. cit.*, p. 10.

[122] For more, see: European Commission, 2013, p. 9.

[123] See: Group of parliamentarians, September 2016.

[124] See: Vice President of the Commission on Political System and Relations among the Communities and President of the Legislative Commission, October 2016.

[125] Some of the proposed novelties were: an additional mechanism to be introduced for the special reports about the disability of the Ombudsman's work, disrespect and non-implementation of his requests, proposals, opinions, recommendations or indications; the Standing Inquiry Committee for Protection of Human Freedoms and Rights to review the Ombudsman's request and within seven days to submit a report on it, and afterwards the Assembly to determine measures; the Ombudsman's annual report should contain recommendations for overcoming the established situation; the Assembly and the Government should act responsible towards the Ombudsman's recommendations, as well as they should report about the implementation of the concrete measures; the Ombudsman should have an infrastructure appropriate to perform the authorities, especially to have an adequate financial resources for providing staff and space; the procedure for Ombudsman's employment and termination of employment should be regulated; etc.

The last Draft - Law on changing and amending the Law on Ombudsman (***2018 Draft - Law***), was submitted by the Government to the Assembly in January 2018,[126] with the aim to establish the Ombudsman as an additional corrective in the system of investigation regarding the criminal acts committed by official persons, i.e. the employees of the Ministry of Internal Affairs while performing the police authorizations and by the members of the Prison Police. As a mechanism of civil control, and in accordance to the Articles 2 and 3 of the European Convention on Human Rights, the Ombudsman should give an emphasis to the current procedures / cases initiated on request of the victim or the victim's family, upon the initiative of the representatives of the civil sector as an external members, as well as on his own initiative after obtaining an information for alleged violations of rights (had heard rumours). In essence, the first target of the 2018 Draft - Law was to enhance the protection of human rights in the line with the standards of the Council of Europe (CoE) and other international standards, and the second target was to provide support and protection of the victim and his/hers interests to be presented in all procedures, through an efficient and transparent investigation of the criminal acts and other unlawful actions carried out by the above mentioned official persons.

According to the 2018 Draft - Law, the proposed provisions should cause financial implications into the Macedonian Budget, for the purpose of hiring a new persons with experience in police law and judiciary, i.e. persons who have a knowledge and experience in conducting investigations, as well as engaging external members out of prominent civil activists for which they should receive a salary and remuneration from the Ombudsman's Budget. Therefore, the funds for work of this organizational unit for external control should be determined in the Ombudsman's Budget as a separate budgetary subprogram. Also, additional financial resources should be provided by the Macedonian Budget for the realization of the determined competences, material and technical equipment and staffing of the new organizational unit.

The 2018 Draft - Law explained that the Ombudsman was a part of a Working group within the CoE's Project dedicated to strengthen the protection of human rights during the police treatment. The Working group by a consensus concluded that there was a need for establishing an external control over the police work, whereby the Ombudsman was selected as a model to realize such authorizations - civil control with a certain number of tasks and competencies, involving external experts from the non-governmental sector. In addition, the 2018 Draft - Law pointed to several international documents, that had required independent, effective and timely monitoring mechanisms to be established.[127] Finally, the proposed provisions should operationalize the execution of such authorizations, and the external members should strengthen the efficient performance of

[126] See: Government of the Republic of Macedonia, January 2018.

[127] The 2018 Draft - Law pointed to the European Convention on Human Rights, and also to the judgements of the European Court of Human Rights in which it ruled that the authorities failed to conduct an effective investigation about police brutality, torture and inhuman or degrading treatment; findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; Opinion of the CoE's Commissioner for Human Rights concerning independent and effective determination of complaints against the police, etc. Commissioner for Human Rights, 2009, observed that five principles of effective police complaints investigation have been developed in the jurisprudence of the European Court of Human Rights on Articles 2 and 3 of the Convention, i.e. independence, adequacy, promptness, public scrutiny and victim involvement.

the Ombudsman in the protection of human rights, and should allow pluralism in the personnel that carries out the actions of the Ombudsman as a civil control mechanism.[128]

3. OBSERVATIONS ABOUT THE OMBUDSMAN'S WORK

As mentioned before, the Sub-Committee on Accreditation analysed the Ombudsman's work and its position in the society, i.e. its competences and responsibilities from the aspect of the Paris Principles. In addition, the draft - laws in their explanations pointed to the 2015 Priebe's Report that noted "state institutions like Ombudsman can and should play a central role in overcoming the current crisis by addressing shortcomings in an open, transparent and constructive manner".[129] Although, the Ombudsman informed the Senior Experts' Group that he experienced that the system was not always complying with his decisions, that his communication was at times ignored and that the public authorities were not cooperating, the 2015 Priebe's Report observed that the Ombudsman appeared reluctant to use his mandate fully, probably as he was balancing between not upsetting the establishment too much in relation to concrete cases and his ability to carry out investigations into less politicised cases. Consequently, the 2015 Priebe's Report perceived that the Ombudsman was not systematically addressing the revealed potential violations of human rights although apart from obvious political pressure (direct or indirect) nothing, in theory, seemed to prevent him from acting strongly on the revelations, like a real watchdog.[130] In 2017, the Senior Experts' Group assessed that even though some of the shortcomings that were identified two years ago had been addressed, the failure to implement most of the recommendations was a cause for serious concern, and concluded that there was an urgent need to make up for the lost time.[131] Furthermore, while in his reports and public appearances, the Ombudsman severely criticised the Government, the practice of balancing with the political establishment continued evident through the appointment of two prominent party functionaries as deputies to the Ombudsman in the autumn of 2016.[132]

In the same line are the findings contained in the document titled "Urgent Reform Priorities" (June 2015), drawn up by the European Commission, i.e. the list of priorities that should be fulfilled by the Republic of Macedonia in several fields, among which was the rule of law and fundamental rights. The list pointed that sufficient autonomy of independent regulatory, supervisory and oversight bodies should be ensured, not only in theory but in practice, in order to act effectively and free from political pressure. This

[128] At the end, the 2018 Draft - Law stressed that the proposed novelties should comply with the Law on Internal Affairs, Law on Police, Law on Monitoring Communications, Law on Execution of Sanctions, Law on Public Prosecution Office and other relevant laws and by-laws.

[129] See: 2015 Priebe's Report, p. 2.

[130] More about the findings of the Senior Experts' Group concerning the Ombudsman, see: 2015 Priebe's Report, p. 13-14.

[131] Based on the view of the Senior Experts' Group, the adoption of the amendments to the Law on Ombudsman and a decrease in defamation lawsuits, had been addressed. See: European Commission, 2017, p. 1. European Commission on 15 September 2017 published a Press Release, in which it stated "The views expressed in the report are those of the authors and do not necessarily represent the opinion of the European Commission. However, the European Commission fully recognises the validity of the experts' assessment in the fields covered by this report and it endorses their recommendations."

[132] See: European Policy Institute, 2017, p. 7.

required not only pro-active efforts from the bodies themselves but the political will of all other actors to allow them to carry out their functions as intended by law, including through allocation of sufficient financial means. At the end, the document contained a demand the Law on Ombudsman to be amended with aim to comply fully with the Paris Principles.[133]

In contrast, if the last two reports prepared by the European Commission concerning the country's progress towards EU are taken into account, a different impression shall be perceived about the Ombudsman's work.[134] For example, the 2015 Progress Report observed that the Ombudsman continues to function efficiently, and around 87% of his 2014 recommendations were implemented by the administration. On the promotion and enforcement of human rights, the 2015 Progress Report also noted that the Office of the Ombudsman remained the key oversight institution underpinning democratic values in the country and continued to deliver on its constitutional and legal mandate to protect citizens' rights.[135] The report for the next year (2016 Progress Report), gave the same remark and supplemented it with a comment that systemic follow-up of his repeated recommendations was required from a number of institutions. The 2016 Progress Report reiterated that the Office of the Ombudsman remained the key oversight institution on the promotion and enforcement of human rights.[136]

Finally, an overview should be given to the attitude of the Macedonian parliamentarians towards Mr. Idzet Memeti, as an Ombudsman. Namely, the parliamentarians on 6 November 2017 did not vote for the measures contained in the 2016 Ombudsman's Annual Report,[137] despite the fact that many of them were in the same line with the recommendations of the 2015 Priebe's Report. In essence, the Ombudsman's proposed measures were not approved by the parliamentarians, and afterwards they justified themselves as being "defocused and confused".[138]

Were the parliamentarians really "defocused and confused", or it was a payback time for what happened on the so-called "Black Monday"? As an explanation, on 24 December 2012 the parliamentarians of the opposition party and the journalists were expelled from the Assembly's plenary hall during the adoption of 2013 State Budget,[139] and Mr. Memeti remained silent. One journalist noted "As of yesterday, Ombudsman Idzet Memeti began redefining his role of social fighter for human rights, as he stood and silently observed dramatic violation to human rights... As if nothing happened in the plenary hall just minutes before, the defender of human rights expressed his gratitude to the Government for approving more funds for the institution he chairs."[140] In addition, nothing was mentioned in 2012 and 2013 Ombudsman's Annual Reports about the incident that happened on the "Black Monday".[141] Nonetheless, the parliamentarians gave

[133] For more, see: European Union, 2015, p. 3.
[134] The Progress reports are available at https://ec.europa.eu/neighbourhood-enlargement/news_corner/key-documents_en?field_file_theme_tid[0]=96&field_file_country_tid[0]=86.
[135] See: European Commission, 2015, p. 11 and 56.
[136] See: European Commission, 2016, p. 12 and 59.
[137] More about the Ombudsman's conclusions and proposed measures, see: Ombudsman of the Republic of Macedonia, 2017
[138] For more, see: The distracted members of the Parliament missed to delete the rubber bullets for dissipation of crowds, published on 7 November 2017
[139] More about what happened on 24 December 2012, or so-called "Black Monday", see: Gligoroska(Editor), 2013.
[140]See: Popovski, 2013, p. 104
[141] See: Ombudsman of the Republic of Macedonia, 2013; Ombudsman of the Republic of Macedonia, 2014

a second chance to the Ombudsman's proposed measures, by approving them on 8 November 2017.

4. CONCLUSION

Starting from the first novelties of the Law on Ombudsman, to the last ones, one phenomenon is constant for all of them - they all refer to the same documents and standards that should be fulfilled in order to improve the Ombudsman's work. For that reason, is the problem in the regulations or in their application into the practice? Or, is it up to the person who manages the institution? As stated in the 2015 Priebe's Report, bodies in charge of the oversight and control in particular should not shy away from, and should by no means be prevented from, freely carrying out their mandate without inappropriate "political self-restraint".[142] Therefore, instead of a conclusion, a question should be raised - is Mr. Memeti, as a Macedonian Ombudsman, "tango-dancing" with the political establishment? As a remark, when the parliamentarians of the opposition party and the journalists were expelled from the Assembly, he acted like a fish - no word came out of his mouth.[143] He did not raise his voice and did not condemn the violations. Instead, he was and still is comfortable sitting in his chair for two mandates.

Having in mind the legal acts that regulate the Ombudsman's position, the expanded competences and his practice so far, a doubt rises whether the Ombudsman can comprehensively perform such competences. Consequently, if the Macedonian relevant stakeholders want to change the current situation in the field of protection and promotion of human rights, they should have in mind the old saying "The fish stinks from its head", and lucky for them, the "head" has less than 2 years till his second mandate expires.[144]

5. REFERENCES

1. Aichele, V. (2010). *National Human Rights Institutions - An Introduction.* German Institute for Human Rights. Berlin.
2. Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII of the Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 91/2001).
3. Commissioner for Human Rights. (2009). *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police, Comm DH (2009)4.* Retrieved from https://rm.coe.int/16806daa54.
4. Constitution of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 52/1991)

[142] See: 2015 Priebe's Report, p. 4.

[143] Milcin, 2013, p. 5, gave a remark that pinnacle of shame was the serenity of the silent witness - the Ombudsman - whose second term of office was voted by the Parliament, once "relieved" of undisciplined MPs. Also, Najcevska, 2013, p. 33, noted that MPs who on 24.12.2012 were expelled from the plenary hall cannot rely on the Ombudsman's protection: "We will not submit a complaint to the Ombudsman, because at the time when special police forces hijacked the Parliament he was in the immediate vicinity of plenary hall, i.e. in the Hall of the Government of the Republic of Macedonia", said Igor Ivanovski, coordinator of SDSM's parliamentary group.

[144] Mr. Memeti was re-elected as Ombudsman in December 2012.

5. Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20.11.1989, entry into force 02.09.1990.
6. European Commission. (15.09.2017). *Press Release on the 2017 Report of the Senior Experts' Group on systemic Rule of Law issues in the former Yugoslav Republic of Macedonia.* Retrieved from https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/press-release-2017-report-senior-experts-group-systemic-rule-law-issues-former_en.
7. European Commission. (2013). *Commission Staff Working Document - The Former Yugoslav Republic of Macedonia - 2013 Progress Report* Brussels
8. European Commission. (2015). *The Former Yugoslav Republic of Macedonia Report 2015.* Brussels
9. European Commission. (2015). *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015 (so-called "2015 Priebe's Report").* Brussels. Retrieved from https://ec.europa.eu
10. European Commission. (2016). *The Former Yugoslav Republic of Macedonia Report 2016.* Brussels
11. European Commission. (2017). *The Former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017*. Brussels. Retrieved from https://ec.europa.eu
12. European Policy Institute. (2017). *The Priebe report two years later: new government and new opportunities for resolving old problems.* Skopje
13. European Union. (2015). *Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia (June 2015)*. Retrieved from https://eeas.europa.eu
14. Gligoroska, V. (Editor). (2013). *Black Monday - 24th December 2012.* Foundation Open Society - Macedonia. Skopje
15. Global Alliance of National Human Rights Institutions. (2017). *Chart of the Status of National Institutions (accreditation status as of 26 May 2017)*
16. Global Alliance of National Human Rights Institutions. (2017). *Rules of Procedure for the GANHRI Sub-Committee on Accreditation (amended version adopted on 6 March 2017)*
17. Government of the Republic of Macedonia. (January 2018). *Draft - Law on changing and amending the Law on Ombudsman* Retrieved from http://www.sobranie.mk
18. Government of the Republic of Macedonia. (July 2009). *Draft - Law on changing and amending the Law on Ombudsman* Retrieved from http://www.sobranie.mk
19. Government of the Republic of Macedonia. (July 2016). *Draft - Law on changing and amending the Law on Ombudsman* Retrieved from http://www.sobranie.mk
20. Group of parliamentarians. (September 2016). *Draft - Law on changing and amending the Law on Ombudsman* Retrieved from http://www.sobranie.mk
21. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. (2011). *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* Geneva
22. Krstevska, K. (2016). Paris principles and national institutions of human rights. *Pravni život - a magazine of legal theory and practice, thematic edition "Law and Social Imperatives, 29 years of Kopaonik School of natural law". No. 12. vol. 4* Association of jurists of Serbia, Belgrade

23. Law on Ombudsman (Official Gazette of the Republic of Macedonia No. 7/1997).
24. Law on Ombudsman (Official Gazette of the Republic of Macedonia No. 60/2003, 114/2009, 181/2016, 189/2016).
25. Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette of the Republic of Macedonia" No. 165/2008).
26. Memeti, I. (2012). Ombudsman of the Republic of Macedonia, *Journal for European Issues 'Evrodijalog' No. 16.* Skopje
27. Milcin, V. (2013). Against Forgetfulness: Black Monday and Days After. In Gligoroska, V. (Editor) (2013). *Black Monday - 24th December 2012.* Foundation Open Society - Macedonia. Skopje
28. Najcevska, M. (2013). Stomping on the Constitution, laws and Members of Parliament, In Gligoroska, V. (Editor) (2013). *Black Monday - 24th December 2012.* Foundation Open Society - Macedonia. Skopje
29. Ombudsman of the Republic of Macedonia. (2013). *2012 Annual Report on the Degree of Provision, Respect, Advancement and Protection of Human Rights and Freedoms*, Skopje
30. Ombudsman of the Republic of Macedonia. (2014). *2013 Annual Report on the Degree of Provision, Respect, Advancement and Protection of Human Rights and Freedoms*, Skopje
31. Ombudsman of the Republic of Macedonia. (2017). *2016 Annual Report on the Degree of Provision, Respect, Advancement and Protection of Human Rights and Freedoms*, Skopje
32. Pesic, S. (2012). National human rights institutions and the accreditation process, *Journal for European Issues 'Evrodijalog'. No. 16.* Skopje
33. Popovski, Lj. (2013). Macedonian Gallery of Shame, Utrinski vesnik, p. 12, 26.12.2012, In Gligoroska, V. (Editor). (2013). *Black Monday - 24th December 2012.* Foundation Open Society - Macedonia. Skopje
34. Principles relating to the status and functioning of national institutions for protection and promotion of human rights - the Paris Principles, adopted by General Assembly Resolution 48/134 of 20.12.1993
35. United Nations Human Rights Council - Working Group on the Universal Periodic Review. (2013). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 - The former Yugoslav Republic of Macedonia*
36. Vice President of the Commission on Political System and Relations among the Communities and President of the Legislative Commission. (October 2016). *Supplemented Draft - Law on changing and amending the Law on Ombudsman.* Retrieved from http://www.sobranie.mk
37. The distracted members of the Parliament missed to delete the rubber bullets for dissipation of crowds. Published on 7 November 2017. Retrieved from http://fokus.mk/raseanite-pratenitsi-ispushtija-da-gi-izbrishat-gumenite-kurshumi-za-rasteruvane-na-tolpa/.

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SECRET DETENTION SITES IN THE EUROPEAN COURT OF HUMAN RIGHTS JURISPRUDENCE

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Abstract

Secret detention sites exist around the world, which is connected with the practice of "rendition", or a variety of practices used by the US authorities involving transfers of individuals from one country to another, without any form of judicial or administrative process such as extradition. Primarily, it is related to CIA actions across the European continent, because there are many reports about the victims of secret detention and extraordinary rendition operations not only on American soil. The forms of CIA involvements range from an operational involvement to tolerating or ignoring the use of European territory for the purpose of the renditions. The European Court of Human Rights dealt with the three such cases: *El-Masri v. the former Yugoslav Republic of Macedonia, Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland*, and *Nasr and Ghali v. Italy*. In addition, there are two cases that are pending before the Court (*Al Nashiri v. Romania* and *Abu Zubaydah v. Lithuania*). In every case, the ECtHR found violations of several articles of the European Convention on Human Rights, linked to the prohibition of torture and inhuman and degrading treatment, right to life and security, right to respect for private and family life and right to an effective remedy. The authors in this work deal with the jurisprudence of the ECtHR in this insufficiently explored criminal sphere.

Key words: *secret detention, rendition, CIA, ECtHR jurisprudence*

INTRODUCTION

In the modern world, torture and other cruel, inhuman and degrading treatment are prohibited, but at the same time torture continues to take place around the world (Mendez, 2016: 247-248). The CIA secret detention sites for the high-value suspects (Cerna, 2015: 571), well-known as "black sites" all around Europe have been some kind of a taboo for a long time. Furthermore, their existence was being denied by relevant actors in different ways. As Prof. Đurđević points out, in recent years there have been blatantly evident cases of abduction and extrajudicial interstate transfer of persons even in the European Union, known as US extraordinary rendition and although such activities are clearly prohibited by international law, almost all requested EU member states (18 of them) have facilitated the extraordinary rendition by giving permission for the use of their airspace and airports for flights associated with the CIA extraordinary rendition program. Some EU member states, like Germany, Austria, Italy, Sweden and the United Kingdom participated in the abduction/apprehension and/or interrogation of extraordinarily rendered individuals, and

some like Poland, Lithuania, and Romania hosted secret CIA prisons on their territories where persons were tortured (Đurđević, 2016: 12). There, the prisoners were subjected to enhanced interrogation techniques that involved torture and other abuse. In addition, the CIA gained expansive authority to engage in "extraordinary rendition", defined as a transfer without a legal process of a detainee to the custody of a foreign government for purposes of detention and interrogation (Singh, 2013: 5) or similar, abduction of a person from either the US or foreign territory and his transportion to the US or foreign detention facility (Sadat, 2008: 65; Lau, 2016: 1261). The expansion of the abovementioned CIA activities followed after September 11, 2001, when the USA was attacked by terrorists. This opened the door for numerous illegal activities hidden behind searching for terrorists, not only on the US continent, but all over the world, including Europe. According to certain data, 54 countries have participated in the rendition, secret detention and interrogation (Cordell, 2017: 180). The number of prisoners is, at least, 119 (Blakeley & Raphael, 2017: 2). It is important to say that the U.S. government defended this program as integral to its counter-terrorism policy (Orpiszewska, 2014: 1169). The extraordinary rendition program entails a range of human rights abuses such as arbitrary arrest, lack of due process, torture or cruel inhumane or degrading treatment and deprivation of life and liberty (Lau, 2016: 1262).

The European Court of Human Rights dealt with the three such cases: *El-Masri v. the former Yugoslav Republic of Macedonia*, *Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland*, and *Nasr and Ghali v. Italy*. In addition, there are two cases that are pending before the Court (*Al Nashiri v. Romania* and *Abu Zubaydah v. Lithuania*). The two pending cases have the applicants from the previous judgments (Al Nashiri and Abu Zubaydah). A really important fact here is that the ECtHR established in the following judgments that the treatment of "high-value detainees" for the purposes of CIA's extraordinary rendition program was to be classified as torture within the meaning of Article 3 of the Convention. The decisions rendered so far are mostly based on Dick Marty's reports on massive violations of human rights, but also on projects established on the ground of taboo's breaking in this field.

THE CASE OF EL-MASRI V. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The very first case before the ECtHR requesting protection of fundamental rights was El-Masri v. the Former Yugoslav Republic of Macedonia (El-Masri v. the Former Yugoslav Republic of Macedonia, 2012) and it represents a leading precedent regarding the extraordinary rendition in the context of the Convention's standards (Balcerzak, 2013: 90) and a milestone decision in the quest to ensure accountability for the gravest human rights violations committed in the fight against terrorism (Fabbrini, 2013: 2). The case concerned the complaints of a German national of Lebanese origin that he had been the victim of a secret "rendition" operation during which he was arrested, held in isolation, questioned and ill-treated in a Skopje hotel for 23 days, then transferred to CIA (Central Intelligence Agency) agents who took him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months. The applicant stated that several of his human rights were violated, but the European Court of Human Rights (hereinafter: ECtHR) declared the application inadmissible except for Articles 3, 5, 8 and 13. ECtHR found that the rights laid down in these articles had been violated.

Firstly, the applicant complained that Macedonia had been responsible for the ill-treatment to which he had been subjected while he was detained in the hotel, as well as for the failure to prevent his being subjected to a "capture shock" treatment when transferred to the CIA rendition team at Skopje Airport. He further complained that the respondent State had been responsible for his ill-treatment during his detention in the "Salt Pit" in Afghanistan by having knowingly transferred him into the custody of US agents even though there had been substantial grounds for believing that there was a real risk of such ill-treatment. In this latter context, he complained that the conditions of detention, physical assaults, inadequate food and water, sleep deprivation, forced feeding and lack of any medical assistance during his detention in "Salt Pit" amounted to treatment contrary to Article 3 of the Convention. Lastly, he complained that the investigation before the Macedonian authorities had not been effective within the meaning of this Article (El-Masri v. the Former Yugoslav Republic of Macedonia, 2012: 162). As we can see from the afore-stated, the applicant stated that Macedonia is responsible for the violation of two aspects of Article 3: the procedural aspect (lack of an effective investigation) and the substantive aspect of the Convention. With respect to the procedural aspect, ECtHR concluded that the summary investigation that had been carried out in this case cannot be regarded as effective to enable the identification and punishment of those responsible for the alleged events and to establish the truth. Hence, ECtHR found that there has been a violation of Article 3 of the Convention, in its procedural limb(El-Masri v. the Former Yugoslav Republic of Macedonia, 2012: 193-194). Secondly, ECtHR stated that Macedoniais to be held responsible for the inhuman and degrading treatment to which the applicant was subjected while in the hotel, for his torture at Skopje Airport and for having transferred the applicant into the custody of the US authorities, thus exposing him to the risk of further treatment contrary to Article 3 of the Convention.

ECtHR has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness. In this case, ECtHR noted that there was no court order for the applicant's detention, as required under domestic law. His confinement in the hotel was not authorised by a court. Furthermore, the applicant's detention in the respondent State had not been substantiated by any custody records, or, at least, no such documents have been submitted to ECtHR. It had already been found that the failure to hold data recording of such matters as the date, time and location of detention, the name of the detainee, as well as the reasons for the detention and the name of the affected person, must be seen as incompatible with the very purpose of Article 5 of the Convention. During his detention in the respondent State, the applicant did not have access to a lawyer, nor was he allowed to contact his family or a representative of the German Embassy in the respondent State, as required by Article 36 § 1 (b) of the Vienna Convention on Consular Relations. Furthermore, he was deprived of any possibility of being brought before a court to test the lawfulness of his detention. His unacknowledged and incommunicado detention means that he was left completely at the mercy of those holding him. Lastly, ECtHR found it wholly unacceptable that in a state subject to the rule of law, a person could be deprived of his or her liberty in an extraordinary place of detention outside any judicial framework, as was the hotel in the present case. It considered that his detention in such a highly unusual location adds to the arbitrariness of the deprivation of liberty. Having regard to the fact that Macedonia submitted no explanation about the applicant's detention between 31 December 2003 and 23 January 2004, or any documents by way of justification, the Court

concluded that during that period the applicant was held in unacknowledged detention in complete disregard of the safeguards enshrined in Article 5, and that this constitutes a particularly grave violation of his right to liberty and security as secured by Article 5 of the Convention(El-Masri v. the Former Yugoslav Republic of Macedonia, 2012: 236-237). In addition, ECtHR emphasized the importance of the right to know and to establish the truth about the events (Cavanaugh, 2015: 30).

In view of its findings regarding the facts established to the required standard of proof, the Court observed that on 23 January 2004 the Macedonian security forces handed over the applicant at Skopje Airport into the custody of CIA agents who transported him to Afghanistan on a special CIA-operated flight, described by Marty Inquiry as the "well-known rendition plane N313P". He remained there until 28 May 2004, when he was transported back to Germany, via Albania. The Court reiterated that a Contracting State would be in violation of Article 5 of the Convention if it removed an applicant to a State where he or she was at real risk of a flagrant breach of that Article. In the present case, the Court had already established to the required standard of proof that the applicant was subjected to "extraordinary rendition", which entails detention ... "outside the normal legal system" and which, "by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention". Furthermore, the detention of terrorist suspects within the "rendition" program run by the US authorities has already been found to have been arbitrary in other similar cases. In such circumstances, the Court considered that it should have been clear to the Macedonian authorities that, having been handed over into the custody of the US authorities, the applicant faced a real risk of a flagrant violation of his rights under Article 5. In this connection the Court reiterated that Article 5 of the Convention lays down an obligation on the State not only to refrain from active infringements of the rights in question, but also to take appropriate steps to provide protection against an unlawful interference with those rights to everyone within its jurisdiction. The Macedonian authorities not only failed to comply with their positive obligation to protect the applicant from being detained in contravention of Article 5 of the Convention, but they actively facilitated his subsequent detention in Afghanistan by handing him over to the CIA, despite the fact that they were aware or ought to have been aware of the risk of that transfer. The Court considered therefore that the responsibility of the respondent State is also engaged in respect of the applicant's detention between 23 January and 28 May 2004. Having regard to the above, the Court considered that the applicant's abduction and detention amounted to "enforced disappearance" as defined in international law. The applicant's "enforced disappearance", although temporary, was characterized by an ongoing situation of uncertainty and unaccountability, which extended through the entire period of his captivity. In this connection the Court would point out that in the case of a series of wrongful acts or omissions, the breach extends over the entire period starting with the first of the acts and continuing for as long as the acts or omissions are repeated and remain at variance with the international obligation concerned. Having regard to all afore-stated, ECtHR concluded that the Government is to be held responsible for violating the applicant's rights under Article 5 of the Convention during the entire period of his captivity. In addition, ECtHR had already found that the respondent State did not conduct an effective investigation into the applicant's allegations of ill-treatment. For the same reasons, it found that no meaningful investigation was conducted into the applicant's credible allegations that he was detained arbitrarily (El-Masri v. the Former Yugoslav Republic of Macedonia, 2012: 238-240, 242).

Then, ECtHR found Article 8 violated as well. Having regard to its conclusions concerning the respondent State's responsibility under Articles 3 and 5 of the Convention, ECtHR considered that Macedonia's actions and omissions likewise engaged its responsibility under Article 8 of the Convention (El-Masri v. the Former Yugoslav Republic of Macedonia, 2012: 249). In view of the established evidence, the Court considered that the interference with the applicant's right to respect for his private and family life was not "in accordance with the law". Finally, Macedonia breached Article 13 in conjunction with Article 3, 5 and 8. Simply, the ineffectiveness of the criminal investigation undermined the effectiveness of any other remedy, including a civil action for damages, so the applicant was denied the right to an effective remedy under Article 13 (El-Masri v. the Former Yugoslav Republic of Macedonia, 2012: 261). At the end, Katerina Krstevska correctly considers that the first step of the Macedonian authorities should be providing a full and public apology for the participation in the El-Masri's ill-treatment and rendition (Krstevska, 2016: 97).

AL NASHIRI V. POLAND AND HUSAYN (ABU ZUBAYDAH) V. POLAND

Judgments Al Nashiri v. Poland(Al Nashiri v. Poland, 2014) and Husayn (Abu Zubaydah) v. Poland (Husayn (Abu Zubaydah) v. Poland, 2014) were delivered on the same day, are very similar and will be explained at the same place. Both cases concerned allegations of torture, ill-treatment and secret detention of the applicants suspected of terrorist acts. Both applicants submitted that they had been held at a CIA "black site" in Poland. Poland hosted at least one secret CIA prison, where water-boarding and dozens of torturous and cruel techniques were used concurrently for weeks at a time(Carey, 2013: 433). They maintained in particular that Poland had knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, for six and nine months, respectively, without any legal basis or review and without any contact with their families. They complained that Poland had knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill-treatment and incommunicado detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial. Finally, they complained that Poland had failed to conduct an effective investigation into the circumstances surrounding their ill-treatment, detention and transfer from Polish territory. ECtHR found several Articles violated.

These cases are built on the El-Masri judgment. As it was the case in the previous judgment, the procedural and substantive aspects of Article 3 were also violated in these cases. ECtHR reiterated that *where an individual raises an arguable claim that he has suffered treatment infringing Article 3 at the hands of agents of the respondent State or, likewise, as a result of acts performed by foreign officials with that State's acquiescence or connivance, that provision, read in conjunction with the Contracting States' general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.The investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must act of their own motion once*

the matter has come to their attention and must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions (Al Nashiri v. Poland, 2014: 485-486).

Here, EctHR found that Poland's denial of any complicity in the CIA operations and the failure to cooperate at international level cannot be seen in isolation from an officially undeclared but, for all practical purposes, perceptible lack of will to investigate at domestic level the allegations that they were denying. The authorities decided not to carry out any further domestic inquiry from November-December 2005 until March 2008. This resulted in the opening of any proper investigation being delayed by nearly two and a half years. Having regard to the exceptional gravity and plausibility of the allegations, encompassing crimes of torture and undisclosed detention, such delay must be considered inordinate. As pointed out by the applicant, it inevitably undermined the Polish prosecution authority's ability to secure and obtain evidence and, in consequence, to establish the relevant facts (Al Nashiri v. Poland, 2014: 492). ECtHR found that the proceedings complained of have failed to meet the requirements of a "prompt", "thorough" and "effective" investigation for the purposes of Article 3 of the Convention (Al Nashiri v. Poland, 2014: 499).

Further, in this case the CIA used different interrogation techniques. For example, as can be seen from the CIA documents, those unauthorised measures included two mock executions, which apparently took place on the same day. The first one was with the use of an unloaded pistol being "cocked" to his head while he was shackled in a sitting position, the second with a power drill while he was forced to stand naked and hooded in his cell. The applicant was also subjected to what was described in the 2004 CIA Report as "potentially injurious stress positions". That meant, as stated in the report, that he was required to kneel on the floor and lean back, that he was subjected to standing stress positions and pushed when in those positions and that he was lifted off the floor by his arms while his arms were bound behind his back with a belt. This apparently resulted in his arms nearly being dislocated from his shoulders. He was told that, if he did not "talk", his mother and family members would be brought to the black site – leaving him to infer from this that his female relatives might be abused in front of him. His "debriefer" stood on his shackles to induce pain, which caused further bodily injuries – cuts and bruises. The same "debriefer" was blowing smoke into his face during the interrogation sessions. Also, in order to induce pain on him, he was washed with the kind of stiff brush that "one uses ... to remove stubborn dirt" (Al Nashiri v. Poland, 2014: 511). ECtHR cannot speculate as to when, how and in what combination the specific "authorised" or "permitted" interrogation techniques were used on the applicant between 5 December 2002 and 6 June 2003. However, the predictability of the CIA standard procedures and treatment applied to its detainees gives sufficient grounds to believe that these measures could have been used in respect of the applicant during his detention in Poland and likewise elsewhere, following his transfer from Poland, as an integral part of the HVD Program.Nor does the Court find it necessary to analyse each and every aspect of the applicant's treatment in detention or the physical conditions in which he was detained. This treatment is to be characterised as "deliberate inhuman treatment causing very serious and cruel suffering" for the purposes of Article 3.All the measures were applied in a premeditated and organised manner, on the basis of a formalised, clinical procedure, setting out a "wide range of legally sanctioned techniques" and specifically designed to elicit information or confessions or to obtain intelligence from captured terrorist suspects. Those – explicitly declared – aims were, most

notably, “to psychologically ‘dislocate’ the detainee, maximize his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist ... efforts to obtain critical intelligence”; “to persuade High-Value Detainees to provide threat information and terrorist intelligence in a timely manner”; “to create a state of learned helplessness and dependence”; and their underlying concept was “using both physical and psychological pressures in a comprehensive, systematic and cumulative manner to influence behaviour, to overcome a detainee’s resistance posture”.In view of the foregoing, the Court concluded that the treatment to which the applicant was subjected by the CIA during his detention in Poland at the relevant time amounted to torture within the meaning of Article 3 of the Convention (Al Nashiri v. Poland, 2014: 514-516). The Court had already found that Poland knew of the nature and purposes of the CIA’s activities on its territory at the material time and cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory. It had also found that, given that knowledge and the emerging widespread public information about ill-treatment and abuse of detained terrorist suspects in the custody of the US authorities, it ought to have known that, by enabling the CIA to detain such persons on its territory, it exposed them to a serious risk of treatment contrary to the Convention.It is true that in the assessment of the experts – which the Court has accepted – the interrogations and, therefore, the torture inflicted on the applicant at the Stare Kiejkuty black site were the exclusive responsibility of the CIA and that it is unlikely that the Polish officials witnessed or knew exactly what happened inside the facility.However, under Article 1 of the Convention, taken together with Article 3, Poland was required to take measures designed to ensure that individuals within its jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals.Notwithstanding the above Convention obligation, Poland, for all practical purposes, facilitated the whole process, created the conditions for it to happen and made no attempt to prevent it from occurring. So, there has accordingly been a violation of Article 3 of the Convention, in its substantive aspect (Al Nashiri v. Poland, 2014: 517-519).

When ECtHR considered the violation of Article 5, it observed that that secret detention of terrorist suspects was a fundamental feature of the CIA rendition programme. As can be seen from the CIA declassified documents, the rationale behind the programme was specifically to remove those persons from any legal protection against torture and enforced disappearance and to strip them of any safeguards afforded by both the US Constitution and international law against arbitrary detention, to mention only the right to be brought before a judge and be tried within a reasonable time or the habeas corpus guarantees. To this end, the whole scheme had to operate outside the jurisdiction of the US courts and in conditions securing its absolute secrecy, which required setting up, in cooperation with the host countries, overseas detention facilities.The rendition operations had therefore largely depended on cooperation, assistance and active involvement of the countries which put at the USA’s disposal their airspace, airports for the landing of aircraft transporting CIA prisoners and, last but not least, premises on which the prisoners could be securely detained and interrogated. While, as noted above, the interrogations of captured terrorist suspects was the CIA’s exclusive responsibility and the local authorities were not to be involved, the cooperation and various forms of assistance of those authorities, such as, for instance, customising the premises for the CIA’s needs, ensuring security and providing the logistics were the necessary condition for the effective operation of the CIA secret detention facilities. Poland was aware that the applicant had been transferred from its territory by means of “extraordinary rendition” and that the Polish authorities, by

enabling the CIA to transfer the applicant to its other secret detention facilities, exposed him to a foreseeable serious risk of further ill-treatment and conditions of detention in breach of Article 3 of the Convention (see paragraph 518 above). It found that these conclusions were likewise valid in the context of the applicant's complaint under Article 5 and that Poland's responsibility is engaged in respect of both his detention on its territory and his transfer from Poland (Al Nashiri v. Poland, 2014: 530-531).

Next, having regard to its conclusions concerning the respondent State's responsibility under Articles 3 and 5 of the Convention, ECtHR considered that the actions and omissions of Poland in respect of the applicant's detention and transfer also amounted to an interference with his rights protected by Article 8 of the Convention and engaged Poland's responsibility under that provision. In view of the circumstances in which it occurred, the interference with the applicant's right to respect for his private and family life must be regarded as not "in accordance with the law" and as inherently lacking any conceivable justification under paragraph 2 of that Article. Then, there is, therefore, no doubt that the applicant's complaints are "arguable" for the purposes of Article 13 also and that he should accordingly have been able to avail himself of effective practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, as required by that provision (Al Nashiri v. Poland, 2014: 550). In this judgment, ECtHR found violation of Article 6. It stated that Poland's cooperation and assistance in the applicant's transfer from its territory, despite a real and foreseeable risk that he could face a flagrant denial of justice engaged the Polish State's responsibility under Article 6 § 1 of the Convention (Al Nashiri v. Poland, 2014: 568). Finally, having regard to its conclusions concerning the respondent State's responsibility for exposing the applicant to the risk of a flagrant denial of justice in breach of Article 6 § 1 of the Convention on account of his transfer to the military commission's jurisdiction, the Court considers that the actions and omissions of Poland likewise engaged its responsibility under Article 2 taken together with Article 1 of Protocol No. 6 and under Article 3 of the Convention (Al Nashiri v. Poland, 2014: 578).

Husayn (Abu Zubaydah) v. Poland is similar to the previous judgment. The ECtHR noted that the Polish authorities opened the investigation into allegations concerning the existence of a CIA secret detention facility in Poland on 11 March 2008. Since then – for some 6 years and 4 months as on the date of the adoption of this judgment – this investigation had been pending seemingly still against persons unknown. In any case, there had been no confirmation from an official source that criminal charges had been brought against any individual. The proceedings began as late as some 6 years after the applicant's detention and ill-treatment, despite the fact that the authorities must necessarily have been involved already at an early, preparatory stage of the implementation of the HVD Programme in Poland and that they knew of the nature and purposes of the CIA's activities on their territory between December 2002 and September 2003. However, at that time they did nothing to prevent those activities, let alone inquire into whether they were compatible with the national law and Poland's international obligations.In the Court's view, this failure to inquire on the part of the Polish authorities, notwithstanding the abundance of publicly accessible information of widespread ill-treatment of al'Qaeda detainees in US custody emerging already in 2002-2003, could be explained in only one conceivable way. As shown by the sequence of the subsequent events, the nature of the CIA activities on Polish territory and Poland's complicity in those activities were to remain a secret shared exclusively by the intelligence services of the two cooperating countries.The Court saw no other reason capable of explaining why, when in November

2005 Poland was for the first time publicly named as a country that had possibly hosted a CIA secret prison and received CIA-associated flights at the Szymany airport, there was no attempt to initiate any formal, meaningful procedure in order to clarify the circumstances surrounding the aircraft landings and the alleged CIA's use of, in the words of the 2005 HRW Statement, "a large training facility and grounds near the Szymany airport" maintained by the Polish intelligence service. Nor did the inquiries instituted by the Council of Europe and the European Parliament prompt the Polish State to probe into those widely disseminated assertions of human rights violations. Indeed, the only response of the Polish authorities to the serious and prima facie credible allegations of their complicity in the CIA rendition and secret detention was to carry out a brief parliamentary inquiry in November-December 2005. The inquiry produced no results and was held behind closed doors. None of its findings have ever been made public and the only information that emerged afterwards was that the exercise did not entail anything "untoward"(Husayn (Abu Zubaydah) v. Poland, 2014: 482-484).ECtHR found that the proceedings complained of had failed to meet the requirements of a "prompt", "thorough" and "effective" investigation for the purposes of Article 3 of the Convention (Husayn (Abu Zubaydah) v. Poland, 2014: 493).

During the initial phase of his detention in Poland, the most physically aggressive measures were not necessarily inflicted on him, the applicant was subjected to an extremely harsh detention regime and permanent emotional and psychological distress caused by the past experience and fear of his future. He was subjected to more than 80 applications of a technique known as "waterboarding" which had an effect of a mock execution of interrupted drowning (the US Department of Justice gave legal approval for this and other nine enhanced techniques: 'attention grasp'; 'walling'; 'facial hold'; 'facial slap (insult slap)'; 'cramped confinement'; 'wall standing'; 'stress positions'; 'sleep deprivation'; 'insects placed in a confinement box'; and 'the waterboard' (Lau, 2016: 1267). Accordingly, considering all the elements of the treatment to which the applicant must have been subjected and its cumulative effects on him, there can be no doubt that it is to be characterised as "deliberate inhuman treatment causing very serious and cruel suffering" (Husayn (Abu Zubaydah) v. Poland, 2014: 510). So, Poland violated the substantive right from Article 3.

ECtHR repeated its conclusion regarding the violation of Article 5. It found that these conclusions were likewise valid in the context of the applicant's complaint under Article 5 and that Poland's responsibility was engaged in respect of both his detention on its territory and his transfer from Poland (Husayn (Abu Zubaydah) v. Poland, 2014: 525). ECtHR took the same conclusion regarding Article 8 (Husayn (Abu Zubaydah) v. Poland, 2014: 533-534), and Article 13, where it found that the criminal investigation in Poland fell short of the standards of the "effective investigation" that should have been caried out in accordance with Article 3 (Husayn (Abu Zubaydah) v. Poland, 2014: 544). Finally, ECtHR found violation of Article 6, so it stated that in the light of publicly available information, it was evident that any terrorist suspect would be tried before a military commission. Moreover, the procedure before the commission raised serious worldwide concerns among human rights organisations and the media. The 2003 PACE Resolution, adopted on 26 June 2003, expressed its "disapproval that those held in detention may be subject to a trial by a military commission, thus receiving a different standard of justice than United States nationals, which amount[ed] to a serious violation of the right to receive a fair trial". The representatives of Poland, as those of any other member State of the Council of Europe, must necessarily have known of the circumstances that gave rise to the

grave concerns stated in the resolution. The Court noted that the applicant had not been listed for trial before the military commission and that since 27 March 2002, that is, for over twelve years, has remained in indefinite detention without ever being charged with a criminal offence. The last review of the legality of his detention took place more than seven years ago, on 27 March 2007. This, in the Court's view, by itself amounts to a flagrant denial of justice(Husayn (Abu Zubaydah) v. Poland, 2014: 558-559).

At the end of these considerations, we can conclude that the judgments against Poland can serve as a framework for the cases pending Romania and Lithuania(Wanlin, 2015: 200).

NASR AND GHALI V. ITALY

The last judgment in this sphere is *Nasr and Ghali v. Italy*. As the previous cases, this case concerns the extraordinary rendition of the Egyptian imam Osama Mustafa Hassan Nasr (Abu Omar) and his transfer to Egypt, followed by his secret detention there for several months. The applicant was abducted and taken from Milano to Cairo. On his arrival, he was interrogated by the Egyptian intelligence service about his activities in Italy, his family and his trip abroad. He was detained until April 2004 in cramped and unhygienic cell. Then he was released, but arrested again 20 days after. Finally, he has released on 12 February 2007 without charge, but he was prohibited to leave Egypt. He complained in particular of his abduction with the participation of the Italian authorities, the ill-treatment endured during his transfer and detention, the impunity enjoyed by the persons responsible on the grounds of State secrecy, and the failure to enforce the sentences passed on the convicted US nationals owing to the refusal of the Italian authorities to request their extradition. Lastly, he and his wife – the second applicant – complained of a violation of their right to respect for private and family life, given that the first applicant's abduction and detention had resulted in their forcible separation for more than five years.

Regarding Article 3, ECtHR noted that in spite of the efforts of the Italian investigators and judges, which had identified the persons responsible and secured their convictions, the latter had remained ineffective owing to the attitude of the executive. The legitimate principle of "State secrecy" had clearly been applied in order to ensure that those responsible did not have to answer for their actions. Accordingly, the investigation and trial had not led to the punishment of those responsible, who had ultimately been granted impunity. The Court therefore took the view that the domestic investigation had not satisfied the requirements of the Convention. Accordingly, there had been a violation of the procedural aspect of Article 3 of the Convention (Nasr and Ghaly v. Italy, 2016). As was on the previous cases, the CIA used techniques that have caused him emotional and psychological distress. His ensuing detention, including his transfer by plane to an unknown destination, had undoubtedly placed Mr. Nasr in a situation of complete vulnerability, and he had undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate. In fact, in his statement to the Milan public prosecutor Mr Nasr had given details of the circumstances surrounding his abduction and his detention in Egypt and the treatment to which he had been subjected, and in particular the violent interrogation sessions. In view of the fact that the Italian authorities had been aware of the extraordinary rendition operation carried out in the context of the CIA's high-value detainee programme, and had actively cooperated with the CIA during the initial phase of the operation – Mr. Nasr's abduction and his transfer abroad – the Court considered that

those authorities had known or should have known that this would place him at a real risk of ill-treatment. In those circumstances, the likelihood of a violation of Article 3 had been particularly high and should have been considered as inherent in Mr. Nasr's transfer. Accordingly, by allowing the CIA to transfer Mr. Nasr outside the country, the Italian authorities had exposed him to a serious and foreseeable risk of ill-treatment and of conditions of detention contrary to Article 3 of the Convention. As acknowledged by the Italian courts and ECtHR, Mrs. Ghali had suffered significant non-pecuniary damage as a result of her husband's disappearance, especially on the account of the sudden interruption of their married life and the damage to her psychological well-being and that of her husband (Nasr and Ghaly v. Italy, 2016).

The Court had already found under Article 3 that Italy had been aware of Mr. Nasr's transfer outside the country in the context of an extraordinary rendition and that the Italian authorities, by allowing the CIA to abduct Mr. Nasr in order to transfer him to Egypt, had knowingly exposed him to a real risk of treatment contrary to Article 3. The Court maintained those findings and considered them to be applicable in the context of Article 5. It concluded that Italy's responsibility was engaged with regard both to Mr. Nasr's abduction and to the entire period of detention following his handover to the US authorities. There had therefore been a violation of Article 5 of the Convention in that regard. In view of its findings concerning the responsibility of the respondent State under Articles 3 and 5 of the Convention, the Court took the view that the State's actions and omissions also engaged its responsibility under Article 8 of the Convention. In the light of the facts as established, the Court considered that the interference with the first applicant's exercise of his right to respect for his private and family life had not been "in accordance with the law". There had therefore been a violation of Article 8 of the Convention. Finally, ECtHR found violated Article 13 read in conjunction with Articles 3, 5 and 8. In the Court's view, the applicants should have been able to avail themselves of practical and effective remedies capable of leading to the identification and punishment of those responsible, to the establishment of the truth and to an award of compensation. In view of the circumstances already examined, the Court could not consider that the criminal proceedings had been effective within the meaning of Article 13 with regard to the complaints under Articles 3, 5 and 8. As the Government themselves acknowledged, it had not been possible to use the evidence covered by State secrecy; likewise, a request for the extradition of the convicted US agents had proved futile. As to the civil consequences, the Court considered that, in view of the circumstances, any possibility for the applicants to obtain damages had been virtually ruled out (Nasr and Ghaly v. Italy, 2016).

Regarding the first applicant, ECtHR found violated Articles 3, 5, 8 and 13 in conjunction with Articles 3, 5 and 8, while regarding the second applicant it found violated Articles 3, 8 and 13 in conjunction with Articles 3 and 8 of the Convention.

CONCLUSION

Secret detention measures are almost commonly used all around the modern world which is, at least declaratory, strongly confronted with all sorts of terrorism. A part of the measures conducted by some countries in its substance are not more than assistance to the CIA in its revenge (for 9/11) oriented activities, mostly hidden behind arresting suspects for terrorism in civilized countries subordinated to the US power. It took some time to start public debate on this issue through the prism of human rights. Dick Marty's reports were an additional incentive to react upon such brutal human rights violations that the CIA

considered justified by their primary activity, leaving human rights aside. In other words, the CIA does not consider their suspects human beings.

The European Court of Human Rights has dealt with complaints related to the CIA's described activities in three cases so far establishing a series of violations of human rights, while two more applications are currently under consideration. The Court took the position that all the human rights invoked by the applicants were violated, except in one case where the applicant complained of a violation of Article 6 of the Convention, where the Court concluded the same facts were included in the qualification of the other violations, so there is no need to consider this violation under Article 6. Through its judgments, the ECtHR condemned the activities of the CIA in the countries included in the applications. However, the states, not the CIA, remain responsible for violation of rights, but also for paying the compensation. The fact that the compensation in these cases is extremely high (at the very top of the amounts that the Court has awarded in its practice so far) speaks for itself about the level of seriousness of the human rights violations. How many such cases have not been reported so far, or even how many suspected of terrorism are still being detained in a secret place? However, it is obvious that this issue deals with two opposite values- power and justice. The main question is: Who will win ultimately and whose win will be just illusory?

REFERENCES

1. Abu Zubaydah v. Lithuania, Application no. 46454/11 (European Court of Human Rights).
2. Al Nashiri v. Poland, Application no. 28761/11 (European Court of Human Rights July 24, 2014).
3. Al Nashiri v. Romania, Application no. 33234/12 (European Court of Human Rights).
4. Balcerzak, M. (2013). The Responsibility of State-Parties to the ECHR for the Conduct of Foreign Agents - Building on the 'Soering Doctrine' or a General Regime of International State Responsibility? El-Masri v. "the Former Yugoslav Republic of Macedonia". *Polish Review of International and European Law, vol. 2, issue 3* , 89-98.
5. Blakeley, R., & Raphael, S. (2017). Human rights fact-finding and the CIA’s rendition, detention and interrogation programme: A response to Cordell. *International Area Studies Review* , 1-10.
6. Carey, H. F. (2013). The Domestic Politics of Protecting Human Rights in Counter-Terrorism: Poland’s, Lithuania’s, and Romania’s Secret Detention Centers and Other East European Collaboration in Extraordinary Rendition. *East European Politics and Societies and Cultures vol. 27 no. 3* , 429-465.
7. Cavanaugh, K. (2015). Unspoken Truths: Accessing Rights for Victims of Extraordinary Rendition. *Colum. Hum. Rts. L. Rev. vol. 47* , 1-55.
8. Cerna, C. M. (2015). Introductory Note to Al Nashiri v. Poland (Eur. Ct. H.R.) . *Int'l Legal Materials vol. 54* , 571-573.
9. Cordell, R. (2017). Measuring extraordinary rendition and international cooperation. *International Area Studies Review vol. 20* , 179-197.
10. Đurđević, Z. (2016). The Directive on the Right of Access to a Lawyer in Criminal Proceedings: Filling a Human Rights Gap in the European Union Legar Order. *Defence Rights in the EU Member States Cooperation in Criminal Matters* (pp. 9-

23). Zagreb: Faculty of Law University of Zagreb and the Croatian Association of European Criminal Law .
11. El-Masri v. the Former Yugoslav Republic of Macedonia, Application no. 39630/09 (European Court of Human Rights December 13, 2012).
12. Fabbrini, F. (2013). The European Court of Human Rights, Extraordinary Renditions and the Right to theTruth: Ensuring Accountability for Gross Human Rights Violations Committed in the Fight Against Terrorism. *Human Rights Law Review* , 1-26.
13. Husayn (Abu Zubaydah) v. Poland, Application no. 7511/13 (European Court of Human Rights July 24, 2014).
14. Krstevska, K. (2016). Case of El-Masri v. Repubic of Macedonia - with a Special Focus to the Violation of the Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. *European Integration, vol. 2* (pp. 81-97). Tara: Academy for Criminalistic and Police Studies.
15. Lau, F. (2016). The Treatment of High Value Detainees under the United State's Extraordinary Rendition Program: a Case of Crimes against Humanity for the International Criminal Court. *UNSW Law Journal Volume 39(3)* , 1261-1296.
16. Mendez, J. (2016). How International Law Can Eradicate Torture: A Response to Cynics. *Sw. J. Int'l L. vol. 22* , 247-267.
17. Nasr and Ghaly v. Italy, Application no. 44883/09 (European Court of Human Rights February 23, 2016).
18. Orpiszewska, M. (2014). El Masri v. Former Yugoslav Republic of Macedonia: Implications for the CIA Extraordinary Rendition Program. *N.C.J. Int'l L. & Com. Reg.* , 1165-1194.
19. Sadat, L. N. (2008). Shattering the Nuremberg Consensus: US Rendition Policy and International Criminal Law. *Yale Journal of International Affairs* , 65-77.
20. Singh, A. (2013). *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition.* New York: Open Society Justice Initiative.
21. Wanlin, L. A. (2015). Responsibility for Secret Detention and Extraordinary Rendition: The Strasbourg Court Holds Poland to Account. *Cyprus Hum. Rts. L. Rev. vol. 3* , 185-200.

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THE BULGARIAN PRESIDENCY OF THE COUNCIL OF THE EU AND THE INTEGRATION OF THE WESTERN BALKANS AS A KEY PRIORITY. THE ROLE OF CIVIL SOCIETY.

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Abstract

It was set clear that the European perspective of the Western Balkans is a key priority for the Bulgarian Presidency of the Council of the EU (1 January – 1 July 2018). The membership in the EU is only workable way to achieve sustainable peace, security, economic growth and prosperity in the region.

In this context the bilateral relations between Bulgaria and Macedonia are of utmost importance and many positive steps for strengthening and improving the political dialogue have been made, emanating with the signing of the signing and ratification of the Treaty of Friendship between the two countries.

The author's main task is to analyze the current debate about the Euroatlantic perspective of Macedonia in the overall context of the integration of the Western Balkans, including the achievements and future challenges. There is a special focus upon the importance of building an active and aware civil society that is able to leave behind the contradictions of history and to look ahead and work with dedication to a "united in diversity" future for the region.

When we talk about united and secure Europe, we shall have no doubt that the Western Balkans need a clear European perspective. This is a salient topic for the Bulgarian Presidency and the future of the European Union and the aim is to come closer to an agreement for a clear action plan with each one of the countries candidates. The idea is not to create unrealistic, overloaded expectations. As Bulgarian prime minister said "The enlargement has been talked about for a long time now and now is the right opportunity to make concrete steps forward." When presenting the priorities of the Bulgarian Presidency to the European Parliament Mr. Borissov pointed out the extremely good relations between Bulgaria and the Republic of Macedonia, which can serve as a role model for resolving long-standing bilateral problems. He underlined the importance of the infrastructure projects in the region that enable investment and tourism development. "The stability of the Balkans is directly linked to the stability of Europe; the solution is a European perspective. They expect it, they want it." (European Parliament, 17 January 2018 - Speech of Bulgarian Prime Minister Boiko Borissov).

In February 2018 the European Commission adopted a strategy for "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans."

ThePresident of the European Commission, Jean-Claude Juncker stated :"*Investing in the stability and prosperity of the Western Balkans means investing in the security and future of our Union. Although there will be no further enlargements under this mandate, today the European Commission is charting the European path ahead for the Western Balkans. With strong political will, real and sustained reforms, and definitive solutions to disputes with neighbours, the Western Balkans can move forward on their respective*

European paths. Whether this is achieved will depend on their objective merits. The European Commission will be rigorous but it will also be fair. I will travel to each of the countries of the Western Balkans at the end of this month with a clear message: keep reforming and we will keep supporting your European future." *(European Commission, Press release, 6 February, 2018).*

High Representative Federica Mogherini, on the other side, reaffirmed that :*"The Western Balkans are part of Europe: we share the same history, the same geography, the same cultural heritage and the same opportunities and challenges today and in the future. We have a common interest in working more and more closely together to guarantee to our people economic and social development, and security. This strategy shows the path that we have ahead of us: for all our six partners to overcome once and for all the past, for all of us together to make the process of the Western Balkans towards the European Union irreversible and keep reuniting the Continent. This Strategy gives all of us a shared, clear, unequivocal, credible and concrete perspective for each and every one of our six partners' EU integration. The next months will be not only intense but also crucial to make sure that this historic and unique opportunity is seized." (European Commission, Press release, 6 February, 2018)*

The European Commission outlines six flagship initiatives are to strengthen rhe cooperation in a number of areas and support the transformation process in the Western Balkans. These are areas of common interest: rule of law, security and migration, socio-economic development, transport and energy connectivity, digital agenda, reconciliation and good neighbourly relations. Concrete actions in these areas are foreseen between 2018 and 2020. *(European Commission, Press release, 6 February, 2018).*

In addition to that, speaking after co-hosting a summit of western Balkans leaders in Sofia on March 1, President Juncker said that he is returning to Brussels even more convinced that the place of the Western Balkans countries is in the EU.

Notably, we do not lack political will for the integration of the Western Balkans. A remarkably good example for turning political well into practice is the relations between Bulgaria and Macedonia over the last year. Back in August our countries signed a historic friendship treaty, aiming to leave behind historic differences aside and focus on future EU-oriented cooperation. The agreement recognizes both countries' territorial integrity, envisages the formation of a commission to resolve their differing views of history, and also has a pledge to protect the rights of the other's nationals on their soil, not interfering in each other's domestic affairs.

In January 2018 Bulgaria's parliament has ratified the treaty by 186 votes to zero. As the Bulgarian minister of foreign affairs put it, "this is a strategic choice of our country, which falls among the priorities of the Council of the EU" She added that the bilateral friendship treaty is based on common European values that will add considerably to the stability of the region.

Another upcoming key event for the Bulgarian Presidency is the EU-Western Balkans summit, which will take place on 17 May 2018 in Sofia. In February the President of the European council, Donald Tusk, reaffirmed the importance of this event: "*We will aim to strengthen connections both with and within the region. This spans from more investments in transport infrastructure, through multiplication of educational and cultural exchanges to making communication among our citizens easier and faster. The summit will also aim to boost cooperation in areas of mutual interest, including security and*

migration." (Donald Tusk, 13 February 2018). The summit will bring together heads of state or government from EU member states and the leaders from the six Balkan partners: Albania, Bosnia and Herzegovina, Serbia, Montenegro, Macedonia and Kosovo.

This meeting will strive to, as has been officially stated:

- reaffirm the EU's commitment towards its Western Balkans partners and reiterate the region's belonging to the European family
- strengthen links between the EU and the Western Balkans in infrastructure, digital and human connectivity
- WORK MORE CLOSELY TOGETHER TO TACKLE COMMON CHALLENGES, SUCH AS SECURITY, MIGRATION, GEOPOLITICAL DEVELOPMENTS AND GOOD NEIGHBOURLY RELATIONS. (EU-WESTERN BALKANS SUMMIT IN SOFIA, 17/05/2018, AGENDA HIGHLIGHTS)

Putting aside all the political declarations and diplomatic efforts, we shall not forget that the key for the successful and fruitful integration and membership of the Western Balkans is the active and informed civil society, together with the constructive dialogue between the people from all the countries. Back in In March 2017 the European Commission launched a White Paper on the future of Europe. Discussion about the EU's 'democratic deficit' has been going on for decades, so the issues the white paper brings up are not new. However, for the first time there seems to be a definite recognition of the need for change. The Commission's discussion paper is remarkably candid about widespread public distrust of Brussels, stating for example that "citizens' trust in the EU has decreased in line with that for national authorities (White Paper on the Future of Europe, 2017). Around a third of citizens trust the EU today, when about half of Europeans did so ten years ago. Overcoming this mistrust issue will not be easy, since: "Communities are not always aware that their farm nearby, their transport network or universities are partly funded by the EU."

The White Paper emphasizes the importance of facing expectations as being critical for future success of the European project. Where the Commission builds up expectations for economic growth and cross-border harmony driven from Brussels, it truly and inevitably makes itself vulnerable to attacks. When suggesting faster and stronger integration as one option (the fifth and final), the Commission notes 'there is the risk of alienating parts of society which feel that the EU lacks legitimacy or has taken too much power away from national authorities. On the other hand, the Commission states firmly that going back to the single market alone is not a good (second) option, etc.

Problems originate from the citizens who are uninformed about their rights and possibilities what they possess by being citizens of the EU. In my opinion is important to fill the term "European citizenship" a real content besides its symbolic interpretation by informing the citizens with the help of mass media.

Moreover, there are various legal tools for citizens to petition or make complaints against the decisions of the EU, but these opportunities are not used very often – often for red tape considerations. The EU are complex and time-consuming nature of these legal tools, and also the ignorance of citizens about their rights.

The EU creates all the tools for the citizens' involvement, but still it may somehow try hinder this participation. Public officials may state that citizens are incompetent, while citizens, on the other hand blame the officials and institutions for not being invited to truly

participate in the process – proving the saying that “ninety percent of politics is deciding whom to blame (Greenfield, 1996).

If citizens are not involved in the decision-making process from its beginning, they are usually less supportive. Citizens should be encouraged by feedback of the completed projects. People as a whole are more dedicated to participate in any initiative if they see it as their own and experience the betterment in the life of their own locality. The civil society should be strengthened to support democracy, in order to stop the declining trust of citizens in their politicians. The European Union and the members-states should encourage more voluntary activities and social connectedness which would represent “happening „of participatory democracy.

The citizens of post-communist member-states, such as Bulgaria for example, show a diverse willingness to participate in the decision-making process both on European and national level.

In the very complex system of the EU information matters a lot. Media has become a very powerful communication channel which can unfortunately be used as a tool to manipulate the masses. Media can prove to be very influential, convincing messages for the people, who are many times unaware of the fact that they are influenced. The European Union often uses the help of the media to inform citizens about its achievements, initiative. The shift towards a participatory democracy and the freedom of speech involves the risks of demagogic and populist interventions which must be controlled in order to preserve its legal pursuit. The new possibilities given by modern technologies should be utilized, but wisely.

People who are more politically aware are also able to assign responsibility to the EU correctly. It is interesting that people who read papers with a lot of EU coverage are prove to be more competent than those who rely on television coverage – it is very often for television to simply prime the citizens to think more about the EU.

In the EU and also in the region, there are two contradictory trends which are simultaneously presented: globalization and centralization. While certain decisions are moved from national to EU level taking away some national sovereignty, on the other hand the principle of "subsidiarity" principle is also emphasized, which refers to solving problems on lower levels and supporting community activity. The Union, therefore, on one hand enhances citizen participation by using deliberative methods to involve stakeholder, but on the other hand widens the gap between its citizens and the policy-makers.

At the time of a legitimacy crisis of the EU, much attention should be paid on fostering comprehensively efficient citizen participation. It means creating a platform which is transparent and easily available for ordinary citizens or for civil organizations. Through this they can visibly participate in the public debates and express their opinion.

After looking over the different factors and influences which pull back the establishment of a legally operating participatory system, the following observations can be specified:

- Civil participation and awareness is crucial for the legitimacy of the European Union

- The legal basis for citizen participation is adequate, the obstacles mainly appear in putting them into practice
- A feedback is needed about the outcome of any initiative on EU level, that implies citizen participation
- A two-way communication is needed between the citizens and the authorities
- Media should be utilized in a fair way by the EU - to inform citizens about the results and the possibilities and not to manipulate them

Citizens should start to care not only about what the EU and its institutions can do for them and their countries, but also what the same EU institutions can do for the European project as a whole. As the President of the European Council stated recently – *"United we stand, divided we fall"* (Tusk, 2017).

Bibliography

Договор за приятелство, добросъседство и сътрудничество между Република България и Република Македония - http://www.mfa.bg/uploads/files/1501093350Dogovor-RM-RB.pdf.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. Official Journal of the European Union, 2007/C 306/01.

European Commission (2018) Press release – strategy for the Western Balkans: EU sets out new flagship initiatives and support for the reform-driven region

European Parliament (2018) - Speech of Bulgarian Prime Minister Boiko Borissov, 17 January 2018

European Commission (2017) White Paper on the Future of Europe – Reflections and Scenarios for the EU27 by 2025

Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (Consolidated version 28/07/2015)Arnsten, S. (1969) A Ladder of Citizen Participation. AIP, Vol. 35, No. 4, July 1969, pp. 216-22

Hobolt, S., Tilley J.(2014) *Blaming Europe? Responsibility without Accountability in the European Union*, Oxford:Oxford University Press, 2014.

Setala, M. Schiller, T. (2012) *Citizens' Initiatives in Europe,* Palgrave, Macmillan.

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IMPLEMENTINGOPERATIONAL PSICHOLOGY IN NATIONAL SECURITY SYSTEM:INTRODUCTION TO ETHICAL ISSUES

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Abstract

Operational psychology is a complex applied profession in the national security system, including diverse duties and roles. Psychology, by itself, differs from other professions by having its ethical code oriented to "do not harm" principles, while the ethical principles and roles inherent for the police, military or intelligence community usually collide with them. On the other hand, there is a lack of guidance in the operational security professions. Given the complexity of the context or work specifics and the decision-making process of all operational professions, the whole picture and the decision-making process become even more complicated. Operational psychology, as an in-between role of psychology and operational society, has specific content and implementation, which requires additional guidance for the psychological ethical code and specific training and monitoring mechanisms, as well as consultations with other psychologists. Ethical dilemmas are mostly found in the mixed/dual agencies, competences, multiple/dual relationships and roles, confidentiality, informed consent, unlawful orders, personal problems and etc. Dialogue workshops and round tables with all relevant experts are necessary, to clarify the relevant ethical principles for these fields and give the operational psychologists a "team role" in their working duties. It is important to consider these issues in order to facilitate the process of operational psychology implementation in the system in its true sense, contributing to the improvement of the ethics and trust in the psychology profession.

This paper will be oriented to the psychological ethical obligations overview, in order to identify, introduce and discuss specific ethical challenges and risks of the professional ethical compromise within practicing the field of operational psychology. The aim is to protect the operational psychology profession within the national security context, by minimizing the space for eventual abuses, misconducts or inappropriate treatment by the security or other psychology professionals.

Key words: operational psychology, ethical code, intelligence, military, decision making

INTRODUCTION

The ethical standards define the professional way or the roles of conduct, which psychology explains in the "Ethical Principles of Psychologists and Code of Conduct", the ethical guidelines document of APA, as the biggest psychological world organization. This document makes a distinction between *principles*, which include such moral values as "justice" that appear earlier in the code, and enforceable *standards*, as more specific forms of guidance, such as "minimizing harm". APA ethical standards have historically been

revised and modified according to the changes in the practices and roles of psychologists. All countries have their own adjusted codes, based on the APA code. Hence, while the development of ethical standards for new areas of psychological practice is presented as a routine phenomenon, in some fields these standards have been developed as uniquely applicable in those particular fields. In the case of operational psychology, the question implied is whether the standard code requires changes in the existing code or that code is sufficient to be used by the operational psychologists, given the laws and specific organizational demands in the national security area. Operational psychologist's position and role (Dimitrovska, 2017) differ from other psychology specialties, given that they have different clients, aims of activities and acting positions of military or other national security agents, which include receiving orders in the chain of command alongside their psychological role. This position opens up many ethical challenges and operational psychologists need to know how to respond to them and to prepare themselves for such responses in advance. Operational psychologists need to clarify the nature of the conflict and take reasonable steps to resolve it consistently based on psychological ethical standards, as well as to advise the commander of any potentially negative implications or ethical or moral issues that may be caused if the lawful order of the commander is carried out. The other main question refers to the operational psychologist's work in operational missions, where the "dual-loyalties" role collides mainly with the "avoiding harm" standard (APA, 2017).Hence, recognizing the ethical complexity of the work of psychologists involved in national security activities and its expansion after 9/11, in 2005 APA created the Psychological Ethics and National Security (PENS) Task Force, providing adequate ethical guidance for these unique settings. Despite endorsing the psychologist's involvement in national security interrogations and information-gathering process, PENS is unambiguously negative for their engagement in directing, supporting, facilitating, or offering training in torture or other cruel, inhuman, or degrading treatment, having an ethical responsibility to be alert and report any such acts to the appropriate authorities. Engaging in such consultative and advisory operational psychologist's role that differs from the traditional health-care service provider requires a delicate balance of ethical overview and decision-making. So, the Task Force recognized this role as a unique position of assisting in ensuring that these processes are safe and ethical for all participants. On the other hand, another group of authors claim that the PENS report was accepted as APA interrogation policy by bypassing the APA Council of Representatives' critical review and vote, being only voted for by the APA Board of Directors. Given the many cases of abusing psychologists in these operations, as well as not respecting the ethical code given in the Nuremberg Defense "just following the law/orders" in the military psychologists' specific obligation, after 9/11 APA voted for the first time to abandon this Nuremberg ethics, changing the APA code in 2010 (Pope, 2011).

Operational psychologist complex identity: explaining within-role ethical collision issues

Given the operational psychologist complex and responsible role, setting the operational psychology standards and specifics is important for prevention of misuses and other negative consequences. A decade-long conflict over the PENS (Olson, et al. 2008, Arrigo & Wagner, 2007) was sublimated in the workshop for operational psychologists in 2015, when these dual-loyalty questions were also explained (Soldz, et al., 2015). The *adversarial* operational psychology *(AOP)* was distinguished from *collaborative* operational psychology (COP); COP was explained as closer to the traditional operational

psychology tasks and overt operations researches, both oriented to maximizing personnel performance for high-risk military and intelligence operations; while the AOP tasks imply support of deception, coercion and assault in those operations and covert operational researches. Although the different ideology in targets explains the ethical differences, COP-AOP categorization is not a precise separation of ethical from unethical professional psychology, given that it talks about roles, not about individual psychologists, so both roles involve psychological ethics risks, and most importantly, both activities sometimes transform rapidly one into the other, depending on the assignment and needs (Arrigo, et al., 2012). Actually, AOP transforms the "do not harm" into "do as little harm as possible", explaining that harm cannot always be avoided in competition. This goes in favor of the AOP "specific" goal to manipulate, neutralize or harm the subjects of the psychological intervention, who will always remain unaware of the psychologist's involvement, in order to protect others. In other words, in national security settings, the ethical code concept of *autonomy* in decision-making for the recipients of the psychological interventions in somewhat limited.

There are insuperable differences between psychological ethics and military ethics, which in high-risk and high-secrecy operations become even worse. Thus, the universal *telos,* or proper end goals of the profession of psychology, is in direct conflict with the military *telos*, which prioritizes the victory of one nation and its allies over that of other nations. This conflict between universality and prioritizing national interests was found as a key conceptual source of the APA PENS (2005) controversy. On the other hand, "staying in one's line" susceptibility to deception is incongruous with the accountability of psychology. This dual-loyalties or conflict of interest is resolved by the individual operational psychologist's determination or identification of his/her primary loyalty to the profession of psychology or to the profession of arms or intelligence. In the second case, psychology's unique social role is put in question, further eroding the essential counterweight provided by the autonomy of professions in the modern society, whose subversion is a threat to the democratic principles. A three-factor model of COP-AOP distinction has been developed, classifying activities as AOP in case of lack of informed consent, including non-stipulated harm rather than beneficence and insufficiently outside of the ethical oversight. Thus, given the great negative consequences of AOP on COP, APA, behavioral sciences and health professions, as well as the military "needs of AOP" explanations and pressures, its exclusion from professional psychology has long been discussed, and it is recommended only by some experts. Other operational personnel with expertise in psychology for intelligence aims are not professional psychologists and cannot be recognized psychologists, given that they are not responsible toward the psychological code and their manipulation and deception (Nathan, 2016) are a serious threat to the profession of psychology and civil society, the scientific values, civilian-military relations and laws, and the well-being of the subjects of intervention, given their acting without an operational psychologist involved. This issue was found at the base of a decade-long world conflict and is actually the reason for the operational psychology stagnation in its recognition as an independent discipline (Soldz, et al., 2017). So, the possibility, program content or other relevant pre-conditions of psychological specialization in non-psychology national security experts, need to be considered. Incorporating operational psychologists in the national security system will resolve a great deal of these concerns, for which a general overview of the responsibilities is necessary.

Practicing Operational Psychology Roles: Explaining Some Ethical Issues

Operational psychology as an emerging military psychology sub-discipline has expanded in the last decade given the national security sector's increased need of scientific and practical expertise (Dimitrovska, 2017). The diversity of roles additionally complicates the ethical challenges otherwise present in military psychology, as an applied psychology in military settings (Staal & King, 2000, Kenedy & Zilmer, 2012). Explaining some ethical issues in several roles separately (Kenedy & William, 2011) will clarify the dilemmas about the tasks, positions and responsibilities of operational psychologists, in order to strengthen and enhance the relationships with other professions, which is important for facilitating the process of its implementation in the national security sector. That will also draw proposals about the legal changes or additional necessary acts and will explain the institutional cooperation.

Developing and realizing the assessment and selection programs for personnel in high-risk military and national security operations, as well as the ***research and validation studies*** for preparing and maintaining that process, is the operational psychologists' core function and the role from which operational psychology was historically developed. The primacy lies in the foundation of this role for the development of all subsequent roles, given that a condition for the application of this psychological discipline into practice is the research knowledge, especially in operational settings. The complexity of this research lies in the high unpredictability of the unconventional and high-risk changing contexts, which in the psychological tool designing procedure need to be measured. Considering that the operational psychologist in this role is a military or other relevant national security agency agent, it is specific that an organization or a mission has the priority over the clinical military psychologists. This opens a potential for several ethical conflicts, given the operational research ethical standards that support its relevance as a condition, explained in "it is better to struggle with a 'restless conscience' than to be told what to do" (Ormerod & Ulrich, 2013). Furthermore, the operation research carried out at the universities or institutes, and the research conducted by operational psychologists in the national security settings and careers must be differentiated (Soldz, et al., 2015). On the other hand, APA Ethics Code (2017) clearly emphasizes that psychologists are obligated to be alert and on guard against political, organizational or any other factors that might lead to misuse of psychological decisions, considering the consequences that psychological scientific and professional judgments and actions may have on the lives of others. The psychological screening tools and procedures of these positions largely differ from the typical selection procedure used by psychologists in other settings. In this case, it needs to include *screen-out* - that uses mental health psychological tests for excluding 'inappropriate' candidates, and *screen-in phase* - for selection of the best candidates for the positions by assessing the psychological factors that the researches confirmed as predictors for future successful performance. A distinction should be made regarding these two types of tests, as well as whether it is a validation procedure or a selection process, among which the confidentiality degree, purpose and relationships to legal limitations differ. It is crucial for the no-psychologist professionals to distinguishthatthe psychological selection tools (interview, tests or scenarios) "don't think by themselves", which is one of the main reasons why their useis logical and allowedonlyfor the psychologists, especially the second type that may seem more "familiar" to them, besides the higher degree of confidentiality they have in the procedure. As in other contexts, the ethical code requires the use of psychological procedures with demonstrated evidence of validity for the intended purpose, for which the operational psychologist is responsible. Hence,a periodical review of the

validity is necessary,based on the operational psychologist's need assessment. Similar toother emerging specialties, defining the boundaries of operational psychologists' competences in practice is difficult. Only a psychologist with specialized training or experience in selection of the operational settings should perform this role, considering that the psychological selection trainings from other specialties have been proven insufficient. Thus, only psychologists with specialized competences can be involved in the training, research or selection process of this type of personnel. In this role, the operational psychologist can use consultation with psychologists specialized in other complementary psychological areas or other professionals from areas he/she assesses not to be too knowledgeable, but only in "needs to know" framework of information for those persons. The sensitive nature of the selection procedure obligates the operational psychologist and other consultants involved in this process and training to have appropriate security clearances, more for the purpose of assessing and selecting as a "know-how", its expiration date and relevancy, than for the results or keeping others to monitor the process. What is most confidential is the operational psychologist'sdecision-making process, in which nobody is allowed to interfere, as well as the procedurethat can only be periodicallyinspected by an outside experienced operational psychologist.Considering the military or national security agency's directives and mandate for disclosure to those with a "need to know" status among the agency decision-making personnel, there is no guarantee of the confidentiality of any information revealed during the process. This ethical conflict needs to be resolved by informing in advance the volunteer candidates about these limitations. Informed consent and taking a great effort to respect the candidate's privacy are additional forms for negotiating this limitation. It was indicated that after aproper training by an operational psychologist with the commanders in order to clarify the ethical rules or potential ethical conflicts, the decision makers need to exclude their interest in details and rather base their position on the information presented by the psychologist, which needs to be limited only to the relevant information and in the minimum amount for achieving the purposes of the process. Informed consent also calls for the need to explain how and to whom the results will be released, the selection or research purposes, whether feedback will be obtained, etc. Therefore, there is a concession regarding the right to feedback of the applicants as well, in order to protect the objectivity and the "expiration date" of the procedure.

The ***security clearance process***within all phases, as an investigation process, the adjudication phase, periodic reviewsor incidental disclosureof a violation, needs to includeevaluationsby a specialized psychologist, whose roles needs to be appropriately provided in the legal framework. Given that the aim of this role is risk assessmentor predicting a personal future behavior, it is necessary for the military and police psychologists first toassessif they are prepared with their qualifications to provide such evaluations, considering the long-term implications they may have. Even though the security clearance psychological evaluationis not punitive by nature, it is usually requested to help in the determination or clarification ofsomepsychological issuesrelated to the risk factors, when the treatmentproviders in the first phaseare unable to address some questionsor they"have no opinion". The ethical coderequires the psychologists to limittheir work on the population and psychological areawithintheir competence, so risk assessment andnext behavior predictionare part ofthe operational psychologists' competencies. Therefore,it must be taken into account that the risk factorsdifferin differentwork positions, contextsand uniqueconditions, for which it is necessary to understand the dynamics of the assessment, vs. the small number of researches available as publicinformation, and to

compensate the shortage of knowledgeby senior operational psychologists' consultations. In case when the operational psychologistis in a therapist role, the ethical conflict arises in the principles ofprivacy and confidentiality, as well as with the multiple roles.As a mental health protector, theoperational psychologist in this role supportsthe open conversation with the client, butas a security or militaryworkerfollowing orders,he or she needs tolocatethe informationfordisqualification. This disparity is dealt with easily if multiple mental health evaluators are present at the working location. Thus, separating the roles of the therapist and the security clearance evaluation consultant in that case is recommended.If there is no conditionfor that,the clientneeds to be informed aboutlimitedconfidentiality bysigning previouslyinformed consent, timelyremindedduring the process or contact prior to the information release. Also, forthe past treatments' information insight by the investigator during the first phase, an informed consent should be signed by the person applying for the certificate.

The operational psychologists' ***consultations inundercover***, ***counterintelligence or counterterrorism operations*** are primarily oriented to support operators, investigators and military leaders by assessing the human sources of information, helping them to understand psychological and behavioral issues, as well as the situational dynamics related to those sources, and offer suggestions or guidance about their management and control. Risk assessment, recruitment and handling of sources, recommendations and veracity and credibility of information and opinions, are some of the operational psychologists' tasks in these operations. These roles and the roles explained below require operational support quite distinct from the clinical services, including an area of practice for which few guidelines or professional standards exist; hence, the operational psychologist needs to navigate carefully avoiding ethical pitfalls that may arise. The lack of established standards opens the question of the competence boundaries for this role, which is resolved with a wide variety of training practices, gained mostly from their colleagues in the operational arena, in order to understand and adapt the differences between applying psychological science and methods in operational settings as opposed to a clinical and/or forensic practice, as well as the recommended naturalistic decision making model that integrates rational and intuitive elements (Stephenson and Staal, 2007). Justifying deception in the interest of the national welfare may be a case (Grisso, 2001). Given these needs, APA in 2004 gave approval for this specific continuous education for psychologists. Clinical and forensic practice differ in the assessment methods as well, considering the different reasons and use of the assessment results, so that some of them have direct applicability in the operational arena, but many do not. Developing new tools, or preparing relevant norms for particular population, as well as clarifying the strengths and limitations in case of using the traditional tools, are the steps to be undertaken for resolving this dilemma. The operational psychologist needs to be prepared for potential misuse or misrepresentation of his work by the operational personnel, to become aware of it and be in a position to correct and minimize it on time. Meeting them to ensure they understand the limitation or the assessment written in the report, following up or asking for a summary, or providing preliminary verbal feedback prior to writing the formal report, are some of possibilities for recognizing and clarifying the misunderstandings. The complexity and differences rise in this role, given the dual responsibility because of the government as a primary client. So, obtaining informed consent for ensuring that the purpose of evaluation and the limits of confidentiality are clearly explained, or for clarifying feedback receiving issues is not always possible, having in mind that that the subject is an unknown person or the time is limited. Given that the information provided for psychologists is often incomplete in cases

when the contact with the individual is impossible, a clarification about the psychological assessments and conclusions' limitations and how they might impact the reliability and usefulness of the operational conclusions, is recommended.

In the role of providing ***operational support to military and intelligence operations*** as ***interrogations, debriefing, information-gathering or other national security operations*** the authorized***behavioral science consultants (BSC)*** apply psychological sciences in the form of questioning conducted by specially trained and certificated security or military personnel, in such operations designed to prevent harm or danger to individual, public or national security. Psychological activities as BSC imply discussions about the importance of developing relationships, building rapport, types of questions, and those unproductive for eliciting accurate information, while prohibiting the provision of medical care except in case of an emergency. These standards and guidance for what they may and may not to do need to be prescribed in special documents and supported by all relevant related national and international laws or regulations. Training requirements also need to be documented, which is essentially important in the psychologist role of BSC, since the most complex ethical dilemmas arise mostly conflicted between ethics and the law, regulations, governing legal authority, organizational demands and boundaries of competence, and the psychologists need to know how to adequately respond. So, certified training for this role includes the relevant laws and doctrines for this kind of operations, ethical guidance by professional associations; relevant areas of behavioral science; cultural, religious, ideological and other relevant issues related to the population affected by the operation; dynamics and risk management of this kind of settings, as well as combat and operational stress control courses. The essence of the ethical dilemma in this role lies within weighting of the positive values, as a process required in decision making if the behavior is professional, for which the professional's own values are most important. This implies that balance must be established between ethical responsibilities "do no harm" to an individual and those to the larger society, or to the organization where they work, given the organization as a client in this role. Mixed agency situation in these cases usually produces limited confidentiality. Any abusive treatment is specifically prohibited, so only after meeting the three requirements "safe, legal and ethical" in that particular order, may the operational psychologist focus on helping to increase the interrogation effectiveness. In case the BSC psychologist determines that some detainee "crazy" behavior is not contrived, neutral mental health care expert able to directly address the psychological concerns of the detainee needs to be called, in order to avoid entering into a multiple role relationship. The same goes in case when the staff that the BSC psychologist supports, clearly request consultation of personal nature strictly with the BSC, having in mind the built trust, the BSC psychologist does not need to accept this intervention, except if there is no other mental health expert near or in an urgent situation. In case the BSC psychologist feels that he/she has been ordered to perform illegal, immoral or unethical duties, he or she is responsible to seek clarification from the chain of command explaining the ethical standards, and in case they are not able to resolve the situation, the BSC psychologist needs to contact the specialty consultant or other mechanisms as higher inspectors or advocates. The BSC psychologist's requirement to "minimize harm when is foreseeable" implies at minimum to encourage the guard officer to report to his supervisors that his threatening behavior provoked some mental health consequences on the detainee. Then, the information should be reported to the interrogation team so they can anticipate any potential incidents and possibly decide to provide some additional psychological training to the guard forces using some

psychological researches, or open a dialogue about personal management issues that have positive impact on the stress level, as shift schedules, deployment rotation etc., as well as refer the officer for a medical support intervention. Detainee's mental health information cannot be used to his detriment. Hence, the BSC psychologist does not need to share the information with the interrogation team, while he/she is responsible to consult them making sure that the interrogation process will continue appropriately, after the medical evaluation of the detainee is clear on those grounds.

The responsibilities of the ***operational psychologist in crisis negotiation*** role differ in three of the phases of the negotiation process. As on-the scene consultant, the operational psychologist mainly assesses and interprets the information for operational use by the negotiation team, helping in the communication strategy development and stress level management, while slowing down the incident, so time can benefit the negotiator. This role's main goal is achieving a peaceful resolution of the situation without losing any life, but except the right to suggest, the consulting psychologist has no function in the determination of the negotiation process ending for moving to tactical resolution, in which moment the psychologist's consultation ends. Except in a high-stress and high-complex situation, the psychologist must be very sensitive with this role and function, being aware of the different relationships existing in the organization, as well as careful about the blurred roles and boundaries during the consultation. The psychologist as a consultant does not serve as a treating clinician for the hostage taker, and in order to avoid the multiple relationships, the clinical and the operational psychology roles are recommended to be kept separate from each other, since they have different functions with different ethical challenges. Also shifting from a consultant to a negotiator is not recommended, because of losing the objectivity and the psychological value of the team. This line of separation can be potentially blurred by the psychologist unconsciously, by the officers given the established trust relationships or as a result of high stress. Although the client in this role is the law enforcement agency, ethical standards prescribe that the psychologist has an obligation towards all other involved individuals, including the law enforcement personnel, the hostage taker, hostages or innocent passers-by. Although this role is contrary to the profession of psychology, since the operational psychologist assists the police in situations in which the hostage taker may be injured or killed while the psychologist is gaining insight into his mental health and personality, preventing the need for tactical resolution that may result in losing a life goes in favor of avoiding harm, that further supports this role. Given the high stress situation, it is especially important that the operational psychologist is free from personal problems or conflicts, and also to ensure that he or she maintains the awareness of the possible circumstances. As in the ***psychological assessment of a political leader, psychological operations, psychological autopsies, threat assessment*** or other operational psychologists' roles, he or she must use *indirect assessment techniques* (Morgan, et all, 2006), as that the operational psychologist has no direct contact with the individual for whom the consultations are provided, which differs from the traditional psychologist role in competences and aims. The consulting psychologist needs to know how to assess and provide the information that is collected, as well as how to provide them by the support of the intelligence or other teams, given that the consultations rely on what others say about the hostage taker, on what can be derived from the communication between the hostage taker and the negotiator, or on other sources. In all these cases, there is no opportunity for gaining informed consent of the individual being assessed. In crisis negotiations, medical and mental health care information should be used if it is estimated as beneficial for the negotiation process. Also, the consulting

psychologist is responsible to ensure that the negotiation team does not use it to exploit or manipulate the subject; all ethical conflicts that may arise must also be examined, and this must be conducted with discretion, giving information only in case they are crucial for success. The most important for this role is not to be allowed to get involved without appropriate specialized trainings provided, in addition to the ethical standard of "providing services in emergency" that allows the opposite, in order to avoid the risk of violating the "avoid harm" ethical standard, having in mind the life and death matters and consequences that may arise in case of practicing beyond the bounds of one's competences. After trainings, the operational psychologist may consult independently only after the supervising crisis negotiation psychologist determines that he/she possesses the necessary competences and supervised experience. Cultural differences must be taken into account, given the potential of significant misinterpretation in this case.

The operational psychologist role in well-knownhigh-demanding military ***SERE trainings***, implies five categories: *1.evaluator* or SERE instructors' assessment and selection, *2.safety observer* of training and evaluation if the instructors cross the line, given the extremity of scenarios vs. guidance and protocols, using behavioral assessment, *3. educator* or psychological trainer to instructors and candidates, *4. consultant/ researcher* – validation of training parameters, establishing predictors of performance and developing new psychological tools, all those have a particular military relevance, and *5. recovery* of personnel to prevent permanent damage to the well-being, that actually evaluate the effectiveness of SERE and if it complied with the standards of the Military Code of Conduct. SERE is a direct result of the prison experiment, that point out the prison environment as a specific social context with significant power of personnel that must not be allowed unchecked. SERE has a classified nature and as other operational context trainings actually serves as an operational laboratory for researches for enhancing the operational personnel performance. SERE is a precondition for the most of afore-stated roles, which explained the ethical dilemmas. SERE psychologist needs to be SERE licensed and a training science expert as well. The "safety officer" as a key role, implies calibration of harm, or determining "behavioral drifts" or when the interventions are causing a form of harm which becomes extreme in an amount that should be stopped or mitigated, in order to ensure the participants' well-being. The ethical complexity is in weighting the present and future harm to trainees against the improved function in the trainees' specialty of choice, and as well preventing to be used by the authorities for nonconsensual goals.

CONCLUSION

The operational psychologist's roles go beyond the ethical standards prescribed in APA or any national adjusted psychological ethical code, whose conduct is covered in the PENS Report. A legal framework review is recommended, with the support of legal and other relevant experts, in order to provide additional inclusions or other regulations (including PENS) that are necessary for implementing the operational psychologist roles in the national security system. Taking into account the low level of psychology development, its recognition and implementation in society in general, the ethical level of psychology must be upgraded as a priority, in order to avoid any abuses by self/power-interests or blurred situations. For that purpose, the promotion of the profession of psychology and its ethical code is very important and beneficial, and therefore other professions' appropriate treatment will be provided, especially important for the linked

professions. The last is particularly significant in case of operational personnel, considering the fact that their guidance is much scarcer or the ethical code is quite contrary to the psychologist role or that the ethical roles are not respected. Most of the operational psychologist roles differ considerably from the traditional clinical service-provider psychologist role, mostly in clients, competences and ethical issues. Their separation is very important, mostly in terms of training issues. In the Republic of Macedonia, once a clear distinction is made with respect to the competences for operational psychology, some steps are recommended as: organizing a dialogue with the national security psychologists, a dialogue with relevant operational and command personnel, coordination with supporting organizations and governing bodies, development of guidelines and legal changes or additional regulations for this specific area, and as well informing the operational psychologists about this process, in order to ensure that the implementation of this area meets the highest ethical and professional standards. In case the operational psychologist role is not abused, it was shown that its appropriate implementation has an additional covered role of an indirect national security system and personnel control mechanism. The complexity of ethical issues is the main purpose for the necessity of senior operational psychologists in mentoring role, out of the chain of command, who also need to have an appropriate level of security clearance. In the Republic of Macedonia, this issue can be resolved only by foreign expert support. The process of implementation is recommended to start in the military higher education, since the military ranks and other experts are important for misuse protection.

REFERENCES

1. American Psychological Association, Presidential Task Force on Psychological Ethics and National Security (2005). Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security
2. American Psychological Association (2017). Ethical principles of psychologists and code of conduct
3. Arrigo, J.M., Wagner, R.V. (2007). Psychologists and Military Interrogators Rethink the Psychology of Torture, *Peace And Conflict: Journal Of Peace Psychology*, *13*(4), 393–398
4. Arrigo, J.M., Eidelson, R.J., Bennett, R. (2012). Psychology under Fire: Adversarial Operational Psychology andPsychological Ethics, *Peace And Conflict: Journal Of Peace Psychology*, 18 (4): 384-400
5. Arrigo, J.M., Eidelson, R.J., Rockwood, L.P. (2015).Adversarial Operational Psychology Is Unethical Psychology: A Reply to Staal and Greene (2015), *Peace And Conflict: Journal Of Peace Psychology*, 21 (2): 269–78
6. Dimitrovska, A. (2017). Operational psychology – the last range of military psychology: science and application, *40 years of Faculty of security conference*
7. Grisso, T. (2001). Reply to Schafer: Doing Harm Ethically, *The Journal of the American Academy of Psychiatry and the Law*, 29 (4): 457-60
8. Kennedy, C.H., Zillmer, E.A. (2006). Military psychology: Clinical and Operational Applications. New York: Guilford Press
9. Kennedy, C.H., Williams, T.J. (2011). Ethical Practice in Operational Psychology: Military and National Intelligence Applications, Washington DC: APA

10. Morgan, C.A., Gelles, M.G., Steffian, G., Temporini, H., Fortunati, F., Southwick, S., Feuerstein, S., Coric, V. (2006). Consulting to Government Agencies – Indirect Assessment, *Psychiatry*, 3 (2): 24-8
11. Nathan, C. (2016). Liability to Deception and Manipulation: The Ethics of Undercover Policing, *Journal of Applied Philosophy*, 34 (3): 370-88
12. Ormerod, R.J., Ulrich, W. (2013). Operational Research and ethics: A literature review, *EuropeanJournal of Operational Research*, 228: 291-307
13. Петроска-Бешка, В., Такашманова, Т., Спасовски, О., Наумова, К., Фрицханд, А. (2006). Етички кодекс на психолозите на Република Македонија
14. Olson, B., Soldz, S., Davis, M. (2008).The ethics of interrogation and the American PsychologicalAssociation: A critique of policy and process, *Philosophy, Ethics, and Humanities in Medicine*, 3:3
15. Pope, K.S. (2011). Are the American Psychological Association's Detainee Interrogation Policies Ethical and Effective? Key Claims, Documents, and Results, *Journal of Psychology*, 219 (3):150-8
16. Soldz, S., Olson, B., Arrigo, J.M. (2017). Interrogating the ethics of operational psychology, *Journal of Community & Applied Social Psychology*, 27 (4): 273-86
17. Staal, M.A., King, R.E. (2000). Managing a Multiple Relationship Environment: The Ethics of Military Psychology, *Professional Psychology: Research and Practice*, 31 (6): 698-705
18. Stephenson, J.A., Staal, M, A. (2007). An ethical decision-making model for operational psychology, *Ethics & Behavior*, 17 (1): 61-82
19. Закон за класифицирани информации

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REVIEW OF THE TREATMENT OF JUDICATURE IN THE REPUBLIC OF SERBIA AND THE REPUBLIC OF MACEDONIA IN CASES OF MIGRANT SMUGGLING[145]

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Abstract

In addition to the treatment within the existing framework of criminal justice for the current problem of migrant smuggling, which was developed by the Republic of Serbia and the Republic of Macedonia, based on the solutions present in international legal documents, dealing with various aspects of this complex social phenomenon, the judicial authorities of both countries have already built a fairly rich and, in many elements, already recognizable practices in the area of sanctioning the criminal behavior of smugglers. Starting from the bases and frameworks defined by the content of the incrimination provided in the Criminal Code of the Republic of Serbia (Art. 350), respectively those contained in the Criminal Code of the Republic of Macedonia (Articles 418-b and 418-v), the judicial authorities of both countries respect the normative solutions present in the provisions of criminal procedural legislation and other relevant legal acts and bylaws. This primarily relates to those that regulate the jurisdiction of the acting judicial authorities, but also the issues of foreigners, refugees and asylum. Acommon determinant of the existing criminal justice solutions, which are, especially in the Republic of Serbia, extremely rigidly enforced in certain cases, is the imposition of imprisonment penalties with a longer duration (especially in the Republic of Macedonia). Without a detailed analysis of the existing normative solutions for basic and qualified forms of incrimination of migrant smuggling, we will focus only on those provisions specifying the circumstances that are most often recognized, valued and used as crucial for assessing the danger which migrant smuggling entails. This will be elaborated by presenting those elements of the decisions

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that indicate a kind of "adaptation of the facts" and a free assessment of the basic and qualitative elements of incriminating actions, as well as the mitigating and aggravating circumstances. With due care, the provisions of procedural legislation will also be subjected to the analysis, as they provide the possibility of ending the initiated procedure at various stages of its unfolding, and those elements of the decisions through which they were instigated and of the completion of the initiated proceedings at one of the initial stages.

Keywords: migrant smuggling, smugglers, criminal prosecution, the Republic of Serbia, the Republic of Macedonia

Introduction

The international community insists that migrant trafficking and smuggling are still present, must be viewed and treated as forms of human rights violations and as acts of organized crime. This also testifies to the fact that, when the United Nations Convention against Transnational Organized Crime was adopted, it was followed by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, in particular Women and Children, and the Protocol against Smuggling Migrants by Land, Sea and Air. The Convention was adopted by Resolution A/RES/ 55/25 (November 15, 2000) and the Protocols in December 2000 (in Palermo). Following the ratification of the above documents, and upon reliance on the solutions contained therein, the Republic of Serbia [146] and the Republic of Macedonia [147] incorporated the amendments in their national criminal laws. With the anticipation of a criminal responsibility, legislators sought to ensure effective criminal law prosecution of traffickers and human traffickers (migrants), as well as other normative solutions, which are present primarily in the provisions of criminal procedural legislation. Despite differences in the normative definition of the bases and frameworks of criminal prosecution of the perpetrators, the practice of the judicial authorities of both countries has a number of qualities which, inter alia, are the result of the existing challenges, and the current and potential solutions for both countries.

Normative framework for the treatment of migrant smuggling by the judicial authorities in the Republic of Serbia

Criminal law

The Republic of Serbia introduced the Law on Amendments to the Criminal Code [148] in 2003. For the first time, it lays down trafficking in human beings as a particularly criminal offense in Art. 111b. In addition to the prosecution of traffickers, the provision imposes criminal prosecution of "people smugglers" (and even migrants)[149] (p. 248). The observed deviations from the principles proclaimed by international conventions regarding the differentiation of smuggling of migrants (human beings) and trafficking in human

[146]Official Gazette of SRJ, International agreements, No 6/01
[147] Official Gazette of RM, No 20/04
[148]Official Gazette of RS, No 39/03
[149]Žarković , M. Zločin trgovine ljudima u krivičnom zakonodavstvu Republike Srbije, in *Zbornik - Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, Ideo*, Beograd, Pravni fakultet Univerziteta u Beogradu, Beograd, 2007, pp. 242-254

beings were the reason for their different normative definition in the 2005 [150] Criminal Code. Modifications were made, inter alia, in Chapter 31, in the group of criminal offenses against public order and peace, where in Art. 350, the offense of illegal border crossing and smuggling of people was prescribed as a special criminal offense.

In 2009 [151], the legislator specified more clearly the passive subject (without stating the nationality of a smuggling person) in Art. 350 p. 2,and the qualified form of smuggling in Art. 350 p. 4, prescribing stricter penalties in the event the criminal act is committed by an organized criminal group (the perpetrator will be punished by an imprisonment of 3 to 12 years). In addition, the legislator excluded the possibility of reducing the penalties for qualified forms of work provided for in Art. 350 p. 3 and p. 4[152] (p.124). With the amendments from 2016 [153], some of the penalties were increased:

- For an act from Art. 350 p. 2, that is, for a person whoallows another illegal passage of the border of Serbia or illegal stay or transit through Serbia, with the intention to obtain for himself or for another any advantage, (substitution of the sentence in duration of six months to five years, by a sentence in duration of one to eight years imprisonment),
- For an act from Art. 350 p. 3, that is, in the event the offense referred to in p. 2 is committed by a group, by abuse of office or in a manner that endangers the life or health of the persons whose illegal border crossing of Serbia, residence or transit is carried out or more persons are smuggled (substitution of the sentence in duration of one to ten years by a sentence in duration of two to twelve years imprisonment),
- For an act from Art. 350 p. 4, that is, in the event the crime referred to in p. 2 was committed by an organized criminal group (replacement of the sentence in durationof three to twelve years, by a sentence in duration of three to fifteen years imprisonment).

The provision in Art. 350 p. 1 sanctions the unauthorized crossing of the state border, stipulating that a lawmaker shall be punished by imprisonment for up to one year without the prescribed permit, or attempting to cross the border of Serbia (previously Serbia and Montenegro), armed or using violence. The same is true of the provision stipulating that the funds intended or used for the execution of the acts from p. Sections 1 to 3 of this Art. shall be seized.

Competence and process opportunities

Pursuant to the Law on the Settlement of Courts [154], an initial first instance court is envisaged for criminal offenses, for which a fine or a prison sentence of up to ten and ten years is prescribed as the main penalty. Insofar as this court is not competent for some cases (in the cases referred to in Art. 350, p. 2), the higher court at first instance shall try the criminal offenses for which the sentence of imprisonment of more than ten years is prescribed as the main penalty (therefore, in the case of crimes under Art. 350 p. 3 and in criminal proceedings for juvenile offenders (Articles 22 and 23 p. 1 and 3)). The Special Department of the Higher Court in Belgrade for organized crime is the first instance court in case of the criminal offense referred to in Art. 350 p. 4. The Law on Organization and

[150]Official Gazette of RS, No 85/05, 88/05, 107/05

[151] Official Gazette of RS, No 72/09

[152] Žarković M.; Rakitovan D. Human Trafficking and Related Criminal Offences in the Criminal Legislation of the Republic of Serbia and Romania: From Incrimination to Present-Day, Journal of Eastern-European Criminal Law, University of Timisoara Faculty of Law, Timişoara, 2016, pp. 113-131, ISSN 2360–4964

[153] Official Gazette of RS, No 94/2016

[154] Official Gazette of RS, No 116/08, 104/09, 101/10, 31/11– other law, 78/11– other law, 101/21, 101/13, 106/15, 40/15– other law, 13/16, 108/16 i 113/17

Jurisdiction of State Authorities in Combating Organized Crime, Corruption and Other Particularly Serious Crimes, [155] inter alia, is foreseen to be applied for the purpose of detecting and prosecuting organized crime offenses (Art. 2, p. 1, it.1).

The higher court decides on appeals (Art. 23, p. 1 and 3)against the decisions of the basic courts issued in proceedings for criminal offenses for which a fine and a sentence of imprisonment of up to five years is imposed (in the case of a criminal act referred to in Art. 350, p. 1), while the appellate court decides on appeals against the decisions of the higher courts, as well as against the decisions of the basic courts in the criminal procedure if the higher court is not competent for deciding on the appeal (Art. 24, p. 1, items 1 and 2). Therefore, the Special Department of the Appellate Court in Belgrade for Organized Crime decides in cases of appealson the first-instance judgment for acts referred to in Art. 350 p. 2 and 3, and appeals on the first instance judgment for acts referred to in Art. 350 p. 4. Prior to the amendmentsto the Criminal Code of 2016, the higher court decided on the offenses from Art. 350 par. 1 and 2 and the appeals of the Basic Court, while the Appellate Court decided on acts from Art. 350 par. 3. Increasing the penalties for offenses referred to Art. 350 par. 2, from a maximum of 5 to a maximum of 8 years, resulted in granting jurisdiction to the Appellate Court for decision-making in the second instance, while the increasedpenalty for the offenses referred to in Art. 350 par. 3 from a maximum of 10 to a maximum of 12 years, resulted in a change in the jurisdiction to decide in the first instance (under the competence of the Supreme Court).

The extent to which the legislator attached importance to the prevention and suppression of people smuggling (in practice, most often migrants), is also testified by the fact that the Criminal Procedure Code [156], in the part which regulates special evidence, sets forth that it could be applied, in the case of a suspicion that the person has committed a criminal offense for which the special prosecution of special jurisdiction is determined by a special law (also refers to the act stipulated in Art. 350, p. 4), as well as other criminal offenses (including those referred to in Art. 350, 2 and 3). The definition of the legislator is also confirmed by the provisions of the Law on Confiscation of Property [157] regulating the criminal act. Namely, in Art. 2 p. 1 and p. 9, the legislator foresees that the provisions governing the conditions, procedure and authorities responsible for the detection, confiscation and management of property of natural and legal persons involved in a criminal offense shall also apply, for the forms of the criminal offense of unauthorized state border crossing and people smuggling envisaged in Art. 350 p. 2, p. 3 and p. 4 (for acts referred to in p. 2 and 3, provided that the property gain obtained by the criminal offense or the value of the criminal offense exceeds the amount of one million and five hundred thousand Dinars).

[155] Official Gazette of RS, No 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05, 61/05, 72/09, 72/11, 101/11 and 32/13

[156]Official Gazette of RS, No 72011, 101/11, 121/12, 32/13, 45/13 and 55/14

[157] Official Gazette of RS, No 32/13 and 94/16

The normative framework of the judicial authorities of the Republic of Macedonia in cases of migrant smuggling

Criminal law

The Law and Amendments to the 2004 Criminal Code [158],addresses the criminal offenses against humanity and international law. The criminal offense of migrant smuggling (Art. 418-b) has been introduced into the national legislation, and Art. 418-v regulates the Organizinga group and inciting the perpetration of acts of trafficking in human beings, traffickingin juveniles and smuggling of migrants.

A special weight of the form of criminal offense from Art. 418-b was established in 2009 (when migrant smuggling is performed by an official in the exercise of his/her official duty) [159].

Under the provisions regulating migrantsmuggling (Art. 418-b), the legislator provides:

(1) The one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose shall be sentenced to imprisonment for at least four years.

(2) The one who recruits, transports, transfers, buys, sells, harbours or accepts migrants shall be sentenced to imprisonment for one to five years.

(3) If during the perpetration of the acts of paragraphs 1 and 2 a migrant's live or health is endangered, or if the migrant is treated in a particularly degrading or cruel manner, or if he/she is prevented from exercising the rights he/she is entitled to according to international law, the perpetrator shall be sentenced to imprisonment for at least eight years.

(4) If the act of paragraphs 1 and 2 is perpetrated against a minor, the perpetrator shall be sentenced to imprisonment for at least eight years.

(5) If the act of paragraphs 1, 2, 3 and 4 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least ten years.

(6) The articles and means of transportation used for the perpetration of the act shall be seized.

Pursuant to the provisions on Organizinga group and inciting the perpetration of acts of trafficking in human beings, traffickingin juveniles and smuggling of migrants, in Article 418-v, the legislator also provides for the following:

(1) The one who organizes a group, a gang or another association with the intention to commit crimes specified in Articles 418-a, 418-b, 418-g and 418-d, shall be sentenced to a prison term of at least eight years.

(2) The one who becomes a member of a group, a gang or another association stipulated in p. 1 or otherwise assists the group, gang or association, shall be sentenced to imprisonment of at least one year.

(4) The one that calls for, incites or supports the perpetration of the crimes specified in Articles 418-a, 418-b, 418-g and 418-d shall be sentenced to one to ten years imprisonment.

158 Official Gazette of RM, No 19/04

159 Official Gazette of RM, No 114/09

Competence and process opportunities

Art. 22 of the Law on Courts [160] stipulates that the Basic Courts, the Courts of Appeal, the Administrative Court, the Supreme Administrative Court, and the Supreme Court of the Republic of Macedonia will exercise the judicial power in the judicial system. The basic courts have been established for one or more municipalities whose jurisdiction is defined by the Law on Courts and are responsible for first instance criminal offenses for which a maximum sentence of up to five years is envisaged under the law (unless under the jurisdiction of another tribunalfor another crime), as well as for criminal offenses for which their competence is specified by a special law (Art. 30). Article 31 prescribes the establishment of basic courts with extended jurisdiction. In addition to their jurisdiction, Article 30 specifies that these courts are competent for the areas for which they have been established, inter alia, for deciding on criminal offenses for which the law prescribes a sentence of imprisonment of more than five years, as well as for criminal offenses of minors.The basic courts with extended jurisdiction are in Bitola, Prilep, Ohrid, Struga, Gostivar, Tetovo, Kumanovo, Kochani, Veles, Strumica, Radovish and Shtip.

The Basic Court Skopje I is a criminal court with basic and expanded jurisdiction, and a specialized court department responsible for the trial of organized crime and corruption for the entire territory of the Republic of Macedonia. The jurisdiction of this court is defined in accordance with the Law on Courts (Official Gazette of RM No. 58/2006) and the Law on Amending and Supplementing the Law on Courts (Official Gazette of the Republic of Macedonia No. 35/2008). Art. 32 of the Law on Courts, in addition to its regularity, states that a specialized court department has the jurisdiction to prosecute the criminal offenses of migrant smuggling referred to in Art. 418-b, trafficking in minors from Article 418-g and other crimes against humanity and international law, regardless of the number of perpetrators.

The Appellate Courts are competent to deal with appeals against the decisions of the Basic Courts in their area (Art. 33), while the Supreme Court of the Republic of Macedonia, among other things, is in charge of settling the third and final instance of appeals against the decisions of appellate courts, of dealing with extraordinary legal remedies against legally effective court decisions and decisions of its panels when determined by law (Art. 35).

Regarding the composition of the courts, the Code of Criminal Procedure (CPC RM) [161] in Art. 25 provides that for the criminal offense for which the main penalty is a fine or a sentence of imprisonment of up to five years, the judge shall adjudicate at the first instance.

In order to create the conditions for efficient prosecution and proving of the criminal offense of smuggling, the Code of Criminal Procedure of the Republic of Macedonia provides the possibility for undertaking special investigative measures in suspected cases of commission of criminal offenses against humanity and international law (and also for the acts referred to in Art. 418 -By 418-v).

The provisions of Article 381 of the CCM RM, which stipulate the conditions, procedures and rules for the rendering of judgments based on a plea of the accused during the main trial, also provide for consideration of the peculiarities of treatment in cases of migrant smuggling.

[160] Official Gazette of RM, No 58/06, 35/08,U.No 256/07,U.No 74/08,150/10,U.No 12/11

[161] Official Gazette of RM, No 150/10 i 100/12, 142/16 and U.No.2/2016,

The provisions of Article 98a CC of the RM on extended confiscation in which, inter alia, are to be applied in relation to perpetrators of criminal offenses committed within acriminal association for which property gain has been obtained, and for which a sentence of imprisonment of at least four years is envisaged.

Review of data on criminal charges for the criminal offense referred to in Art. 350 of the Criminal Code of RS and for the crimes referred to in Art. 418-b and 418-th CC RM and their outcomes

According to the data from the Bulletin of the Republic Institute of Statistics of the Republic of Serbia [[162]] covering the period 2014-2016, 1212 criminal reports were filed for the acts referred to in Art. 350 of the CC of the RS, 1115 against known perpetrators and 97 against unknown perpetrators, 198 reports in 2014, 605 reports in 2015, and 409 reports in 2016. Alarge number of submitted applications were rejected (225 or 18.56%). In the case of 36 complaints, it was established that the reported work was not a criminal offense, in 58 there were no grounds for suspicion that the act was committed. In 10 cases the investigation was interrupted and 21 were suspended (in 16 cases because there was no evidence). 859 charges were raised (155 in 2014, 409 in 2015, 295 in 2016) against 1030 persons. Sentences were pronounced against 920 persons. This includes pronouncing 577 prison sentences, 335 suspended sentences, 7 fines (5 in the range of 100 to 200 thousand Dinars and two in the range of 10 to 100 thousand Dinars) and one educational measure.

The maximum number of imprisonment sentences ranged from 6 to 12 months (224). The most severe sentences of imprisonment (ranging from 5 to 10 years) were rendered to three defendants. Penalties ranging from 3 to 5 years were imposed on 17 persons, with 29 persons sentenced to two to three years; 61 persons were sentenced to one to two years of imprisonment, 49 persons were sentenced to 3 to 6 months; nine persons were sentenced to two to three months, and 10 persons were sentenced to up to two months. Furthermore, the court ordered 175 prison sentences of up to one year to be executed as house arrests.

According to the data of the State Statistical Office of the Republic of Macedonia[[163]] covering the period 2014-2016, 169 criminal reports were filed for the criminal offense referred to in Art. 418-b (4 of which against unknown perpetrator), 35 reports in 2014, 77 in 2015, 57 reports in 2016. One application was rejected, 165 charges were filed against 352 persons, and 348 were convicted. 328 persons were sentenced to prison.

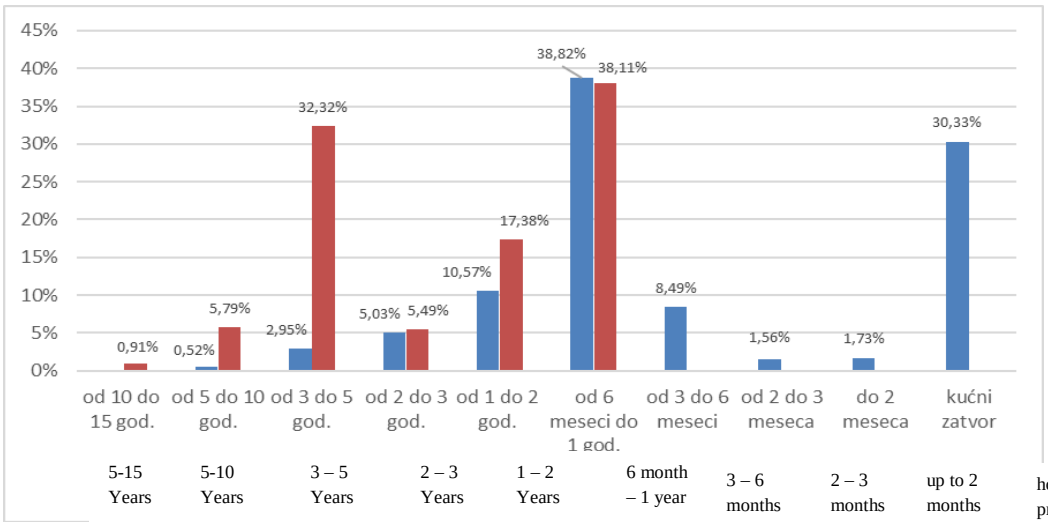
The maximum number of imprisonment sentences ranging between 6 months and one year of imprisonment was 125. Sentences ranging from 10 to 15 years were pronounced to three persons, sentences ranging from 5 to 10 years imprisonment to 19 persons, sentencesranging from 3 to 5 years to 106 persons, sentences ranging from two to three years to 18 persons andsentences ranging from one to two years were pronounced to 57 persons. Probation was pronounced in 19 cases, and confiscation of property in 10

[162] The Republic Institute of Statistics of the Republic of Serbia, Available online: http://www. stat.gov.rs/WebSite/ repository/documents/00/02/54/03/SK12_194-srb-punoletni-2016.pdf, http://www.stat.gov.rs/ WebSite/repository/documents/ 00/02/35/82/SB-617-Punoletni2015.pdf, http://www.stat.gov.rs/ WebSite/repository/documents/00/01/97/00/SB_ 603_Punoletni_ ucinioci_KD_2014.pdf, (accessed on 24.2.2018.)

[163] The State Statistical Office of the Republic of Macedonia, Available online: http://www.stat. gov.mk/Publikacii/2.4.17.09.pdf, http://www.stat.gov.mk/Publikacii/2.4.16.08Kor.pdf, http://www.stat.gov.mk/Publikacii/2.4.15.12.pdf, (accessed on 24.2.2018.)

cases. Confiscation of the case was pronounced in 308 cases, and expulsion of foreigners in 22 cases. Alternative sanctions were imposed in 19 cases.

In the period from 2015 to 2016, 13 persons were charged with the criminal offenses referred to in Art. 418-v and 12 were sentenced for them. The sentence of imprisonment ranging from 5 and 10 years was pronounced to five defendants, ranging from 3 to 5 years, that is, from two to three years to one defendant, the sentence of imprisonment ranging from one to two years to four defendants, and one defendant was sentenced to six months to one year. The decision to confiscate cases was made in three cases.



Graph No. 1 Presentation of the [illegible] the Republic of Serbia and the Republic of Ma[illegible] migrants) in the period 2014-2016.

35 judgments in human smuggling cases (migrants) were subject to more detailed analysis. Of the total of 26 cases from the Republic of Serbia, sixteen of them contained only first instance decisions (6 basic courts and ten special departments of the higher court for organized crime in Belgrade), seven judgments included first and second instance decisions, and in two cases there were first instance and second instance decisions and verdicts on request for protection of legality. In addition to the judgments of the Basic Court Skopje I Skopje - a specialized court department responsible for the trial of organized crime cases, the analyzed cases from the practice of the courts in the Republic of Macedonia included three cases of a second instance verdict, a second instance in two cases and a judgment on an extraordinary legal remedy in one.

In the Republic of Serbia and the prosecuted cases on the grounds of p. 3 of Article 350, the most used qualifying circumstance was - more persons (five and more trafficked migrants). Unfortunately, the fact is that in some judgments, the consideration of this circumstance is not carried out (the judgment of the Basic Court in Bujanovac K. No. 105/16 on the occasion of the transportation of 5 foreign nationals), that is, it is not taken into consideration or interpreted with a sufficient understanding of the context of the acts referred to in Art. 350 (for example, by neglecting the fact that the three co-perpetrators,

with a prior agreement at a pre-agreed location, took jointly over 7 foreign citizens into their vehicles for further transportation, knowing that they did not have passports with visas for legal entry into Serbia - the judgment of the Appellate Court in Kragujevac CP 1259/16, on the occasion of the judgment of the Basic Court in Kraljevo, No. 408/15).

In addition, for the qualified form referred to in p. 3 of Article 350, the most commonly issued penalty was a one-year imprisonment, often followed by a decision for house arrest. Additionally, in some decisions the Court did not assess at all the aggravating circumstances when deliberating the sentence. Thus, for example, in the judgment of BC 5K 165/15, Basic Court of Pirot, in the case where the two circumstances were the basis for referring to 350. 3 in relation to p. 2 (the act was committed by a group and several persons were smuggled),it did not reflect the length of the sentence imposed on the three accomplices at the level of the legal minimum (1 year in prison). The Appellate Court in Nish, in the case Kž1 697/15, with the amended legal qualification of Article 350 p. 2, after the appeal of the plaintiff against the first instance verdict rendered by the Basic Court in Surdulica (Judicial Unit in Vladičin Han) no. K 41/15, by which the court pronounced a prison sentence for one day longer than 130 days spent in custody by two foreign nationals, the sentence was replaced by the minimum sentence of imprisonment for the act referred to in Article 350 p. 3 in relation to p. 2 (one year in prison). Similarly, with respect to the judgment of BC Subotica K. 592/16, by which three Abkhazian citizens were accused of perpetrating an act referred to in Article 350 p. 3 in relation to p. 2 (for smuggling of 7 migrants), following the changed (milder) legal qualification of the prosecutor during the procedure and by applying the provisions on mitigation of sentences, the sentence for the act referred to in Article 350 p.was 2 to 5 months imprisonment (the measure of expulsion of foreigners for 5 years).

The facts related to a threat upon the life or health of persons are seldom taken into account, moreas an exception to the rule. Thus, for example, although they had a legal basis, even when qualifying the criminal offense, neither the prosecutors nor the courts considered the fact that in a vehicle intended for transportation of maximum 8 passengers, up to five times more people (migrants) were transported. This, although it is beyond doubt that the management of such vehicles, in violation of the provisions of the Law on Road Traffic Safety [[164]], entails also the endangerment of the life or health of the person whose unauthorized border crossing, stay or transit is allowed, and this is precisely envisaged as a qualifying circumstance in Article 350 p. 3 (see the Verdicts: the Basic Court in Zajecar 2K 175/15, the Appellate Court in Nish, Case No. 1, No.394 / 16 and the Appellate Court in Belgrade, Kz 1 836/15)

In court practice, it is still possible to find, fortunately rarely, ambiguous interpretations of certain attributes. For instance, the interpretation that the smuggling of human beings, in the sense of the incrimination referred to in Art. 350 KZ, is enabling another to cross the state border illegally, in terms of secret, concealed and illegal entry into the territory of our state, through or outside the border crossing. Consequently, the qualifying circumstance referred to in Art. 350 st.3 of the Criminal Code of the RS (smuggling of a large number of persons) does not refer to illegal transit as a means of execution defined in cited provisions in p. 2 (Appellate Court in Nish, Kž 1, No. 394/16). Acting on the request for protection, the Supreme Court of Cassation in the judgment Kzz 908/16 stated that the conclusion of the second instance court given in the contested final

[164]Official Gazette of RS, No 41/09, 53/10, 101/11, 32/13, 55/14, 96/15, 9/16

decision cannot be accepted in the part in which it states enabling more foreign citizens to transit illegally through the territory of Serbia.

In the cases from the Republic of Serbia all of the verdicts contained the measure of confiscation of funds / objects, including vehicles (from the taxi driver and when another person is the owner) intended or used in the perpetration of the offense referred to in p. 2 and 3. Also, in all the verdicts where the defendant was a foreign national, the court also issued a security measure of expulsion. Court practice varies in terms of the duration of the measure, ranging from one to ten years. However, none of the verdicts states the reasons for the court to reach that specific decision.

Due to the fact that the age of the smuggled person is a qualifying circumstancefor the act from Article 418-b, the question of determining the age of the persons (for example, from 15 to 19 years) who are smuggled is a matter of urgency, and in this regard, the question of the sentences rendered in such cases (this is a special minimum sentence of 8 years imprisonment). With respect to the judgment of the Appellate Court Skopje KZ. No 2243 / 14, this court proceeded upon the appeal against the judgment of the Basic Court Skopje I Skopje, specialized court department for criminal offenses in the field of organized crime and corruption (VI KOK. No 60 / 14), which sentenced three defendants to eight years in prison, reversing the decision on the criminal sanction, with the application of the provisions of the CC RM on mitigation of sentences. Three of the defendants convicted for the criminal offense referred to in Art. 418-b p. 4 in conjunction with p. 2 CC RM, were sentenced to four years imprisonment.

With regard to the definition of penalties that are significantly more severe than those pronounced in the Republic of Serbia, but also often at the limit of the minimum that can be imposed with the application of the provisions on the imposition and mitigation of penalties provided for in the legislation of the Republic of Macedonia. The Basic Court Skopje I Skopje KOK.br 102/15 sentenced the accused for the criminal offense referred to in Art. 418-vp. 2 to one year and six months in prison, and for the criminal offense referred to in Articles 418-b, 4 in conjunction with p. 2 to six years imprisonment, combining the two sentences into a single sentence of seven years in prison, The Court of Appeal Skopje (KOKŽ - 109/15), acting upon the appeal against the judgment of the Basic Court Skopje, changed the sentence with reference to the provisions on the mitigation of sentences, and sentenced him to a single sentence of 6 years in prison (previously the punishment for the crime referred to in Art. 418-b p. connected with p. 2 was 5 years in prison).

The verdicts of the Basic Court Skopje are based on pleading guilty and the testimonies in the short duration of the proceedings, as well as for the purpose ofavoiding fines at a level that is close to the minimum that the legislator presumes under the provisions defining the limits of the sentence mitigation. They also apply the provisions of the Law on Determining the Types and Levels of Sentence. Thus, for example, in the judgment of KON No 31/16, which was rendered 49 days after the date of commission of the criminal offense, the defendant was sentenced to one year and four months imprisonment for migrant smuggling, referred to in Art. 418-b p. 2. In this case, neither the prosecutor nor the court paid attention to the fact that the defendant in the passenger vehicle "Opel Sintra" transported 17 persons (thus endangering the life / health of the smuggled persons). Similarly, in the judgment of the same court KON No. 17/16 (rendered on the basis of the admission of guilt on the eighth day from the date of commission of the criminal offense), the defendant was sentenced to ten months in prison, although he drove 9 migrants in a passenger car.

Conclusion

The general impression is that the judgments demonstrate a view that migrant smuggling represents a less important social threat than some other criminal offenses and this "attitude" is reflected on the quality of the proceedings, presented and collected evidence, the choice of penalties, etc. This even applies to cases in which the defendants / accused were persons with "criminal history" having committed serious criminal offenses with the purpose of obtaining financial benefits. This is further proved by the endeavor to effectively end the proceedings, as well as by the significant number of judgments given on the basis of the agreement on the recognition of a criminal offense by the Special Department for Organized Crime of the Higher Court in Belgrade, i.e. those brought on the basis of pleading guilty before the Basic Court in Skopje I. This is often done with the application of the provisions on mitigation of sentences (in practice, the courts in the Republic of Serbia apply them only for the act envisaged in Art. 350, p. 2).

Given the penalties imposed, both in the Republic of Serbia and in the Republic of Macedonia, the trial in individual cases of smuggling of people (migrants) may be within the jurisdiction of an individual judge. In the Republic of Serbia, this may be the judge of any local competent court, and in the Republic of Macedonia only the judge of the Basic Court in Skopje I Skopje, specialized court department responsible for the trial of acts in the field of organized crime of corruption is competent for the entire territory of the Republic of Macedonia, but also for all criminal acts from the group of acts against humanity and international law, and also for all acts from Art. 418-b and 418-v, regardless of the number of perpetrators.

When determining the facts, the majority of courts, inter alia, take into account the statements of the smuggled migrants interviewed as witnesses, and the acts of the misdemeanor courts that these persons were heard in the proceedings led against them. In the Republic of Serbia, some prosecutors advocated the view that, for the application of the provisions of Art. 350 of the Criminal Code, it was necessary that a judgment was issued by a misdemeanor court to establish that the criminalized migrant illegally crossed the state border, that is that he / she is illegally staying in the Republic of Serbia. This interpretation is controversial, given that a misdemeanor court should not issue a conviction if the conditions for the application of Art. 8 of the Law on Asylum and / or Art. 31 of the Geneva Convention relating to the status of refugees (the principle of impunity) have been met (quite common on the border with Hungary). A certain number of prosecutors consider that only the initiation of misdemeanor proceedings against a smuggled migrant is sufficient. In recent judgments, a very different practice was recorded, since the fact of the legal status of smuggled persons is considered only exceptionally.

References

Official Gazette of SRJ, International agreements, No 6/01
Official Gazette of RM, No 20/04
Official Gazette of RS, No 39/03
Žarković , M. Zločin trgovine ljudima u krivičnom zakonodavstvu Republike Srbije, in *Zbornik - Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, Ideo*, Beograd, Pravni fakultet Univerziteta u Beogradu, Beograd, 2007, pp. 242-254
Official Gazette of RS, No 85/05, 88/05, 107/05

Official Gazette of RS, No 72/09
Žarković M.; Rakitovan D. Human Trafficking and Related Criminal Offences in the Criminal Legislation of the Republic of Serbia and Romania: From Incrimination to Present-Day, Journal of Eastern-European Criminal Law, University of Timisoara Faculty of Law, Timişoara, 2016, pp. 113-131, ISSN 2360–4964
Official Gazette of RS, No 94/2016
Official Gazette of RS, No 116/08, 104/09, 101/10, 31/11– other law, 78/11– other law, 101/21, 101/13, 106/15, 40/15– other law, 13/16, 108/16 i 113/17
Official Gazette of RS, No 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05, 61/05, 72/09, 72/11, 101/11 and 32/13
Official Gazette of RS, No 72011, 101/11, 121/12, 32/13, 45/13 and 55/14
Official Gazette of RS, No 32/13 and 94/16
Official Gazette of RM, No 19/04
Official Gazette of RM, No 114/09
Official Gazette of RM, No 58/06, 35/08,U.No 256/07,U.No 74/08,150/10,U.No 12/11
Official Gazette of RM, No 150/10 i 100/12, 142/16 and U.No.2/2016,
The Republic Institute of Statistics of the Republic of Serbia, Available online: http://www. stat.gov.rs/WebSite/ repository/documents/00/02/54/03/SK12_194-srb-punoletni-2016.pdf, http://www.stat.gov.rs/ WebSite/repository/documents/ 00/02/35/82/SB-617-Punoletni2015.pdf, http://www.stat.gov.rs/ WebSite/repository/documents/00/01/97/00/SB_ 603_Punoletni_ ucinioci_KD_2014.pdf, (accessed on 24.2.2018.)
The State Statistical Office of the Republic of Macedonia, Available online: http://www.stat. gov.mk/Publikacii/2.4.17.09.pdf, http://www.stat.gov.mk/Publikacii/2.4.16.08Kor.pdf, http://www.stat.gov.mk/Publikacii/2.4.15.12.pdf, (accessed on 24.2.2018.)
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INTERNATIONAL MISSIONS OF THE EUROPEAN UNION IN LEBANON AND IRAN

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Following the Kosovo war in 1999, the European Council agreed that "the Union must have the capacity for autonomous action, backed by credible military and police forces, the means to decide to use them, and the readiness to do so, in order to respond to international crises without prejudice to actions by NATO. The creation of an EU capacity for crisis management has been set by the European Councils of Nice and Goteborg in order to be capable of covering a full range of police missions from training, advisory and monitoring missions to executive missions. To meet these EU goals at the Police Capabilities Commitment Conference in 2001, the Member States of the Union undertook responsibility to provide 5000 police officers by 2003, out of whom 1400 police officers could be deployed within thirty days. Thus from 200,3 EU's ESDP began to function effectively by conducting its first military, police and rule of law missions in Europe, concretely in the Balkans, and at international level beyond the European continent, such as the Middle East:the EU police missions in Lebanon and EU involvement in the nuclear program in Iran. They were established for monitoring, mentoring and advising the countries' police and administration, thus helping to fight organized crime as well as promoting European democratic standards.

In this context the research paper aims to show the positive and negative experiences of the EU police missions in Lebanon and the EU involvement in the nuclear program in Iran, thus serving to point out the perspectives for future developments and improvements in conducting rule of law missions at the international scene by the European Union.

Keywords: rule of law, European Union, crisis management missions.

1. THE ENGAGEMENT OF THE EUROPEAN UNION IN LEBANON

The engagement in Lebanon is one of the first missions of the European Union. However, this is not the Union's own arrangement, it is a mission within the framework of the United Nations (UN). Namely, after the fierce confrontation between the Israeli Army and the Hezbollah, in July 2006, the UN Security Council adopted Resolution 1697 on 31 of July 2006, which was continued and strengthened by the presence of the UN temporary forces that had been present in Lebanon since 1978. Nevertheless, this could not prevent the hostilities, and the trust and integrity of the Security Council were shaken. Finally, the UN Security Council adopted Resolution 1701 on 11 August, which required immediate cessation of the attacks by Hezbollah, and the interventions of the Israeli Army.[165] Consequently, both sides complied with all requirements and the ceasefire started on 14 August. The initiative for adopting such resolution was first taken by France, suggesting

[165] Security Council Resolution 1701, 11 April 2006

the text for the draft-resolution in the UN and Brussels.[166] Later, on 5 August, France and USA jointly proposed a draft-resolution for cessation of the conflict in Lebanon.[167] Unlike in other UN peace operations, this time the EU participated actively, from the very beginning in the preparation of the new UN mission, despite the initial hesitations by certain member- states.[168] Even France did not accept readily Chapter VII of the UN Charter (that allows a state to use force and sanctions) and insisted that the mandate on the use of force be correctly established – having learned from the bad experience with the UN mission in the Balkans. In the last negotiation stages, with the adoption of Resolution 1701 France considered the engagement of its army contingent in United Nations Interim Force in Lebanon (UNIFIL). Resolution 1701 was finally adopted in the UN on 11 August.[169] France committed only 200 soldiers to this operation, so the leadership was taken by Italy which sent 3000 soldiers and Italy hinted its own involvement in Gaza.[170] This situation lasted until the conference for commitment of military forces that was held on 25 August.[171] At this conference of the EU foreign ministers, 7000 soldiers were committed to secure the countries that are EU members (under the command of France) and together with the Lebanese army they created a buffer - zone between Israel and Hezbollah.[172] French President Jacques Chirac said at the Annual Ambassadors Assembly that the EU was too much absent in the settlement of the Lebanon crisis, regretting that the other member-states did not give mandate to Solana, " to speak and to act" on behalf of the EU, like in Iran, something that can allow the EU to mobilize "its own forces in function of peace".[173] This was not accepted even upon the suggestion of the Secretariat of the Council in Lebanon to use the third concept for the purpose of creating battle groups (to use the EU as a "clearing house") to manage the national contributions for the UN missions. However, Solana qualified the EU dominant leadership function in the UN missions in Lebanon as a fundamental change in the configuration of international capacity in the Middle East. One EU diplomat stated: the geometry of the power in the Middle East was changed, i.e. USA is no longer an actor in the region like before.[174] The major part of the troops arrived on 1 September, however, there were differing views as to what needed to be their function. Hence, Israel insisted that the EU forces needed to have more executive functions and help the Lebanese forces to take control of the country and to disarm Hezbollah.[175]

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[166] Beatty, A., ''EU hopes Lebanon accord will spur security Council'' ,*European Voice*, Vol. 12 No. 30, 3 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26017.

[167]*The Security Council*,*Recalling* all its previous resolutions on Lebanon, in particular resolutions 425 (1978), 426 (1978), 520 (1982), 1559 (2004), 1655 (2006) and 1680 (2006), as well as the statements of its President on the situation in Lebanon, in particular the statements of 18 June 2000 (S/PRST/2000/21), of 19 October 2004 (S/PRST/2004/36), of 4 May 2005 (S/PRST/2005/17) of 23 January 2006 (S/PRST/2006/3) and of 30 July 2006 (S/PRST/2006/35) pass on Draft Resolution.

[168] Gresh, A., ''Middle East: What will Emerge from the Riuns'',,*Le Monde Diplomatique*, August, 2006.

[169] International Crisis Group. ''Israel/Hidbollah/Lebanon: Avoiding Renewed Conflict, '*Middle East Report* No. 59, I November 2006. p. I I.

[170] Emerson, M. &Tocci, N., ''EU next Steps in the Middle East' 'European Voice, 28 September 2006.

[171] Bet el, l., ''the sad chronicle of Middle East insincerity'', European Voice, Vol. 12 No. 31, 31 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26082.

[172] Diab, K., ''Using a Carrot and stick for Peace'', European Voice, Vol. 12 No. 31, 31 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26081.

[173] Taylor, S., ''was the EU ''missing in action'' in Lebanon war?'', European Voice, Vol. 12 No. 31, 31 August 2006.

[174] Beatty, A., '' EU's growing role in the Middle East'', European Voice, Vol. 12 No. 34, 21 September 2006. http://www.europeanvoice.com/archive/article.asp?id=26237.

[175] Beatty, A., ''EU troops face ''long and hard'' Lebanon mission'', European Voice, Vol. 12 No.31, 31 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26079.

2. ENGAGEMENT OF THE EUROPEAN UNION IN RELATION WITH THE IRANIAN NUCLEAR PROGRAM

The Iranian nuclear program is almost 60 years old. More intensive engagement of the EU in relation to the Iranian nuclear program followed after the adoption of the European Security Strategy which qualifies the proliferation of mass destruction weapons, like the weapons in Iran, as one of the five crucial threats which modern world faces.[176] The same applied after the adoption of the Strategy against Proliferation of Weapons.[177] The international community became aware of the Iranian nuclear program in the summer of 2002, taking into account the information from the Iranian opposition. It was then that some light was shed for the first time on the existence of two unknown nuclear plants in Iran - one in Natanz - for enrichment of uranium, - the other in Arak - for production of hard water. In addition, substantial amounts of uranium were discovered in Sagand.[178] The first exploring center in the framework of the University of Teheran that owned a reactor was built with American help in 1960. Later, France and Iran opened a joint company- Eurodif- for cleaning and enrichment of uranium. The cooperation with France had allowed Iran to build a tremendous number of 20 nuclear centers in 1970. Nonetheless, in this period there were no indications that Iran would develop them for military purposes; an agreement on nonproliferation was concluded and Iran agreed on insight by International Atomic Energy Agency (IAEA) inspectors. In the period between 1984 and 2002, Iran caused considerable trouble by not respecting its own obligations arising from the agreement on nonproliferation. In February 2003, the International Atomic Energy Agency released a report, according to which, it was difficult to estimate the volume of the Iranian nuclear program. Iran admitted that importing uranium without reporting it to the IAEA was opposite to the Agreement on Nonproliferation.[179]

In June 2003, the IAEA reported that Iran had not completed its own obligations.[180] The USA insisted that the case needed to be referenced to the United Nation Security Council; on the other hand, the EU did not agree with that. In December 2002, the EU started negotiations with Iran for concluding an agreement on trade and association; however, after the IAEA report, the negotiations were suspended. There was no special effect issued to Iran, which in the summer of 2003 continued with the uranium enrichment process. On the part of the IAEA, in September they gave Iran a deadline for providing all the data on its own nuclear program by 31 October.[181] Prior to this deadline, the Foreign Ministers of Germany, France and Britain visited Teheran to reinforce the IAEA ultimatum and present the EU approaches. However, these three countries had not previously coordinated their actions with the other EU member countries to prioritize this action from the very start as the EU approach.[182] Nevertheless, since the mission of the three Ministers

[176] EU Security Strategy '' A Secure Europe in a better World'', 12 December 2003.
[177] EU Strategy against Proliferation of Weapons of Mass Destruction, December 2003,
[178] Borda, A., 'The Iranian nuclear issue and EU3 Negotiations'', *FORNRT Working Paper* No.8, 2005, p.l.
[179] Sazhin, V., ''Iran's Nuclear Program: A Russian Perspective,'' Allin, D.& Emerson, M., *Readings in European Security vol. 3,* Centre for European Policy studies, Brussels & International Institute for Security Studies London, 2005, p. 137.
[180] Report by the Director General to the Board of Governors of IAEA, GOV/2003/40. 6 June, 2003, http://www.IAEA.or.at/Publications/Documents/Board/2003/gov2003-40.pdf ,p. 7.
[181] Resolution of the Board of Governors of IAEA, GOV/2003/69, Vienna, 12 September, 2003, http://www.IAEA.or.at/Publications/Documents/Board/2003/gov2003-69.pdf
[182] Teheran declaration ,. Look : IAEA, Statement by the Iranian Government and visiting EU Foreign Ministers'', 21 October 2003, www.idea.org/NewsCenter/Focus/laeaIran/statement_iran21102003shtml.

was successful, Iran agreed to sign and ratify the additional IAEA Protocol, and even more importantly, to stop the enrichment of uranium, and started acting accordingly when the Protocol came into force. The ratification of the additional protocol allowed IAEA inspectors to explore unreported plants for enrichment of uranium. The Council for Foreign Affairs had formally supported their mission in October 2005.[183] There was no suspicion that in case of passivity of the other members, EU 3 would provide visibility to the EU related to Iranian's global stage place. However, it quickly transpired that this success was just temporary. Namely, after the departure of the three Ministers from Teheran, both sides started to interpret the agreement differently. Hence, the Iranian side claimed that Iran is free to continue with the enrichment uranium process that was temporarily suspended when they choose so. At the start, Iran showed goodwill by signing the additional protocol, which was actually not ratified. During the signing period, Iran sent a detailed document to the IAEA for its own nuclear program. After this period, the inspectors faced obstructions in their work and they concluded that there were inconsistencies and incompatibilities in the Iranian report and that the report was not completed. In one IAEA report from February 2005, it was found that Iran had not reported the designs of P-2 centrifuges (that were used as materials for nuclear bombs) and that Iran had concealed the experiments with plutonium 210 – a substance which is used for initiation of nuclear explosion. In May 2004, Iran submitted one more declaration to IAEA, however the next month, in June, the Agency Management Board had yet another unsatisfactory case of cooperation with its inspectors and called upon Iran to meet its own obligations.[184] As a result of this blatant statement, Iran declared its withdrawal from the October agreement made with EU- 3 and immediately started with an enrichment uranium process by building a centrifuge. Two weeks later, there was an attempt for reconciliation between EU-3 and Iran in Paris with no result. Then, the EU 3 Ministers threatened Iran that if it did not suspend completely the uranium enrichment process, they would support readdressing the issue to the UN Security Council. As a result of that development, the IAEA threatened that in September they would readdress the case to the Security Council. However, this would happen if Iran had not completed the new requirements by the IAEA within a new term - November 25, 2004. The requirements was for Iran to stop the uranium enrichment process immediately and forever, as well as all other activities connected with that process, as building of centrifuges, and immediately ratify and accept the Additional Protocol.[185] In mid October, EU 3 and Solana successfully convinced the USA to give Iran one more chance - through economic incentives and a contract for cooperation in the field of nuclear energy for civilian goals. Iran agreed and on November 15 the uranium enrichment process was suspended, but only during the period of negotiations for concluding the agreement. This "deal" was opposite the IAEA requirements, and other countries, including China and Russia, agreed that Iran must have one more chance, so that the EU made them partners and active participants. In the same month, the Paris agreement was concluded, in line with which Iran committed to continue the suspension, regarding all activities related to the enrichment and reprocessing. On its own part, the EU was committed to work on negotiations for concluding a mutual

[183] Poch. W., ''The EU and Iran: The Tangled Web of Negotiations,'' in: Posch, W., Iranian Challenges, Paris EU Institute for Security Studies, 2006, pp. 99-114.
[184] Resolution of the Board of Governors of IAEA, Vienna, 18 June 2004, GOV/2004/49, http://www.IAEA.or.at/Publications/Documents/Board/2004/gov2004-49.pdf.
[185] NPT Safeguards Agreement in the Islamic Republic of Iran, Resolution of the Board of Governors of IAEA, 18 September, 2004.

acceptable agreement on the final arrangement and EU 3 promised to provide an access for the Iranian nuclear fuel and start negotiations for access of Iran into the World Trade Organization.[186] The EU recognized the Iranian law for developing a nuclear program for civilian goals, however demanding objective guarantees that this program would not be abused for military goals. To that end, it was necessary that Iran would demonstrate complete transparency and full cooperation with IAEA, as a voluntary application of the agreement for non-proliferation. However, the situation with the Iranian nuclear program became more problematic after the election of the new Iranian President- Ahmadinejad in July 2005. In August, Iran already "opened" the nuclear plant (in Isfahan) which was closed by the IAEA and initiated activities for conversion of uranium, which was perceived by the EU as a significant violation of the Paris Agreement of November 2004. Consequently, on 24 September 2005, the IAEA adopted a resolution noting that Iran had committed a material violation and that Iran did not respect the non-proliferation agreement. The IAEA concluded that after 3 years some disputed issues could not be cleared.[187] On the other hand, there was not any cause for readdressing the case to the Security Council. In January 2006, Iran started with another nuclear plant in Natanz, and the goal was to continue its nuclear program. After the European requirements, the IAEA Management Board held a session from 2 to 4 February 2006, and adopted a resolution which required that Iran immediately suspend completely the uranium enrichment and all processes related to it, and to review the building of a reactor with hard water.[188] Iran was requested to ratify an additional protocol, and to behave in the meanwhile according to the protocol. In addition, Iran was to apply the transparency actions that were required by IAEA General Director and to forward all reports on the Iranian nuclear program to the Security Council. The resolution was supported by Russia and China, under one term that there would be no sanctions against Iran. In response, Iran stopped the suspension of the uranium enrichment process and issued a statement that there were no more obligations related to the additional protocol.[189] In June 2006, the five permanent UN Security Council members and Germany offered Iran a new stimulative package to cancel his own nuclear program. It was offered to Iran to help its civilian nuclear program and also international quarantines to supply Iran with nuclear fuel. This suggestion followed when Iran increased its own efforts for uranium enrichment, several months before the IAEA found that Iran had tested gas cascade with 164 machines for uranium enrichment in Natariz, which was a serious warning for the international community. According to te experts, Iran still needed to enrich a uranium for several years, because it was necessary for its thousand machines. Despite this offer from P5 and Germany, Iran did not respect its obligations to the international community under the terms imposed by UN SC Resolution 1696 from 31 August 2006. After Iran's latest failure to comply with its obligations, the USA pledged for adopting a new UN SC Resolution for imposing sanctions against Iran, but then again the

[186] 'Communication dated 26 November 2004 received from the permanent representatives of France, Germany and the Islamic Republic of Iran and the United Kingdom concerning the Agreement signed in Paris on 15 November 2004''. www.IAEA.org/Publications/documents/Infcircs2004/inf_circ637/pdf.

[187] Resolution adopted on 24 September 2005. www.ieae.or/Publications/Documents/Board/2005/gov2005-77.pdf.

[188] Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran. Resolution adopted by the Board of Governors of IAEA, 4 February, 2006, GOV/2006/14, point 1, p. 2.

[189] Coughlin, C., ''Iran plant '' has restarted it's nuclear bomb-making equipment''. *Sunday Telegraph*, 12 February 2006, www.telegraph.co.uk/news/main.jhtml?xml=/news/200602/11/wiran11/xml.

EU tried to restore the negotiations.[190] Hence, on 10 September, conversations were held between the EU representative Javier Solana and Iranian negotiator Ali Larixani, pertaining to the nuclear program. Both of them agreed that there was progress in their talks, so they clarified certain questions arising from the "stimulative package". There was a possibility for a two - month suspension of the uranium enrichment process, when the negotiations started. In his last report sent to the IAEA Management Board and the Director Mohamed El Baradey, Solana concluded that Iran had not stopped with the uranium enrichment process. On top of this, Iran decided to reduce the cooperation with the IAEA, but remain connected, depending on the further review of its nuclear program by the Security Council. Yet, according to Baradey, the agency did not have an opportunity to clarify the numerous questions connected with Iranian nuclear program. Finally, in December 2006, the UN SC adopted Resolution 1737 which bans Iran to enrich uranium and UN SC introduced a series of restrictive measures against Iran. In April 2007, the EU adopted a regulation that imposed restrictive measures on Iran, based on the UN sanctions.[191] From then onwards, the UN SC is reviewing the Iranian record.

3. CONCLUSION

This paper addresses the period after 2003 when the European Defense and Security Policy started to function effectively and it is the first view - military and political on the missions on European soil and beyond the European continent. The Union has performed missions with different character, such as the mission in Rafah, the missions for rule of law in Iraq and Georgia, as well as other initiatives in Iran and Lebanon. It can be deduced that the EU missions were fairly successful and most of them had successfully achieved their goals. The fundamental change in the configuration of the international capacity in the Middle East can be seen through the dominant leadership function of the EU in the UN missions in Lebanon. Certain researchers share the view the geometry of the power in the Middle East has changed, i.e. the USA is no longer an actor in the region like before. However, the same cannot be concluded with respect to the EU engagement concerning the Iranian nuclear program. The incoherence within the Union and the ineffectively conducted negotiations led to an increased number of countries possessing weapons of mass destruction. According to the afore – stated, it has caused combinations of capacities from the second instrumental pillar with instruments from first pillar and some European commission projects, and the related military, police and civilian crisis management. The ensuing conclusion is that the EU crisis management should be more comprehensive and more basic, rather than purely military crisis management for other organizations or countries that are involved in this plan. Furthermore, the process of upgrading the EU military, police and civilian capacities for conducting operations should be continued.

[190] Security Council Resolution 1696 of 31 Juiy 2006, point 7.
http://daccessdds.un.org/doc/UNDOC/GEN/N06/450/22/PDF/N0645022.pdf?OpenElement.
[191]Regulation of the European Union 423/2007.

4. REFERENCE

1. Security Council Resolution 1701, 11 April 2006
2. Beatty, A., ''EU hopes Lebanon accord will spur security Council'' , *European Voice*, Vol.12 No. 30, 3 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26017.
3. *The Security Council,Recalling* all its previous resolutions on Lebanon, in particular resolutions 425 (1978), 426 (1978), 520 (1982), 1559 (2004), 1655 (2006) and 1680 (2006), as well as the statements of its President on the situation in Lebanon, in particular the statements of 18 June 2000 (S/PRST/2000/21), of 19 October 2004 (S/PRST/2004/36), of 4 May 2005 (S/PRST/2005/17) of 23 January 2006 (S/PRST/2006/3) and of 30 July 2006 (S/PRST/2006/35) pass on Draft Resolution.
4. Gresh, A., ''Middle East: What wil Emerge from the Riuns'',, *Le Monde Diplomatique*, August, 2006.
5. International Crisis Group. ''Israel/Hidbollah/Lebanon: Avoiding Renewed Conflict,''*Middle East Report* No.59, I November 2006. p. I I.
6. Emerson, M.&Tocci, N., ''EU next Steps in the Middle East'', European Voice, 28 September 2006.
7. Bet el, l., ''The sad chronicle of Middle East insincerity'', European Voice, Vol. 12 No. 31, 31 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26082.
8. Diab, K., ''Using a Carrot and stick for Peace'', European Voice, Vol. 12 No. 31, 31 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26081.
9. Taylor, S., ''Was the EU ''missing in action'' in Lebanon war?'', European Voice, Vol. 12 No.31, 31 August 2006.
10. Beatty, A., '' EU's growing role in the Middle East'', European Voice, Vol. 12 No. 34, 21 September 2006. http://www.europeanvoice.com/archive/article.asp?id=26237.
11. Beatty, A., ''EU trops face ''long and hard'' Lebanon mission'', European Voice, Vol.12 No.31, 31 August 2006. http://www.europeanvoice.com/archive/article.asp?id=26079.
12. EU Security Strategy '' A Secure Europe in a better World'', 12 December 2003.
13. EU Strategy against Proliferation of Weapons of Mass Destruction, December 2003,
14. Borda, A.,''The Iranian nuclearissue and EU3 Negotiations'', *FORNRT Working Paper* No. 8, 2005, p. l.
15. Sazhin, V., ''Iran's Nuclear Programme: A Russian Perspective,'' Allin, D.& Emerson, M., *Readings in European Security vol. 3*, Centre for European Policy studies, Brussels & International Institute for Security Studies London, 2005, p. 137.
16. Report by the Director General to the Board of Governors of IAEA, GOV/2003/40. 6 June, 2003, http://www.IAEA.or.at/Publications/Documents/Board/2003/gov2003-40.pdf ,p.7.
17. Resolution of the Board of Governors of IAEA, GOV/2003/69, Vienna, 12 September, 2003, http://www.IAEA.or.at/Publications/Documents/Board/2003/gov2003-69.pdf

18. Teheran declaration ,. Look : IAEA, Statement by the Iranian Government and visiting EU Foreign Ministers'', 21 October 2003, www.idea.org/NewsCenter/Focus/laeaIran/statement_iran21102003shtml.
19. Poch. W., ''The EU and Iran: The Tangled Web of Negotiations,'' vo: Posch, W., Iranian Challenges, Paris EU Institute for Security Studies, 2006, pp. 99-114.
20. Resolution of the Board of Governors of IAEA, Vienna, 18 June 2004, GOV/2004/49, http://www.IAEA.or.at/Publications/Documents/Board/2004/gov2004-49.pdf.
21. NPT Safeguards Agreement in the Islamic Republic of Iran, Resolution of the Board of Governors of IAEA, 18 September, 2004.
22. 'Communication dated 26 November 2004 received from the permanent representatives of France, Germany and the Islamic Republic of Iran and the United Kingdom concerning the Agreement signed in Paris on 15 November 2004''. www.IAEA.org/Publications/documents/Infcircs2004/inf_circ637/pdf.
23. Resolution adopted on 24 September 2005. www.ieae.or/Publications/Documents/Board/2005/gov2005-77.pdf.
24. Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran. Resolution adopted by the Board of Governors of IAEA, 4 February, 2006, GOV/2006/14, point 1, p. 2.
25. Coughlin, C., ''Iran plant '' has restarted its nuclear bomb-making equipment''. *Sunday Telegraph*, 12 February 2006, www.telegraph.co.uk/news/main.jhtml?xml=/news/200602/11/wiran11/xml.
26. Security Council Resolution 1696 of 31 July 2006, point 7. http://daccessdds.un.org/doc/UNDOC/GEN/N06/450/22/PDF/N0645022.pdf?OpenElement.
27. Regulation of the European Union 423/2007.

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DEPRIVATION AND STRESS AS PSYCHOLOGICAL IMPACTS OF IMRISONMENT

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Abstract

The adaptation of imprisonment is almost always a difficult process for convicts, leading to serious and long-term psychological consequences manifested through pain, deprivation and extremely atypical patterns and norms of behavior and interactions with other individuals. The majority of convicts who are in prison for the first time feel like they are obligated to adapt to a frequently rigid institutional routine, they also face deprivation of liberty and privacy, status change, or extremely disadvantageous material conditions, which is stressful, unpleasant and difficult for them. In this context, imprisonment is considered one of the most stressful life events. This paper includes theoretical explanations of the most usual psychological reactions of convicts, such as deprivations and stress, which can cause serious problems, such as mental health and behavioral problems. Furthermore, this paper presents the results of the evaluation of the psychological condition of convicts in the Republic of Macedonia, which is part of the more extensive study conducted by the Faculty of Security titled'The condition of convicts in the penitentiary institutions in Macedonia'.

Key words:*deprivations, stress, prison, convicts*

1. INTRUDACTION

This paper focuses on the psychological changes caused by imprisonment. It is known that the imprisonment is almost always a complex process which can inflict to convicts' long-term psychological consequences. It is important to point out that reactions to adaptation to imprisonment, as well as stress caused by other events, are considered as 'a normal reaction to an abnormal situation', mostly for those convicts who are imprisoned for the first time in their life. It is believed that imprisonment is among the most stressful life events. Moreover, convicts face serious problems such as: mental health issues and behavioral problems, which result from their patterns of behavior (that led to imprisonment), but also they are highly exposed to deprivation and stress, which are caused by the imprisonment, as well as by their personal ways of handling stress.

2. DEPRIVATIONS IN PRISONS

Prisons are called 'total institutions'[192] (like the military, psychiatric institutions, and monasteries), and this type of institutions regulate every possible aspect of the lives of the people who stay there.

[192]Goffman, www.markfoster.net/neurelitism/**totalinstitutions**.pdf

Prison, as a total institution, is excluded from the rest of the world and because of that, it provides all the necessities for its inmates. Basic characteristics of prisons are: lots of individuals live and work together, in one place, and similar rules apply to them; exclusion from the outer world for a certain period of time; isolation from the rest of the world; strict and detailed regulation of their daily activities. 'An ideal of every total institution is that each of its members should behave in accordance with strictly determined rules, they should be monitored, while personal freedom space should be as restricted as possible.'[193]

An institution with such rules of management has negative effects on convicts, mostly because of deprivations imposed on them. Studies show that anxiety and depression are reduced after few months spent in prison, which results from their adaptation to the institution. On the contrary, aggressiveness is increased[194]. It is believed that this is caused by several factors, such as displeasure of the conditions in prison, inadequate behavior of prison officers, defense from violent behavior manifested by other convicts, dissatisfaction from the verdict, length of punishment, as well as the feeling of common insecurity.

As a result of the aggressiveness manifested by convicts, violence in prisons is a widely common phenomenon. In this context, violence in prisons can be classified as: individual and collective violence. Individual violence includes convict on convict attack, or convict on prison officer attack. Collective violence includes rebellion, which is more frequent in larger prisons with higher security levels, and thus, more restrictions. It mostly occurs when convicts are deprived of something they claim it belongs to them, or when experienced criminals take advantage of an omission in the security system in order to cause rebellion and conflicts, or to achieve some personal benefits.

Most analyzed models of adaptation and behavior in prisons (including violent behavior) are the deprivation and importation models.

The basic premise of the***deprivation model***is that life in prison has unique traits in a manner that changes the values, norms, beliefs and behavior of inmates. This model emerged during the 50s and 60s of the twentieth century, and it suggests that socialization of convicts is a specific reaction to the loss caused by imprisonment or to the 'pains of imprisonment'.

Half a century ago, Sykes[195], analyzed the life of prisoners and discovered five types of deprivations or disadvantages: deprivation of liberty, deprivation of goods and services, deprivation of heterosexual relationships, deprivation of autonomy and deprivation of security. He believes that deprivations are part of life in prison, but also a consequence of imprisoning lots of convicts in one place. Furthermore, he considers that deprivations are a manner to punish convicts for mistakes in the past, and even though deprivations are not as brutal as physical punishment, they have strong negative impact on convicts. In addition to these deprivations, newer studies on this topic also add variations such as segregation, absence of rehabilitation programs and prison architecture.[196]

According to Sykes, first comes the deprivation of liberty and cut off from family and friends. It is the basic deprivation which leads to all other deprivations. Convicts lose not only their connections to society outside prison, but their freedom within

[193] Kovčo I.: Penological institutional treatmentof a murderer, Police College, Ministry of Interior of Croatia, 1997, p. 55

[194]Mejovšek, M.: Components of aggressiveness within prisoners, according to the model of intervention in penitentiary institutions, University of Zagreb, Educational Rehabilitation Faculty, Zagreb, 2001, p. 64

[195]Sykes,1958; according to: Gover et. al., 2008

[196]Useem B., &Piehl, A.: Prison buildup and disorder, Punishment and Society, 8, 87-115, 2006

the prison walls is also restricted. Deprivation of liberty results in lack of emotional intimacy, boredom and loneliness. Despite being cut off from family and friends, convicts are also rejected by the society and are treated as misfits because they violated the norms imposed by society. Deprivation of liberty often leads to job loss, and very frequently, to family loss.

Second is the deprivation of goods and services. Convicts do not possess stuff they possessed before they were imprisoned, and their lives are on the edge of poverty. The life standard of prisons is low, only covering the bare necessities and not allowing so called symbolic exceptions which are important for individual differentiation (favorite food, special clothes, etc). In modern societies possession of goods and services is important for the image a person would have, and deprivation of such goods and services is equal to messing with the personal identity.

One of the typical features of prisons is that in the past, but also nowadays, the prison presents a community of people of the same gender. In this context, third is the deprivation of heterosexual relationships. There are many penal institutions which, aware of the seriousness of this deprivation, allow convicts to have intimate contacts with their partners. In the Republic of Macedonia, this deprivation is reduced, because prisons allow convicts to meet their wives / husbands / partners. Furthermore, this deprivation often leads to violent homosexual behavior, which upsets heterosexual inmates.

Next we come to the fourth deprivation, the deprivation of autonomy. This means that convicts are monitored 24 hours and their lives are organized or managed by others. They have little or no chances to make choices; this causes a feeling of helplessness and frustration, and thus leads to aggressive behavior.

Final is the deprivation of security. When inmates share limited space with each other, it is almost inevitable the manifestation of aggression, violence and sexual exploitation. Most of the convicts describe other convicts as violent and aggressive, and in this context, they feel threatened.

All these deprivations, which are a result of imprisonment, lead to establishment of a normative system that opposes the authority of the prison officers. A convict code is accepted, which is important in order to obtain acceptance and respect within their environment.

The deprivation theory refers to prisons and their environment as factors that would help to explain the adjustment and behavior of the convicts. This impossibility of satisfying their basic needs leads to institutionalization and prisonization, i.e. 'incorporation of the norms of prison life into an inmate's habits of thinking, feeling, and acting'[197].

The ***importation model***is a theoretical model which emerges as a reaction of the deprivation model. According to this model, the person is not analyzed as a separate entity and adjustment to life in prison is also influenced by the personal experience of the convict, as well as his / her socialization before being imprisoned. Furthermore, this model argues that aggression in prisons is a result of the personal traits of certain convicts who bring in their problematic personality and continue to manifest aggressive behavior, just like they used to do before being imprisoned. The importation model emphasizes that, when convicts start serving their sentence in prison, they stick to their personal traits, and

[197]The Psychological Impact of Incarceration:Implications for Post-Prison Adjustment,Craig Haney,University of California, Santa Cruz December 2001
http://aspe.hhs.gov/hsp/prison2home02/haney.htm

bring their past and social background with them. Their behavior is a result of previously adopted values, motives and attitudes.

Manifestation of aggressive behavior by convicts in prisons can also be influenced by personal and psychological factors such as: alcohol addiction, previous employment, educational level, and criminal record of convicts before being imprisoned. It is believed that convicts are mostly people from the lowest ranks of society, 'underprivileged'(separated from the social norms and values) and / or who live in subcultures where violence is appreciated. The importation model explains their aggressiveness as simply transferring their patterns of behavior from their subculture in prison.

A group of authors analyzed the stages of alcohol addiction of each inmate of the Canadian prison. The results showed that the more addicted to alcohol convicts were, the more aggression they manifested in prisons[198]. Moreover, the convicts who have been unemployed for a longer period of time were those with lower levels of education, and convicts who committed more serious offences manifested more aggressiveness in prison[199].

'Studies about both models that aimed to confirm the theses of the importation and deprivation model showed that these two models cannot be implemented into practice separately, but only combined (because it is not possible to analyze each model out of the context it appears). Moreover, it was concluded that certain methods of managing the prison and the state policy itself (rehabilitation vs. retributive philosophy), should be also taken into consideration when prison violence is being analyzed.In this context, an administrative / managing model of explaining violent behavior in prisons (micro and macro level) is also very popular, and in special literature, it can be found under the terms: interactional, transactional model of prison violence'[200]. This model was created byBottoms (1999), and it focuses on a continuous, dynamic process of interaction between the convicts, the prison officers, and the environment within the prison walls which is shared by both. In order to achieve prison order, he suggests: fair behavior of prison officers, fair behavior within the frames of the prison regime and disciplinary system with high quality.

3. STRESS IN PRISONS

As a result of all these factors, imprisonment, for the majority of people is a very intense and stressful life event. According to the Holmes and Rahe stress scale, imprisonment is among the top five (ranked fourth). It is known that the occurrence of suicides, self-injury, violence, even murders is higher in prisons compared to the normal population. Main problems or stressors that are mentioned in studies are: deprivation of family and friends, deprivation of liberty, deprivation of special goods and activities, conflicts with other convicts, regret and disturbing thoughts about the past and the offence, anxiety about the future after serving the sentence, inadequate prison conditions, poor medical service, lack of support from prison officers, and worry regarding personal

[198]Mills, J. F., Kroner, D. G., & Forth, A. E. (1998). Novaco Anger Scale: Reliability and validity within an adult criminal sample. Psychological Assessment, 5, p. 237-248.
[199]Same
[200]KovčoVukadin, M. Mihoci: Violence in penal institutions, Croatian Yearbook of Criminal Law and Practice (Zagreb), vol. 17, number 1/2010, p. 333-367.

security. The negative aspects of the environment within prison walls, such as presence of other convicts, overcrowding, lack of intimacy etc, contribute even more to stress. According to the studies conducted by Sykes and Jinny, deprivation of security is one of the common problems with which convicts face. Other stress sources include: obeying prison rules, other convicts and prison officer's expectations and sexual harassment from other convicts.

It is familiar that deprivations increase the stress level to which convicts differently react. In this context, some convicts behave aggressively in order to reduce and suppress the stress, as well as to bring under control the situation. Some convicts manifest increased levels of depression, boredom, sensation of loneliness, but also other unsuitable behavioral patterns (alcohol addiction, drug addiction, gambling).

4. RESERCH

How convicts evaluate their own psychological condition and their harmful habits?

In order to answer this question, we presented the results that are part of a more extensive study conducted by the Faculty of Security in Skopjetitled 'The condition of convicts in penitentiary institutions in the Republic of Macedonia', conducted in the prisons in Skopje, Shtip, Bitola, Tetovo, Strumica and Struga. This study is multidisciplinary and focused on the criminological, penological, victimological, legal, psychological, and social aspects.

4.1. Goal of the study

The goal of this part of the study is to evaluate the **psychological condition resulting from the deprivations imposedof convicts in the Republic of Macedonia.**

4.2. Sample

A representative sample of convicts from open, semi-open, and closed penitentiary institutions in the Republic of Macedonia is analyzed. Combined, occurring in several phases and stratified random sampling method has been applied for this research. The penitentiary institutions were selected in accordance with the number of inmates, the treatment, and territorial dispersion which occurred in several phases. The sampling was stratified because the respondents were elected according to previously determined percentage and by random choice. The sample is randomly chosen from a list and categorized according to several criteria subsequently: treatment departments, category of criminal offenses (types of crimes), length of prison sentence and gender. In this manner, 12% of all convicts in Macedonia were randomly chosen from the list.

In this context, the sample follows the basic parameters of the convicts in the Republic of Macedonia in accordance with the criminal offenses, the prison in which they are distributed, the length of the prison sentence and their gender, which is a starting point for further analysis and elaboration of the data, as well as for coming to appropriate conclusions.

4.3. Instrument

The instrument applied for this research is a half structured interview for the convicts from RIDOC (Rhode Island Department of Correction) which refers to the evaluation of the psychological condition of the convicts. Part of the questionnaire for re-

socialization referred to convict's evaluation of their own psychological condition (feeling of boredom, anxiety and depression) addiction problems (drug addiction, alcohol addiction, gambling addiction) and behavioral problems related to their psychological conditions such as: sleeping disorders, anger management, stress management, affinity for violence and tendency to repeat mistakes or offenses in the past.

5. RESULTS AND DISCUSSION

The results show that convicts in the Republic of Macedonia believe that they are faced with several psychological difficulties during their imprisonment. Namely, the most serious problem for the majority of them is their extreme anxiety 60%, depression for 55,2%, loneliness for 58,4% and boredom for 55,8% of the convicts. In regard to their addictions, serious problems for them are: alcohol addiction for 33,8% of convicts, drug addiction for 38,9% of convicts, and gambling addiction 22,2% of convicts. Sleeping disorders were reported by 33,5% of the convicts, anger management 44% of them, stress management 50%, affinity for violence 50%, and fear of repeating past mistakes or offenses is a serious problem for 59% of the convicts.

We can conclude that, as e result of imprisonment, more than half of the convicts feel depression, loneliness, boredom and anxiety (extreme worry). Approximately half of the convicts evaluate that they face problems in regard to stress management, anger management, violent behavior, and fear to repeat past mistakes. Between one third to one fourth of them state that they have addiction or substance addiction problems.

This numbers point out the seriousness of the psychological and behavioral problems of the convicts, which are mostly a result of the life within prison walls, but also, of some personal traits which contributed to imprisonment of most of them. This situation, and mostly the self-evaluation of the convicts who admit that they face certain problems, even in a study in which complete honesty is always expected, show that convicts are prepared to talk about these psychological conditions, and most probably, to work in order to overcome these problems if they are offered help such as suitable programs and method for overcoming such problems.

In this context, the high prevalence of such problems among convicts points out to the fact that they cope with stress in an inadequate manner. These results are congruent with the results from other studies. Furthermore, Zamble and Porporino (1990) in their study on the convict's mechanisms and strategies of coping conclude that their methods of coping with the situation are not very efficient, and, considering the fact that they do not learn the suitable methods and strategies of coping that are necessary for the life after prison, they return to prison because they are not able to solve the problems while they are on freedom. These authors claim that convicts who apply inadequate coping strategies eventually recidivate, mostly as a result of their inability to cope. The authors also criticize prisons for not introducing enough strategies to help coping mechanisms. 'Nothing important happens in regard to the behavior of convicts, and in this context, prisons are 'deep freeze'.'[201]

These authors represent the thesis that convicts end in prison due to the inadequate strategies of coping with the daily routine and life, and they propose that programs for developing cognitive and behavioral skills that could help convicts to learn

[201] ZambleiPorporino ,(1990): Coping, imprisonment and rehabilitation, Criminal Justice and Behavior, 17, 53 - 70

more efficient strategies for coping with problems should be incorporated in the penal system. After being imprisoned, and after staring to serve their sentence, convicts should immediately be incorporated in programs which aim to motivate them to change and help them to successfully face all problems. However, because the problems in prison and outside prison are not the same, these authors suggest special programs which convicts should attend shortly before being released[202], so they can be prepared to face and cope with problems that expect them in the life after prison.

Taking into consideration these conclusions, and also considering the fact that our prisons work poorly to implement skills for coping with stress, we agree with these authors and speak in favor of introducing trainings which would be an obligatory part of the rehabilitation treatment. To be specific, the factors that help convicts to adjust to life in prison can be static (gender, disadvantageous family conditions, criminal history) and they cannot be changed, as well as dynamic factors which can be changed, such as: education, friendships with asocial individuals, and stress coping mechanisms. Newer studies of the rehabilitation treatment are focused on the dynamic factors, mostly because they can be changed and represent a basis for successful rehabilitation. One of the most important dynamic factors is undoubtedly the skill of coping with stress within prison walls.

6. CONCLUSION

The main goal of prisons must be rehabilitation and reformation, instead of penalty. Convicts need to be allowed to live a fulfilling life and to respect the legal norms and regulations after they leave the prison. Taking all this into consideration, the negative impacts of imprisonment should be minimized and the mental health of convicts should be maintained and improved. Deprivations, which most frequently refer to liberty, goods and services, family, social and sexual relationships and security, reduce the autonomy, and the self confidence and self respect of convicts. According to this, if prisons in Macedonia reduce such deprivations (by improving living conditions, serving better food, allowing more frequent contacts with a convict's partners), the stress will probably reduce. Furthermore, if we take into consideration that unemployment among most of the convicts, as well as non-attendance to cultural activities are also deprivations, we will conclude that convicts are seriously deprived of some basic needs such as recreation, work, and love.All these factors push them closely to the prison culture, which gives their lives some meaning.

Owing to this, it is necessary that the prison management system engages and allows convicts to participate more frequently in positive activities (work, recreation, cultural activities, rehabilitation groups, more frequent contacts with their families), which would significantly reduce deprivations which cause stress and lead to psychological disorders.

7. REFERENCES

1. Arnaudovski Lj., Chaeva V.: Prison society, Institute of sociological and legal researches, Skopje, 2000
2. Kovčo I.: Penological institutional treatment of a murderer, Police College, Ministry of Interior of Croatia, 1997

[202]Same

3. Kovčo Violence in penal institutions, Croatian Yearbook of Criminal Law and Practice (Zagreb) vol. 17, No. 1/2010 (2010): 333-367.
4. Lazarus and Folkman. Stress, estimation, sfacing. Zagreb: Naklada Slap, 1984.
5. Mills, J. F., Kroner, D. G., & Forth, A. E. (1998). Novaco Anger Scale: Reliability and validity within an adult criminal sample. Psychological Assessment, 5, 237-248.
6. Mejovšek, M.: Components of aggressiveness within prisoners, according to the model of intervention in penitentiary institutions, University of Zagreb, Educational Rehabilitation Faculty, Zagreb, 2001
7. Mejovšek, M. Introduction into penological psychology. Zagreb: Naklada slap and Educational Rehabilitation Faculty, Zagreb, 2002.
8. Mills, J. F., Kroner, D. G., & Forth, A. E. (1998). Novaco Anger Scale: Reliability and validity within an adult criminal sample. Psychological Assessment, 5, 237-248
9. Mojanoski c., Batic D. and others: Position of convicts in the penitentiary institutions in Macedonia (research report), Faculty of Security, Skopje, 2014
10. Useem B., &Piehl, A.: Prison buildup and disorder, Punishment and Society, 8, 87-115, 2006
11. Zamble and Porporino "Coping, imprisonment and rehabilitation" *Criminal Justice and Behaviour* 17 (1990): 53 -70.
12. Spadijer Djinic J.: Prison society, Institute of criminological and sociological researches, Belgrade, 1973

Internet sources

- The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, Craig Haney, University of California, Santa Cruz December 2001 http://aspe.hhs.gov/hsp/prison2home02/haney.htm
- Goffman, www.markfoster.net/neurelitism/totalinstitutions.pdf

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TACKLINGTHE 'SHADOW PUZZLE':A CASE STUDY OF MACEDONIA

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Abstract

The empirical evidence from less developed post-transition countries shows that high unemployment is often coupled with a high rate of informal economy, a phenomenon also known as 'shadow puzzle'. According to the 'shadow puzzle' hypothesis, high shares of informal sector accompanied by a high unemployment rate may indicate an overlap between these two categories due to the overestimation of unemployment i.e. false identification as unemployed of those who are de facto informally employed. The aim of this paper is toassess the interplaybetweenunemployment and informal work practices of unemployed workers in Macedonia, which will shed light and to some extent clarify the 'shadow puzzle'.For this purpose weuse the results from a survey carried out on a sample of registered unemployed workers in order to identify the profile of unemployed who are informally employed,and we draw some implications for labour market policies.

Keywords: Labour market, unemployment, informality, 'shadow puzzle'.

JEL classification: J46, O17

1. Introduction

In the past two decades Macedonia has gone through the process of transition which is still shaping the social, political and economic ambience in the country. As a part of South-Eastern Europe, Macedonian economic growth is constrained by the general regional predispositions, which, amongst other things, are determined by the political instability of the region. Hence, the economic performance of the South-Eastern European countries (SEECs) has not been strong enough compared to Central-Eastern European countries (CEECs), which are already members of the European Union. In this sense, Macedonia and other SEECs are known as 'lagging reformers' with regard to the completion of the reforms in all spheres of society.

The initial transitional recession has *inter alia* manifested salient effects on the labour market performance (Pechijareski and Rocheska, 1998). Generally, the transitional reforms initially had negative effects on labour markets, which were manifested in declining participation rates and persistent high unemployment. The processes of ownership restructuring and sectoral reallocation assumed a large-scale transformation of state owned firms into privatised ones and a reallocation of a substantial part of the labour force from

the manufacturing and agricultural sectors towards the expanding service sector (Blanchard, 1997). The experience in almost all transition countries, including Macedonia, shows that the creation of new jobs in the emerging private sector was not initially strong enough to absorb the mass of workers laid-off from the restructured state-owned firms. At the same time, the mismatch between the skill requirements of newly created jobs and effective skills owned by the workers has become a substantial problem (Svejnar, 2002). Consequently, the labour markets in early transition became less dynamic with a relatively stagnant unemployment pool leading to increases in unemployment and especially long-term unemployment (Cazes and Nesporova, 2003). The initial 'transitional unemployment' differed in several aspects from other types of unemployment in that it was characterised by pronounced labour market segmentation, long average duration of unemployment and a low probability of exiting unemployment into employment (Nikoloski, 2009).

The transitional recession generated a number of preconditions that subsequently led to an increase in the size of the informal sector (Commander et al., 2013). One of them was the accumulation of long-term unemployment that caused a large fraction of unemployed to become 'discouraged workers'. Assuming that these workers experience depreciation of human capital and decline in morale to search for a job, it is reasonable to expect that they are more inclined toward employment in the informal sector compared to those who are short-term unemployed (Haigner et al., 2013). As a consequence, depressed labour markets with a large proportion of long-term unemployment such those observed in SEECs are more likely to have a sizeable informal sector.

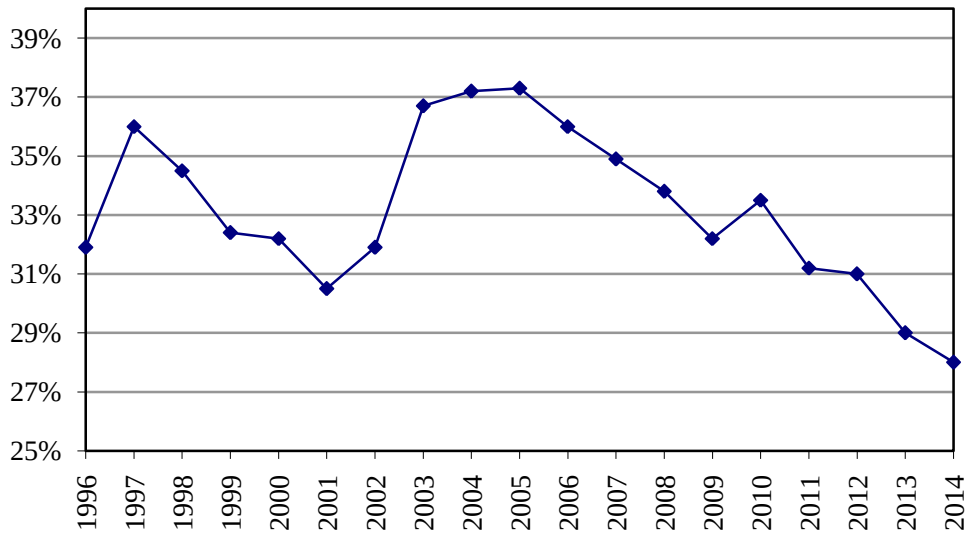
Most of the macroeconomic theories emphasize the counter-cyclical character of both the employment in the informal sector and unemployment which assumes that during the downturns adjustment would predominantly occur through one of these two channels. However, the empirical evidence shows that the high unemployment in SEECs including Macedonia is coupled with a high rate of informal economy, a phenomenon also known as a 'shadow puzzle'. According to the 'shadow puzzle' hypothesis, high shares of informal sector accompanied by a high unemployment rate may indicate an overlap between these two categories due to the overestimation of unemployment *i.e.* false identification as unemployed of those who are *de facto* informally employed. Therefore, the informal employment and unemployment are two sides of the same coin that ultimately require complementary policy measures for their reduction.

The aim of this paper is to assess the interplay between unemployment and informal work practices of unemployed workers as alternative forms of labour market adjustment in Macedonia, which will clarify the related 'shadow puzzle'. For this purpose, we use the empirical results from a survey of registered unemployed workers. To our knowledge, this is the first study addressing this issue in Macedonia that will shed light on the role of the informal sector as an alternative labour market adjustment mechanism in the Macedonian labour market. In this context, in section 2 we first review the general labour market trends in Macedonia. Next, in section 3 we present the theoretical background of the informal sector as a form of a labour market adjustment mechanism. The empirical assessment of the relationship between the unemployment and the informal employment in Macedonia is elaborated in section 4. Finally, in section 5 we conclude and formulate suitable labour market policies that target the unemployed population involved in various forms of informal activities.

2. Macedonian labour market performance

In order to investigate the features of the Macedonian labour market during the transition process, it is appropriate to divide the transitional period into two sub-periods. The first period encompasses the transformational recession from 1990 to 1995, with the second period starting immediately thereafter and lasting until the present. The changes of the unemployment rate in relative terms during the business cycle are rather small, which reflects the depressed characteristics of the Macedonian labour market (Nikoloski, 2009). The dynamics of the unemployment rate in Macedonia during the period 1996-2014 is shown in Figure 1.

Figure 1 The unemployment rate in Macedonia 1996-2014



Source: Macedonian Statistical Office, Labour Force Survey

The first Labour Force Survey (LFS) in Macedonia was conducted in 1996, and since then we have detailed data concerning labour market trends. During the period 1996-2003, the Macedonian LFS was conducted on a yearly basis, whereas since 2004 it is conducted as a continuous survey throughout the year with quarterly data processing. For the period prior to 1996, we can explore labour market trends based on the number of registered unemployed workers. According to both data sources, we can generally distinguish several features of Macedonian labour market presented as follows.

First, during the initial phase of transition, the labour force participation and employment rates fell for most of this period, while the unemployment rate steadily increased. These trends are in line with the normal labour market patterns found in other transition countries *i.e.* declining employment under the initial shock of recession and subsequent persistence of sluggish demand for labour. Although the mature phase of transition is characterised by broad stability in all three rates, we can observe recessions in 2001 primarily caused by the political instability and in 2009 due to the global economic crisis. Namely, Macedonia has not remained apart from the negative global macroeconomic tendencies engendered by the recent economic crisis. Although recession has started one year later, after three consecutive quarters of negative GDP growth, the macroeconomic performance has already demonstrated some signs of recovery by the end

of 2009 and since then the unemployment rate has manifested a continuous declining trend.

The Macedonian labour market is affected by strong segmentation, meaning that certain social groups such as youths, less skilled workers and women face a higher risk of unemployment and inactivity than the rest of the labour force. As a consequence, the high Macedonian unemployment rate has enormous social implications such as rising poverty, income inequality and social exclusion of deprived social segments (Nikoloski, 2012). When considering the marginalised categories, we assume that the same labour market segments are the most inclined toward informal employment arrangements or temporary emigration where jobs are characterised with low security and lower wages compared to jobs in the formal sector. Furthermore, the marginalised segments are affected by the fluctuations in the business cycles more than the rest of the labour force which is evident from the last economic downturn.

In addition, the Macedonian labour market is characterised by a relatively stagnant unemployment pool that has been translated into increasing long-term unemployment. For instance, long-term unemployment accounts for more than 80 percent of total unemployment which represents a high relative share compared to international standards. Long-term unemployment has significantly contributed to an erosion of skills and motivation of unemployed workers, making them less employable over time (Arandarenko and Bartlett, 2012). The deterioration of skills further reduces the attractiveness of the labour force and contributes to a blurring of the difference between the states of unemployment and non-participation. The long-term unemployed are not viewed by employers as attractive fillers of vacancies, meaning that their employability is relatively weak.

After remaining unemployed for a long period of time, a considerable part of unemployed workers stops looking for jobs and quits the labour force. This is known as the phenomenon of 'discouraged workers', a characteristic for depressed labour markets where labour demand is insufficient and unemployed workers face poor employment prospects. Discouraged workers do not fulfil the requirements of job search as a precondition to be counted as unemployed. On the other hand, they can easily re-enter the labour force if conditions on the demand side of the labour market improve (Kingdon and Knight, 2006).For instance, the estimated number of discouraged workers according to the LFS in 2012 was 30322 which represent more that 10 percent of the total number of unemployed.

The sectoral reallocation of labour has been characterised by a significant increase of subsistence agriculture and other non-standard forms of employment at the expense of rapid shrink of employment in industry (European Training Foundation, 2007). These trends in employment by sectors indicate that in Macedonia new jobs are not predominantly created in the more productive industries and service sector, but rather in agriculture and low productivity services (Micevska, 2008). The increase in the share of employment in agriculture suggests that this sector has become a buffer for some people who have lost their jobs in the state-owned industrial enterprises (Nikoloski, 2009). However, the recent changes show that the service sector gradually becomes to play an increasingly important role by absorbing more than half of the employed workforce, whereas the agricultural sector starts to shrink. Given the rigidities in the standard adjustment through employment and wages, less traditional labour market adjustment mechanisms may play a more significant role. Among the alternative labour market

adjustment mechanisms in SEEC we particularly distinguish the non-participation, emigration and employment in the informal sector of the economy.

The size of employment in the informal sector in Macedonia is relatively large compared with the more advanced transition countries. For instance, according to the LFS data, in 2012 the share of employed in the informal sector was estimated at about 22.5 percent. According to the LFS data, the Macedonian informal sector predominantly consists of small-scale agricultural production carried out by workers with low levels of education who are either employees without stable contracts or unpaid contributing family workers. Thus, the workers in the informal sector are usually low skilled or unskilled and consequently they are less competitive in the labour market such as youths, workers at a retirement age and workers with a low level of education or without a specific vocation (Nikoloski et al., 2012). In addition, a majority of these workers experience the so-called 'informal employment trap' *i.e.* they face a low probability of exiting the informal employment (Bernabe, 2002). At the micro level, there is increased human capital erosion experienced by workers who work in the informal sector due to the labour-intensive characteristics of the informal employment and absence of vocational training.

3. Theoretical background

Having in mind the multitude of different approaches, defining the informal economy is not a simple task. There are various terms that are used in order to denote the informal sector such as: informal, hidden, underground, parallel, black, unofficial, unrecorded, shadow, grey, dual, and so forth. Despite the existing nuances in the meaning of the above terms, we will assume that they concern more or less the same issue. In this analysis, for convenience we adopt the term 'informal' as the most appropriate and frequently used in the case of transition economies, because it indicates its specific nature in providing employment and alleviating poverty (Falcetti et al., 2003).Generally, there are two distinct approaches to the formulation of the informal sector. The first is called 'definitional' and considers the informal economy as unrecorded economic activity. The second approach, called 'behavioural', considers the informal economy as an explicit change in the behaviour of economic agents in response to institutional constraints. According to the most commonly used definition, the informal economy encompasses all unregistered economic activities that contribute to officially calculated or observed Gross National Product (Schneider, 2005).

The informal sector of economy is not homogenous and it consists of various different types of activities. By using several criteria, we can distinguish four types of economic activities within the informal sector: illegal, underground, informal and household activities (OECD, 2002). In this context, we should make a distinction between the informal sector which designates all types of informality and informal economic activities as a particular type of activity within the informal sector. Illegal economic activity consists of production and traffic of illegal goods and services or when the latter are not allowed when carried out by unauthorised producers/retailers. In other words, this segment consists of criminal activities, which are often excluded from economic analyses. The underground economy comprises all unrecorded economic activities, such as the production or traffic of legal goods and services, which are deliberately concealed from the public authorities. The informal economy covers all unrecorded economic activities that are legal by the nature of the goods and services that are produced, but they are not deliberately concealed from the public authorities. Finally, household economic activities consist of productive activities

that are carried out by the members of the households and are undertaken for their own final use. Alternatively, the underground, informal and household economic activities have been called 'coping strategies' undertaken in order to meet basic needs.

The research on informal economy has identified a number of factors that influence the size and structure of the informal sector. As summarised by Schneider and Enste (2010), the main cause of a flourishing informal economy is the burden of tax and social security contributions, intensity of regulation, and the disincentive effects of social transfers. All these factors create a tax wedge, which consists of the difference between the total cost of labour and after tax earnings. The greater is this difference, the higher will be thhe incentives to operate in the informal sector (Kucera and Roncolato, 2008). Moreover, in transition countries there exist peculiar factors that can cause a large informal economy such as poverty and social exclusion. In these countries, due to the low level of wages and social welfare, such as unemployment benefits and pensions, the informal and household production can arise as potential survival strategies for the marginalised and socially excluded segments (Bernabe, 2002; Williams and Lansky, 2013). Besides this, the informal sector can be viewed as an opportunity for undertaking various forms of entrepreneurial activities (Williams and Nadin, 2010; Bureau and Fendt, 2011).

The informal employment is often defined as an arrangement where some aspects are lacking or missing relative to formal employment. Depending on what is considered as absent from it or is insufficient about it, the following three different definitions can be used: enterprise-centred, job-centred or activity-based (Williams and Lansky, 2013). The informal employment is widely recognised to include a range of self-employed persons, who mainly work in unregistered enterprises, as well as a range of wage workers who are employed without employer contribution to social protection (Chen and Vanek, 2013). In addition, informal entrepreneurship is defined as involving somebody in starting a business or is the owner/manager of a business who participate in the paid production and sale of goods and services that are legitimate in all respects besides the fact that they are unregistered by, or hidden from the state for tax and/or benefit purposes (Williams and Nadin, 2010).

The employment in the informal sector is considered as an important issue by the policy makers for several reasons. First, from an individual point of view, the people who are informally employed encounter barriers to insurance instruments to manage the impoverishing shocks to their income. Second, the firms that operate according to legal rules face unfair competition from those who operate in the informal sector which, in turn, discourages investment and hinders growth. Third, the large informal sector represents a problem for the society as a whole since it imposes heavy costs to society and deteriorates the provision of public goods and services (Packard et al., 2012).

Regarding the participation of unemployed workers in informal employment arrangements, there are two alternative theoretical explanations (Williams and Nadin, 2014). First, the 'marginalisation' perspective assumes that informal employment is mainly concentrated among the marginalised segments such as the unemployed, who disproportionally participate and gain from the informality. In contrast, the 'reinforcement' perspective argues that the unemployed benefit less from the informal employment than those who are formally employed and that informal employment reinforces rather than reduces the inequalities produced by the formal economy. Having in mind the counter-cyclical character of both the informal employment and the unemployment, we assume that the negative economic shocks will be mainly adjusted through one of these two alternative channels. However, as we described in the previous section, in Macedonia there might be

observed the 'shadow puzzle' phenomenon which arises from the fact that the high unemployment rate is coupled with a high rate of informal economy. Furthermore, this may indicate an overlap between these two categories due to the overestimation of unemployment *i.e.* false identification as unemployed of those who are *de facto* informally employed. Hence, in what follows we attempt to tackle the 'shadow puzzle' in Macedonia by empirically assessing the profile of unemployed workers who engage in the informal employment.

4. Empirical assessment

As stated before, the high and sustained unemployment rate in Macedonia has been coupled with various forms of labour market adjustment mechanisms. The conventional (standard) forms of labour market adjustment are characteristic for the employed workers, whereas the non-standard forms are mainly alternatives for the unemployed workers. In this context, among the alternative labour market adjustment mechanisms we pay particular attention to the role of employment in the informal sector.

One possible approach for assessing the employment in the informal sector is by using the LFS data. It is worth mentioning that within the LFS framework, established according to the ILO standards, there is a distinction between employment in the informal sector and informal employment (ILO, 2003; Hussmanns, 2004). The difference between the two above-mentioned notions arises from the different units of observation, employment in the informal sector being an enterprise-based concept, whereas the informal employment is a job-based concept. The assessment of the informal sector by LFS provides a number of advantages, but it also has some limitations. In this context, we can identify two sources that lead to an underestimation of the informal sector. First, because of the self-reporting characteristic of the LFS, it is reasonable to assume that a certain number of respondents who are informally employed declare themselves as unemployed or inactive in order to avoid sanctions for not having complied with the legal regulation. Second, since much of the informal economic activities are undertaken in firms that participate in both the informal and formal sectors, if all the workers of such firms are considered as formally employed this method will seriously underestimate the informal economy. Consequently, the results of the LFS can be misleading, giving inaccurate information on the true size of employment in the informal economy.

To our knowledge, in Macedonia there is a lack of consistent cross-section data about the employment in the informal sector as a form of labour market adjustment mechanism. In order to estimate to what extent the unemployed workers are prone toward the employment in the informal sector, we have designed and carried out a survey based on a representative sample of registered unemployed. The sample size is 2300 unemployed workers selected randomly in each of 30 centres of the Employment Service Agency (ESA) all over the country. Due to the lack of exhaustive lists of registered unemployed that are confidential, the interviewers had freedom to randomly choose eligible respondents. Moreover, the geographical distribution was maintained by selecting a proportional number of respondents from each centre with respect to the total number of registered unemployed workers in that centre. The structure of the sample according to the basic demographic characteristics is given in Table 1.

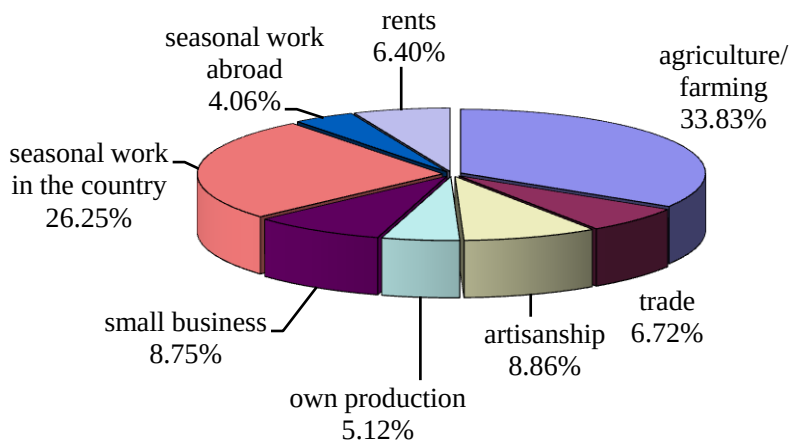
Table 1. The structure of the sample according to various demographic characteristics

Gender		**Place of living**		**Age**	
Male	50.30%	Urban	77.89%	15-20	4.09%
Female	49.70%	Rural	22.11%	21-25	23.27%
Education		**Ethnicity**		26-30	19.23%
Primary or less	15.11%	Macedonian	81.80%	31-35	11.70%
Secondary	50.35%	Albanian	10.21%	36-40	10.61%
Higher	34.54%	Turk	2.26%	41-45	10.61%
Marital status		Roma	2.26%	46-50	8.96%
Single	40.43%	Serbian	1.95%	51-55	6.92%
Married	53.66%	Vlach	1.00%	56-60	3.61%
Divorced	3.74%	Bosnian	0.35%	61-65	0.87%
Widowed	2.18%	Other	0.17%	65 and more	0.13%

Source: Authors' calculations

In our empirical analysis we use the activity-based definition of informal employment as the most appropriate and comprehensive. According to this definition, an activity of unemployed workers is considered as informal employment if it is not declared to, is hidden from or unregistered within the authorities for tax, social security and/or labour law purposes (Williams and Lansky, 2013). In this context, the results show that 38.3% of the surveyed unemployed workers declared that they earn income from various types of additional activities that are informal by nature, while half of them declared that the other household members also perform such types of activities. With respect to this, we argue that in depressed labour markets which lack job creation in the formal sector, informal employment helps people enter the workforce by offering an alternative to unemployment or inactivity and, prevents a further decline in the living standards. The structure of employment by type of informal activity is shown in Figure 2.

Figure 2. The structure of informal employment by type of activity



From Figure 2 it is evident that the majority of unemployed workers are engaged in subsistence activities such as agriculture, farming and seasonal work in the country that together represent about 60%. On the other hand, the entrepreneurial activities such as running own business, artisanship or own production and trade are represented to a lesser extent. Therefore, we can conclude that most of the unemployed workers that operate in the informal sector are usually low skilled or unskilled and perform labour-intensive operations. The above argument is in line with the sectoral reallocation in Macedonia during transition, according to which the share of employment in subsistence agriculture demonstrated a significant rise. Nevertheless, this should not be a general conclusion for the productivity in the informal sector, since in this case we do not include the informal activities performed as a second job by those who are otherwise formally employed.

The income gained from informal activities for these households on average is 34.2% of their total household incomes, which represents significant financial contribution. However, expressed in absolute terms, the average monthly income from informal activities is moderate since one third of the respondents declared to earn less than 100 Euros and another third declared between 100 and 200 Euros. As a consequence, we can argue that unemployed workers are primarily involved in informal businesses that usually operate on a small-scale basis either in the form of self-employment or as micro or small enterprises.

In order to assess the factors that influence the informal activities among the registered unemployed in Macedonia, we apply the Logit model, where the dependent variable takes value zero if the person declared not to earn any income from additional activities in the informal sector. In the opposite case where the unemployed worker declared that he/she works and therefore earn income from such activities, the dependent variable takes value one. We divide the possible determinants in four groups: Personal traits, household characteristics, services from the ESA and the alternative labour market adjustment mechanisms. The results from the estimated Logit model are presented in Table 2.

Table 2.Logistic regression model for the informal activities of the unemployed

Variable	Coefficient	Standard error	t-value
Intercept	– 3.9042	1.0497	– 3.7193***
Personal traits			
Male	0.4478	0.1567	2.8567***
Age	0.1858	0.0553	3.3598***
Age square	– 0.0021	0.0006	– 3.0414***
Married	– 0.3721	0.2101	– 1.7709*
Urban	– 0.5720	0.1837	– 3.1130***
Long-term unemployed	0.2078	0.2150	0.9661
Household characteristics			
Total number of members	0.0740	0.0998	0.7417
Number of members at working age	0.1404	0.0987	1.4222
Number of employed members	– 0.5194	0.1096	– 4.7361***
Another unemployed member	– 0.2467	0.1014	– 2.4328**
Services from the ESA			
Health insurance beneficiary	– 0.0765	0.1732	– 0.4419
Unemployment benefit	– 0.2010	0.3176	– 0.6329
Participation in active programmes	0.0809	0.2472	0.3276
Alternative adjustment mechanisms	0.0571	0.1841	0.3100
Have retired member(s)	0.4986	0.2658	1.8761*
Social assistance beneficiary	0.2540	0.2307	1.1009
Have emigrated member(s)	0.0676	0.1683	0.4019
Intention to emigrate	0.2289	0.2100	1.0902
Search for job			

*Note: *, ** and *** represent statistical significance at the 10%, 5% and 1% levels respectively.*

According to the obtained results, most of the personal traits of the unemployed worker are statistically significant determinants of employment in the informal sector. In this context, male unemployed are about 56.5% more likely to engage in informal activities than female. Married unemployed are about 31% less likely to perform various forms of informal employment activities, whereas those who live in urban areas are 43.6% less likely to engage in informal employment compared to those who live in rural areas. The coefficient of the age variable is a positive and statistically significant meaning that more experienced workers prevail among the informally employed. However, the negative sign of the age square coefficient shows significantly convex shape with respect to the age, which means that after certain maturity the probability to engage in the informal sector begins to decline.

Considering the household characteristics, the number of employed members and having another unemployed member in the household significantly influence the respondents' decision to undertake informal economic activities. Hence, an unemployed worker on average will be 40.5% less likely to engage in informal employment for any additional employed member in the household. On the other hand, having an additional unemployed member in the household on average will decrease the probability of

undertaking informal economic activities by about 21.9%. These results are somewhat expected since an increase of employed members in the household is often associated with increased incomes, which in turn renders the informal sector employment to be less attractive.

With respect to the labour market policies, we have considered the health insurance, the unemployment benefit and the participation in active labour market programmes. The signs of the estimated coefficients confirm the theoretical assumptions that passive labour market policies create disincentive effects, whereas the participation in active programmes goes hand in hand with the employment in the informal sector. However, we have not found a statistically significant effect of those policies upon the engagement in the informal employment.

Finally, according to our estimated model, we find out that among the alternative adjustment mechanisms only the social assistance beneficiaries are significantly more likely to undertake informal economic activities. In fact, this category of unemployed are the most deprived on the labour market and, consequently they are about 64.7% more likely to engage in the informal employment as an alternative source of income for their households. Having in mind the above results, we further derive concluding remarks and formulate appropriate policy recommendations with respect to the employment in the informal sector.

5. Conclusions and policy recommendations

In this paper we make an attempt to tackle the 'shadow puzzle' in Macedonia by assessing the size and nature of employment in the informal sector as a form of a labour market adjustment mechanism. For this purpose we assume that during the past two decades of transition the Macedonian labour market has been characterised by high and persistent unemployment coupled with alternative forms of adjustment among which is the employment in the informal sector. The conventional forms of labour market adjustment are characteristic for the employed workers, whereas the non-standard forms are mainly alternatives for the unemployed workers. Hence, the 'shadow puzzle' mainly arises as a consequence of the overlap between the unemployment and employment in the informal sector.

In our analysis we adopt the activity-based definition of informal employment and as informal economic activities we consider only those which are legal by nature but not officially registered. With respect to this, we identify their capacity to absorb a part of the unemployed workforce and cushion the economic and social consequences of persistent unemployment. To our knowledge, in Macedonia there is a lack of consistent cross-section data about the role that the informal sector plays as a form of a labour market adjustment mechanism. In order to estimate to what extent the unemployed workers are prone toward the employment in the informal sector we have designed and carried out a survey based on a representative sample of registered unemployed.

According to the results of our empirical analysis, a considerable number of unemployed workers are engaged in various forms of employment in the informal sector. Furthermore, we found that the income earned from additional informal activities represents more than one third of the total income of their households. Hence, employment in the informal sector alongside other forms of labour market adjustment significantly contributes to the wellbeing of the unemployed workers. However, most of the informal arrangements of the unemployed workers are low-productivity and small-scale

predominantly in the agricultural and farming sector. With respect to possible determinants of employment in the informal sector we revealed that male, mature and those who live in the rural areas are more inclined toward the informal sector. Regarding the labour market policies, we have not found any significant impact on the respondents' decision about participation in the informal sector. On the other hand, those who receive social assistance, who represent the poorest and the most marginalised segment of the population are significantly more involved in the informal arrangements. Hence, the informal economic activities for this category of unemployed workers mostly represent a strategy of last resort rather than opportunities for entrepreneurship.

Having in mind the characteristics of the employment in the informal sector as an adjustment mechanism for the unemployed workers we can draw several policy implications. First, the labour market issues should be tackled on both demand and supply side which means that the increased number of created jobs must be accompanied with wise investments on the side of the quality of the labour force. Second, the passive labour market policies have to be redesigned in order to target the most vulnerable segments of the unemployed population and provide appropriate employment opportunities in the formal sector. In this context, the labour market segmentation might have serious negative implications on the labour market functioning that have to be set off by using appropriate policy measures. Third, a greater accent should be given to the active labour market policies and their complementarities with the passive labour market policies. Fourth, the process of formalisation of jobs in the informal part of the economy has to be done prudently with an accent on the sustainability of the formalised jobs.

We hope that the above stated and other similar policy measures will reach the desired transformation of the labour market performance and will successfully assist the future economic development. However, the measures undertaken in the field of labour market should be supported by complementarily designed measures in other fields such as education and monetary and fiscal policies. In this context, it is worth mentioning that our policy recommendations are not formulated in the form of an 'operational plan', but rather as general directions that should inform the future actions of the policy makers.

References

Arandarenko, M. and Bartlett, W. (2012) *Labour Market And Skills in The Western Balkans*, Foundation for the Advancement of Economics (FREN) and LSEE Research on South Eastern Europe;

Bernabe, S.(2002) Informal Employment in Countries in Transition: A Conceptual Framework, Centre for Analysis of Social Exclusion working paper, No.56.

Blanchard, O. (1997) *The Economics of Post-Communist Transition*, Clarendon Press Oxford.

Bureau, S. and Fendt, J. (2011) Entrepreneurship in the informal economy: why it matters, *The International Journal of Entrepreneurship and Innovation*, Vol.11, No.2, pp.85-94.

Cazes, S. and Nesporova, A. (2003) *Labour Markets in Transition, Balancing Flexibility and Security in Central and Eastern Europe*, International Labour Office, Geneva, 2003.

Chen, M. and Vanek, J. (2013) Informal Employment Revisited: Theories, Data & Policies, *The Indian Journal of Industrial Relations,* Vol.48, No.3, pp.390-401.

Commander, S., Isachenkova, N. and Rodionova Y. (2013) Informal Employment Dynamics in Ukraine: An Analytical Model of Informality in Transition Economies,*International Labour Review*, Vol.152, No.3-4, pp.445-467.

European Training Foundation (2007) *Labour markets in the Western Balkans, Challenges for the future*.

Falcetti, E., Sanfey, P. and Taci, A. (2003) Bridging the Gaps? Private Sector Development, Capital Flows and the Investment Climate in South-Eastern Europe, EBRD Working Paper, No.80.

Gregg, P. and Manning, A. (1996) Labour Market Regulation and Unemployment, Unemployment Policy, Government Options for the Labour Market, Centre for Economic Policy Research: 333-356.

Haigner, S., Jenewein, S., Schneider, F. and Wakolbinger, F. (2013) Driving Forces of Informal Labour Supply and Demand in Germany, *International Labour Review*, Vol.152, No.3-4, pp.507-524.

Hussmanns, R. (2004) Measuring the Informal Economy: From Employment in the Informal Sector to Informal Employment, *ILO Working Paper*, No.53.

ILO (2003) Guidelines Concerning a Statistical Definition of Informal Employment, *Seventeenth International Conference of Labour Statisticians, Geneva, 24 November-3 December 2003, Report of the Conference;* ICLS/17/2003.

Kingdon, G. and Knight, J. (2006) The Measurement of Unemployment when Unemployment is high, *Labour Economics*, 13(3): 291-315.

Kucera, D. and Roncolato, L. (2008) Informal Employment: Two Contested Policy Issues, *International Labour Review*, Vol.147, No.4, pp.321-348;

Micevska, M. (2008) The Labour Market in Macedonia: A Labour Demand Analysis, LABOUR, 22(2): 345-368.

Nikoloski, D. (2004) Some Aspects of the Problem of Unemployment in Macedonia, *Economic Development*, Vol.6, No.1-2-3, pp.241-260.

Nikoloski, D. (2009) *The sustainable rate of unemployment in transition countries – A case study for Macedonia*, VDM Verlag.

Nikoloski, D., Pechijareski, L. and Pechijareski, G. (2012) Entrepreneurship in the informal sector as a form of labour market adjustment – The case study of Macedonia, *Proceedings from the 5th International conference for entrepreneurship, innovation and regional development, Sofia, 1-2 June, 2012*.

Nikoloski, D. (2012) The determinants of the labour market segmentation in transition countries with particular reference to Macedonia, *Der Donauraum Volume 52, Issue 3-4, 2012, pp.429-444*.

OECD (2002) *Measuring the Non-Observed Economy, A Handbook*.

Packard, T., Koettl, J. and Montenegro, C. (2012) *In From the Shadow, Integrating Europe's Informal Labour,* The World Bank, Washington DC.

Pechijareski, L. and Rocheska S. (1998) *Transition in Macedonia, between theory and practice*, NIP Metafora, Prilep.

Schneider, F. (2005) Shadow Economies of 145 Countries all over the World: What Do We Really Know?*Centre for Research in Economics, Management and Arts, Discussion Paper*, No.13.

Schneider, F. and Enste, D. (2000) Shadow Economy: Size, Causes and Consequences, Journal of Economics Literature, 38(1): 77-114.

Svejnar, J. (2002) Labour Market Flexibility in Central and East Europe, *William Davidson Working Paper*, No.496.

Williams, C. (2013) Beyond the Formal Economy: Evaluating the Level of Employment in Informal Sector Enterprises in Global Perspective, *Journal of Developmental Entrepreneurship,* Vol.18, No.4.

Williams, C. and Lansky, M. (2013) Informal Employment in developed and developing economies: Perspectives and Policy Responses, *International Labour Review,* Vol.152, No.3-4, pp.355-380.

Williams, C. and Nadin, S. (2010) Entrepreneurship and the informal economy: An overview, Journal of Developmental Entrepreneurship, Vol.15, No.4, pp.361-378.

Williams, C. and Nadin, S. (2014) Evaluating the Participation of the Unemployed in Undeclared Work, Evidence from a 27-nation European Survey, *European Societies,* Vol.16, No.1, pp.68-89.

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NATIONALISM AND ETHNIC ORIGIN IN THE WESTERN BALKANS VS EURO INTEGRATION THE CASE OF THE REPUBLIC OF MACEDONIA.

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INTRODUCTION

"Nationalism is not the awakening of the nation to self-consciousness; it invents nations where they do not exist" (Gellner, 1964:169)

The desire to create independent states out of multiethnic Yugoslavia has led to the victory of nationalism there. Their political elite used all available ways to promote it. In this context, it was expected that the EU membership was not seen as a priority over the objective of consolidating the new statehood. According to Richard Cottam, (Cottam and Cottam, 2001) nationalism, understood as a national feeling is connected to foreign policy formation, because of the motivation, lying behind individual or collective action; among the politically relevant communities to which the individuals are identified, the most involved in the foreign policy is the nation, organized as a country [1].

The democratization in the Western Balkans (WBs) countries has been slowed down because these states are very different from the rest of Europe. They have to overcome different challenges, from those that have been on the agenda for the rest of the European states, as most of them are EU candidates. The Balkan Peninsula has always been a crossroads between the Great powers' interests and appetites. These countries have developed their own ambitions through time too. But more important is that when at the end of the 90s the bipolar system collapsed their nationalisms did not disappear. A slow and painful process of change began.

The purpose of this paper is to outline the main problems in the foreign relations of the Republic of Macedonia, connected with the slowed progress towards the country's Euro integration. Finding a compromise for the name issue with Greece will open the door to starting the accession negotiations with the EU, give new incentives for development, and hopefully- civic and political consolidation for the sake of the country's future.

Macedonia is a unique case among the other Western Balkans' aspirant countries for EU membership. It was the first from the region that signed the Stabilisation and Association Agreement (SAA) with the EU and became a candidate country. Nevertheless, today it is at the end of the regional process, left behind by the other neighboring states, mostly because of the Greek veto over Macedonia's application.

THE "EXCLUSIVE" NATIONALISM AND ETHNIC ORIGIN IN THE WESTERN BALKANS

According to Rogers Brubaker, nationalism is not a static phenomenon and it cannot be understood unless examined in its interactive dynamics, presented in the so called triadic nexus in which dynamic opposition is seen between new states, political minorities and external homelands. The nationalism can be understood in many ways - as a doctrine, as a national feeling or as a political program (Brubaker, 1996). It is something typical in newly created states in the post-communist space. The state is very important to nationalism and the power relations inside the country, but more defining for the nationalistic policy are the fields in which decisions have to be made. Nationalism refers to the population and its specifics as a political entity; it is also understood as strong affection and loyalty to the own national entity. As a policy the core of nationalism has three interrelated problematic regions that influence the foreign policy. The first is connected to national identity problems (language, religion, ethnic self-determination). The second - to the minorities into the national borders and the relations with their "external homeland"; the third is about the nationalism as policy, concerning territories control and territorial appetites to lands outside the country's borders [2]. In order to explore its understanding as loyalty to the own national entity, it should be taken into account that the nationalism as ideology, in the post-socialist space is focused on the reorientation from the Marxism-Leninism towards nationalism, understood in terms of rekindling the collective national identities.

Distinctive for South Eastern Europe (SEE) and the Western Balkans is a type of ethnicity-based nationalism, that scholars call 'exclusive ethnic nationalism'. As in the twentieth century, ethnicity has become more important in politics, ethnic nationalism (or 'ethno nationalism') has been the distinguishing characteristic of it. This kind of nationalism has followed the end of the Cold War, the collapse of communism and the disintegration of the last multiethnic states, like Yugoslavia. It is used to distinguish the peoples from one another and to claim territories that have formerly been parts of the federation. According to M. Ignatieff (M. Ignatieff, 1993), 'Eastern' European nationalism is focused on the nation as a community of common descent, language and religion. In 'Western European nationalism', the citizens of a territory are accepted as members of the nation, and could form a 'nation-state'. In the 'Eastern' one, only those with the correct ethnic credentials have the right to live in a territory and be the citizens of the nation-state [3]. Nationalism results from changes in the character of politics, the economy and culture, however, these changes lead to ambiguous results, and it is very difficult to predict whether some kind of nationalism or another outcome would follow.

The challenges the Western Balkan countries encounter are related to maintaining peace, enhancing state efficiency and promoting country stability. The clear perspective of EU membership is a key stabilizing factor for these countries. It supports progress towards fulfillment of the necessary conditions, including those of the Stabilisation and Association Process (SAP) [4]. Good neighbourly relations and inclusive regional cooperation are essential. Continuous efforts are needed to tackle bilateral issues among these countries and the member states. These should contribute to overcoming the legacy of the past in the Western Balkans, where despite much progress, the conflicts wounds still need time to fully heal. Supporting stability and prosperity in the region is an investment in its future, but also in the EU's own interest. The EU membership has a big potential for change - in the national and transnational relations, power and opportunity structures. It has evolved in

practice and it provides benefits and freedoms that are only possible because of the member states cooperation.

ISSUES IN THE FOREIGN RELATIONS: GREECE AND BULGARIA
THE NAME DISPUTE WITH GREECE

After Macedonia declared independence in 1991, Greece (a member state of both the EU and NATO) reacted very acutely, pointing out that an independent country with the name "Macedonia" does not have the right to exist, moreover beside its borders. Greece challenges the very existence of the Republic of Macedonia. The issue has formed as a problem, concerning besides the name of the country, its national symbols and history, that are claimed as non-Macedonian and assumptive. Athens insists that the name is part of the historical Greek legacy and cannot be used by another country. The underlying reason for the issue over the name to continue for more than two decades today is the legitimacy, the right to exist. The Macedonian state underlines that its aim is to make the Greek state drop its pretensions over the name, because it is the both parties fault that the issue has not been resolved for such a long time.

The Macedonian political leaders consider a matter of outstanding importance that their country be recognized with its identity, language and borders, which would lead to broader international support, and solidarity on the name issue. The dispute is an international issue today, that has not been resolved for 27 years, most of which - with the UN mediation. Throughout the time various names have been proposed, different from the announced (and desired) by Macedonia, but all have been rejected by the parties at issue.

The official country's name still is "Former Yugoslav Republic of Macedonia" [5]. The source of the stubbornness in both parties' positions and a reason for the lack of progress is the WBs nationalism. The Greek side claims are based on irredentist fears and putative territorial claims towards the north Greek province that bears the name Macedonia too. The two countries have reached an agreement only for the addition of a geographical marker to the Republic's name, but the discussed alternatives so far [6] have not been approved by either party.After the signing of the Interim Accord [7] in 1995, the Greek side agreed not to stand in Macedonia's way in becoming a member of international and regional organisations (provided it uses the name FYROM), but it vetoed its NATO accession at the Bucharest Summit in 2008.

The 5 alternatives, proposed by the international UN Mediator M. Nimetz have not taken into account the Albanian minority's stance, as they are equally interested in the country's advance towards European integration. This highlights the difficult position Macedonia is in and the consequences that could follow if the political elite finds it impossible to consolidate over an adequate policy that would lead the country forward in the EU association process. Although Macedonia has made considerable concessions, concerning the coat of arms and constitutional articles, based on Greek demands, if the name issue does not find a resolution in the nearest future, the country could become "an isle" of backwardness in the region, a reservoir of nationalism and instability. It is very important that the country reforms be continued in the spirit of cooperation and political consensus.

In 2014 the European Parliament adopted a resolution, stating that Macedonia has fulfilled the Copenhagen criteria and the accession negotiations can start, as soon as the name issue is resolved. The standstill in the integration process has a profound effect on the public opinion in Macedonia towards the European Union. A survey, conducted in

2016 showed that 55% of the people think that the political situation in the country is not auspicious for EU integration; 18% think that Macedonia is closer to accession today, than it was in 2005 when it received its candidate status. About 40% consider the name issue the major and main obstacle to the slowed integration, only 17% - the new conditions, imposed by the EU. The figures show that more than 50% of the interviewed consider the slowed integration a result of internal political problems. Only 1/5 of them believe that Macedonia is closer to EU accession today, than it was in the mid-2000s, which is an indication that society is becoming increasingly frustrated from the stalled resolution of the name issue [8].

Macedonia should build on constructive relations with the Greek counterparts, as the base for a reasonable solution to the name dispute. The Zoran Zaev's Government has given serious requests and has showed strong willingness to find a compromise and an acceptable solution to the issue [9]. When the long standing problem finally finds its solution, that would mean lifting off the Greek veto and the start of the accession negotiations; something repeatedly recommended by the European Commission, that has not come into reality so far [10].

THE CONTROVERSIAL BULGARIAN-MACEDONIAN RELATIONS

The Republic of Bulgaria is the first country that has recognized Macedonia with its official name that comes to show that the Bulgarian state has no territorial or other claims towards Macedonia. The recognition is emotionally and historically burdened and especially in the first years of the bilateral relations, they were tense, inconsistent and non-reciprocal.

In 1999, a prime ministerial bilateral declaration was signed, between Ljubcho Georgievski and Ivan Kostov that started a new stage in the relations between the two states, marked by intensified cooperation, contacts and agreements in various fields. The dramatic changes in Macedonia after the signing of the declaration led to a change in the priorities and in key political actors on the Macedonian political stage. The raging ethnopolitical conflict in Kosovo (1998-1999) spilled over in tremendous, for the size of Macedonia, refugee inflow. The 2001 ethnopolitical crisis has had serious implications for the Macedonian attitude to foreign relations and its nationalism as a whole. After the increase of subjective perceptions for insecurity and vulnerability, this naturally leads to nationalism revival. The resolution of the crisis, which ended with the Ohrid Framework Agreement (OFA), was perceived by the Macedonian society as a strike on their stateness, seen as an expression of their unique identity.

The fluctuations and interdependence in the bilateral relations are particularly obvious when the political power changes. After Ivan Kostov's fall of power, the Bulgarian-Macedonian relations lost progress momentum. In the bilateral relations this resulted in hate speech between the countries which led to further deterioration in relations and practically froze them. In 2012 Nikolai Mladenov, the Bulgarian Foreign Minister stated that the initially announced unconditional support for the Macedonian European integration is no longer guaranteed, unless the relations between the two states start to improve. He outlined concrete measures to be met [11] in exchange of the continuation of the Bulgarian support towards accession. The Macedonian side stated that they will continue to work on the measures and on the improvement of the bilateral relations [12].

After a continuous period of lack of a more binding bilateral document on 02.08.2017 a bilateral Treaty for Good Neighbourly Relations between Bulgaria and

Macedonia [13] was signed, upgrading the 1999 Declaration. The document stresses the development of good neighbourly relations between the parties, regional cooperation development and cooperation in key sectors. The fluctuations in the Bulgarian - Macedonian relations are a consequence of the countries' inconsistent politics. This treaty is a symbol and result of the political will for the relations improvement, as well as a new level of cooperation. The "fruits" and effects from it are to be seen in the years to come.

MACEDONIA'S EURO INTEGRATION: MISSION (IM)POSSIBLE?

The transitions of the post-Yugoslav states are more complex than the national liberation struggles of the peoples for preserving their identity from the colonial empires. Nationalistic formations, proclaiming for the rights of a particular ethnic group rise and thrive and the ethnic politics in the WBs in the 90s is predetermined by nationalism. This contributes to the escalation of pressure and war, which burden the interethnic relations and slow down the region's democratic transition, European and Euro Atlantic integration. The SEE nationalism, the driving force of ethnopolitics is a function of tradition and the peoples' eagerness for communal self-determination. The WBs ethnopolitics has its particularities not only because of the geographical location, but also because of the indigenous peoples. The Balkan customs are strongly connected to the land and religion, as well as to the ethnic groups' history. That is the reason the natural continuation and political expression in post-Yugoslav states leads to slow and difficult change and their transitions "without an end date". The region has a long history of conflicts and territorial claims that the "old" European democracies stay away from.

After two world wars and the creation of the European communities (today-EU) that led to peace and economic progress in Europe, at the beginning of the 90s the European countries unwillingly interfered in the turbulent Balkan region, where the ex-Yugoslav states were struggling to defend their identities. The different concepts for the situation back then contributed to the slow healing of the war scars and stagnant democratization in these states [14]. Despite the huge investment in experts, post-conflict measures and reconciliation, most of the region's countries showed slow progress on the path to democratic development. The political relations are still based on nationalism and ethnicity, while the region's turbulence is still present.

Politics is still divided along ethnic lines in Macedonia, with political parties representing the interests of their own ethnic groups. According to David Brown, ethno-cultural nationalism arises as a response to a lack of state legitimacy [15]. As a consequence of perceived social injustice and lack of trust in national authorities, adherence to the ethnic group may be reinforced. The lack of domestic political consolidation in Macedonia (between the Macedonian and Albanian parties), the crises that followed and the problematic neighbour relations have determined the slowed European (and Euro Atlantic) integration.

The relationship between the EU and candidate countries is asymmetrical. This makes the terms set by the EU non-negotiable by the aspirant countries. In order to move forward in the integration process, they must be willing to accept the EU's changing demands, long transition periods and also to be willing to undertake reforms that might be unpopular among certain groups [16]. But the long pre accession process and the internal problems make the society and politicians less enthusiastic and doubtful whether the EU-imposed conditions would lead to the promised prosperity.

This leads us to the conclusion that although "everything is possible" [17] in Macedonia, it needs clear political orientation that would allow it to progress on the integration path. As long as the resolution of the name issue is a condition for starting of the accession negotiations, the domestic political consensus is urgently needed. After that the future developments will show whether the lessons from the long pre-accession process have been learnt. Being an EU member state means sharing common privileges and responsibilities; the new member states should be ready to defend the external borders against Union's threats and ready to build and upgrade a more watchful civil society.

CONCLUSION

Admitting the countries from the Western Balkans as full EU members is not an easy task, because it is about fulfilling criteria, but also about member states support, which is not unconditional. But for all of them, becoming part of a Union of security sounds like a good option against secessionist trends. However, the EU is in a deep crisis and is divided more than ever before. The future enlargement has been frozen for the near future and neither the Heads of state, nor the member states are certain what to do next. This makes the EU less attractive for the Balkan states that are not advancing fast towards Euro integration.

The SAP, built on the requirements of the previous strategies introducedpolitical conditionality; acknowledging these countries' difficult past, it emphasized their obligations for building and maintaining good neighbourlyrelations. EU incentivescould have made more sense with supportive domestic political elite. One of the main drawbacks of the Commission'sapproach was its reluctant attitude in setting any concrete dates forthe two countries' negotiations. The aspiring countries had engaged in a reform processwith no visible end other than a statement of 'belonging' to the EUfamily.

The EU future enlargement has acquired a complete look, with the strategy outlined in February 2018 - a document that makes a link between expansion and absorbing it in the inside. It is thorough, targeted at membership aspirants and the EU itself. In this sense, it shows the WBs countries that the region is important to the EU, but that the path to membership is only one. The document has a significant flaw though - it is unfair in terms of settlement of bilateral disputes that have been inherited from the breakup of Yugoslavia. The name dispute with Greece has already made these bilateral issues internal, not external to the EU. National veto over the accession process has been complicating the enlargement process for decades. The Greek veto has had serious consequences, it brought Macedonia far back, and on the verge of an ethnic conflict last year.

The new EU strategy for the WBs is more of a strategy for the EU itself than for the region. It is a call to these countries to finally make their civilizational choice not only in words. The new EU Strategy towards the countries from the region is a good basis for deepening of the relations. The extent to which it will be successful depends on what the EU will be able to do with itself and whether the WBs countries will be able to fulfill the requirements. All this will develop in an atmosphere of significant global shifts and influences [18].

NOTES AND REFERENCES

1. Cottam and Cottam (2001) cited in Bakalova. M. “Nationalism and foreign policy. The Bulgarian-Macedonian relations after the Cold war” [in Bulgarian], Stratkom: Sofia, Bulgaria, 2013: p. 69.
2. Brubaker, R. “Nationalism reframed. Nationhood and the national question in the New Europe”; Cambridge University Press: USA, 1996, p. 4-7.
3. Kellas J. “The Politics of Nationalism and Ethnicity” 2nd ed.; Macmillan press LTD, 1998; p. 88.
4. The Stabilisation and Association Process towards the Western Balkans is an EU policy in which the countries are involved in a progressive partnership with a view of stabilising the region. The SAP sets out common political and economic goals although progress evaluation is based on countries' own merits. The SAP was launched in June 1999 and strengthened at the Thessaloniki Summit in June 2003 taking over elements of the accession process.
5. This is the international name of the country with which it has been admitted in the UN.
6. Mathew Nimetz’s proposals for the Republic of Macedonia name are 1.) Constitutional Republic of Macedonia, 2.) Democratic Republic of Macedonia, 3.) Independent Republic of Macedonia, 4.) New Republic of Macedonia and 5.) Upper Macedonia.
7. Greece and Macedonia formalised bilateral relations in an Interim Accord in 1995. Both countries committed to continuing negotiations under UN auspices and Greece agreed not to block Macedonia’s accession in organisations. The accord is not a perpetual treaty but its provisions are binding in terms of international law.
8. Survey of Macedonian public opinion, conducted 19-25 April 2016 by the International Republican Institute. pp. 4; 28-30.
9. The name of the Skopje airport and a highway have been changed from “Alexander the Great” to “Friendship” (Prijatelstvo) in the name of the compromise and will to a reasonable resolution of the name issue.
10. Focus news. Alsat-M (Macedonia): Zoran Zaev says that he expects the name issue to be resolved in the first half of 2018. 06.01.2018г. http://www.focus-news.net/news/2018/01/06/2474082/alsat-mmakedoniya-zoran-zaev-zayavi-che-ochakva-sporat-za-imeto-da-bade-razreshen-prez-parvata-polovina-na-2018-a-godina.html
11. The measures, recommended by minister Mladenov include a signed bilateral Treaty for good neighborly relations, infrastructure, cooperation and the establishment of a High level council for annual intergovernmental meetings.
12. Macedonia Accepts Bulgaria's Terms For Support. http://www.balkaninsight.com/en/article/macedonia-accepts-bulgarian-terms-for-support.
13. The Treaty was signed by Bulgarian Prime minister Borissov and his Macedonian counterpart Z. Zaev. According to the Treaty’s articles: Bulgaria will cooperate with and support Macedonia on its way to European and Euro Atlantic integration (Art. 2), the cooperation in SEE will be developed (Art. 3); neither of the parties will execute non-friendly or/and separatist actions towards the other (Art. 11) and neither party has or will have territorial claims towards one another.

Treaty of friendship, good neighborliness and cooperation between Bulgaria and Macedonia, 08.2017.
14. The abyss between the Western Balkans situation in the 90s and the EU common principles and democratic history have led to the term "Balkanization" - a negative description of the interethnic fights and claims in the Balkans, resulting in a spiral of international instability.
15. Brown, D. (2000) "Contemporary Nationalism-Civic, Ethno cultural & Multicultural Politics: pp.43-44 cited in Nordman, J. "Nationalism, EU Integration, and Stability in the Western Balkans"; OSCE Yearbook 2015: p. 156.
16. Ibid. pp. 156-159.
17. Words by Neighbourhood Commissioner Johannes Hahn on 4 May 2017
Euractiv.com "Bulgaria pledges to champion Macedonia's EU and NATO dreams" 02.08.2017.
https://www.euractiv.com/section/enlargement/news/bulgaria-pledges-to-champion-macedonias-eu-and-nato-dreams/
18. EU inside. Brussels Finally Got the Western Balkans by the Horns 12.02.2018
http://www.euinside.eu/en/news/the-eu-enlargement-strategy-is-not-just-about-the-wb6-but-the-eu-itself.

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PERCEPTIONS OF THE CITIZENS OF THE LEVELS OF CORRUPTION IN VARIUOS ENTITIES IN THE REPUBLIC OF MACEDONIA - RESEARCH RESULTS 2013-2017

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Abstract

Modern transitional societies face numerous traumas in their social development, one of which is corruption. We can note that corruption is a current world problem. We are talking about how spread it is, and what the social, above all, organized response to that situation implies. The socio-economic development, the institutional and political system, or the dominant social and cultural norms are elements that can jointly be shaped in different ways, but corruption still remains an evil from which no country is spared, including Macedonia. Macedonian citizens see corruption as a significant everyday problem.

This paper contains the results from a citizens survey on their perceptions of the levels of corruption in various entities in the Republic of Macedonia. The results of the research were collected in a period of five years starting from 2013 until 2017. Three sets of assessments related to the degree of risk and the degree of corruption in certain activities, professions, and institutions are represented in the survey. Thus, according to the degree of corruption (from 0 - no corruption, 1 - the lowest, to 10 - the highest degree), citizens estimate that the degree of corruption is the highest among the customs workers at 8.18 in 2013 and 7.96 in 2014. Next, the political leaders in 2013 were marked by an average mark of 8.06 and 7.93 in 2014, followed by the political parties marked by 8.04 in 2013 and 8.09 in 2014. In 2015, "the political parties" were marked as the most corrupted by an average mark of 8.07, followed by the political leaders by 8.01, then the customs and the customs officers by 7.69. In 2016, the tendency to estimate the political parties as the most corrupted continued at 7.81 and the political leaders at 7.78. The total estimates in 2016 were somewhat lower than in the previous three years when they exceeded the values of 8; now they are below that value. In 2017, the tendency of marks above 8 remained. The political leaders were estimated as the most corrupted by an average mark of 8.08, followed by the political parties by 8.00, customs and customs officers by 7.73, officials by 7. 70 and the civil servants by 7.35.

Key words: corruption, perceptions of corruption, organized response to corruption, model of research of corruption

INTRODUCTION

We can say that corruption is a constant companion in the development of a state community. It adapts successfully and exists in different socio-political and economic systems. Economically underdeveloped countries with unstable political systems and serious violation of the human rights and freedoms are especially suitable ground for corruption (Mojanoski 2014: 305). Tanci finds that corruption exists when a conscious,

deliberate violation of the principle of impartiality in decision-making occurs in order to take advantage for some benefits (Tanci, 1998).

As a phenomenon, corruption impedes democratic development, threatens the general and existential human rights and freedoms of the citizens, distorts competition and thus obstructs the economic development of the country. Corruption also obstructs the rule of law, which is a direct threat for the democratic institutions (Labović 2006). Corruption is a phenomenon that seems to be very sticky (Rothstein and Uslaner 2006). The reason why corruption is a sticky problem is that none of the "players" in such a game have reasons to change their strategy (to pay or demand bribes).

Corruption is undoubtedly a social phenomenon; the opinion for its existence, spread, and installation in the system is dominant. It is necessary to discuss the phenomenon of corruption in the institutions in order to find ways for its limitation, prevention, and elimination. Here, it is important to puzzle about why this massive sense of presence of corruption exists (P.L.Berger & T. Luckman 1985:32). Corruption is a phenomenon of modern societies, especially of the countries in transition. It does not mean that there was not corruption earlier; it is that the standards and norms have changed and the previous ones became unacceptable. In the pre-transitional system there were many obstacles against the personal enrichment and the low concentration of political power. In that period, service was not exchanged for money but for influence (Cotić 2001:301). Actually, the motive was not the money directly, but the fear (the threat) or the desire for more power which provided progress on the social scale. In the new society, things are changing. The aspirations grow, and the money becomes a means of achievement. It is a time when the simultaneous explosion of material aspirations on the one side, and the erosion of values and norms on the other side have became a more serious, and even dangerous combination (Kragar 1994: 47-61). When the new challenges of privatization, the illegal money making, denationalization, and the direct thefts of public funds are added, the image of the unstable transitional societies becomes clearer. We can add here the reduced efficiency of the institutions for revealing, prosecuting, and punishing corruption, and hence, the appearance and the spread of corruption is not surprising (Mojanoski et. all. 2014). Thereby, the impression created in the society is that corruption is important - it is not a fashion because it is dangerous - it is an indicator of successfulness and ability to "befall" (Dirkem 1969: 827). Without the intention to get into dispute about the causes of corruption, we can note that the consequences are devastating: it is the erosion of the trust in the institutions as a serious social trauma that paralyzes social institutions, and living in the community is perceived as a serious social handicap, and the exercise of power as an opportunity to redistribute the national wealth to party, group and personal interests (Kregar URL: 2-3).

Method and instruments

The answer to the initial assumptions is sought in the results of the five-year research on the topic “The attitudes of the citizens of the Republic of Macedonia on corruption” conducted in the period from 8 to 20 January in 2013, 2014, 2015, 2016 and 2017[*]. The number of respondents in 2013 was 1210, in 2014 - 1017, in 2015 - 1041, in 2016 - 1022 and in 2017 a total of 1020 respondents from all regions of the Republic of

[*]The research team was led by Professor Cane T. Mojanoski. Professors Marina Mališ-Sazdovska, Marjan Nikolovski, and Katerina Krstevska were also included in the research.

Macedonia. The territorial distribution shows that the research was conducted in 38 municipalities in 2013, in 33 in 2014, in 30 in 2015, in 34 in 2016 and in 39 municipalities in 2017. The sample is multi-phased (Mojanoski 2013:188). The populated municipalities by regions in which the research was conducted were randomly chosen. In each place a nucleus on which the research would be conducted was formed. Every fifth house or every 20th apartment in a block of flats was visited. In the chosen family the person who was interviewed was the adult whose birthday was closest to the day of visit.

For the needs of the research the following information was prepared: ground for conversation: "the opinion of the citizens on corruption", the survey diary, data processing analytical table, the Codes and the Guidelines for application of the ground for conversation and provision of interlocutors (Mojanoski 2013: 76).

The ground for conversation was intended to examine the views of the citizens. It was constructed particularly for this research in the form of a socio-demographic survey designed and structured in the form of a questionnaire, which includes the demographic characteristics of the respondents and a number of batteries of questions through which set the ranking of the certain forms of corruption or the degree of corruption (Mojanoski 2012a: 418). Hence, we can say that the method of data collection is through a structured interview. As a reminder, a structured interview is when all candidates are asked the same questions, formulated according to the requirements of the particular situation. Structured interviewers tend to create circumstances as objective as possible: all applicants must be examined by the same criteria and given equal time for presentation (Mojanoski 2012b).

The basis of the discussion was structured in 6 parts: a) demographic data; b) knowledge about corruption; c) experiences related to corruption; d) the state of corruption; e) preparedness and determination to fight against corruption; and f) development of an anti-corruption system. The form of the questions is basically closed and consists of constructing scales for the degree of corruption, i.e. choosing variations on issues related to knowledge acquisition, corruption-related experiences, or presented forms of combating corruption. The instruments included graphic assessment scales (from 0 no corruption to 10 – the highest degree) of corruptness of certain professions or institutions, and the offered mechanisms for ranking the forms in which corruption is most commonly displayed.

The basis for the discussion contains a battery of 19 questions with a request to estimate the degree of corruption on a graphic scale. The respondents were asked a question: "38. Evaluate the level of corruption within the inspection bodies (Evaluate as follows: from 0 to 10). Circle one number.)".

Additionally, a subject of analysis was the answer to the question "In your opinion, in which of the following situations is the CITIZEN the most exposed to the risk of corruption? (from 1 - the least, to 7 - the most)". The respondent was asked to define a range from 1 to 7 according to the following situations in which the respondent (citizen): (1). wants to avoid the consequences of a committed misdemeanor (traffic, financial, or similar), (2) when in front of the public administration bodies he/she wants to exercise their legal rights within a short period of time and out of the procedure, (3) when he/she wants to make a property profit in accordance with the law, but in a shortened procedure; (4) when looking for employment or promotion at work, (5) when he/she wants to make a profit (property or other) or to expedite the process outside the procedure; (6) when he/she needs to enter university or when sitting for exams, (7) for accomplishing the right to health insurance (getting a health care intervention in a short period of time).

Results and discussion

A battery of 17 questions was put in the research. The respondents were asked to evaluate the level of corruption on a graphic scale (eg: [("24. Evaluate the level of corruption among the police and police officers") - Evaluate asfollows: 0 - no corruption, 1 – the lowest degree, to 10 – the highest) Circle one number.)]. On the basis of the questions presented in this way, the citizens determined the level of corruption related to certain activities, professions, and institutions. The following are the average estimations:

Table 1 Estimation of the degree of corruption in 2013 to 2017 - weighted arithmetic means

Order	Activities, professions and institutions rated according to the degree of corruption	Year				
		2013	**2014**	**2015**	**2016**	**2017**
1	Everyday situations of the citizens	6.60	6.90	6.69	6.48	6.75
2	Political parties	8,04	**8,09**	**8,07**	**7.81**	8.00
3	Political leaders	**8,06**	7,93	8,01	7.78	**8.08**
4	Officials	7,88	7,73	7,66	7.38	7.70
5	Civil servants	7,59	7,48	7,31	7.07	7.35
6	The police and police officers	7,02	7,36	7,23	7.07	7.28
7	The customs and customs officers	8,18	7,96	7,69	7.26	7.73
8	Denationalization bodies	6,53	6,49	6,33	5.80	6.15
9	Sale of state land	6,96	6,84	6,87	6.45	6.54
10	Inspection bodies	7,60	7,48	7,28	6.87	7.05
11	Doctors and health care workers	7,23	7,33	6,78	6.32	6.57
12	Judges	7,97	8,02	7,48	7.04	7.25
13	Prosecutors	7,27	7,43	6,72	6.40	6.78
14	University professors	7,12	7,28	7,13	6.37	6.72
15	Journalists	5,96	6,49	6,06	6.08	6.18
16	NGOs	5,16	5,45	5,27	5.14	5.15
17	Private entrepreneurs	5,60	5,76	5,43	5.60	5.63

The table presents the degree of corruption of a certain institution or profession according to the research results of 2013, 2014, 2015, 2016 and 2017. The estimation is made as a weighted arithmetic mean of the responses from 1 – the least, to 10 - the most corrupted. The respondents who answered that there was 0 - no corruption, were not calculated. If we look at the results of the top five functions, professions, and activities separately, the description would be the following: in 2013, the citizens rated the customs and customs officers with the highest negative rating by an average score of 8.18, out of possible 10 (maximum). Then the political leaders with a degree of corruption of 8.06, followed by political parties with 8.04, judges with 7.97, officials with a score of 7.88. In 2014, that distribution slightly changed. The most corrupted were the political parties with a score of 8.09, followed by judges with a score of 8.02 (somewhat lower than the rating in 2013), then the customs and customs officials with a score of 7.96. The next assessment refers to the political leaders by an average estimation of 7.93 and in the fifth place are the officials with an average score of 7.73. In 2015, "political parties" were rated as the most corrupt with an average score of 8.07, followed by the political leaders with a score of

8.01, customs and customs officials with 7.69, officials with 7.66 and judges with a corruption degree of 7.48. In 2016, the tendency remained: the most corrupted are the political parties with 7.81, and political leaders with 7.78. Then, officials followed with an average score of 7.38, then customs and customs officials with 7.26 and equal scores of 7.07 were given to civil servants and the police and police officers 7.07. We can note that total estimates in 2016 were somewhat lower than the previous three years, when they exceeded the value of 8; they went below that value. In 2017 the tendency of values above 8 continued. The most corrupted are the political leaders with an average score of 8.08, followed by political parties with 8.00, customs and customs officials with 7.73, officials with 7, 70 and civil servants with a score of 7.35.

For better illustration, we present the top five activities, professions, andfunctions which are estimated as particularly corrupted:

Table 2 Rank of activities, professions, and functions according to the level of corruption in 2013 – 2017

Rank	Year of survey				
	2013	**2014**	**2015**	**2016**	**2017**
1	customs and customs officers	political parties	the political parties	political parties	political leaders
2	political leaders	judges	political leaders	political leaders	political parties
3	political parties	customs and customs officers	customs and customs officers	officials	customs and customs officers
4	judges	political leaders	officials	customs and customs officers	officials
5	officials	officials	judges	civil servants	civil servants

The perceptions of the respondents indicate that thepopulation perceives the following fivemost corrupted institutionsoractivities: a) politicalleaders, b) politicalparties, c)customs andcustomsofficials, d)judgesand e) officials.

Why are the perceptions dominantly grouped around these five groups of activities, professions, and institutions. The answer is related to the actuality of the social relations in the country, primarily related to the absence of the rule of law, the visible insufficiency of the democratic processes in the country, the emphasized presence and uncontrolled action of the "state apparatus", particularly the lack of control over the intelligence and counterintelligence services, the emphasized personalization of certain functions, manifestations of absence of legal and other responsibility for the acts of the state officials and other responsible work positions.

The subject of analysis are also two groups of questions related to the ranking of the degree of exposure to the risk of corruption of civil servants and entrepreneurs. Therefore, a battery of assessment questions was set in the survey (from 1 - the least, to 7 – the most) to assess in which situations the citizen is most exposed to the risk of corruption.

Table 3In your opinion, in which of the following situations, the CITIZEN is most exposed to the risk of corruption?

	2013	2014	2015	2016	2017
1. In situations where they want to avoid the consequences of committed violations (traffic, financial, and similar)	3.53	3.70	3.78	3.68	3.45
2. When they want to exercise their legal rights in front of the public administration bodies within a short period of time and out of the procedure	3.34	3.66	3.59	3.61	3.67
3. In situations when they want to acquire a property gain in accordance with the law but in a shortened procedure	3.59	3.86	3.90	4.09	3.80
4. In situations when they are looking for employment or promotion at work	3.83	3.97	4.03	**4.47**	4.54
5. In situations when they want to make a profit (property or other), or to speed up the process outside the procedure	4.26	4.08	**4.25**	4.19	4.42
6. In situations when they want to enroll at the university or when sitting for an exam	4.47	4.28	4.21	3.94	**4.64**
7. In situations of exercising the right to health insurance (obtaining a health care intervention without a waiting period)	**4.98**	**4.45**	4.24	4.03	4.00

The offered presentation indicates that in 2013, the citizens were most exposed to corruption in the exercise of their right to health insurance. It occurred in 2015, when they wanted to make profit (property or other), or speed up the process outside the procedure, in 2016 when they were looking for employment or promotion at work, and in 2017 when they were enrolling at university or sitting for exams. It is interesting to note that enrolling at university or sitting for exams ranked second in 2013 and 2014, in 2015 situations when exercising the right to health insurance (obtaining an medical service without a waiting period), in 2016 situations when people wanted to make profit (property or other), or to speed up the process outside the procedure, and in 2017 in situations when they were looking for employment or promotion at work.

If we try to answer why the citizens of the Republic of Macedonia perceive the situation in the country in this way, we should also search for the answer in other research results. Namely, according to a survey carried out in 2011 by the UNDOC office in Vienna, corruption and the other forms of crime are a significant obstacle for the private companies in the country and they have a negative effect on the private sector investments (Bismogno, Jandl, Karbalo, & Reiterer 2013: 4). The survey showed that a significant number of construction companies, and wholesale and retail companies had bribed the public officials, especially customs officers, cadastre officials, municipal officials, police officers and inspectors throughout the year. According to the research results, from all companies that had a contact with a public official in the previous 12 months, 6.5% had paid bribe to that official. The most vulnerable were the small companies (10-49 employees). They had paid bribes most often. One part of the bribe that companies paid to

the public officials was in food and beverages (52%), then by giving other goods that were not produced by the company (27.6%) and cash payments (16. 6%). It was estimated that the median value paid as bribe amounted to 17,349 Denars, which is equivalent to 689 EURO (Bismogno, Jundle, Carballo, & Reiterer 2013: 6).

The following were stated as the most common purposes for which companies paid bribes: they wanted to speed up business-related procedures in 50.2%, bring the procedure to an end in 9.6%, reduce costs of the procedure or get a better treatment in 8.6% and get information in 2.8%. The survey found that less than a quarter, or 22.2% of the bribe did not serve for a specific purpose, but it was rather a kind of "treating" public officials to improve communication in the future and to "protect" the interest of the company (Bismogno, Jundle, Carballo, & Reiterer 2013: 12).

It is interesting that only 3.3% of the companies that paid bribe reported it to the official authorities. As the main reasons for not reporting bribery, several explanations were given, such as: "The payment or gift was given as a sign of gratitude to the public official because he/she provided the requested service" in 21.6% of the cases, 20.0% responded that it was "pointless to report when nobody cares" and 18.3% estimated that "the company benefited from the bribe", i.e. it is a cost effective expense. It is also interesting that only 0.2 percent of bribe-takers reported to the relevant authorities such business-to-business bribe. One of the problems pointed by this research is that 0.9% of the companies were victims of extortion, a crime that can be associated with organized criminal groups.

It was estimated that fear of crime plays an important role in the decision-making process of the business leaders, especially those associated with large investment ventures. On average, one out of ten (or 10.3%) entrepreneurs claimed that they did not have major investments in the previous year and the reason they stated was fear of crime.

Interesting is the fact that some criminal offenses were not reported. Such are vandalism and fraud committed against companies. Namely, more than half (or 56.3%) of the companies consider that a crime as vandalism is not worth reporting to the police. 33.5% of them believe that the police can do nothing, and 32.1% think that the police were not interested in prosecuting the perpetrators. On the contrary, about two-thirds, or the 65.5% of the respondents did not report fraud to the police because they thought it was not within the competences of the police. Some other reasons were also stated for not reporting a crime, such as fear of retaliation and the low level of insurance cover (Bismogno, Jundle, Carballo, & Reiterer 2013: 74).

The main reasons for the dissatisfaction noted in the way in which the police react to crime reports are often related to the difficulties of resolving the crime and the fact that the companies victims of crime will be reimbursed. For example, in cases of vandalism, the victims are not satisfied or not completely satisfied because they think the police do not do enough (70 percent) or the police would not find the perpetrator of the misdemeanor (47.9 percent). About one tenth of the companies also feel that they were not treated properly (10.8 percent) or were not properly protected from crime (6.7 per cent) (Bismogno, Jundle, Carballo, and Reiterer 2013: 57).

In this survey related to the attitudes of the citizens of the Republic of Macedonia in these five years, the highest ranking factor is the fear that the private sector is most often exposed to the risk of corruption in "situations when double standards are applied while practicing activities among relatives and friends". In terms of the second ranking factor, there are oscillations from year to year.

Table 4In your opinion, in which of the following situations is the PRIVATE SECTOR (the private owner) the most exposed to the risk of corruption?

	2013	2014	2015	2016	2017
1. In the administrative procedure, in situations of meeting the legal requirements for engaging in activity	2.85	2.88	3.01	2.73	2.39
2. In situations of settlement of obligations toward the state which arise from the activity (payment of taxes, fees, etc.)	2.88	3.06	3.17	2.92	2.73
3. In the situations of providing a competitive advantage in the implementation of the activities	3.22	3.43	3.36	3.58	3.61
4. In situations of winning tenders	3.57	3.80	3.54	3.98	4.20
5. In situations of customer acquisition (customers) in the performance of the activity	4.02	3.89	3.83	3.81	3.77
6. In situations when double standards are applied when engaging in activities related to relatives and friends	**4.47**	**3.92**	**4.09**	**3.99**	**4.29**

In the first three years (2013, 2014 and 2015) dominating is the assessment that the private owners in the Republic of Macedonia are most often exposed to the risk of corruption in "situations of attracting customers or clients while performing the activity", and in 2016 and 2017 in the situations of "winning tenders".

Conclusion

Corruption is undoubtedly a social trauma that has various forms, affects the overall social life and is part of the normative order of the modern state. The normative framework covers the instruments for initiating a procedure against corruption and sanctioning the punishable behavior. In this, we must not neglect the fact that all forms of corruption do not necessarily imply crime, which means that corruption in its contents goes beyond the limits of criminal law.

Corruption is a complex crime with unclear boundaries, so it is often difficult to distinguish between the offender and the victim. This does not mean that it must be a one-dimensional transaction in which the active side forces the passive one: the two sides may have mutual benefit, and the victim may be a third party or the community as a whole. Moreover, there are cultural and social factors that can further blur this issue. Presenting gifts as a sign of gratitude or evading bureaucratic obstacles can be considered acceptable in one culture, and unethical in another.

Researches indicate that in the Republic of Macedonia the notions about the content of corruption are layered and insufficiently clear and precise. This indicates the need for applying forms of information and raising the level of knowledge and awareness of the need to participate in the efforts of organized society to solve this complex social phenomenon. The answers to the questions indicate that more than one-fifth of the respondents include under corruption giving and taking bribes, abuse of power and illegal

mediation. The proportions indicate that despite the strong media treatment of corruption, the knowledge and understanding of the citizens of the Republic of Macedonia are not completely clear. Namely, the relatively low percentage of responses that bribery includes giving of bribes can indicate that in the cultural pattern of the respondents there are ideas that giving gifts for a service rendered is considered as an act of being nice rather than a form of corruption.

The research results indicate that corruption in the Republic of Macedonia is present. Citizens largely think that it is especially present among the officials, institutions, especially those who perform public services, but also within the security organs, as well as certain entities in civil society. Such sections indicate that corruption is a serious trauma and a threat to the development of Macedonian society and that it implies a social response that will suppress the sources of its origination.

Bibliography

1. Berger,P.L & Luckman, T. 1985, *The Social Construction of Reality*, London, Penguin Books
2. Bonacin, D., Smajlović, N., 2007*Faktorska analiza nekih kinematičkih parametara završnih faza bacanja koplja [Factor Analysis of some Kinematic Parameters of the Final Stage of Spear Throwing]*; Acta Kinesiologica 1; pp. 58-63;
3. Dirkem, E.1969. *O normalnosti zločina [About the Normality of the Crime]*, Parsons & all.: *Teorije o društvu [Theories of Society]*, Beograd, Vuk Karadžić,
4. Faktorska analiza – Glavne komponente - zajednički faktori; [Factor analysis – main components – joint factors] Retrived 2009, June, 29 www.ekof.bg.ac.yu/nastava/.../9-FAKTORSKA%20ANALIZA.pdf URL;
5. Faulend, M.& Šošić, V. 1999. *Jeli neslužbeno gospodarstvo izvor korupcije*? *[Is Unofficial Economy a Source of Corruption?]* Zagreb, Croatian National Bank;
6. Klinke, S., Mihoci, A., Härdle, W. 2012 *Exploratory factor analysis in mplus, r and SPSS*; Retrieved 2012, June 22,
http://www.stat.auckland.ac.nz/~iase/publications/icots8/ICOTS8_4F4_KLINKE.pdf, URL,
7. Kregar, J. 1994. *Deformation of Organizational Principles*, pp. 47-61, D.V.Trang (ed)., Corruption and Democracy, Budapest COLPI, Budapest,
8. Kregar, J.: *Korupcija u pravosuđu [Corruption in Judiciary]*; Retrieved 2001, May, 26*www.pravo.hr/_download/repository/korupcijasudstvo.cg.doc, URL;*
9. Mojanoski, C., 2014. *Citizens perception of Corruption as a Security risk and challenge*, pp. 315-331, International scientific conference: "Macedonia and the Balkans, a hundred years after the World War I – Security and Euro-Atlantic Integrations; Volume I; Skopje, Faculty of Security;
10. Walter-Roberts P. F. 2012.
Determining the validity and reliability of the culturalawareness and belief sinventory:
(A. Dissertation); pp.78-86; Retrieved 2012, Jun,
22http://repository.tamu.edu/bitstream/handle/1969.1/6013/etd-tamu-2007A-EDCI-WalterR.pdf?sequence=1, URL
11. Labović. M., 2006. *Власта корумпира [Power Corrupts]*, Skopje,De Gama
12. Lalović D., 2005. *Корелационо-факторска истраживања вербалне способности [Correlation-factor Research of Verbal Abilities]*; p.8-11; Compilation of the Institute of pedagogic researches; Belgrade; Year XXXVII; No. 1;

13. Ljatifi, V. *Прашања околу откривањето и борбата против корупцијата[Issues about Discovering and Fight against Corruption]*;Retrived, 2011 February 11 ww.fes.org.mk/.../Veselj%20Latifi,%20Prasanja%20okolu%20otkrivanjeto%20i%20borbata%20protiv%20kor... URL;
14. Mojanoski, C. T. 2015. The Citizens's perceptions about the contribution of the police to the feeling of saffety. *Security Dialogues, VI*(2-1), 275-290.

15. Mojanoski, C. T. 2016. The Citizens's percetrion of the level of corruptionn in the Republic of Macedonia according to the research results obtained from 2013 to 2015. (A. Dragovic, Ур.) *The Sociological Review, XVII*(2), 27-48.

16. Mojanoski, C. T., & Pelivanova, N. (2016). Indicators for level of corruption in certain entities in Republic of Macedonia. *ZENITH International Journal of Multidisciplinary Research, 6 (3) March*(3), 123-139.

17. Mojanoski, C. T., Pelivanova, N., & Ristovska, M. 2015. Features of The Corruption in the Republic of Macedonia according to the Research Results 2013-2015. *ZENITH International Journal of Multidisciplinary Research, V (11) November*(11), 70-84
18. Mojanoski, C., Sazdovska - Malish, M., Nikolovski, M., Krstevska, K., 2014. *Мислењето на граѓаните на Република Македонија за корупцијата [Views of the Citizens of the Republic of Macedonia about Corruption]*, Skopje, Faculty of Security
19. Mojanoski, C. 2012a. *Методологија на безбедносните науки – основи [Methodology of Security Sciences - Basics]*, Book I, Skopje, Faculty of Security
20. Mojanoski, C. 2012b. *Методологија на безбедносните науки - истражувачка постапка [Methodology of Security Sciences – Research Procedure]* Book II, Skopje, Faculty of Security
21. Mojanoski, C. 2013. *Методологија на безбедносните науки - аналитички постапки [Methodology of Security Sciences – Analytical Procedures]*, Book III, Skopje
22. Cotić, D., 2001. *Меѓународне препоруке и национална искуства за борбу против корупције, Зборник радоваПриврени криминалитет и корупција [International Recommendations and National Experiences in the Fight against Corruption]*, Compilationof works *Economic Criminality and Corruption*, Belgrade, Institute of Criminologic and Sociologic Researches,;
23. Tanci V. 1998. *Corruption Around the Wordl*, Vol.45, No 4,IMFStaff Papers
24. Rothstein, Bo. and Uslaner E. M. 2006. *All for All. Equality, Corruption and Social Trust.* World Politics 58 (3).

Attachment:

Table 5 Rank according to the degree of corruption in 2013, 2014, 2015, 2016 and 2017

Rank	Year in which the survey was conducted				
	2013	**2014**	**2015**	**2016**	**2017**
The most	customs and customs officers	political parties	political parties	political parties	political leaders
	political leaders	judges	political leaders	political leaders	political parties
	political parties	customs and customs officers	customs and customs officers	officials	customs and customs officers
	judges	political leaders	officials	customs and customs officers	officials
	officials	officials	judges	civil servants	civil servants
	inspection bodies	civil servants	civil servants	the police and police officers	the police and police officers
	civil servants	inspection bodies	inspection bodies	judges	judges
	prosecutors	prosecutors	the police and police officers	inspection bodies	inspection bodies
	doctors and health care workers	the police and police officers	university professors	everyday situations of citizens	prosecutors
	university professors	doctors and health care workers	sale of state land	sale of state land	everyday situations of citizens
	the police and police officers	university professors	doctors and health care workers	prosecutors	university professors
	sale of state land	everyday situations of citizens	prosecutors	university professors	doctors and health care workers
	everyday situations of citizens	sale of state land	everyday situations of citizens	doctors and health care workers	sale of state land
	denationalization bodies	denationalization bodies	denationalization bodies	journalists	journalists
	journalists	journalists	journalists	denationalization bodies	denationalization bodies
The least	private entrepreneurs	private entrepreneurs	private entrepreneurs	private entrepreneurs	private entrepreneurs
	NGOs	NGOs	NGOs	NGOs	NGOs

Table 6In your opinion, in which of the following situations is the CITIZEN most exposed to the risk of corruption?

7. in situations of exercising the right to health insurance (getting a health care service without a waiting period)	7. in situations of exercising the right to health insurance (getting a health care service without a waiting period)	5. in situations when they want to make profit (property or other), or speed up the process outside the procedure	4. in situations when they are looking for employment and promotion at work	6. when enrolling at university or sitting for an exam
6. when enrolling at university or sitting for an exam	6. when enrolling at university or sitting for an exam	7. in situations of exercising the right to health insurance (getting a health care service without a waiting period)	5. in situations when they want to make profit (property or other), or speed up the process outside the procedure	4. in situations when they are looking for employment and promotion at work
5. in situations when they want to make profit (property or other), or speed up the process outside the procedure	5. in situations when they want to make profit (property or other), or speed up the process outside the procedure	6. when enrolling at university or sitting for an exam	3. in situations when they want to achieve property gain in accordance with the law but in a shortened procedure	5. in situations when they want to make profit (property or other), or speed up the process outside the procedure
4. in situations when they are looking for employment and promotion at work	4. in situations when he/she is looking employment and in promotion at work	4. in situations when they are looking for employment and promotion at work	7. in situations of exercising the right to health insurance (getting a health care service without a waiting period)	7. in situations of exercising the right to health insurance (getting a health care service without a waiting period)
3. in situations when they want to achieve property gain in accordance with the law but in a shortened procedure	3. in situations when they want to realize property gain in accordance with the law but in a shortened procedure	3. in situations when they want to achieve property gain in accordance with the law but in a shortened procedure	6. when enrolling at university or sitting for an exam	3. in situations when they want to achieve property gain in accordance with the law but in a shortened procedure
1. in situations when they want to avoid the consequences of committed violations (traffic, financial, or similar)	1. in situations when they want to avoid the consequences of committed violations (traffic, financial, or similar)	1. in situations when they want to avoid the consequences of committed violations (traffic, financial, or similar)	1. in situations when they want to avoid the consequences of committed violations (traffic, financial, or similar)	2. when they want to exercise their legal rights with the public administration bodies within a short period of time and out of procedure
2. when they want to exercise their legal rights with the public administration bodies within a short period of time and out of procedure	2. when they want to exercise their legal rights in front of the public administration bodies within a short period of time and out of procedure	2. when they want to exercise their legal with the public administration bodies within a short period of time and out of procedure	2. when they want to exercise their legal rights with the public administration bodies within a short period of time and out of procedure	1. in situations when they want to avoid the consequences of committed violations (traffic, financial, or similar)

Table 7In your opinion, in which of the following situations is the PRIVATE SECTOR (the private owner) most exposed to the risk of corruption?

2013	2014	2015	2016	2017
6. in situations when double standards are applied when engaging in activities related to relatives and friends	6. in situations when double standards are applied when engaging in activities related to relatives and friends	6. in situations when double standards are applied when engaging in activities related to relatives and friends	6. in situations when double standards are applied when engaging in activities related to relatives and friends	6. in situations when double standards are applied when engaging in activities related to relatives and friends
5. in situations of attracting customers in the performance of the activity	5. in situations of attracting customers in the performance of the activity	5. in situations of attracting customers in the performance of the activity	4. in situations of winning tenders	4. in situations of winning tenders
4. in situations of winning tenders	4. in situations of winning tenders	4. in situations of winning tenders	5. in situations of attracting customers in the performance of the activity	5. in situations of attracting customers in the performance of the activity
3. in situations of providing competitive advantage in performing of the activities	3. in situations of providing competitive advantage in performing the activities	3. in situations of providing competitive advantage in performing of the activities	3. in situations of providing competitive advantage in performing of the activities	3. in situations of providing competitive advantage in performing of the activities
2. in situations of settlement of obligations towards the state which arise from the activity (payment of taxes, fees, etc.)	2. in situations of settlement of obligations towards the state which arise from the activity (payment of taxes, fees, etc.)	2. in situations of settlement of obligations towards the state which arise from the activity (payment of taxes, fees, etc.)	2. in situations of settlement of obligations towards the state which arise from the activity (payment of taxes, fees, etc.)	2. in situations of settlement of obligations towards the state which arise from the activity (payment of taxes, fees, etc.)
1. in the administrative procedure, in situations of meeting the legal requirements for engaging in the activity	1. in the administrative procedure, in situations of meeting the legal conditions for engaging in the activity	1. in the administrative procedure, in situations of meeting the legal conditions for engaging in the activity	1. in the administrative procedure, in situations of meeting the legal conditions for engaging in the activity	1. in the administrative procedure, in situations of meeting the legal conditions for engaging in the activity

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RUSSIAN INFLUENCE IN THE WESTERN BALKANS: HOW THE REGION HAS BECOME THE SOFT UNDERBELLY OF EUROPE

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1) Background: This paper seeks to explore the strength and significance of Russian influence in the region of the Western Balkans. The purpose of the paper is to offer a short overview of Russia's actions in the Western Balkans.

2) Methods: The paper will use analytical, comparative, descriptive, deductive and historical and situation analysis methods

3) Results: The paper will analyze the level of Russian influence in the Western Balkan through the cases of Serbia, Montenegro, Bosnia and Herzegovina and Macedonia. Serbia has been a faithful ally of Russia even though the European Commission annihilated its expectations through the scrapped Russian-backed South Stream project. Serbia never introduced sanctions to Russia as the EU did, and it hosts the so called Russian humanitarian center in Niš. Montenegro was influenced by both NATO's intention to block Russia from docking its navy in Montenegrin Mediterranean ports, and by the Russians who are strongly present in many aspects in the country. The Russians were also subject of suspicion of involvement in the (alleged) coup d'état in Podgorica in October 2016. Bosnia and Herzegovina is unstable largely because of the intentions of Republic of Srpska to secede, and is backed by the Russians. Macedonia saw a physical attack on its incumbent Prime Minister Zoran Zaev at the Parliament in April 2017 as the two factions, pro-Western and pro-Russian fought for power.

4) Conclusion: Russia has been able to sprawl its influence in the Western Balkans, mainly through energy projects and good personal contacts with the political elites of the region. It uses its presence in the region as an advantage against the stronger influence of the disoriented European Union, and against further NATO expansion in Eastern Europe. Thus, the region found itself in the crossfire between the East and the West, and its European future looks rather bleak.

Keywords:*Western Balkans,Russia, European Union, energy security, EU enlargement*

1. INTORDUCTION: Use of military might and energy supply as means for Russian undermining of the Euro-Atlantic community

Ever since Vladimir Putin took over the reins of power in the Kremlin in 2000, Russia has been seeking to restore its influence at least to an extent of what used to be the global influence of the USSR. Modern Putin's Russia, abandoned the Soviet ideal of global dominance divided with the United States, and decided instead to turn into regional, Euro-Asian power, spreading its influence from the Baltics to the West Pacific region. In 2004 NATO expanded to the much of the Central and Eastern European countries, and even to

the three Baltic States, formally members of the Soviet Union. It was a big blow given by the West to the Russian ambitions of reiterating its influence in Eastern Europe. As the European Union enlarged with the countries that had just joined NATOin that same year, Russia started to pursue a different agenda, with the same ultimate goal – to hamper further NATO and EU expansion and to project its influence instead. The Balkans proved as an ideal terrain for the new doctrine of undermining the Euro-Atlantic expansion. The countries in the Balkans are largely Slavic and Eastern Orthodox like Russia, and have been fostering sympathy toward the Russians since the wars against the Ottomans in the nineteenth century, even though former Yugoslavia never joined the Warsaw Pact and was not part of the Soviet sphere of influence. The Kremlin decided that spilling its influence in the Western Balkans region would gravely put in jeopardy the European project, which envisages encircling the whole of the Balkans in the EU. Undermining the NATO cohesion and the unity of the European Union has thus become the ultimate goal of the Russian Federation, since if it were disabled, NATO would no longer serve as a barrier to the readiness of the Kremlin to intervene militarily if it deemed necessary. Disintegrated Euro-Atlantic community and divided Europe is the key to the expansion of the Russian influence throughout the continent. Instead of the Brussels centered EU, the countries in Eastern Europe, the Caucasus, Central Asia and the Balkans, could join the Moscow centered Euro-Asian Union. In order to achieve this goal, the Kremlin was willing to use its military power. With an economy approximately equaling that of Spain, in other words with GDP smaller that 10% of EU overall GDP, Russia is lingering far behind Europein terms of economic and technological development, but its military is still the second largest in the world. Thus, the Russian military intervened in Georgia and Ukraine, and holds large military bases in Moldova and Armenia. Furthermore, Russia uses its energy resources to undermine the energy security of Eastern Europe and the Balkans, and to use its dominance in the energy sector to influence the political elite in these countries. Using the combination of military threat, energy dependency and political elites that had originally sprung up in the communist era, Russia has so far had some success. Russia's intention is to curb the continuation of the EU project and to a large extent underpin its influence in the Eastern European countries and the Balkans, while gaining sympathies among some political parties and structures in the West, including Berlin, Paris, Rome, and even London and Washington DC.

2. CHAPTER 1: Western Balkans as the battleground between the West and Russia

The Western Balkans proves to have a central importance in Russian efforts, inter alia, to undermine the European project, or to at least to water it down for an undefined period. In 2003, the EU launched its Strategy for the region of ex-Yugoslavia, excluding Slovenia and including Albania, which the European officials named the Western Balkans. The next year NATO and the EU expanded, even to Romania and Bulgaria which joined in 2007 after a small hiatus, even though these countries were not fully ready to join the European club, and thus the strategic goal of encircling much of the European continent in the Euro-Atlantic community was achieved. This meant that the EU expelled Russia from Europe. However, with NATO and EU reaching the shores of the Black Sea, the West neglected a big hole within South East Europe – the Western Balkans – that the Russians would start using as battleground against the West. In 2008, the forces against Euro-Atlantic expansion marked a big victory during the NATO summit in Bucharest when the

road map for NATO membership of Georgia and Ukraine was abandoned. Soon Russia seized parts of Georgia.The West became self-engulfed with the global economic crisis and the plans for further expansion of the Euro-Atlantic community were abandoned. By 2014, ten years after the large NATO and EU expansion in the East, only Albania and Croatia joined NATO in 2009, with the latter joining the EU in 2013. Thus, six countries in the Western Balkans remain outside the EU – Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia – and even though Montenegro joined NATO in 2017, the West still lacks a clear vision of how to treat these countries, and even more, it lacks the will to admit these countries in the Euro-Atlantic club. In its latest enlargement Strategy published in February 2018, ''A credible enlargement perspective for enhanced EU engagement with the Western Balkans,'' the EU did confirm its willingness to expand to the Western Balkans, but with no firm commitment and set deadlines. Instead, the year 2025 is a rather fluid vision than a set term for the EU to accept these countries in its membership. This lack of commitment and even interest leaves the door open for Russia. By spreading its influence, Russia seeks to use the Western Balkans as the soft underbelly of Europe. Bypressuring Europe to its underbelly, Russia is blocking the continuation of the European project, which cannot be completed without the membership of the Western Balkans in the EU, and it is also undermining the whole of the European Union, as Paris,London and Berlin have visions for the Western Balkans that are not always necessarily in line. By exerting its power in the region, Russia is also trying to drive a wedge between the US and its European allies, as Washington is pushing for a faster Euro-Atlantic integration, while the EU is cautious on its enlargement. Brussels now focuses on internal issues, as it braces itself for 2019, the year that will see the United Kingdom leaving the Union, and a new EU, with the new five years mandates of the European Parliament and the European Commission. So far, this lack of Euro-Atlantic or even EU unity was used by Russia that aims to use all means in the Western Balkans in order to stir disorder in the region and even across Europe. This paper will focus on four of the six Western Balkan countries, as Kosovo (excluding the Serbian enclave) and Albania seem to have insignificant or no Russian influence in their economic or political life.

2.1 SECTION 1 – Serbia as the key point of Russian influence in the Western Balkans

Serbia is the key country in the Russian architecture that has been constructed in the Balkans with the aim of blocking the enlargement of the European Union and exporting Russian influence through the entire region. Serbia has been the target of NATO bombing in 1999 and even though some efforts were made before the assassination of Prime Minister Zoran Đinđić to bridge the mistrust between the North Atlantic Organization and Serbia, these ideas were soon dismissed. Some progress toward getting closer to the EU were made during the tenures of pro-European president Boris Tadić and pro-European Serbian cabinets, and Serbia finally gained the status of a EU candidate country. However, in 2012, an overtly pro-Russian candidature Tomislav Nikolić was elected president of Serbia, and Ivica Dačić, who nourishes strong ties with Moscow took the Serbian cabinet. Two years later, Aleksandar Vučić became the Prime Minister of Serbia, and just months after that Vučić and Nikolić invited Russian President Vladimir Putin to a military parade celebrating the 70th anniversary of the Red Army's seizure of Belgrade at the last stage of World War 2. This move sparked an outcry in the West that had just imposed sanctions on Russia, which followed the annexation of Crimea and the subsequent war in Eastern Ukraine. As the relations between the West and Russia had been

deteriorating ever since, Serbia decided to take a complete opposite route – forging an ever-stronger partnership with Russia. In spite of a growing row between the US and most European countries with Russia, and a situation resembling more and more a new Cold War, Serbia seems to be stepping out from the policies set by Brussels and Washington, and siding more with the Kremlin. In line with that, Serbia has not introduced trade sanctions to Russia, and even more, it procures military equipment from Russia. Moreover, Serbia and Russia have been conducting joint military exercises, just miles away from the NATO and EU member state Croatia, resembling the Russian military exercises near the Polish and Lithuanian borders, only on a smaller scale. Russia has also opened a humanitarian center in the South Serbian city of Niš, while the West suspects that the center is in fact a Russian military and intelligence base. It seems that the new Serbian president and ex-Prime Minister Aleksandar Vučić seeks to pursue an old Yugoslav foreign policy of non-alignment, balancing between the West and Russia. Serbia today is indeed a buffer zone, with unfolding EU accession process and cementing ties with Russia, but it is questionable for how long the country will be able to pursue this policy. Relations with Kosovo have reached a deadlock, and it could be the case with Serbia's relations with the EU. The region with Serbia at its core is entangled with Russian, Turkish, Chinese, European and American interests, and the latter seem to be growing distrustful toward Serbia, regardless of the US attempts to snatch Serbia out of the Russian grip. Adding to this, the US is by far the most militarily embedded power in the region, with their huge military compound in Bondsteel in Kosovo. Notwithstanding, Serbia seems to be contradicting the US interest and is often used by Russia as a factor of instability in the region. Serbian nationals were involved in the coup d'état attempt in Montenegro in October 2016, its intelligence officer stormed the Macedonian Parliament in April 2017 when the incumbent Prime Minister Zoran Zaev was physically attacked. Serbia officially turns a blind eye on the ambitions of Milorad Dodik to secede from Bosnia and Herzegovina, and in fact Banja Luka closely coordinates its operations with Belgrade. Belgrade's initiatives for Kosovo, including the train that was stopped on the Kosovo-Serbia border in 2017, and the suggestions of swapping territory between Kosovo and Serbian southern municipalities inhabited by the Albanian minority, add to the already fragile stability in the region. In most of these external operations, Serbia is backed politically or least morally by Russia, and Serbia serves as a factor of instability in the Western Balkans, which adds to the Russian leverage in the region, hampering the attempts to stabilize the Western Balkans and bring it closer to the West and the EU.

2.1 Section 2 – Montenegro successfully balancing between Russia and the West

Montenegro has been a success story of the Western Balkans in terms of its Euro-Atlantic path. By far the country has made most progress in the EU accession negotiations, and the country even joined NATO in June 2017. At the same time, Montenegro still has huge Russian presence, even more dominant than in Serbia, even though its policy is far less influenced by Moscow than Belgrade. There are almost 30 thousand ethnic Russians living in a just above 600 hundred thousand nation, and the Russians have invested in Montenegro's iron and aluminum smelting facilities, although these cases could be added to a list of unsuccessful privatization endeavors that have crippled the economies of the Western Balkans since the nineties. Milo Đukanović's party Democratic Socialist Party, which inherited the League of Communists of Montenegro, also signed an agreement of cooperation with Putin's party the United Russia. Montenegro, like Serbia, also wants to

attract investors from all corners of the world, including the Western countries, Russia and China, with more or less success. Furthermore, the Russians have been unequivocal in advocating against Montenegrin attempts to join NATO, as Montenegro would have been the last point on the European Mediterranean where the Russians could dock their war ships, in Boka Kotorska Bay or Port of Bar. Still Montenegro joined NATO, regardless of the fierce opposition from Moscow, and from within the country itself, where many called for a NATO accession referendum. As the most stark warning, an alleged coup d'état occurred on the Election Day in October 2016 and the authorities were quick in pointing a finger toward Belgrade and Moscow, although substantial evidence had not been provided. Thus, Montenegro seems to be the case of a country which cherishes traditionally strong links with Russia, while being a forth runner among the Wester Balkans countries on the path to Euro-Atlantic integration, and the Russian presence in the country has not halted its EU and NATO ambitions. On the other hand, the West seems to be turning a blind eye on the omnipresent corruption in this small nation, its organized crime syndicates and influential drug cartels engulfing the country in a streak of violence and unprosecuted mafia executions. At least nominally, Montenegro has opted for its Western future, and out of the Russian grip, and the Russian attempts to block the countries' NATO ambitions had fallen short.

2.1 Section 3 – Bosnia and Herzegovina's Euro-Atlantic ambition blocked by Russia

Unlike Serbia and Montenegro, which have gained the status of candidate countries for EU membership and opened a number of chapters in the EU accession negotiations, Bosnia and Herzegovina is still just an EU potential candidate country, far from EU candidacy or application for NATO accession. The country has three constituent nations, two of whom, the Muslim Bosniaks and Catholic Croats support the EU and NATO accession, while the Orthodox Serb entity, the Republic of Srpska strongly opposes the ambitions for any closer ties with NATO. The three sides can hardly cooperate, especially the Federation of Bosnia and Herzegovina with the Republic of Srpska entity. Thus, the country is embroiled in a spiral of constant disagreement that keeps B&H in a vicious deadlock and political and economic limbo. This situation is being used by the Kremlin, which keeps persistently supporting Milorad Dodik and his ambition to secede from B&H and eventually unite with Serbia. To gain this cause, the Republic of Srpska uses rather aggressive rhetoric with their emotional attachment to Russia even more visible than in Serbia. Republic of Srpska perceives Sarajevo as a rival and an obstacle to its independence ambitions, and the Kremlin, along with Belgrade, as its strongest and maybe only ally and supporter in this cause. The chaotic situation in B&H will keep serving the Kremlin not to just undermine the stability of the country, but the whole region, as both Croatia, now out of the Western Balkans club, and Serbia perceive the protection of their respective ethnic groups in B&H as their vital national interests. In that respect, the Kremlin will keep the control over the stability of the region with its finger on the trigger of unrest and ethnic conflicts.

2.1 Section 4 – The West seems to prevail in Macedonia traditionally at the crossroads of clashing interests

Macedonia has been for a long time a battleground between the West and Russia. The country has a strong Orthodox, Slavic and pro-Russian sentiment due to the long period of invading forces, most dominantly the Greeks and the Turks. The country's situation is also quite complex due to a substantial Albanian minority, with its distinct religion, language and culture. Macedonia on some occasions resorted to Russia in face of threats from within, be it the Albanian ambitions to unite with their Albanian relatives across the border, be it the Greek blockade in the EU and NATO institutions due to the name dispute. The ex-Prime Minister Nikola Gruevski was the last to resort to the Kremlin for help and Russia used Macedonia to stir up the unrest and take it further away from EU and NATO accession, which it is very eager to prevent. The most blatant attempt occurred in the Macedonian Parliament Sobranie when protesters stormed the Parliament premises, supported by a Serbian intelligence officer, and inflicted wounds to Zoran Zaev who just weeks later took the Macedonian cabinet. Prime Minster Zaev wants to turn Macedonia out of the Russian grip and push further for Euro-Atlantic integration, and has managed to gain the support of the Albanian minority. The support of the Albanian minority is the key to Zaev's success to lead Macedonia into NATO and the EU as the Albanians have a strong pro-Western and almost no pro-Russian sentiment. Both ethnic Albanians and a vast majority of Macedonians share a common vision of the country in the EU and in NATO. Nonetheless, the West will have to reward Macedonian Euro-Atlantic visions and find a solution for the stubborn Greek resistance to allow the country to join the EU and NATO, unless it wants to see a growing unrest again, and with it, an opportunity for the Kremlin sprawling its influence again.

3. CONCLUSION

Western policies in the Western Balkans have been a major failure, allowing the region to be the fertile ground for corruption and organized crime, which undermine order, the rule of law, social cohesion, and open the door for unrest and instability, which Russia had aptly used. Russia has been capable of stepping in the places where the West has failed, offering in return stronger economic and political ties, mostly through its energy policy and weakened energy security in the region. In Serbia, taking over of NIS by Russian Gazprom allowed the Kremlin to gain a strong overall influence in the country. Russia also used its energy supply to bring the countries of Eastern Europe closer to its orbit, but the effect was just the opposite. Energy blackouts eventually contributed to Ukraine turning away from Moscow, and Poland and the Baltic States now seek new energy supply routes away from Russia. These countries also joined NATO and the EU, and combined with their strong pro-Western sentiment, fed additionally by fear from a new Russian expansion after decades under the Soviet occupation, they represent a strong barrier to the sprawling Russian influence in Europe. The situation in the Balkans is in stark contrast to that of the North East corner of the EU. These Western Balkan countries have no traumatic experiences with Russia, as for example Poland. Different history has turned these countries to regard Russia as their patron and partner, and the feeling is being fueled by the Orthodox sentiment. Many countries in the Western Balkans are deadlock and their dependence on Russian gas has made them heavily dependent on the Kremlin, as energy diversification that is being implemented in the Baltic, can hardly be reached in the

Western Balkans. The strong presence in the energy sector and other investments has made political elites in these countries further prone to turn their sight to Russia. Russia, on the other hand, invests its efforts to bring these countries closer to its orbit and use them as the soft underbelly of Europe that exposes the vulnerability of Europe to the Russian expansion in a way that has not been seen during the Cold War. In return, the West will need to demonstrate stability and prosperity though NATO and the EU if it wants to stabilize its South Eastern flank and unite its positon against Moscow.

4. REFERENCES

- A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, European Commission, 2018 https://ec.europa.eu/commission/publications/eu-western-balkans-strategy-credible-enlargement-perspective_en
- Marusic, D., Badenbaugh, S., Wilson, D., Balkans Forward, A New US Strategy for the Region, Atlantic Council, 2017
- Schoen, D. E., Putin's Master Plan, 2016
- State of the Energy Union, European Commission, https://ec.europa.eu/commission/second-report-state-energy-union_en
- U.S. Department of State, Department Press Briefing, November 30 2017, https://www.state.gov/r/pa/prs/dpb/2017/11/276085.htm
- Zaslavsky., I., The Kremlin's Gas Games in Europe, Atlantic Councilhttp://www.atlanticcouncil.org/images/publications/The_Kremlin_Gas_Games_in_Europe_0602_RW.pdf

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RIGHTS OF REFUGEES AND MIGRANTS IN THE REPUBLIC OF MACEDONIA WHEN THEIR FREEDOM OF MOVEMENT IS LIMITED

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Abstract

From mid 2015 on the Balkan Route in the Republic of Macedonia and in Southeast Europe, there has been an unprecedented influx of migrants and refugees who have transited to the countries of the European Union. From mid 2015 to September 2016, more than 800 thousand migrants who have irregularly crossed the border were registered in our country, and some NGOs say that about 2 million migrants have passed. Most of them were from Syria, Afghanistan, and Iraq, countries affected by war, which suggests that many of them are refugees. The state institutions in Macedonia, but also in other countries in the region and the EU, were surprised and unprepared to cope with the crisis.
The initiated legal changes made under the pressure of the refugee crisis were in the "humanitarian sphere" and should have enabled thousands of irregular migrants to be treated as persons in the need of international aid and protection. Registration of the migrants was initially made in improvised conditions or not at all. The measures taken by the police contained many administrative restrictions, were not consistent, often changed, contained improvisation, and were backed up by the use of excessive repression.

In 2017 the situation of the route significantly changed and on the territory of the Republic of Macedonia there were registered "only" 17000 irregular migrants (UNHCR, 2017). In the first half of the year, migrants and refugees, mainly male, were registered from Turkey to the islands in Greece, demanding a way through Macedonia to reach the EU countries. In the second half of 2017, an increasing number of migrants and refugees were registered, usually composed of whole families.

When migrants come to the country, most often it is on the green border, which is not a border crossing. This is an irregular entry into the country, and the legislator prescribed a procedure that involves determining the identity of each person, recording it and depending on his or her status, a procedure that the state is obliged to undertake.
The migration and refugee crisis of 2015 is special and it will be the focus of our interest, especially when migrants face procedures requiring their registration, detention, and then, depending on their status, extension or expulsion from the country. In the cases where persons reside in transit centers, as well as in the reception center for foreigners, the host country is obliged to provide residence conditions, until the final decision. This is a complex matter and often the solutions move between the narrow line of law enforcement by providing standards for human dignity, integrity, and rights, and on the other hand with the need for effective law enforcement.

1. FREEDOM OF MOVEMENT IN TRANSIT CENTRES AND THE FOREIGNERS DETENTION CENTER

In September 2015, the transit of refugees was organized organized through improvised transit camps in the south, in the immediate vicinity of Gevgelija (Vinojug), and north, in the immediate vicinity of Kumanovo (Tabanovce). The camps expanded daily, and the transit was carried out more organized, by registering the refugees near Gevgelija and direct transport with an extra line of trains to the border with the Republic of Serbia. The regime of stay in the camps was of open character and the persons in them could leave when they wanted. In the next few months from the camp near Gevgelija, about 1,400 people "got away".

In 2016, around 1,500 migrants remained in the Tabanovce transit center, housed in bad conditions, some even under open sky. A number of migrants did not want to register at the center, believing that they would be able to move their way to the desired destination faster. On the other hand, due to the vague status and non-registration, the police legitimately recognized them as persons who illegally entered the country and aimed for expulsion from Macedonia. Some non-governmental organizations reacted if there were mothers with children, elderly people or persons with disabilities who needed medical care if they could not approach or bring to the transit centers where they would be given help and recovery. Police is responsible for the security and the order and they must enforce the law. However, the non-governmental organizations reported cases where irregular migrants were suppressed or transported in order to leave the country[203].

At the beginning of 2017, the number of migrants in the camps ranged from 60 to 100 in each, but that number changed as new groups left and went on a daily basis. A small number of them decided to apply for asylum, so they were moved to the Reception Center for asylum seekers in Vizbegovo, Skopje. Most of them abandoned their demands and left the country through illegal roads. The motive of these people was not to remain in Macedonia, but to continue to Germany or some other EU countries. The Ombudsman and the non-governmental sector informed about the need for improvement in the access to services in the area of legal aid and primary health care. Some non-governmental organizations reported that by mid 2017, new migrants and asylum seekers were not allowed to enter. At the request of the NGO, the Ombudsman made an inspection in which he noted the situation and asked the Ministry of Interior to allow entry of all persons who would request assistance, regardless of their status. In the unannounced visits that followed in the Tabanovce transit center, the Ombudsman stated that the given direction was respected selectively, depending on the will of the police officers in the shift. In conversation with a representative from the border police (January 25, 2018), an answer was received that the Ministry of Internal Affairs and the border police have an interest for persons who are outside the camp to come in, register, and receive the necessary services. The legal task for the police was to treat irregular migrants with humanity.

The non-governmental organizations advocated, regardless of the reasons for migrants avoiding the Tabanovce transit center and staying around it openly, to allow them

[203]In a survey conducted by the Helsinki Committee, a focus group participant explained the way migrants are expelled: "This is done so that we do not see ourselves from NGOs, loaded in cyride trucks. Once they were loaded from Kumanovo in a truck with a cirera and brought to Gevgelija, about 3 o'clock in the morning. "The remarks refer to the inhumane way (the choice of weather and conditions in means of transport) and the poor conditions in which migrants are transported.

access to the services of the center, where they would be registered and informed about their rights and obligations. In this way, the Ministry of the Interior will be able to re-establish the daily statistics available on the website of the Ministry of Interior on the number of persons staying and seeking asylum or temporary protection, and are placed in the transit centers, the Acceptance Center Asylum in Vizbegovo near Skopje and the Center for Acceptance of Foreigners Gazi Baba in Skopje.In the Ombudsman's reports, there is a recommendation that persons who have retained more than 72 hours in the transit centers will be transferred and placed in the Asylum Seekers' Center in Skopje. There, the conditions for stay are improved, although there is a need for their further improvement, including improving the quality of food. According to the Annual Report of the Ombudsman (2016), this center had utilization of up to 10% of its capacity. In January 2018, 9 people stayed in the center of Vizbegovo[204].

In the reception center for foreigners Gazi Baba in Skopje the number of foreign migrants decreased and in January 2018 there were 129 people, of which 9 were women. This center was subject to a visit by the Committee for Prevention of Torture in 2014 and they noted very bad conditions[205]. The National Preventive Mechanism (NPM) of the Ombudsman's Office actively deals with the situation related to the conditions for staying in the reception center in the last years (2016, 2017). His assessment was that the Reception Center for Foreigners, which is an organizational unit of the Ministry of Interior, did not meet the standards for detention of the persons.It is a closed-type institution. In this center, in 2016 and 2017, irregular migrants, who were denied the right to freedom of movement, accommodation in inadequate conditions, as well as separation of juveniles from adults without a written decision by a competent body, were ungrounded.

Following the intervention of the Ombudsman, this practice has changed. A new problem is the written document for detention issued only in Macedonian language, when the detainees are foreigners and do not understand the language, and translation is not provided. That this situation has not been changed was confirmed in the focus group composed of NGO representatives (January 2018). In the last one or two years, there has been an improvement in hygienic and other conditions, while the complaints about the quality of food have not changed. Unlike the situation with the food in the reception center for foreigners, the NGOs are unanimous that the quality of food in transit centers at the border is very good. On the other hand, the MoI assures that the food taken in the reception center for foreigners in Gazi Baba is cooked in a kitchen and the same food is consumed by the police.

2. ACCESS TO TERRITORY

After closing the border in March 2016, about 1,500 migrants were stuck in the transit centers, and within a few months they left the country by returning to Greece or heading to Serbia, most often with the intention of illegally crossing the border. In March 2017[206], the border crossing centers were occupied by 49 people on the northern and 14 at the southern border, which expresses the tendency for further decreasing of their number. By the beginning of October 2017, 5 persons stayed in the transit center Vinojug - Gevgelija, and 23 persons stayed in Tabanovce. The decrease in the number of migrants in

[204] The information is from an NGO, a participant in the first focus group, held on January 22, 2018 in Skopje.

[205] https://rm.coe.int/16806974f0p. 61 - 71

[206] http://www.legis.mk/news/2402/

the centers is due to the departure of irregular routes to Serbia, group deportations of migrants to Greece and one registered forced deportation by the use of excessive force of 10 persons from the transit center Tabanovce. Namely, on 17.07.2017 at 04.30 a.m., an application was received for police officers who, according to the statement, took over 10 people from the transit center by using excessive force, some of which were deported to Greece, and some escaped. In this case, the Ombudsman opened a case for determining the responsibility of the police officers.

In 2017, the NGOs report that the number of migrants who crossed into Serbia through Tabanovce decreased, but they register a significantly larger number of migrants returning from the northern part of Macedonia to Greece[207].

In the annual report for 2016, in the situation with human rights, the Ombudsman noted these conditions and requested that they their removal. In the periodical reports on the situation on the southern border (2016) it was determined that persons caught in irregular transit were briefly detained in the transit center Vinojug in Gevgelija before being returned to Greece without a decision to return or expulsion from the state. The Helsinki Committee for Human Rights of the Republic of Macedonia in the report for October 2017 reported about 118 migrants caught by the police in the border area of Macedonia and for a short time they were returned to Greece.In each of the mentioned cases, no individual procedure was conducted for the missing persons, nor was the subject opened for consideration by a competent authority[208]. The return of migrants and refugees were also present on the northern border of Macedonia. In the discussion[209] in the focus group, a statement was made: "Formerly, the police officers from Serbia and Macedonia played ping pong, when even 12 times during the day, one group was sent from one side to the other. It is now reduced, it is not eradicated, it exists, but it is reduced".

The illegal return of migrants is carried out in several countries in the region, whether some are EU members or not. Illegal expulsion occurs more often than it can be deduced from cases registered by NGOs and information published in the media. Police do not want to talk about this, but at the same time, they do not deny these remarks. In order to highlight the importance of this issue, NGOs document cases by talking to migrants who have taken these actions. The reports from the NGOs are carefully analyzed by the Ombudsman. In the center of Tabanovce, migrants who are returned from Serbia arrive on a daily basis after they have stayed there or only tried to cross the border and were discovered by the Serbian police. According to their testimonies, they are often victims of violence by police officers or organized criminal groups in Serbia. Refugees lately (2017) are returning on wild roads, most often moving on foot in the direction towards Gevgelija. NGOs in this recognize the return to dangerous situations from the beginning of 2015, when groups of migrants and refugees illegally entered in Macedonia and after Gevgelija, moving along the rail track on foot, were suffering deathly.

IOM and other non-governmental organizations emphasize that in the past two years numerous trainings have been made, which have contributed to the better conduct of state institutions, primarily the police. However, isolated cases of unprofessional police

[207]Information shared in a focus group held in Skopje (January 2017) with representatives from NGOs

[208]Monthly report, October 2017; Helsinki Committee for Human Rights of the Republic of Macedonia http://mhc.org.mk/system/uploads/redactor_assets/documents/2535/Sostojbata_na_granicnite_premini_oktomvri2017.pdfhttp://mhc.org.mk/reports/652?locale=mk#.WhLRJNKnE2x Quarterly Report, Macedonian Association of the Youth Lawyers, http://myla.org.mk/wp-content/uploads/2016/09/Field-Report-May-Jun-July-2017.pdf

[209]Information shared by the First Focus Group (January, 2018)

behavior have been registered in the past period. An example is the procedure when determining the identity of a migrant, when making profiling and when it comes to determining their age. In the past, the will of the police officer was often significant for the final solution. When one of the migrants said that he was 16 years old (that he was underage), the policeman added: "... no, he is 23 years old, write there". From the discussion of a journalist, it is interesting to think: "The question is when (migrants) will come to the southern border. And how they are going to Greece, nobody says...".

3. ACCESS TO THE RIGHT TO ASYLUM AND TEMPORARY PROTECTION

The restriction of access to the territory of the Republic of Macedonia implies disabling access to the right to asylum, which is a human right[210]. In 2017, 162 intensions, requests, or transit and acceptance of foreigners by the Ministry of Interior were submitted in the Republic of Macedonia[211].

Some NGOs report that the illegal practice continued in 2017, and several cases of illegal deportation by the police from Macedonia to Greece and illegal return of migrants from Serbia to Macedonia were reported. The existence of practice practiced by most countries on the Balkan route implies departure from the internationally established procedure for identifying, registering, profiling and referring to the asylum seeker, a victim of trafficking in human beings, a victim of sexual and gender based violence, the elderly or persons with disability, unaccompanied minors and other vulnerable persons. Additionally, Article 4 of the ECHR Protocol indicates a ban on the collective expulsion of foreigners, without first individually considering each case. This provision is intended to ensure the prevention of non-compliance with the non-refoulement principle derived from the 1951 Convention Relating to the Status of Refugees.

The next reason that points to systemic problems with access to asylum is the duration of the regular procedure before the Ministry of Interior's Sector for Asylum, which lasts between 8 and 12 months[212].

In 2017, progress was made with regard to the issue of providing an interpreter; MoI uses the services of an interpreter engaged by NGOs present in the transit centers and is fast approaching. There is also a review with the names of certified translators, who, in cooperation with NGOs, are engaged for the needs of the procedure[213].

According to the official persons (Police Officers) in the Center, every detained person at the entrance to the institution is informed about the possibility to submit a request for recognition of the right to asylum, and that representatives of a specialized non-

[210]The NGO Legis in its analysis of 2017 states that the illegal deportations of larger migrants to Macedonia on the northern border are reflected in the number of asylum applications and temporary protection in 2017. Unlike 2015 and 2016, when about 340,000 applications were submitted for asylum applications, only 3 people completed the procedure and obtained refugee status, and 7 persons were placed under temporary protection, http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf p. 46

[211]The information is from the NGO, and it is presented by the Ombudsman's office of the NPM

[212]Trpe Stojanovski, Access to the Right to Asylum and Formal / Informal Return of Migrants / Refugees, p. 25, November 2016, Skopje

[213]NGOs in the focus group expressed confidence that in the past period there was no delay in the case, due to lack of translator.

governmental organization[214] visit the Center every week and provide information to the detained persons about the procedure for recognition of the right to asylum in Macedonia. The NPM team notes that the detainees are really aware of the possibility to apply for recognition of the right to asylum in Macedonia, but the opportunity to exercise this right is only enabled after their testimony before the court. The detained persons are prevented from submitting a request for recognition of the right to asylum immediately, but they are conditioned to wait first to file a statement in court proceedings against third parties. The NPM team from the oversight and the interviews conducted in the Center concluded that all of the detained persons after their testimony are given the right to sign a request for recognition of the right to asylum as the only way to be transferred to the Reception Center for asylum seekers, where they can freely to move and to leave when they want. Most of the detained persons who were transferred to the asylum seekers' center were not aware that the documents they signed were requests for recognition of the right to asylum, nor did they intend to file such a request.

The non-governmental sector and the Ombudsman closely monitor the situation with the refugees and their rights. Following the procedure for the right to asylum and temporary protection carried out by the Ministry of Interior, they identify several disadvantages that have a direct impact on the length and efficiency of the procedure: Untimely issuance of personal identification documents exposes them asylum seekers at risk cannot obtain international protection or cannot exercise rights related to international protection. The quality of decision-making on asylum requests contains numerous remarks from the NGO sector, since decisions often do not contain a clear explanation, and the reference to concerns about national security is often used as a basis for refusing requests for international protection. Thereafter, the asylum seeker has no access to effective remedies because the cases are not considered by an individual assessment of the claim, but the court review and the court decision follow the rationale of the first instance body, which is usually general and does not correspond to the particular case and the its characteristics (Legis, 2017). It was found that the access to information in a language spoken by the foreigner is not always provided[215].

The Ombudsman has a critical attitude regarding the procedure for the right to asylum and temporary protection after which the Sector for Asylum decides in the first instance, and in the second instance the Administrative Court, when for checking the information submitted to the Directorate for Security and Counterintelligence on whether the applicant asylum is a potential threat to the security of the state, if the Directorate issues a negative opinion, the Sector accepts the opinion without realizing the circumstances of the asylum seeker and issues a negative decision that can be appealed in to 30 days before the Administrative Court. The practice in the court, appreciating the numerous negative decisions is to confirm the decision of the Sector, without having to listen to the applicant.

[214]The Macedonian Young Lawyers Association is a non-governmental organization that is actively present in the migration crisis and helps refugees to exercise their right to asylum.
[215]Research of NGO Legis, p. 24

4. RIGHTS OF PERSONS HELD IN THE FOREIGNERS DETENTION CENTER

The basis for establishing the center is to provide better conditions for the integrity and dignity of the detained person. In addition to the internal rules, the Ombudsman has the authority to ensure that the procedures and standards for the retention of migrants are met. The external preventive mechanism as a kind of external mechanism ensures the basis for keeping the persons in compliance with the law[216]. The Ombudsman's report confirms that the illegal detention of persons in the Center continues. Although the migration wave is of low intensity, the practice continues to hold the people in the Center with a decision of the Ministry of Interior, in which the basis is the identification of the identity. Having in mind that the sole competent to bring a detention order on this basis is the court, then it is undisputed that the Ministry of Internal Affairs continues to issue illegal solutions for detaining persons in the Reception Center for foreigners. Unlike the legal basis stated in the detention decisions, the NPM team in a conversation with the detained persons and with the officials noted that the reason for staying in the Reception Center is for the purpose of providing them as witnesses in court proceedings against third parties. Retention on this basis is a criminal offenCe "Unauthorized restriction of liberty".

The detained persons, most often migrants, have the right to be informed of the reasons for deprivation of liberty and detention, as well as for the duration of the detaining of the language they understand. With the visit of December 2018, the NPM concluded that the detainees were given copies of the Solutions for Detention in Macedonian and English. Retained people who do not understand English, who are in large numbers, do not receive notification in a language that they understand, which means that they are not familiar with the reasons for their deprivation of liberty and retention in the Center. Some of the people who understand a bit of English, and whom the NPM spoke with, were told that they were kept in the Center for testifying before the court against third parties. At the same time, these people are also used as "translators" for others, if they speak the same language (for example, Arabic).

5. RIGHT TO FREEDOM AND SECURITY

The European Convention on Human Rights (ECHR)^' in Article 5 provides that everyone has the right to liberty and security and that no one may be deprived of their liberty except on the basis of a law. Article 12 of the Constitution of the Republic of Macedonia recognizes the freedom of the human being as indisputable; No one can be restricted in freedom, except by a court decision and in cases and in a procedure established by law. Associated with the actions of the state authorities (and the police), the person summoned, detained or deprived of liberty must immediately be acquainted with the reasons for the summoning, detention or deprivation of liberty and with his rights determined by law. The person has the right to a lawyer in the police and judicial proceedings.

[216]Special report on the situation in the detention center for foreigners, Gazi Baba, December 26, 2018, http://ombudsman.mk/upload/NPM-dokumenti/2017/Poseben%20izvestaj-Gazi%20Baba-26.12.2017.pdf

The application of police powers, including apprehension and detention, is prescribed in the Law on Police[217]. Article 34 stipulates that in the application of police authorizations the calling, deprivation of liberty, apprehension and detention, the police officer must immediately inform the person in a language that s/he understands, about the reasons for calling, apprehending or detaining, and in a clear way to teach him the right to remain silent, the right to counsel with lawyer, the right to a lawyer in the police procedure, the right to medical assistance if the person so requests, as well as the right to notify a member of his / her family or a close person. These provisions follow the spirit of Art. 12 of the Constitution of the Republic of Macedonia and prescribe the procedure of the police officers when they are apprehending and detaining.

However, the legislator has recognized a real life necessity when it comes to a foreign national who is to be extradited or to return to the country of origin or illegally crossed the border (to make a readmission). These are conditions in which state institutions cannot usually complete the procedure within 24 hours and the law determines a longer term. In this paper, we explore migration and we will only stick to the provisions of the Law on Foreigners[218]. In Article 108, paragraph 3 of the Law on Foreigners, the Ministry of Interior issues a decision on temporary detention of the foreigner, and in paragraph 5 it is stipulated that the foreigner has the right to appeal, first to the State Commission for decision making in administrative procedure in the second instance, and then to The Administrative and Higher Administrative Court. Under Article 19, paragraph 3 of the Law on General Administrative Procedure, the participants in the procedure who are not citizens of the Republic of Macedonia but do not understand the Macedonian language and its Cyrillic alphabet are entitled to an interpreter. Article 61, paragraph 5, foresees that the bodies in charge of the administrative procedure shall reply in the Macedonian language and in the official language used by the party. In 2017 and 2018, cases in which migrants are detained has been substantially amended and significantly reduced, compared with 2015. However, according to the NPM, the practice continues with the prosecution through the police to misuse the ground and detain persons who may be victims or migrants only, and for testifying in the case of another migrant. Some of these individuals may be of interest to other national security agencies[219]. These actions are contrary to Art. 12 of the Constitution of the Republic of Macedonia. Illegality in the detention procedure also exists in the non-provision of interpreter by the Ministry of Interior, thus the refugees and migrants are not able to understand or appeal their detention[220].

[217]http://www.mps.mk/wp-content/themes/mps/pravni-akti-pdf/Zakon%20za%20policija%20-%20osnoven%20tekst%202006.pdfaccessed on 3rd April, 2018

[218]http://www.moi.mk/Uploads/Precisten%20zakon%20za%20strancite%2025.01.13.pdfaccessed on 04.04.2018

[219]Refugee rights: national and international standards against the situation on the ground, Helsinki Committee of the Republic of Macedonia, 2017, p.14

[220]During the inspection of the National Preventive Mechanism, the National Preventive Mechanism team (December 2017) in the individual files of the detainees concluded that there is an official note and that the persons are familiar with the House Rules, as well as with their rights and duties during their stay in The center. During the inspection of the accommodation capacities, the team of the NPM also concluded that the rules on the house rules in the Center in Macedonian, English and Arabic language were highlighted in several prominent places. However, for some people who do not understand these languages translation is not provided;

The NPM states that interviews were conducted with the officials in the Center about the procedure for handing over the decisions that are issued to migrants, as well as with the detainees. The NPM concluded that none of the detained persons had been instructed that they could appeal the decision to detain him. Retained migrants - foreigners point out that the main problem they face is the lack of information about the duration of their retention in the Reception Center.

For the treatment of the detained persons by the MoI is telling from one visit of the NPM on April 4, 2017, when the Police officers hid five foreigners, imprisoned and locked at the detention Center for Foreigners. During the unannounced visit, the NPM team was informed that only two people were kept in the Center, as long as they are registered in the evidentiary book. Later, in a locked room, and for which the manager informed them that they were not in use, the NPM insisted that they were unlocked and five people from Syria were caught inside. From the conversation with the individuals it was determined that they were detained and carried out at the Center in the early hours of the same day.

The persons were not informed of the reasons for apprehension and detention, nor were they given any advice about their rights. Following the remarks addressed to the manager of the Center for the treatment of these persons, the detainees were immediately released. The NPM informed the public about the established state of detention of persons outside the legally established procedures, for not registering, as well as for interfering with the mandate of the NPM by providing false information on the number of detained persons and attempting to conceal them, and at the same time asked the Minister for internal affairs to undertake measures for checking and reviewing the work in the Center and determining the responsibility of the manager. In the answer of the Ministry of the Interior the situation with illegally detained Syrian citizens was justified by their detention for human reasons and the need for assistance, until the organization of the transport to the Vinojug transit center, where the persons intended to go. The explanation is legally unsustainable.

6. RIGHT OF DETAINED PERSONS TO ACCESS A LAWYER

Officials at the Center say that any detained person is being trained on the right to access a lawyer. The NPM in its report notes[221] that there have been cases where some of the detainees had engaged attorneys and had been in contact with them, but that some of the detainees interviewed said that they were not informed about the possibility to seek or contact a lawyer. Some of the detainees who asked about the possibility of hiring a lawyer were advised by the officials that they do not need it because they have not been prosecuted and that after their testimony they will be released immediately.

7. THE RIGHT TO A TELEPHONE CONVERSATION OF THE DETAINED PERSON

An official from the Center told to the NPM that the detainees are allowed to make a telephone conversation, which is recorded. However, the NPM concluded that there had been cases where some detained persons were able to make a telephone conversation; the officials had to seek prior consent from authorities from the Security and Counterintelligence Service. From the conversation with the detained persons, the NPM

[221] Special report on the situation in the reception center for foreigners, Gazi Baba, December 26, 2018

team concluded that one of the persons, despite being allowed to make a telephone conversation, was disabled since he was not allowed to check the phonebook from the mobile phone that had been previously taken away. The response of the NPM is that limiting the right to a telephone conversation is a violation of the person's rights.

8. SUMMARY

Civil society welcomes progress in improving the conditions for staying and better food in transit centers. Recommendations to the government are to improve the conditions in all institutions where foreigners and asylum seekers stay. Illegal expulsion will cease and be replaced by respecting procedures, acting under the law and international instruments.

The behavior of the state institutions in the migration crisis, in particular training on human rights and non-discrimination, should be recognized in the police program. The curricula should integrate the provisions of the Istanbul Convention. State institutions to provide information to the foreigner about the procedure in a language that he understands, without exception.

The incentive of the Ministry of Interior for a transparent discussion on the draft text of the Law on International and Temporary Protection, with the involvement of NGOs, expert and other public, was positively evaluated.

To stop the practice of accepting and detaining persons in the Reception Center for foreigners on the basis of a Decision issued by the Ministry of the Interior for the purpose of determining the identity; the grounds for detention must be based on a court decision. Every person's accommodation in the Center must be recorded in the records in the Center; Allow detainees at the Center to provide unhindered access to the aspiring asylum application at the moment they request it. The rights to access a lawyer and telephone conversation are the legal rights of the detainee and they must be enabled. We must immediately stop the practice of irregular migrants found on the territory of Macedonia, without a procedure being conducted, to be deported in groups to the country from which they entered.

9. BIBLIOGRAPHY

- International Office for Migration- IOM
- Golubovska, J., Smailovic, M., Improving access to rights and protection for refugees and migrants with a focus on vulnerable groups, Public Policy Paper, Legis, Skopje, November 2017
- Stojanovski, T., Access to the Right to Asylum and Formal / Informal Return of Migrants / Refugees, November, 2016, Skopje
- Law on Asylum and Temporary Protection, consolidated text
- Law on Foreigners, consolidated text
- A report from an unannounced visit to the Reception Center for Foreigners, July, 2016/2017, and the Annual Report of the National Preventive Mechanism for 2016
- Refugee Rights: National and International Standards vs. the State of the Field, Analysis, March, 2017, Helsinki Committee of the Republic of Macedonia
- UNHCR, Web portal on the Refugee Crisis in the Mediterranean and onward movements, http:// data.unhcr.org/mediterranean/regional.php

- Report on detention center Gazi Baba, Human Rights Watch, 2015: https://www.hrw.org/report/2015/09/21/ Observations on the situation of asylum-seekers and refugees in Macedonia, UNHCR,2015

International Instruments:

- The Universal Declaration of Human Rights
- Convention on Civil and Political Rights
- European Convention on Human Rights
- Convention Relating to the Status of Refugees of 1951 and the 1967 Protocol, with the status of stateless persons
- DIRECTIVE 2011/95 / EU OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 13 December 2011 on standards to be fulfilled by persons who are nationals of third countries or stateless persons in order to qualify as beneficiaries of international protection for equal status for refugees or persons with the right to subsidiary protection and the content of the protection provided
- DIRECTIVE 2013/32 / EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on a common procedure for the granting and withdrawal of international protection
- DIRECTIVE 2013/33 / EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 laying down standards for the admission of applicants for international protection
  COUNCIL DIRECTIVE 2001/55 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 July 2001 on minimum standards for the provision of temporary protection in the event of a mass influx of displaced persons who are unable to return to their country and strike a balance between the activities of Member States when receiving displaced persons, as well as when submitting the consequences of such activities
- UNHCR, Refugee Protection and Mixed Migration: A 10-Point Plan of Action, January 2007, Rev.1

CRIMINOLOGY

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SURROGACY AND ITS LEGAL ASPECTS: BETWEEN ALTRUISM AND COMMERCIALISM

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Abstract

The roots of surrogacy in traditional terms appeared in the 1970s as a phenomenon of newspapers' ads where males with infertile wives were looking for young women who would accept to give birth to their children for a financial benefit. Years later, after the development of modern medicine, gestational surrogacy was the more often used kind of this phenomenon. The interest around this topic resulted with different opinions regarding its justification and it was connected and compared to prostitution, trafficking in children and other social and criminal phenomena.

The Republic of Macedonia accepted the benefit of altruist gestational surrogacy in 2014 with the amendments to the Law on Biomedical Aided Fertilization. By using the normative and comparative method, this paper will analyze the legal situation with surrogacy in the Republic of Macedonia and other countries, but will also review some of the most notable philosophical directions and opinions.

Keywords: *altruism, commercialism, feminism, Republic of Macedonia, surrogacy.*

1 INTRODUCTION

The development of assisted reproduction used in modern times has changed the perceptions of "natural" reproduction. At the same time, it had an impact onthe traditional values regarding maternity, fatherhood, sexuality, family, parenthood, gender roles, making a breakthrough to their core meaning. Today, using technological development, the context of surrogacy, donors of sperm and eggs and other methods of assisted reproduction, has changed the traditional views of marriage, family and "natural" reproduction.

Analyzing it from a medical point of view, infertility can be defined as the impossibility to conceive or to bear the pregnancy until the end, after twelve or more months of unprotected sexual intercourse [1]. There is a difference in terms of infertility and sterility and barrenness (with the latter defined as a religious punishment from God).

In 1978, the technologically – reproductive revolution started with the birth of the first baby (Louise Joy Brown) with in-vitro fertilization. This revolution shifted the borders of pregnancy, giving opportunities to older women to conceive and have their own child.
The afore-stated technologically – reproductive revolution [1], has four aspects of its process of development: contraception and abortion; control of embryo quality; infertility treatment; and using reproductive capacities for non reproductive purposes. Surrogacy, together with artificial insemination; in vitro fertilization; egg donating, embryo transfers and embryo freezing (cryopreservation); is part of the methods used in the process of infertility treatment.

The paper will make an overview of the historical aspects of surrogacy, its evolution and types, and in the focus of interest will be the analysis of the legal aspects of this practice, using a comparative overview of the Law on Biomedical Assisted Insemination from 2008 and its most important surrogacy related amendments to other laws from Macedonian legislature.

1.1 Surrogacy: Origin, definition, types, and philosophical explanations

Surrogacy originates in the USA, in the 1970s, when men who had been married to infertile wives sought women who were willing to give birth to a child for them in exchange for material benefit. The women who gave birth to their children were found through newspaper advertisements. Such acts are known in literature as **traditional surrogacy**, where the surrogate mother isactually the biological mother of the child, but she renounces her parental rights. During these acts, surrogate mothers were artificially inseminated and after giving birth to the child, they were "adopted" by their biological fathers. It was a small scale occurrence and was relatively obscure and known only to well situated couples and citizens. However, after it was concluded that it could be a financially very effective business, lawyer Noel Keane established an agency whose business plan was how to connect infertile couples with potential traditional surrogate mothers. Such businesses were semi – legal and often questioned, especially after the well – known Baby M case. Namely, Mary Beth Whitehead accepted a material benefit of 10 000 USD to give birth to a child. Being the biological mother of the child, she had to renounce her legal right over the newborn child. But she did the opposite and refused to give up her custody. She took her child and ran away to Florida, but at the end she was found. The case went to Court, where the judge gave the custody to the couple, basing his decision only on the financial situation of the couple, declaring that being economically stable made them more fit to be the baby's parents. This case, except the traditional, opens up the debate for another type of surrogacy, known as **commercial surrogacy**, where the surrogate mother (regardless of whether she is the biological mother or a woman who does not have any biological connections to the child) is given financial or other type of compensation for her services. The opposite type is the **altruistic surrogacy** where the surrogate mother does not accept any kind of contribution for her services. Such type of surrogacy is (in most cases) approved by countries' legislature.

With the development of the embryo transplantation in the 1990s, a different type or model of surrogacy emerged differing from the traditional one. It is the **gestational surrogacy** where the surrogate mother has no genetic connection to the child, she is just the woman whose uterus is used to bear and give birth to the child. The possibility to use gestational surrogacy in commercial causes opened the possibilities for surrogacy industries, such as the ones in India today.

The technological advancement in medicine gave possibilities to have cases with three potential mothers of the infant. The surrogate mother, the egg donor mother and the mother who paid for the process. In this and other less complicated cases, in examples of possible court battles, USA courts have a stand that the surrogate mother or the egg donor do not make a procreative choice, but they are simply providing a service. In consequence, the child will be given to the mother or the parents who paid for it.

The consequences of reproductive biomedicine have been felt in different aspects of different sciences. The anthropological scientific postulates were directly vitiated, because assisted reproduction directly undermines the biological facts of human life – sexual intercourse, gestation, reproduction, birth and consanguinity [1]. Helena Ragone (1998) connects the biological explanations with determinism, androcentrism and ethnocentrism, "it is even more clear that "biological" elements have symbolical meaning…their meaning is even not a biological one" [2] (p.124). Traditional and gestational surrogacy allows women to transcend their traditional roles and to achieve a certain degree of independence and personal fulfillment [2]. Fox (1993) detects that the connection between mother and child is natural and as a characteristic it is connected to mammals. A connection is every "intensively emotional connection between two organisms which is happening as a result of their psychophysical interaction" [3] (p.74). In the cases of surrogacy, courts must take into account such connections, before taking any kind of decisions [4] (Ekman, 2013).

In addition to the anthropological authors, surrogacy has attracted both the anti - commodification and commodification approach. Surrogacy must not be perceived as a service given by women, converting their uterus and womb into an apparatus which can be bought. Using market rhetoric does not help human liberty, because liberty is not asking permission for market transactions or selling and buying services.

The anti – commodification approach has arguments such as the malignity of the traditional commercial surrogacy for children and the wrong motivation of the surrogate mother to give birth to a child. It is ethically unacceptable, in comparison to gestational surrogacy, where the surrogate mother only "bears" the fetus (and that is why no one can morally criticize her) [5] (p.35).

Feminist movements have the opinion that every capable, competent and consenting adult has the right of self – determination over how she utilizes her body. Should it lead to social utopia, where it will be of no importance whose child it is? When a woman is entering into a surrogacy contract she confirms her status as an individual, because she is the one who owns her own body.

During the surrogacy process, pregnancy should be perceived as a job, with selling parental rights, not the child as the product of the pregnancy process.

The story of Abraham and Sarah from the Bible, in Genesis, Chapter 16, opens up the discussion of traditional surrogacy. Sarah could not have children of her own, so she gave her servant Hagar to her husband, Abraham to have children with her. Religious views surrounding surrogacy are not against its use, but conclude it is not ethical, because children are not a right, but they are a gift from God (being born in a marriage of two people). Namely, in the First Book of Genesis, Chapters 16, 1, 2 and 15, it is stated that Sarah, the wife of Abraham, did not give birth to children. Sara had a slave to Misirk, named Agar. Sarah addressed Abraham "... go to my slave, to get the children from her. And Abraham joined the word Sarina ". "And he begat Agar the son of Abraham; and Abram bore his son, born to him by Agar, the name of Ishmael."

Being accepted or not, or perceived as an unethical step, surrogacy using technological advancement, has helped many couples or single people to become parents. In such constellations of events, we would conclude that women should have their right to choose how they will use their body, but also we must underline the necessity of widening the circle of potential "clients" of surrogacy.

2 LEGAL ASPECTS OF SURROGATE MOTHERHOOD IN THE REPUBLIC OF MACEDONIA

The Macedonian Law on Biomedical Assisted Insemination from 2008prohibits a number of actions that constitute offenses or crimes given their moral, medical, legal, ethical, and social unacceptability and inadmissibility. One such action was the so-called surrogate motherhood, i.e. this law does not allow seeking or offering a child-bearing service for another service through a public announcement, public media or in any other way [6]. With the adoption of the Law on Amending and Supplementing the Law on Biomedical Assisted Insemination from 2014, Macedonia became the first state in former Yugoslavia, which allowed and regulated this procedure of biomedically assisted insemination.

According to the Law, the right to initiate a procedure of biomedical assisted insemination with a surrogate mother belongs to a husband and wife that are married and are citizens of the Republic of Macedonia. Persons in an extramarital union or in any other form of partnership cannot initiate a procedure[222] from which it arises that a person without a partner is not entitled to this right.[223] The reasons why a couple has the right to submit a request for initiation of a procedure for insemination with a surrogate mother are related to the existence of congenital or acquired anomalies in the female or male partner, as specified in the law, and ultimately the spouses can initiate this procedure in the event of three unsuccessful pregnancies of the woman in a married couple. This concept generally does not correspond with the goal desired to be achieved [224](because the legally predicted anomalies are in principle very rare), however, it is indisputable that for some partners this would be the only way to have a genetically linked offspring.

The potential surrogate mother can give birth to a child for another couple only once, and she, as is the case with spouses, must be a citizen of the Republic of Macedonia and in good psychological, physical and general health condition.[225] The lowest age limit is

[222] In this context, this Law is contrary to the provisions of the Law on Family, which with Article 13 states that: "The community of a man and a woman that is not based on the provisions of this law (illegitimate community) and which lasts for at least one year, is equal to the marital community in terms of rights ("Official Gazette of the Republic of Macedonia" No.153 from 20.10.2014). The dilemma further complicates the situation as the exclusiveness of the married partners for surrogate motherhood is not the case when it comes to other reproductive technologies, where the law is reserved equally for the members of the official family institution-marriage, as well as for the other alternative family forms - illegitimate communities, and even the woman herself.

[223]The Law on Amending and Supplementing the Law on Biomedical Assisted Insemination ("Official Gazette of the Republic of Macedonia" No.149 from 13.10.2014), Art. 12-a, paragraph 4

[224] Fulfilling the desire of parents who want to have children, but they cannot ... makes it possible to access technologies that will raise the low fertility rate in the country

[225] A surrogate mother cannot be a woman to whom the parental right has been confiscated or restricted, or the business ability has been confiscated or limited. It must not be a person who has been sentenced for committing a crime with an effective sentence of more than six months in prison,

set at 25 years, and the highest is not formally prescribed, but it is preconditioned by a good psycho-physical and general health condition that provides a healthy pregnancy and the birth of a healthy child. In addition, it is predicted that the potential surrogate mother at the time of commencement of this procedure must have at least one child of her own.[226]

Only full or gestational surrogacy is accepted in the Republic of Macedoniaas an allowed form of surrogate motherhood.[227] The partial, i.e. genetic surrogacy is not permitted, bearing in mind that the law prohibits the use of the surrogate mother's eggs in this procedure of biomedical assisted fertilization.[228]

The procedure of biomedical assisted insemination begins by sending a request to the Ministry of Health. In addition to the request, notarized statements of consent from the potential surrogate mother (and eventually her spouse/ extramarital partner) and by the spouses, are submitted, and if the procedure is conducted with donated eggs or spermatozoa, there must be a written notarized statement and a consent for their use.[229]
In addition to the consents, the attached documentation must also include a confirmation of a psychological and legal counseling of the married couple and the surrogate mother (and her spouse / extramarital partner).[230] These confirmations, on the one hand, have the purpose of acquainting all the involved persons with all the possible psychological reactions from the procedure, the pregnancy and the birth, and on the other hand, inform them about the legal significance and consequences of the consent for the planned fertilization procedure, and that this medical procedure does not entail parental rights for the surrogate mother.[231]

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a person who is addicted or is mentally ill, or suffers from a severe chronic illness or an incurable infectious disease. (Ibid, art. 6-a, art. 4)

[226] Ibid., Art. 6-a, paragraph 5. The records on women eligible to be surrogate mothers, as well as spouses who demand the implementation of this procedure, are managed by the Ministry of Health (Law on Amending and Supplementing the Law on Biomedical Supported Insemination (Ibid, Art. 6-b, paragraph. 1)

[227] In that sense, the Law on Amending and Supplementing the Law on Biomedical Assisted Insemination, envisages that the embryo or the fetus that is inserted into the uterus of the gestational carrier is obtained by coupling the egg cell and the sperm by the woman and the man who are married or by coupling the sperm of the husband of a married couple and a donated egg, i.e., by coupling a woman's egg from a married couple with a donated sperm, or embryo or the fetus is obtained by coupling a donated egg and donated sperm. But the law stipulates that the donated eggs, the donated sperm, or the donated embryos will be used only if it is not possible to use one's own sex cells of one or both spouses. (Ibid, Art.4, item 5 and Art. 6-a, par. 2)

[228] Ibid, Art. 6-a, Par. 4

[229] Ibid, Art. 12-b, par. 1. The couple and the surrogate mother can withdraw their consent until the embryo is placed in the uterus, and two days before its placementat the latest. After that day, it is forbidden to interrupt or stop the procedure except under cases specified by law. (Ibid., Art. 12-b, paragraph 3). This provision, prevents in some way any unforeseen and undesirable scenarios, such as an abortion threat from the surrogate mother for financial compensation. In each case, the married couple has the right to demand a termination of the pregnancy if medical indications are established, and on the other hand, the married couple is obliged to take over all the children born of a multiple pregnancy, as well as to take over the child even if it is born with a disability due to what it has special needs, that were not detected during the pregnancy. In addition to the couple, the surrogate mother as well has the right to initiate a procedure for terminating the pregnancy. If it is initiated until the expiration of the tenth week from the day of conception, without medical indications, she has the obligation to reimburse all previously incurred material costs, as well as to compensate for the material and non-material damage caused to the couple. (Ibid, art. 12-b, par. 4, art. 12-g, par. 2)

[230] The certificates are issued by 5 member-commissions formed by the Minister of Health for this specific purpose.

[231] Ibid, art. 11-a, art. 11-b

If the conditions for the initiation of the procedure are met, the couple and the potential surrogate mother conclude a contract for the regulation of the mutual rights and obligations arising from that procedure.[232]

When it comes to family status, after the birth of the child, the husband and wife of the married couple, at whose request the procedure was initiated, are registered as the parentsin the birth register. The surrogate mother, according to the provisions of this law, has no parental rights, nor obligations towards the child, i.e. the children she will give birth to.[233]The given statement of consent for the application of the procedure has the legal significance of a statement forrenouncing the recognition of motherhood after the birth of the child.[234]

According to law, the child has the right to know how he/she was conceived and born, as well as information about the surrogate mother. In that sense, it is determined that this information can be communicated to him/her when he/she turns five years old.[235]
The surrogate mother and the woman from the married couple that are in employment have all the rights prescribed by the regulations in the field of labor relations, pension and disability insurance and health insurance on the basis of pregnancy and birth. In doing so, the surrogate mother that is employed has the right to a work leave, due to pregnancy and birth in duration of 45 days from the date of birth of the child, and the woman from the married couple exercises the right to maternity leave as if she gave birth to the child.[236]

Commercial surrogate motherhood is forbidden. Namely, the spouses are legally obliged to pay only certain expenses to the surrogate mother (for keeping a regular life, proper diet and receiving dietary supplements necessary for maintaining the pregnancy and the psychophysical preparation for the delivery).[237] It is legally stipulated that the couple should not give gifts to the surrogate mother in the amount higher than 100 Euros in MKD counter value during the procedure and after the delivery.[238]

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[232] Ibid., Art. 12-d, Par 1

[233] There is a collision again between the changes of the law on biomedical assisted insemination which determines a ban for the surrogate mother to recognize the child which she will give birth to and the Family Law whose recognition provisions apply primarily to the fatherhood of a child born out of wedlock rather than motherhood, because the whole law outlines the Roman maxim that the woman who gives birth to the childis considered to bethe mother of the child.

[234] The law specifically regulates situations where there is a death of a married couple, divorce of a married couple, and so on. (See Article 12-c)

[235] But confusing, in this context, is the provision by which the healthcare institutions are obliged to provide protection of all the personal, medical and genetic data for the gestational carrier, the married couple and the child (Ibid, Art.17, par. 2), especially if it is taken into account the long-standing legal tradition of keeping secrets in the sphere of artificial insemination and adoption in the Republic of Macedonia.

[236] Ibid, Article 12-g, paragraphs 4-6

[237] These costs may include the costs related to examinations and deliveries in private institutions outside the network of state healthcare institutions, whereby the total amount of all costs per month cannot exceed the amount of one average salary paid in the economy in the Republic of Macedonia in the previous year, published by the State Statistical Office. (Ibid., Art. 12-d, paragraphs 8, 10, 11 and 13)

[238] Again here the question arises whether the anticipated altruism in the whole procedure can be consistently applied, i.e., whether it is declarative or practically realistic? Given the fact that the bearing a child for another is a physical, emotional and time consuming engagement, it is unclear if there will be at all a sufficient number of women that would agree to such altruism, or maybe those

In this context, and with the ultimate goal of preventing commercial surrogacy contracts, the law prescribes a criminal responsibility for the one that will demand or take offers or give money, securities, real and/or movable property, gold and/or other precious metals or other material benefit as a monetary compensation for carrying out the procedure [7].

3 CONCLUSION

In the proposals presented by the Ministry of Health, and with respect to the reasons for insisting on the introduction of surrogacy motherhood in the law, two reasons are distinguished as the strongest, or relatively most important. The first reason is to satisfy the need of those families who cannot have a child due to medical reasons and therefore they can use a surrogate mother and, the second, no less important reason is the possibility for the emergence and development of trafficking in the reproductive ability of women and their exploitation for commercial purposes.

What is the European practice and how muchdoes Macedonia keep pace with the countries of Europe when it comes to surrogacy? In some European countries this procedure is allowed and is regulated legally (UK, Greece, Armenia, Israel, Ukraine, Georgia), as well as the Netherlands, although there is still no normative framework for the procedure.Unlike the above mentioned countries, surrogacy motherhood is forbidden, i.e. is not allowed in Germany, Austria, France, Denmark, Montenegro and Slovenia.

It seems that the Republic of Macedonia has gone a step further from the Balkan states, specifically from the countries of former Yugoslavia. The positive legal solution which is in force in the Republic of Macedoniaexpressly forbids the commercial surrogate motherhood.

However, what should be taken into consideration are possible legal amendments for possible future use of surrogate mothers by other categories of clients, such as single parents and other types of partnerships. Such legal steps would be possible after full harmonization with the EU legal solutions.

who agree will receive adequate compensation for it, which does not need to be reported, which again brings us to the old question of co- modification of the human body or its parts.

4 REFERENCES

1. Bilinovic, A. *Uticaj asistirane reprodukcije na redefinisanje socioloskih pojmova porodice I roditeljstva (doktorska disertacija).* Univerzitet u Novom Sadu. Filozofski fakultet: Novi Sad, 2016;
2. Ragone, H. Incontestable Motivations. In: *Reproducing reproduction: Kinship, power, and technological innovation,* S. Franklin and H. Ragoné (eds.). Philadelphia: University of Pennsylvania Press, 1998; pp. 118 – 130;
3. Fox, R. *Reproduction and Succession: Studies in Anthropology, Law and Society.* New Jersey: Transaction Publishers, 1993;
4. Krimmel, H. T. The Case against Surrogate Parenting. *The Hastings Center Report.* 1983. 13 (5): 35 – 39;
5. Ekman, K. E. *Being and Being Bought: Prostitution, Surrogacy and the Split Self.* Melbourne: Spinifex Press, 2013;
6. Tupanchevski, N., Dejanoska-Trendafilovska, A., Kiprijanovska, D., *Medical Criminal Law*, Skopje: Justinijan Prvi, 2012;
7. Law on Biomedical Assisted Insemination (Official Gazette of the Republic of Macedonia, 149/2014).

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DRUG TRAFFICKING THREAT ASSESSMENT IN THE BALKAN REGION

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Abstract

The production and smuggling of drugs in the Balkan region represents the most dominant and most profitable type of organized crime, in which the largest number of organized crime groups (OCGs) are involved. As regards drug smuggling, the Central Balkan countries, including the Republic of Macedonia, are transit countries. Certain quantities remain in their territories for the purpose of consumption or storage, and marijuana and synthetic drugs are illegally produced for the needs of the local market. The drug market is dynamic, as a result of the fact that most of the routes used by the OCGs are also used for the smuggling of other types of products. One of the main factors favoring the presence and development of serious and organized crime in the Balkan region is the region's geographic position on the crossroads between Europe and the Middle and Far East.

The assessment of the drug trafficking threat is an enlarged and compiled overview of the drug trafficking situation, trends and routes, including data on the markets and demands, with the focus on the Balkan region. OCGs dealing with drug trafficking have become more flexible, adaptable, open to international cooperation, with business-like approach, often multi-crime oriented, and, what is extremely important, better prepared to adapt their criminal activities to the obstacles posed by police actions.The organized criminal groups are often involved in other forms of crimes, and many of them are involved in trafficking of more than one type. Drugs trafficked and smuggled by OCGs are cocaine, heroin, marijuana and synthetic drugs.The criminal activities of an OCG depend to a large extent on its structure, and the capability to adapt that structure to the specifics of the criminal markets and to the need for cooperation with other OCGs.
For this purpose, mainly through an analysis of the reports of drug seizures and available data from official sources and statistics of this type of crime for the research period (2014-2016),a conclusion will be drawn on the drugs situation in the Balkan region with a wide-ranging overview, and early warnings about the new trends and threats in the region will be reiterated in order to facilitate the prevention and suppression of these criminal phenomena. The assessment provides clear data and information on the main characteristics of this type of crime.

Key words: organized crime groups, drug trafficking, assessment, threat.

1 INTRODUCTION

The greatest threat today is international crime, which knows no borders and causes long-lasting negative consequences. Narco crime is a link to this crime and it involves a whole chain of participants, starting with consumers without which it cannot survive, through dealers, transporters and financiers. What is necessary for drug crime is

the need of a large number of consumers, as it increases the production of drugs and gains more profits. Due to the seriousness of the crime related to drug abuse, and with particular emphasis on drug crime, many countries worldwide are making international co-operation efforts to eradicate or at least reduce this type of criminality. The geostrategic position of the Balkan Peninsula, as well as the security and political developments in this region, are a suitable ground for organized criminal groups dealing with the production and trafficking of drugs. Narco crime as a form of organized crime is the easiest way of getting rich for the organized criminal groups in the Balkan region. This paper will present the main characteristics of drug crime and organized criminal groups in the Balkan region, the new routes, themost frequently seized drugs, and the modes of transport; it will also assess the threats of this type of criminality.

2 THE NARCO CRIME

Narco crime as one of the forms of organized crime causes negative consequences in the healthcare sector and the monetary flows of many countries in the world, because corruption and money laundering are its inseparable forms. Narcotic crime is also a major financial source of many terrorist organizations. Narco crime involves the production and trafficking of drugs, psychotropic substances and precursors and enables the acquisition of high profits through the use of state-of-the-art means and methods for the production, processing and transport of drugs.This type of criminality invests a great deal of protection against criminal prosecution, which allows for a long-term stay on the criminal scene. Narco crime is characterized by a high level of organization, ranging from producers, processors, transporters, and all the way to financiers.It includes people with various profiles and hierarchical placement is an important feature of OCGs where a high degree of conspiracy and professionalism prevails. Finally, narco crime is an organized activity of many OCGS that are professionally connected and deal with drug trafficking around the world, make large profits and undertake various illegal actions to protect themselves from criminal prosecution.Macedonia is a transit area, where the so-called "Balkan Route" passes through. However, a fair amount of drugs is kept on our territory and very often Macedonia is the ultimate destination. The "Balkan Route" begins in Turkey, through Macedonia, Serbia, Croatia, heading towards Western and Central Europe. Turkey is the biggest crossroad for drug smuggling in Europe.Because of the changes that occurred on the territory of the former SFRY, the "Balkan Route" had been moved and new drug routes were activated as a substitute for the traditional route used for illegal heroin transportation, and part of these routes end up in Spain, the Netherlands, Switzerland, Norway and Denmark. These routes are (Батковски, 2002:130):

- Turkey-Bulgaria-Romania-Hungary-Slovakia-Italy-Germany;
- Turkey-Bulgaria-Romania-Hungary-Croatia-Italy;
- Turkey-Greece-Italy;
- Turkey-Bulgaria-Macedonia-Albania-Italy;
- Turkey-Bulgaria-Macedonia-Greece-Albania-Italy.

The Balkan route has three branches (Selec, 2014: 4-5): Southern, Central and Northern. The Southern branch covers Turkey, Greece and Albania, the Central: Turkey, Bulgaria, Serbia, Hungary, Kosovo, Bosnia and Herzegovina, Macedonia, Montenegro, Croatia and Slovenia. Macedonia and Montenegro belong to the Centraland Southern branches of the Balkan Route. The Northern branch includes: Bulgaria, Romania and Hungary. The northern part of the Black Sea route covers the countries of Central Asia, Azerbaijan,

Georgia, Russia and Ukraine. This route with the northern branch of the Balkan route is connected to the border between Ukraine, Romania and Hungary.Albania produces marijuana and transports it illegally to Macedonia, Kosovo, Greece, Italy, Croatia, Slovenia, Austria and Germany.According to the origin of the drug (Тодоровски, 2012: 90-92), the heroin smuggled through the so-called "Balkan Road" to the Western European countries, most often comes from Turkey, while marijuana in many cases originates in Albania, which is most often smuggled across our territory, to Greece or Turkey.Cocaine originates in the countries of South America, and is commonly targeted for the drug markets in Greece and Western Europe, while synthetic drugs are commonly found in Bulgaria.

3 THE NARCO CRIME IN MACEDONIA

Macedonia is a transit area, but a certain quantity remains on our territory. OCGs from our country deal with a part of the activities of drug-crime, including the transportation of drugs within the borders of our country, storage, repackaging in smaller quantities and sale of drugs.Heroin is most commonly transferred throughout Macedonia and comes from Turkey, Bulgaria or Greece and moves towards Albania and Serbia. The Albanians(Батковски, 2002:131) are the organizers and the controllers of the smuggling, while the Macedonians are the couriers. OCGs are using our emigrants in Turkey and Western Europe, who pack or transport heroin from Afghanistan to Macedonia, or the second option for themis to take drugs from Turkey directly to the Czech Republic, Germany, Sweden or other countries where they visit relatives (Тодоровски, 2014:133).Drug production for personal use is also characteristic (cultivating cannabis and poppy). In recent years, trade in cannabis and its derivatives has increased in Macedonia.The main cannabis route is from Albania through the northwest to the southeast in the direction of Greece and Bulgaria. Synthetic drugs come from Serbia and Bulgaria, and cocaine is transported by air through Skopje airport or through the ports in Albania and Bulgaria. The organizational characteristics (Тодоровски, 2012: 90-92) of Macedonian OCGs that smuggle drugs indicate that they are not solid (stable) organizations. In general, it can be concluded that the hierarchical placement thus tends to change and most often has a combined structure. The persons who are the organizers of drug smuggling usually rely on persons on a family and friendly basis, but they are not long-lasting and of permanent status.It often happens that beginners in this crime decide to organize the transportation of heroin, hashish or marijuana to the markets in the Western European countries because of the possibility to purchase drugsin Turkey or Albania without paying for it immediately. There are findings and indications that Macedonians with a criminal record have made significant breakthroughs in criminal drug groups in Switzerland, Germany and the Scandinavian countries, where they themselves managed to establish a dealer network.In our region, ethnic ties remain important in the formation of criminal groups. Very often they include persons of another ethnicity or nationality. The analysis of data on seized quantities of drugs derives the conclusion that international criminal organizations make an alliance with local criminal groups, for conquering new territories as final destinations or transit zones.On the drug market, at the local level, the individuals and criminal groupsoften have conflicting interests, but they are often associated with gaining larger profits and greater criminal activities.The internal affairs authorities undertake activities to reduce drugs trade and supply, which is related to street dealership and individual drug use.Especially important is the cooperation with the SELEC, Interpol and Europol at the

regional and international level through direct agreements for cooperation in the fight against organized crime, as well as direct contacts and joint investigations.

4 THE BALKAN OCGS DEALING WITH DRUG TRAFFICKING

OCGs dealing with drug trafficking have become more flexible, adaptable, open to international cooperation, with business-like approach, often multi-crime oriented, and, what is extremely important, better prepared to adapt their criminal activities to the obstacles posed by the police actions. The criminal activities of an OCG depend to a large extent on its structure, and the capability to adapt that structure to the specifics of the criminal markets and to the needsfor cooperation with other OCGs. The Balkan OCGs are structured on hierarchical principles, with a single leader or a small group of persons in command, very closely connected, who coordinate and decide on the actions, developments and new initiatives as well on new strategies in some situations. But in many cases, the hierarchical structure is combined with a horizontal development of the group, with different cells covering parts of the criminal activity, with limited knowledge of each ther, but coordinated by one leader.

In some cases, especially valid for small groups organized on cellular principles, the role of the leader is diminished and he/she can get involved in lower level tasks of the group (Selec, 2015: 70). The division of tasks is very important in the structure of a group, and it is determined by two main reasons: successful accomplishment, on the one side and on the other side, the division of tasks ensures the conspiracy of the criminal activity of the OCG and the protection of its members, especially the ones on hierarchy top. The structure of the OCGs is very much influenced by the cohesion factors that link the members together. The profit is the main factor, but there are other aspects that differentiate the OCGs and give them more stability and strength.

It can be clearly noted that OCGs have become more aware of the law enforcement methods. The prime objective of the OCGs in using countermeasures is to protect their communications (frequent change of mobile phones and pre-paid SIM cards, coded language or terms, internet communication). Protection of communication is essential to prevent the discovery of the criminal activities and the identification of the members of the OCGs by the law enforcement. Detailed information on the dismantled OCGs and number of persons is provided below:

Table 1: Dismantled OCGs in the Balkan region (Source: Selec,2015)

DISMANTLED OCGs in 2015					
Country	**Type of drugs trafficked**	**Number of OCG dismantled**	**Number of members**	**Number of members foreign citizens**	**Nationalities of the members**
Bosna and Herzegovina	Heroin	1	8	6	Montenegrin, Bosnian
	Cocaine	3	19	9	Bosnian, Croatian, Serbian
	Marijuana	12	66	13	Bosnian, Croatian, Montenegrin
	Hashish	2	13	6	Bosnian, Montenegrin
	Ecstasy	2	5	1	Bosnian, Serbian

	(MDMA)				
	Amphetamine	2	8		Bosnian
Bulgaria	Heroin	2	7	3	Turkish, Romanian
	Fentanyl	1	4	1	Greek
Croatia	Heroin	2	13	2	Macedonian
	Cocaine	4	18		
	Heroin	7	31	0	Moldovan
	Marijuana	4	15		Moldovan
	Hashish	3	14	1	Ukrainian
Macedonia	Cocaine	1			Albanian
	Marijuana	3	11	1	Albanian
	Mixed	9	30		Macedonian, Albanian
	Heroin	3	5	2	Serbian
	Cocaine	1	2	1	Serbian
	Marijuana	1	8		Serbian
Serbia	Cocaine and Heroin	1	3	1	Serbian
	Amphetamine, Ecstasy (MDMA) and Cocaine	1	3	1	Serbian
Total		65	283	48	

In the Balkan region a total number of 65 OCGs consisting of 283 members were dismantled in 2015.In terms of the type of drugs, a total number of 20 OCGs were involved in marijuana trafficking, 12 OCGs in heroin trafficking, 9 OCGs in cocaine, 2 OCGs in amphetamine, 2 in ecstasy, 5 in hashish, 1 in fentanyl trafficking and 11 OCGs were involved in more than one type of drugs. Detailed information on the total quantities of seized drugs for the period 2014-2015 is provided below:

Table 2: Total quantities of seized drugs 2014-2015 (Source: Selec, 2014/2015)

Total quantities of seized drugs 2014-2015 (kg)					
Country	**Heroin**	**Cocaine**	**Cannabis products (marijuana/hashish)**	**Amphetamine**	**Ecstasy**
Albania	110.400	37.173	113.163.410	/	0.001
Bulgaria	1.196.323	33.786	2.277.238	187.603	152.499,009
Macedonia	31.343	0.382	884.063	1.174.466	0.433
Bosna and Herzegovina	6.242	0.821	437.561	21.164	0.465

Croatia	202.651	21.224	2.505.091	56.496	17.354
Greece	3.095.238	398.734	22.398.558	3.356	37.127,085
Serbia	262.900	38.687	4.126.700	48.218	106.923
Montenegro	7.073	261.810	896.892	1.311	0.540
Total	**4.912.170**	**791.415,203**	**146.689.513**	**1.492.614**	**313.904,533**

Based on the analysis of the Reports of Selec for the period 2014-2015,the largest amount of heroin was seized in Turkey, namely 8,293.909 kilograms. In the Balkan region the largest amount of heroin for the period 2014-2015 was seized in Greece (3.095.233 kilograms; in 2014 seized 2.528.733 kg and 566.500 kg in 2015). A noteworthy drop down of the seized quantity of heroin was registered in Greece (by 77.6%).Likewise, Bulgaria reported a significant decrease of heroin seized in 2015, respectively from 940.488 kilograms (out of which 935.869 kilograms were directly related to trans-bordertrafficking) to only 255.835 kilograms in 2015 (72.8% drop down).Quantities totaling over 100 kilograms were seized by Romania (350.600 kilograms;), Bulgaria (255.835 kg;), Croatia (157.000 kg;) and Moldova(139.753 kg;).Quantities below 100 kilograms were seized by: Serbia (69.800 kg), Albania (36.900 kg;), Hungary (11.720 kg;), Macedonia (7.329 kg;), Montenegro (4.640 kg) and Bosnia and Herzegovina (1.670 kg;).

The lowest reported price of heroin at "street level" is in Macedonia (22 EUR/gram) and Greece (22.5 EUR/gram), but also in Albania where the price varies from 21 to 25 EUR/gram. On the other hand, the highest price is in Moldova. Related to the price for trans-border trafficking, the lowest reported prices are in Greece (16,000 EUR/kg) and Bulgaria (15,000-17,000 EUR/kg), while the highest range of price appears to be in Bosnia and Herzegovina (up to 25,000 EUR/kg).Owing to the activation of the Northern Balkan and Southern Balkan heroin smuggling routes, the Central Balkan smuggling route, which partly crosses the territories of Serbiaand Macedonia, is less used. This shift took place as a result of a more intensive use of the new transport infrastructure(in Albania, the Priština–Durres highway) and maritime ports (Albania and Greece).

The Central Balkan route is used for the smuggling of heroin from Greece and Bulgaria to Macedonia, and onward, through the territory of Kosovo, to Central Serbia, as well as from Bulgaria to Serbia, where the smuggling channels merge and continue along Corridor X towards WesternEurope.The main method for trans-border transportation of opium-based drugs is by land touring vehicles e.g. passenger cars, lorries, vans, buses. The passenger cars remain the most commonly used mode of transport.

In the Balkan region the main role regarding cocaine trafficking is related to transit. For the period 2014-2015, the highest amount of cocaine was seized in Greece, total 398.734 kg (297.221 kg seized in 2014 and 101.513 kg in 2015), in Montenegro (261.810 kg) and the lowest amount of cocaine was seized in Macedonia (0.382 kg) and Bosna and Herzegovina (0.821 kg). Cocaine is shipped from source countries in South America to Southeast Europe by maritime containers. Smaller amounts are trafficked through the international airports in the region by air passengers or postal/express mail parcels. After reaching the region, the cocaine may be transported by other means of transport (e.g. passenger cars, buses, lorries, etc.) to various final destinations. The lowest

range of price (50 EUR/gram) at "street level" is in Bosnia and Herzegovina; in relation to the price of cocaine, the highest range of prices (up to 110 EUR/gram) is inMontenegro and Romania (100 EUR/gram). With respect to the price for trans-border trafficking, the price varies from 34,000 to 47,500 Euro.The lowest price is in Albania (starting 34,000 EUR/kg), while the highest range of price appears to be in Greece (47,500 EUR/kg).

Cannabis is the most commonly used, produced and trafficked illicit drug in the Balkan region. According to the information provided by SELEC, the total amount of cannabis products, including herbal cannabis (marijuana) and cannabis resin (hashish), reported as seized during 2015 was almost 72 tons (71,919.173 kilograms) in 53.267 cases (Selec, 2015: 37). It is the lowest amount of cannabis products registered in the last 5 years.Comparing to the previous year, in terms of quantity, cannabis products registered a severe decline by 71.2%The overall major decrease of the seized cannabis products is directly linked with the decrease of herbal cannabis (marijuana). Hashish also decreased but, considering that itrepresents only a minor part of the total cannabis product, it influences much less the overall situation.The most significant quantity of cannabis products in the period 2014-2015 was detained in Albania (113,163.410 kilograms) and in Greece(22,398.555 kilograms) and the lowest amount of cannabis product was registered in Bosna and Herzegovina (437.561 kg). In 2015, an improvised laboratory for illegal production of high quality marijuana skunk was discovered in a flat in Macedonia and 0.03 kg marijuana were seized, as well as 105 plants and 91 seeds of cannabis sativa and 0.38 kg hashish. The Balkan region remains both a source and a consumer region for marijuana. The countries mentioned as departure countries for the largest quantities of marijuana were: Albania, Serbia, Bulgariaand Macedonia. The most significant quantities of marijuana were transported by lorriesand passenger cars. The smallest price for marijuana at street level was reported by Albania and Bosnia and Herzegovina, where the price in 2015 ranged from 3 to 5 EUR/gram; the highest price was reported by Greece, Romania (15 EUR/gram) and Bulgaria (up to 15EUR/gram only for the so-called "Dutchman" marijuana). Related to the price of marijuana for trans-border trafficking, the lowest reported price is in Albania (starting from 800 EUR/kg up to 1,500 EUR/kg) and in Macedonia (starting from 1,500 EUR/kg up to 2,000 EUR/kg), while the highest price per kilogram (7.000 EUR/kg) appears to be in Romania.

The biggest threat today is posed by the synthetic drugs. According to the information provided by SELEC, 115.730 kilograms amphetamine, 1,930.886 kilograms ecstasy and 261.834 kilograms methamphetaminewere seizedin Southeast Europein 2015. In 2015, the seized amphetamine dropped down by 61.4% to 115.730 kilograms, being the lowest quantity seized in the last five years.Seizures totaling over 20 kilograms of amphetamine were made by Croatia (31.000 kg), Serbia (25.503 kg) and only Bulgaria recorded a serious variation, namely a dropdown from 182.792 kilograms to 4.811 kilograms.In 2015, ecstasy continued to follow the upward trend from the previous years and the biggest quantity was detained by Turkey (1,828.426 kilograms). In the period 2014-2015, the biggest quantity of ecstasy was seized in Bulgaria (152.500 kg) andthe lowest amount was seized in Macedonia (0.433 kg). The most common methods for trans-border transportation of amphetamine were: passenger cars, mail, pedestrians and buses; the methods for trans-border transportation of ecstasy were: maritime transportation, passenger cars, lorries, buses, pedestrians and mail. The price of amphetamine at “street level” distribution ranges from 3.5 up to 5.5 EUR/pill) in Macedonia, (from 5 up to 7.5EUR/pill) in Bulgaria to10 EUR/gram in Greece. In terms of trans-border trafficking, the price varies between 4,000 and 6,000 EUR/kg in Macedonia, while in Greece the price

is 4,500 EUR/kg. In 2015 a laboratory for synthetic drugs was dismantled in Macedonia and one MK citizen was apprehended. The police discovered a range of various forbidden substances in a flat in Skopje which are used in veterinary medicine for healing the intestinal parasites (Selec, 2015: 56). In 2017, the competent authorities in Macedonia and Serbia dismantled an OCG involved in the production, trade and transport of synthetic drugs, as well as illegal trafficking in precursors, with the final destination Turkey and probably the Middle East. In Tetovo, Macedonia, the police found a laboratory with sophisticated equipment for illicit production of synthetic drugs and seized a large quantity of pills (amphetamine) and other raw materials, as well as a gun, two pistols and ammunition (http://www.selec.org/p683/18+December+2017). The illegal laboratory discovered in Tetovo is one of the biggest laboratories for illegal production of precursors and synthetic drugs discovered lately in South East Europe. Another illegal laboratory was found in Serbia, where the members of the OCG produced synthetic drugs, which were subsequently smuggled in Macedonia to be processed as pills.

The biggest threat to public health are the New Psychoactive Substances (NPS) which have been introduced in the drug markets throughvarious modes of distribution, including the Internet, "head" or "smart shops" which selldrug paraphernalia. First introduced as NPS, not controlled under drug laws, synthetic cathinones such asmephedrone, pentedrone and MDPV (3,4-methylenedioxypyrovalerone) have become a fixture on the illicit drug market in some European countries. At street-level, drug traffickers distribute NPS as legal alternatives toillicit drugs.NPS exploit the loopholes in the drug control legislation.Compared to traditional drugs, NPS are cheaper, easier to buy and not easily detectable. The main source for NPS is China, and the order is usually made through the Internet followed bymail/postal package delivery. Seizures of different psychoactive substances were reported for 2015 by Bosnia and Herzegovina, Bulgaria, Greece and Montenegro and Turkey.

The Internet is an important marketplace for the sale of NPS to Europeans. In 2013, an EMCDDA snapshot identified 651 websites selling 'legal highs' to Europeans, and targeted Internet snapshots carried out in 2014 identified websites offering specific drugs such as the synthetic opioid MT-45 for sale, sometimes in kilogram quantities (EMCDDA, 2015: 34). The Internet and social media have also become increasingly important in the market for illicit drugs. Evidence is emerging of so-called grey marketplaces —online sites selling NPS which operate on both the surface and the deep web. The deep web is part of the Internet that is not accessible using standard search engines. There, drug sales can take place within marketplaces, within decentralised networks and between individuals. Most attention has been received by drug cryptomarkets which are only accessible through the use of encryption software, which offers a high level of anonymity.

5 FUTURE THREATS AND DEVELOPMENTS

The speedy technological development and implementation of modern communication and transportation technologies has created greater opportunities for better cooperation among and between OCGs and has reduced the risk of their detection. The number of drug smuggling opportunities has increased. The harmonization of legal frameworks is not moving at the same speed, which represents a big obstacle in the way of cooperation and efficiency of police and judicial authorities. The main drug smuggling routes change constantly because OCGs adapt to the activities of the law enforcement authorities and use

the new transport infrastructure more intensively. The trend of drug smuggling by sea and air, which is typical of cocaine and heroin, maylead to the conclusion that Serbia, Montenegro and Macedonia represent a logistic basefor the organization and conduct of OCG activities abroad. Drugs produced in Serbiaare mostly sold on the local market (marijuana and synthetic drugs), and a small part is smuggled to other markets. Marijuana is produced in Macedonia and Montenegrofor the needs of the local market.The dislocation of routes after the construction of the transport infrastructure in the regionand the trend of increased heroin smuggling through maritime routes will result in reduced transport and smuggling of heroin through the Central Balkan route. Balkan OCGs will focus their activities on the smuggling ofsmaller quantities of heroin, intended for the local market, with more frequent departures toSouth-Eastern European countries. Marijuana will continue to be easily available on local markets at a low purchase price, which will result in an increase in the number of users. The access, through the use of modern information technologies, to expert know-how and online stores that sell the cannabis growing equipment in Europe, will result in an increased number of illegal laboratories for the production of marijuana under natural conditionsand modified marijuana, skunk, under artificial conditions for the local market needs in Serbia, Montenegro and Macedonia (MIASMM, 2016: 22). The OCGs involved in cocaine trafficking will use increasingly sophisticated modi operandi and continue to use the proceeds earned through the smuggling of cocaine for corruption, placing them into legal flows.As a result of the high price and availability of cocaine on the local market, the Balkan region will remain a limited market, which will make the OCGs continue with their criminal activities abroad.The smuggling of synthetic drugs and precursors from Europe to the Balkan region will result in a higher number of users. OCGs will direct the production to kitchen-type laboratories, which will result in an increase of availability of synthetic drugs and precursors for the needs of the local market and directly result in low prices.Owing to faster obtainment of raw materials and easier distribution on the international andlocal markets, the OCGs will also focus on the production and smuggling of synthetic drugs and precursors in South-Eastern Europe and Asia.

6 CONCLUSION

Europe is an important market for drugs, supported by both domestic production and drugs trafficked from other regions. The Balkan region is also a producing region for cannabis and synthetic drugs, with cannabis mostly being produced for local consumption, while some of the synthetic drugs are being manufactured for export to other parts of the world. The region's geographic position on the crossroads between Europe and the Middle and Far East is one of the main factors favoring the presence and development of production and smuggling of drugs. The Balkan region may be observed mostly as a transit region, but also as the region of origin and final destination of narco-crime. Cannabis is the most commonly seized drug. The biggest threat to public health is the NPS. The appearance of unregistered NPS may significantly change the global picture of illegal drug markets elsewhere in the Balkan region.The Internet is an important marketplace for the sale of NPS to Europeans. The fact that manufacturers, suppliers, retailers, website-hosting and payment processing services may all be based in different countries makes online drug markets particularly difficult to control.The specific objectives of the paper present the current situation in the Balkan region, indicate the biggest threatsin this part of the region, determine the factors that affect these phenomena, identify the common features in the

operation of criminal groups, and assess the development of future threats, which may serve as the basis for the adoption of decisions on joint regional fight against drugs production and smuggling.

7 REFERENCES

1. Батковски, Т., (2002), *За некои криминолошки аспекти на албанската мафија и нејзината вклученост во илегалната трговија со наркотици*, Проект на програмата ТЕМПУС и КАРДС "Повисок степен обука за борба против организираниот криминал", едиција: Организиран криминал, Пакунг-Скопје
2. MIASMM-Ministries of Internal Affairs of Serbia, Montenegro and Macedonia, (2016), *Regional Serious and Organized Crime Treat Assessment(SOCTA)*
3. EMCDDA-European Monitoring Centre for Drugs and Drug Addiction, (2015), *European Drug Report, Trends and developments*, Publications Office of the European Union, Luxembourg
4. SELEC -Southeast European Law Enforcement Center, (2014), *Report on drug seizures in South-Eastern Europe*
5. SELEC-Southeast European Law Enforcement Center, (2015), *Report on drug seizures in South-Eastern Europe*
6. Тодоровски, Љ., (2012), *Развивање на стратегии за следење на развојот на наркокриминалот во Република Македонија и поставување на стандардизиран систем на контрола на дрога*, Докторска дисертација одбранета на Факултетот за безбедност, Скопје
7. Тодоровски, Љ., (2014), *Наркокриминал и наркомафија*, Скопје
8. http://www.selec.org/p683/18+December+2017

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THEORETICAL BASIS OF POLITICAL VICTIMOLOGY
(ATTEMPTS FOR INTRODUCING A NEW SCIENTIFIC AREA IN THE SYSTEM OF SCIENTIFIC AREAS, FIELDS AND DOMAIN)

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The paper is an attempt to establish the *political victimism* as a new scientific field in the scientific system of social sciences, that is, as a new scientific field - a new and special victimology discipline within the framework of *victimology*.

The primary scientific and theoretical aims of the work through which we try to determine the theoretical foundations of *political victimism*, which will also mean an attempt to establish it as a new victimitarian discipline, will be: (1) determination of the definition of *political victimology* and its scientific- disciplinary determination, which will be an initial actor of knowledge and accurate thinking and operationalization of its content; (2) theoretical and operational determination of the subject of *political victimology*; (3) determining the *methods of research of political victimization*; and (4) determining the *scientific*, *social* and *educational justification* for the establishment of *political victimism*.

Key words: *political victimism*, *victim*, *political victimization*, *victim predispositions*, *political victimization*, *politically motivated punishable acts.*

PROPAGATION IN THE FUNDAMENT OF POLITICAL VISITOMOLOGY AS A NEW AND SPECIAL VICTIMOLOGY DISCIPLINE

Identifying the scientific gap and the lack of (in the Republic of Macedonia) victimological research of politically motivated (systemic, adaptive or conformist) deviant behavior, that is, investigating its victimological dimension, we accepted the scientific challenge for its *theoretical*, *operative* and *disciplinary determination* and *systematization* in a specific victim-theoretical totality (in terms of scope and content) referringto the aetiology (causes, conditions and circumstances) and phenomenology (in appearance, structure and dynamics) of the process of becoming a *victim* of politically motivated (international and non-international) criminal offenses and offenses (hereinafter: *politically motivated punishable acts*), that is, political victimization and its consequences (but also in the repetition of the consequences for the victim of the perpetrator, *politically motivated*punishable offense), as well as the content of the victim related to society. Moreover, we explore the reaction of *political victimization* (for its concealment, repression and prevention, as well as criminal justice, procedural and out-of-court protection of victims of politically motivated acts and normalized legal protection of his/her rights and legally protected interests).The theoretical and operational determination of the mentioned victim contents forms the scope and content of a particular subject of research that together with the political motivation (of the perpetrators) of the offenses

committed by certain social (non-state, state or supra-state[239]) entities are the essential criteria according to which these contents are differentiated from other victim-related content of victimology (and from the theoretical content of other sciences and scientific disciplines).This determines the theoretical differentiation between the process of becoming a victim of politically motivated punishable acts and the process of becoming a victim of punishable acts whose execution is not politically motivated; it fuels the scientific and methodological basis for establishing a new and special victimology discipline, which we disciplinedly determined as political victimology.Namely, we define *political victymology as a new and special victimological discipline* that uses and develops viticomological scientific and empirical knowledge, **while using scientific knowledge from other sciences and scientific disciplines for the purpose of scientific research of the victim of politically motivated punishable acts, that is, for the purpose of scientific research and determination of the aetiological, phenomenological and consequential dimension of the various forms of political victimization, as well as its dimensions expressed in the social reaction to this occurrence, in order to contribute to its efficient and effective detection, suppression and prevention, as well as to contribute to the achievement of comprehensive criminal, legal, procedural and non-procedural protection of the victim of politically motivated crimes, that is, to the provision of a comprehensive legal standardized protection of the victim's rights and legally protected interests.**With this definition of political victimism, we determined the initial actor of knowledge and correct thinking and operationalization of its theoretical contents (which we have listed above), and at the same time we established the beginning of a new and special scientific research process of laying the theoretical foundations that will enable further determination of *an object, a system of methods, a fund of scientific knowledge (theory)* and *a categorical apparatus* of this conception (for creating this new and special victimology discipline - *political victimology*). Including the insight we obtained from the *Classification of Scientific Research Areas, Fields and Areas under the Interdepartmental Frascati Classification*[240], as well as from the insight into the theoretical structure of social sciences and scientific disciplines that directly or indirectly treat the victim of punishable acts, we have found that neither in the classification, nor in the mentioned sciences and scientific disciplines, are the theoretical contents the subject of research of political victimology. This also prevents one of the key arguments for scientific justification from establishing this new special victim based discipline in the system of science and scientific disciplines, particularly in Macedonia.

The existence of the element of **political motivation** of punishable acts as a result of which a particular social subject acquires the status of a *victim*, as we have mentioned, is an *essential criterion* according to which the theoretical contents of *political victimism* are differentiated from other victimite content of *victimology* (and from the theoretical content of other sciences and scientific disciplines) and consequently - political motivation is a *key element in determining the process of becoming a political victim*. Based on the scope and content of the notion of political motivation, *inter alia*, and the accepted definitions of *politics* and *political behavior* (from us), and consequently the criterion

[239] ***The state entity*** in fact represents the state, that is, its own institution; ***the supra-state entity*** is a union of a state (a universal or regional international governmental organization), while a ***non-state entity*** can be a non-state organization, a non-state legal entity, a political party, a social group, and an informal group of people or a man as an individual.

[240] *Класификација на научно-истражувачки подрачја,полиња и области според меѓународната Фраскатиева класификација*, Службен весник на Република Македонија, бр. 103/2010

regarding the *pursuitof politics*[241]and political behavior within the boundaries of (national and international) law, we can differentiate *politically unacceptable behavior* and *politically punishable behavior*, that is, *politically motivated punishable offense*.Namely, for the existence of a criminal offense, hence for the existence of a criminal act against the state (political crime) or for a politically motivated (punishable) violation or endangering of the fundamental human rights protected by international acts, as well as for criminal acts against specific societies, social groups and people, it is not enough that there is only the behavior of the perpetrator (the natural or legal person) that is punishable, but also the existence of a subjective element that expresses a certain psychological attitude of the perpetrator to the committed criminal offense - that is, it is necessary that there is guilt on the part of the perpetrator.In order to explain the political motivation of the offense with the execution of which a particular social subject has acquired the status of a *victim*, it is necessary to start developing the explanation of the direct intent (as one of the two forms of guilt) involving both consciousness and will, meaning that the perpetrator wanted to commit the crime to the *victim* and he was aware of that, he had the will and agreed that the commission or non-commission of the punishable offense will result in damages to the victim.*Consciousness* and *will*, however, are followed by a complex of feelings and other psychological processes that have the effect of forming intent, whereby in the criminal law (but also in the misdemeanor law[242]) they are considered as the basis on which the *intention*, the *goal* and the *motive* are predicated.[243]***The intent*** **of the perpetrator of a politically motivated offense is a conscious direction of the act of execution** (by the perpetrator) towards the achievement of a politically motivated goal; i.e. "a special notion of the significance of a certain consequence of the crime for the perpetrator or for someone else acting as a driving force to take action"[244]. In some cases, the intention does not express only the direction of the effect of execution toward the occurrence of the consequence, which isthe immediate incentive for committing the offense, but also toward the occurrence of some further consequence which goes beyond the essence of the crime and acts as an intermediate goal.[245]Such an intention not only presupposes direct intent, but in a certain sense strengthens it, i.e. qualifies the intent[246]. From the point of view of patrician victimology, specifically from the point of view of political victimization (*stricto sensu*), such intention exists specifically for certain crimes against the state: [1] abduction of representatives of the highest state bodies; [2] violence against representatives of the highest state bodies; [3] [terrorist threat to constitutional order and security]; [4] diversion, [5] sabotage, [6] espionage, [7] calling for a violent change of the constitutional order, and [8] violation of territorial sovereignty.In criminal acts against the state, the criminal act

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[241]*Politics* is a real and manifested social process of managing the dominant social interests by applying various means and methods, primarily through the power, the power, and the hierarchical system. Listed by: Đevad Termiz, Slavomir Milosavljevič, *Analitika*, NIK Grafit, Lukavac, 2008, стр.153

[242]According to article 2, paragraph 1, from the Law on Misdemeanors (Official Gazette of the Republic of Mavedonia, num.124/15): for misdemeanor and misdemeanor responsiblity, provisions from the general part of the Criminal Code of Republic of Macedonia shall apply.

[243]Зоран Сулејманов, *Кривично право – општ дел*, Графохартија, Скопје, 2001 год., p. 243

[244]Tahović Janko, *Krivično pravo, opšti deo*, Savremena administracija, Beograd, 1961, p. 175;stated in: Зоран Сулејманов, op. cit., p. 243

[245]Зоран Сулејманов, op. cit., p. 244

[246]ibidem

will exist even if there is no (direct, indirect, abstract or other type of) victim in the total criminal process, that is, regardless of whether the intended purpose has been really achieved - it is important that the criminal act against the state is accomplished with a certain intention, and not whether this intention isachieved.***The goal*****of a politically motivated act** is the outcome that the perpetrator wants to accomplish with his politically motivated and punitive action (no matter if the offense is committed or not). Before undertaking any politically motivated and punishable action, any normal perpetrator must have in his consciousness the representation of the purpose which he wants to achieve by doing so.[247]The purpose of the politically motivated offense is to draw special attention tothe victim and, consequently, as a result of the committed punishable act (by committing it or not) if there is a victim, the purpose of the offense has been achieved. Otherwise, we define the ***political goal*** as an imagined state that a certain social (non-state, state or supra-state) entity seeks to achieve: (1) in order to satisfy certain own needs or interests in the area of achieving or creating a management opportunity; therefore, a certain holder of power, on the basis of his own will determines the movement - the play of processes[248];it means the process in which people are influenced by different methods and means through their relationships and behaviors, and their own awareness, emotions and actions; (2) in order to create a social change; (3) management in the organization and the mechanism of establishing and exercising a dominant governing will, which means: ordering and making decisions by the holders of a certain form of government and execution by subordinates; governance (by authority) and subjugation (by subjects); allowed and prohibited; consent and conflict; cooperation and competition; reward and punishment; etc.[249]; (4) for inflicting damages on the imaginary or real political enemy.[250]

2. SUBJECT OF POLITICAL VICTIMOLOGY

The subject of research on political victimology is a methodological basis for its founding, studying and developing as a new scientific field and it is the basic criterion on the basis of which it can be formed in an independent scientific sub-discipline of victimology, differing from other sciences and scientific disciplines. We have determined the subject of research of political victimism in the etiological, phenomenological and consequential dimension of political victimization, as well as in its dimensions expressed in the social reaction to the offense (its detection, suppression and prevention, as well as in the criminal justice, process and out-of-process protection of the victim of politically motivated punishable acts and the legal normative protection of the victim's rights and legally protected interests). Namely, the scope of research on political victimization will be

[247]The difference between the intention and the goal, among other things, is that the intention determines the direction of the will and in a wider sense indicates the content of loving, while the purpose reveals the plan of the perpetrator in whose accomplishment he approached the commission of the crime. Listed by: Tahović Janko,op. cit., p. 245; in: Зоран Сулејманов, op. cit., p. 245

[248]Listed by: Đevad Termiz, Slavomir Milosavljevič, op.cit., p. 153

[249]ibid, стр.154

[250]Karl Schmidt, one of the most controversial, but also the greatest legal and political thinkers of the 20th century, is a basic characteristic of the "political" and "politics itself" that distinguishes this notion from other living spheres such as religion, morality or aesthetics, is the friend-friend relationship. According to him, what appears in other spheres as a dichotomy of good and evil, beautiful and ugly, harmful and useful, in politics appears as a friend-enemy; this relationship is a relation of confrontation, but it does not necessarily mean war or armed conflict; only in specific, extreme situations there is a possibility for mutual conflict. Listed by: Карл Шмит, *Политичка теологија*, Култура, Скопје, 1993 год., p.92

operatively determined through the following interdependent, multi-layered and complex elements:

(1) ***THE VICTIM OF POLITICALLY MOTIVATED OFFENSES***, **that is,*the victim of crimes against the state or other politically motivated non-international and international criminal acts and offenses, that is, politically motivated punishable offenses, as well as victims in international and non-international (internal) conflicts, that is, victims of all forms of political violence that violate the fundamental human rights, as well as the rights of state, supra-state and non-state entities protected by international acts*[251]*(with which a certain person can acquire the status of a victim, as well as a particularsocial or state, supragovernment or non-government entity).*[252]

(2) ***THE ETIOLOGICAL DIMENSION OF THE VICTIMS OF POLITICALLY MOTIVATED OFFENSES***, covers the *general causes of political victimization, as well as the individual, special and direct victimization factors, i.e. reasons and conditions for becoming a victim of politically motivated punishable offenses*.

Namely, ***the reasons*** (in the politico-victimology context), that is, the conditionally determined ***victimogenic causes***, are victimogenic factors whose existence necessarily leads to the creation of a specific political victimization. Victimogenic causes would determine: the victim's immune risks (the individual characteristics of the victim [its biological, psychological and social features] and the situational circumstances), the victim's immune response, and the interaction between the victim and the perpetrator of a politically motivated offense. A grave cause may be sufficient when it directly creates a specific political victimization and is insufficient when it creates political victimization

[251]According to the***Universal Declaration of Human Rights***(adopted by the United Nations [UN] in 1948), the most important human rights are: **(1**) the right to life, freedom and security of a person; **(2)** equality of rights without discrimination; **(3)** the right to be recognized as a person; **(4)** protection against torture, inhuman or degrading treatment or punishment; **(5)** protection against arbitrary arrest, detention or expulsion; **(6)** presumption of innocence; **(7)** protection of private and family life, home and correspondence; **(8)** freedom of movement and housing; **(9)** the right to seek asylum for persecution; **(10)** the right to citizenship; **(11)** the right to marry and to found a family; **(12)** the right to ownership; **(13)** freedom of thought, conscience and confession; **(14)** the right to peaceful assembly and association; **(15)** the right to take part in the management of his country; **(16)** the right to equal access to public services in his country; **(17)** the right to social security; **(18)** the right to work, free choice of a job, fair and favorable working conditions and protection against unemployment; **(19)** the right to rest and leisure, including reasonable hours of work and the right of occasional paid leave; **(20)** the right to the standard of living of a person who provides him and his family with health and well-being; **(21)** the right to education; **(22)** the right to free participation in the cultural life of the community, enjoyment of art and sharing of scientific progress and its benefits; **(23)** the right of a person to the protection of the moral and material interests arising from any scientific, literary or artistic work of which he is the author; and **(24)** the right to social and international order. Otherwise, the Universal Declaration of Human Rights has no provisions for respecting human rights in an international or non-international (internal) armed conflict (as forms of political violence),. The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950 (Article 15), and the International Covenant on Civil and Political Rights adopted by the UN General Assembly in 1966 (Article 4), during war or in emergency situations, when a nation is endangered, certain rights may be abolished, except for the inviolable rights of: life, freedom, physical and psychological integrity, non-violence, non-discrimination, legal certainty, religion and free conviction : Thomas Buergenthal, Harold G. Maier: Public International Law, St. Paul, 1990; in: Vojislav Vasilevski, *International Humanitarian Law*, Military Academy "General Mihailo Apostolski" - Skopje, Skopje, 2002. P. 41). For these reasons, a system of legal rules has been developed that reflects ***International Humanitarian Law***, whose legal rules regulate, inter alia,***the treatment of victims of political violence, that is, victims in international or non-international (internal) armed conflicts.***

[252]Due to the limited textual space, in this paper there will be no typification of victims of politically motivated punishable acts which we developed based on our scientific strategy.

along with other victimism causes, which would not lead to the creation of political victimization while acting independently.

The conditions (in the politico-victimology context) represent an indirect victimization factor expressed as an uncertain circumstance and the occasion on which a specific political victimization depends, the basis on which the victimization of politically motivated crimes depends. Namely, within the *relation cause-consequence* (in the context of becoming a victim) there are other factors that generate the structural features of a politically motivated offense, including, inter alia, the conditions. In particular, the conditions make it easier to make a politically motivated punishable offense and, consequently, make it easier to become a victim of it. Unlike the reasons of a victim of politically motivated crimes, the conditions do not directly produce the consequence, i.e. they do not directly cause becominga victim, but rather shape the situation or circumstances that are an integral element of the *system: perpetrator - political punishment work - a victim*. So, the conditions do not depend on whether the politically motivated punishable act will be committed, but rather how and in what way it will be committed. Simply, the conditions as a victimology factor contribute to or facilitate the conduct of a politically motivated offense, that is, contribute to other victim-related factors, that is, the immediate reasons, which make it easier to become a victim.

The occasion as a victimology factor is a more stable relationship between the victim's cause and the consequence caused by the committed politically motivated offense. Namely, in concrete situations in order to make a politically motivated punishable act, an additional factor is required - a motive occasion which (in case of existence of victimogenic causes and conditions) encourages the decision to commit a politically motivated offense.

(3) ***PHENOMENOLOGICAL DIMENSION OF THE VICTIMS OF POLITICALLY MOTIVATED OFFENSES***, i.e.*the emergent forms of becoming a victim of politically motivated punishable acts*, as well as the *scope, structure and dynamics of political victimization*, will be determined on the basis of the following preliminary *phenomenological matrix of political violence*: according to the criterion regarding the location of the source of political violence, victims can be typified as: ***victims of external, global or internal forms of punishable political violence or other forms of politically motivated punishable behaviors*** which, further on the basis of the criterion relating to the use of armed actions, can be typologized as: ***victims of armed, combined (armed and unarmed violent actions) and unarmed forms of punishable political violence or other politically motivated punishable acts.***

(4) ***CONSEQUENTIALDIMENSION OF BECOMING A VICTIM OF POLITICALLY MOTIVATED OFFENSES*** covers the *negative / harmful physical, psychological, financial and social consequences* for the *victims - individuals*; negative / harmful financial and social consequences of the *victims - legal entities*, as well as the negative / harmful psychological, financial and social consequences of the employees in certain legal entities; and the negative / harmful consequences of the fundamental, lasting, vital and important values and legitimate interests of *societies*, *states*, *universities and regional federations of states (supra-state entities) and social groups*.

(5) ***THE BACKGROUND OF CONSEQUENCES OF THE VICTIM OF POLITICALLY MOTIVATED OFFENDERS***.This victim-relevant correlation can have

its own practical expression on two levels. Namely, the first level refers to a situation in which the negative / harmful effect does not occur after the potential and pre-determined victim, and for that reason the political motivation can be repeated, in view of the fact that the political motives of the perpetrator are not satisfied / the holder of a politically motivated offense. The second level refers to a situation where the political motives of the perpetrator of a politically motivated punishable offense are satisfied with the occurrence of the negative / harmful consequence, that is, the predetermined goalsare partially or completely fulfilled. At the same time, the "feedback" is the consequence which is an expression of the social reaction of political victimization and the politically motivated punishable offense. Namely, the informal, and above all, the formal social reaction of the society to the politically motivated punishable act, aims toeliminate the source of the threat, or control it, since its complete elimination is almost impossible.

(6) *POLITICAL VICTIMIZATION*. If, as correctly pointed out by Professor Dr. Oliver Bachanovic, *victimization is an important substructure of criminalityfor researchers* [253], then it is scientifically correct and justified by analogy to develop and establish the attitude according to which **political victimization is an essential element of the structure of politically motivated criminal acts**, because the scientific-theoretical and operational-practical sense of scientific and criminal-operational research of political victimization is perceived in the (long-established and known) scientific fact that the *perpetrators of politically motivated punishable acts in the process of political criminalization explain their victim, while the victim in the process of political victimization, explains the very politically motivated punishable act and its perpetrators*.[254]**Political victimization**is defined in the narrow sense (*sensu stricto*) as an active or interactive process in which a certain social, or non-state, state or supra-state entity acquires the status of a victim, whereby their legally protected rights, goods, values or interests are violated or endangered by unlawful, that is, incriminated act or omission by another politically motivated social entity, or an active or interactive process in which political motivation does not exist in endangering or harming the victim, but it has political features.**Political victimization**in the *wider sense* (*sensu latu*) is defined as an active or interactive process in which a certain social, or non-state, state or supra-state entity acquires the status of a victim, whereby its legal rights, goods, values or interests are violated or endangered by incriminating or non-criminal act or omission by another politically motivated social entity or an active or interactive process in which there is no political motivation to endanger or harm the victim whileholding political landmarks.

(7)*THE RISK OF POLITICAL VICTIMIZATION* is not evenly distributed in the population - it is, inter alia, determined by the *specific obedience* of a particular subject that increases or diminishes the possibility of suffering.[255]The factors determining the

[253]Д-р Оливер Бачановиќ, *Полицијата и жртвите*, Печатница „2-ри Август С" – Штип, Скопје, 1997 год., p. 71

[254]The basis for this theoretically adapted attitude is in the note of Prof. PhD. Ljupco Arnaudovski according to which **"The criminal in the criminalization process explains the victim, and the victim in the victimization process explains the criminal act and his perpetrator" -** Lj. Arnaudovski, *Towards the Term and Subject of Victimology*, Yearbook of the Faculty of Law, Skopje, vol. 32, 1987, p. 202, stated according to: Д-р Оливер Бачановиќ, *Полицијата и жртвите*, Печатница „2-ри Август С" – Штип, Скопје, 1997 год., p. 215

[255]Đorče Ignjatović, Biljana Simeunović-Patić, *Victimology - general part*, University of Belgrade, Faculty of Law, Belgrade, 2015, p. 28

extent of the risk of victimization include: *individual (biological, psychological and social) features* and *situational circumstances*.**The risk of political victimization**, i.e.**political-victimological risk**is defined as a concrete and permanent or temporary unprotected exposure to the threat of politically motivated endangering or harm of a particular person or a politically motivated violation of his/her human or property rights, as well as a specific and permanent or temporary exposure to the danger of politically motivated endangerment of certain societies or state, supra-state or non-state entities.

(8)*VICTIMOGENIC PREDISPOSITIONS IN THE VICTIMS OF POLITICAL MOTIVATED PUNISHABLE ACTS*are defined as **permanent or temporary bio-physiological, psychological or social traits of one person or the circumstances in which the person is located, as well as the permanent or temporary political, economic, social, cultural, ethnic or religious circumstances of certain societies or state, supra-state or non-state entities, and features and circumstances which create an increased risk of political victimization.**

(9)*POLITICAL VICTIMISM*is defined as the totalvictimization caused by political punishable acts on a specific territory and in a concrete temporal framework. **The dark number of political violence** is the number of victimization caused by political offenses that are not officially registered and disclosed. Consequently, *political victimism* needs to investigate the spread of political violence, i.e. the **rate of political victimization (the rate of political victimization)** or **the prevalence rate of political victimization, as well as the concentration of political victimization.**

(10)*SOCIAL REACTION*, and in particular - state, supra-state (international) and non-state reaction to political victimization, as well as the*DIRECT EXPERIENCE AND THE INDIVIDUAL OF THE VICTIMS (OF POLITICAL VICTIMIZATION AND THE EFFECTS OF THE TRAUMA OF THE VICTIMS)*.[256]

[256]Namely,the*political victimism*from the point of view of the social reaction of the *political victimology* would investigate: **1) the discovery, suppression and prevention of political victimization; 2) the reaction of witnesses to a politically motivated punishable offense; 3) the general and special features of the contemporary social reactions of political violence; the constructive and destructive influence of the media on the victims of politically motivated crimes and the consequences of the media influence on victims and on specific social subjects; 4) the needs of victims of politically motivated crimes and the protection of their rights and legally protected interests (national / state and international legal framework for the protection of victims of crime [universal documents and documents of the European regional system: the Council of Europe's institutions and instruments of the European Union]); 5) Providing assistance and support to the victims of politically motivated crimes** (organized and officially informed victims about their rights, giving emotional support, providing information for certain social entities whose services are available to them, referring to services and experts from different profiles: [lawyers, psychologists, psychiatrists, social workers and other professionals]); **6. Criminal, procedural and non-procedural protection of victims (politically motivated offenses); and 7.) the exercise of the rights of victims of politically motivated offenses and compensation for the damage caused.**

3. SCIENTIFIC RESEARCH METHODS OF POLITICAL VICTIMOLOGY

In *victimological research*, *general criminological methods*[257]are generally applied, and accordingly, in the field of *political victimization*, criminological methods will be applied which will be adapted to the cognitive nature of the subject of research in this new scientific field.

The following methods have a particularly wide application in victimological research: ***examination***, ***document content analysis***, ***in-depth interviewing***, ***observation***, ***case study***, ***clinical method***, ***psychological testing***, ***statistical method***, ***mapping of political criminality***[258], and consequently they also need to be used in the research of political victimization, but other research methods can be applied as well, depending on the research needs.[259]

4. SCIENTIFIC, SOCIETY AND EDUCATIONAL ADVICE FOR ESTABLISHMENT OF POLITICAL VICTIMOLOGY

Scientific justificationof*political victimism* as a new and special victimism discipline (in the phase of foundation and development) comprises the real expectation, the expectation **with its (potential) scientific capacity to contribute to the discovery of new scientific knowledge** (as a heuristic result) **for the victims of politically motivated punishable acts, the emerging features of political victimization, i.e. the etiological, phenomenological and consequential dimension of political victimization, as well as the dimensions expressed in the social reaction (for its detection, suppression and prevention, as well as for criminal, legal and procedural protection of the victim of politically motivated crimes and the legally regulated protection of the victim's rights and legally protected interests).**[260]

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[257]Đorđe Ignjatović, Biljana Simeunović-Patić, *Victimology - general part*, University of Belgrade, Faculty of Law, Belgrade,

[258]Đopđe Ignjatović, Biljana Simeunovič-Patić, ibid., p. 20-22

[259]From a methodological point of view, we will note that the political victimism will have a *characteristic aspect of observation*, which we consider to distinguish the scientific and concrete methodological capacity of this new and special victimitarian discipline. This characteristic aspect of observation will in fact be the *adaptation of the criminological and other scientific methods of the cognitive nature of the subject of research into the political victimology*, which, in their successful scientific and research application, will confirm **the contribution in the field of scientific and research methodology** (which would be achieved by the foundation of this new and special victimitarian discipline).

[260]*Political victimism* would rely on general victimism on its own theoretical basis, and in doing so would use scientific knowledge in other sciences and scientific disciplines (*criminology, political science, sociology, criminal law, criminal procedural law, misdemeanor law, misdemeanor procedure law , international criminal law, international humanitarian law, penology, criminalistics, politics of suppression of criminality, social policy, pedagogy, andragogy, psychology [crime (Psychology and Political Psychology*), as well as other sciences and scientific disciplines) that would be scientifically usable for exploring the subject of research on this new scientific discipline (in emergence and development). In fact, the essence and the meaning of our basic scientific-research idea and its overriding scientific conception for the establishment of political victimism as a new victimism discipline consists in the **scientific-research intent - the results of the scientific research of all the elements of its subject matter research systematized into a concrete scientific whole, with societal-practical goals, which creates the possibility of the emergence and development of this new and special scientific sub-discipline of the *victimology*.** The establishment of the theoretical foundations of

On the basis of the previously established scientific justification of the foundation of *political victimism* as a new and special victimology discipline, it logically follows that there is a **social justification** for its establishment. In addition to raising the awareness and knowledge of the pathological implications as a consequence of the process of becoming a victim of politically motivated punishable acts, the establishment of *political victimism* and the wider social dissemination of knowledge from its scientific field **will allow for an objective perception of the potential, the latent and certain concrete and current political victimization (and its etiological, phenomenological and consequential dimension), that is, for objective perception of concrete situations, processes, situations and circumstances that refer to potential, latent or specific victims of politically motivated punishable acts, which will contribute to the conscious, organized and planned direction of the preventive (general, special and individual) social reaction of political victimization (specifically - the state, supra-state [international] and non-state reaction to political victimization)**.

The educational justification, that is, the educational need for establishment and study of *political victimism*, can be perceived in the scientific capacity of this victimological discipline to enable the acquisition of comprehensive scientific knowledge of the victimological dimension of politically motivated punishable acts.By acquiring this scientific knowledge, students who will study this victimological discipline will, inter alia, *adopt a specific way of thinking that would enable them to develop the ability to differentiate political from other motives for the commission of punishable acts*, as well as *the method of recognizing and identification of victim-specific victimization in politically motivated offenses and the identification of situationsof victimization.*

5.CONCLUSION AND CONSIDERATIONS

1. There is scientific, social and educational justification for the establishment of *political victimism* as a new scientific sub-discipline of victimology, that is, as a new and special victimology discipline (in the system of science and scientific disciplines, specifically in the Republic of Macedonia).

2. *Political victimism* at this stage of establishment as a new and special victimology discipline has an **authentic and clearly defined subject of research.**

3. Since *political victimism* based on this level, pretends to the epithet of *scientific sub-discipline*, this new emerging victimology perspective has realistic scientific possibilities for developing its **own theory**, whose foundation of scientific knowledge would be built on the basis of scientific research employing already known and defined scientific views from the theories of other sciences and scientific disciplines with which, as a new scientific discipline, it would develop a scientifically usable, complementary and methodologically correct relation.

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political victimism will enable improvement of the position of victims of politically motivated socially negative behaviors, opening up space for a more humane and fairer system of criminal control of political criminality and other politically motivated offenses.

4.From the aspect of the methodology of scientific research of *political victimism*, scientific knowledge would come through the ***criminological and other methods*****that need to be adapted to the cognitive nature of its subject of research.**

5. Finally, on the basis of the previous concluding observations, we consider that *political victimism* can be established as an **authentic scientific branch (sub-discipline)** of *victimology*, that is, as a **new and special victimology discipline**.

6. SELECTED BIBLIOGRAPHY

1.БачановиќОливер, *Полицијата и жртвите*, Печатница „2-ри Август С", Штип, Скопје, 1997 год.

2. BavconLjubo, Bele Ivan, Kobe Peter, Pavčnik Marijan, *Kaznenopravna zašita državei njenog društvenog uređenja - politički delikti*, GLOBUS / ZAGREB, 1988

3. IgnjatovićĐopđe, Simeunovič-Patić Biljana, *Viktimologija – opšti deo*, Univerzitet u Beogradu, Pravni fakultet, Beograd, 2015god.

4. Konstantinovič-ViličSlobodanka,Nikoloč-Ristanovič Vesna, *Kriminologija*, Centar za publikacije Pravnog fakulteta u Nišu, 2003

5. RamljakA. Alija, Halilović Haris, *Viktimologija*, Univerzitet u Sarajevu, Fakultet kriminalističkih nauka, Sarajevo, 2004 god.

6. СулејмановЗоран, *Криминологија*, Институт за социолошки и политичко-правни истражувања, Скопје, 2003 год.

7.СулејмановЗоран, *Кривично право – општ дел*, Графохартија, Скопје, 2001 год.

8. Симеуновић-Патић Биљана, Тања Кесић Тања, *Криминалистичка виктимологија*, Криминалистичко-полицијска ака*д*емија, Београд, 2016 год.

9. TermizĐevad, MilosavljevičSlavomir, *Analitika*, NIK Grafit, Lukavac, 2008

10. ČavoškiKosta, *O neprijatelju*, Prosveta, Beograd, 1989 god

11. ШмитКарл, *Политичка теологија*, Култура, Скопје, 1993 год.

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FORCED MARRIAGES

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Abstract

A forced marriage is a marriage in which one or both of the parties are married without their consent or against their will. Unfortunately, they are insufficiently studied although it is a phenomenon that we encounter around the world, and what is more important for us in the Republic of Macedonia it is rooted in certain customs, traditions, and culture of a part of the population.

The subject of the paper will cover a number of issues. More important are: the notion of forced marriages (thus pointing to its, in a conditional sense, broader and narrower understanding); its distinction from similar phenomena (e.g. bridal sale, child marriage, early marriage, etc.); its regulation in the relevant international documents and national legislation; links to trafficking in human beings; elements that give marriage an attribute of force; the nature of forced marriages (a concept of human rights violations, a modern form of slavery or a gender-based concept); an overview of the most often mentioned reasons for its occurrence; the consequences of these marriages which in themselves indicate the severity of the phenomenon; measures and ways of protection of victims of the occurrence; the situation in Macedonia, considered from the aspect of its prevalence (in the absence of official data); the incrimination of occurrence and regulation in the relevant laws; and the conclusion part in which the previously elaborated will be summarized.

In the paper, the descriptive method will mainly be used, primarily the analysis of articles dealing with the topic, showing the most significant research carried out in relation with the occurrence (as a rule, they are foreign, but domestic domains in the Republic of Macedonia will also be listed, and by non-governmental organizations, primarily those who touch the Roma population). In the absence of own research, the results of a more significant research on forced marriages will be used and commented.

Key words*:forced marriages, victims, violation of human rights, gender-based violence*

1. INTRODUCTION

Forced marriage is amarriage in which one or both of the parties are married without their consent or against their will. The definition used by the Royal Prosecutor's Office of Great Britain, which has been accepted by the Government and senior police officers, specifically emphasizes the coercion as a factor in this type of marriage: “Forced marriage is a marriage without a valid consent of one or both sides, where coercion is a factor”. Coercionmay involve physical, psychological, financial, secular, and emotional pressure. Victims of forced marriages, especially women, suffer from isolation, diet disorder, depression, drug abuse and suicide attempts, as well as other physical and mental

illnesses. Some acts of violence in the name of honour or"honour killings" are related to forced marriages.[261]

The issue of forced marriages is increasingly associated with human rights and freedoms. But above all, forced marriage is widely recognized at a national and international level as a violation of women's and children's human rights and as a form of violence against women and children. In this context, the conclusion of our thesis that forced marriages, including children's or early marriages, have been as a rule treated as "private-family affairs, but very rarely related to children who are not sufficiently mature to make decisions independently, and in that sense, the state should protect them within the established norms of children's rights and their best interest through the application of legal provisions and actions of institutions."[262]

When talking about the practice of forced marriages, we can conclude that, as a rule, on one hand, it is a mixture of tradition, customs, culture, and on the other hand, contemporary perceptions of equality among people, regardless of their characteristics, marks related to the right to freedom of choice (in this context, to their partner), the right to education, employment, etc. Therefore, we will also refer to the title as of one of the rare researches in the Republic of Macedonia, the NGO "Roma-SOS" related to children's marriages "Grey zone between tradition and the rights of children", which in a very illustrative way suggests contradiction when it comes to such marriages. A lot of international documents, which will be discussed further in the paper, are in favour of overcoming such perceptions and giving priority to human freedom and rights. We can clearly see this in the part of the Council of Europe Convention on the *Prevention and Combating Violence against Women and Domestic Violence* adopted in Istanbul, but also with the interpretation of the provisions of the Convention of ChildRights (CCR).[263]

Referring to the issue of forced marriages, the possible connection with organized crime has also been discussed. Due to its characteristics and flexibility, organized crime associations can organize any kind of profitable work. One of the areas of its operation is human trafficking, which is a serious criminal offense and a modern form of slavery. Globally, trafficking in human beings is gaining wider scope and leads to a restriction of freedom and the possibility of choosing millions of people and their exploitation by means of coercion, fraud, and abuse for various purposes - sexual and labour exploitation, forced execution of criminal activities, slavery, servitude, purchase-sale, forced marriages and pregnancy, illegal adoption, begging, removal and transplantation of parts of the human body and other inadmissible forms of exploitation.

There is no clear qualification of forced marriage in Macedonian Legislation. It can be qualified and punished according to Criminal act of human trafficking, because behind forced marriage as a form of human trafficking is the fact of coercion, as well as

[261] BariMuhammad Abduli: *Forced Marriage - grey zone of the law*, http://balkans.aljazeera.net/vijesti/prisilni-brak-siva-zona-zakona/ accessed on 30.01. 2018.

[262]Salioska, N. (2016) *Child marriage: from love to severe violation of human rights*, Foundation of Democracy of Westminster, p. 7

[3]In Article 42 of the Istanbul Convention with header: *Unacceptable justification for crimes, including crimes committed in the name of so-calledhonour*in Point 1 is provided: each of the acts of violence covered by the Convention (including forced marriages-our notes), culture, custom, religion, tradition or so-called honour**shall not be accepted as justification for such acts.** Particularly this includes claims that the victim violated cultural, religious, social or traditional norms or customs of appropriate conduct. Interest is, however, that the CPA does not explicitly mention the so-called forced children's marriages. But it does in a conceited manner when speaking ofother forms of exploitation harmful to the child (Article 36,CCR "sale and trafficking of children in any order form" (Article 35,CCR).

the crime of extramarital life with a child, where coercion is assumed. Nevertheless, it can be developed and seen from the perspective of family law, because, however, parents, guardians, or anyone else who cares for the child consent to marriage **contrary to will** of one or both new spouses.

2. FORCED, CHILDREN, EARLY, AND ARRANGED MARRIAGES - BETWEEN TRADITION AND CRIME

The most extreme form of forced marriages is certainly the one related to trafficking in human beings. Hence, for the purpose of illustrating forced marriages, we will start with an explanation as a form of trafficking in human beings. Such a forced marriage involves the recruitment of children by parents, relatives or others for the purpose of "making a marriage" through false promises of a better life most often abroad. Victims of this type of marriage are further susceptible to many types of exploitation by persons, including families to which they have been sold, in particular sexual and work exploitation, begging, theft, and other criminal offenses.

Analysing the emerging forms of trafficking in human beings, including forced marriages, is significant for determining the trends of the threatening phenomena that arise or are related to trafficking in human beings and their impact on security. Thus, a sale of a girl in a Roma community because of marriage cannotbe treated in the same way as sellinga girl by a criminal group for its further exploitation through prostitution, because it is a part of their tradition. In both cases human rights are violated, but the degree of social danger of these two phenomena is not the same, so we have to make a distinction between them and according to their severity.

Starting from the degree of social danger they carry with them, the forms of trafficking in human beings can be classified as:

- Customary (traditional, "illegal") human trafficking.
- Criminal trafficking, which can be differentiated into: traditional criminal, individual (unorganized), and organized.[264]

Those marriages that have existed in society and are an element of its culture can be considered as customary and traditional. Such forms do not target any form of human exploitation but are part of the beliefs and customs of a nation. A typical example of this type of trafficking is buying brides in Serbia.[265] Nonetheless, customs of this type actually represent a vestige hedge of our region in human trafficking and among other indicators refer to the status of women in traditional and patriarchal societies.

The customary criminal form of marriage can be seen from two aspects: the"custom" according to which a person"is sold"and the criminal form through the ultimate goal for which the person"is bought". A typical example of this type of marriage can be found within representatives of the Roma population. The custom when a girl is sold to a boy is often abused, mostly in cases of so-called"marriages of the unseen" where a young woman is bought without first getting to know her future husband. In most cases, the husband lives and works in another country, and the girl must go to him. If they legally cross the border, the bride is deprived of the documents and most often end up in some sort

[264] Mijalkovic, S. (2005) Types and forms of human trafficking, Temida, Year 8. No.1 p. 34 - 35
[265] For more details: Mijalkovic, S. (2005), op.cit.., p. 35

of public house[266],although the purpose of the one who ”sells” is to ensure her safe future without intent to commit a crime.

In individual cases of trafficking there is a conscious and deliberate “purchase and sale” on both sides in order to obtain an illegal profit. The second characteristic is lack of a high level of organization, unlike the organized forms of commerce where there are organized groups characterized by continuity and massiveness in the conduct of criminal activities.

It is not necessary to use physical force in order to characterize a marriage as forced. It may be a marriage based on a threat which can be physical, emotional, or sexual, as well as under the influence of other factors - fear, intimidation, social or family expectations and / or economic factors. The absence of a free and complete will in one or both sides must be taken into consideration or when at least one person is under 18 years of age in order to define the forced marriage in the broadest sense.

Agreed and child marriages are into the category of forced marriages and the typical form of **gender-based discrimination.**

There are also cases known as **arranged marriages** within the Muslim population, where a marriage is considered a civic contract - an agreement between two families. This is done because of many complex social, economic, and political factors that mutually connect families which differ in status, class, living conditions, i.e., a marriage due to family honour, family pressure, an attempt to strengthen family ties, land to be provided, property and wealth to remain in the family, preservation of the presumed cultural ideas, protection of perceived religious ideals by obstructing”inadequate”relationshipsof ethnic, cultural or religiousgroup, control of unwanted behaviour and sexuality, long-lasting family responsibilities, requirements for residency and citizenship. Although it is important to have an understanding of the motives that encourage parents to make their children get married, these motives do not need to be accepted as justification for such an act.

In this context, we will try to define the notion of forced marriage and put it in relation to other similar or related matters for which different terms are used. Most simply defined, a **forced marriage**is amarriage in which one or both of the parties are**married**without their consent or against their will.[267] A **forced marriage** differs from an **arranged marriage**, in which both parties agree to the assistance of their parents or a third party (such as a matchmaker) in choosing a partner. However, it is important to qualify a marriage as a forced one when at least one of the parties is an underage person.

A **child marriage**is a marriage in which at least one side is a child. According to the Convention on the Rights of Children, “a child is every human being who has not attained the age of 18, unless, according to the law applicable to the child, the fullness is not acquired earlier. The Committee on the Rights of Children called on States Parties to reconsider the acquisition of adulthood if this is achieved before a person turns18 years of age.

An **early marriage** is often used as a synonym for a child marriage and refers to a marriage where one person is under the age of 18 in countries where adulthood is acquired earlier or through marriage. Early marriages may also apply to marriages in which both spouses are under the age of 18 or they might be older but there are other factors that make them unwilling to give consent to marrying, such as the level of their

[266] Ibid

[267]https://en.wikipedia.org/wiki/Forced_marriage, accessed on 18.01.2018

physical, psychological, sexual, and psycho-social development or lack of information about their living options.

A **forced marriage**is any marriage that is concluded without full and completeconsent and / or in which one or both of the parties can not break or leave marriage, among other things, due to the force or intense pressure of the society or family. A forced marriage is based ona threat that can be psychological, emotional, or sexual, and can be followed by more subtle factors such as fear, expectations by society, family or economic factors. The methods or ways of recruiting victims of forced marriages as a form of trafficking are the most illustrative manifestation of coercion as an element of forced marriages.[268] With respect to the forced marriage as a form of human trafficking, its coercion and taking into account not only the name but also the acts.

Referring to the requirements of this paper and taking into account the aspects from which the marriage will be studied (criminal-political, criminal-legal, criminological, and victimological), we choose the term ”forced marriage", considering that it covers the early childhood and under certain conditions arranged marriage. Namely, as a common rule, the first and the second mentioned above, do have elements of forced marriage (in accordance with the increased international standards in this area), and as far as the agreed marriages are concerned, they should be prevented as a practice because they are or may be abused.

3. A BRIEF OVERVIEW OF THE PREVALENCEAND THE REASONS FOR FORCED MARRIAGES

In different cultures, religions and nations there are forced marriages, but the fact is that young girls are disproportionately more affected than boys.[269] The emergence of early, forced, or child marriages is most common in rural areas and poor environments, where marriage is seen as a means of providing materially for girls and women who do not have access to resources for production and live in extreme poverty. In addition, poverty may also be the reason for getting married girls for unfamiliar foreign citizens, which increases the risk of becoming victims of trafficking in women. Furthermore, such marriages occur most frequently when girls have a low level of education. Some organizations say that poor quality education, overcrowding in schools, unskilled teaching staff and gender-based violence increase the possibility of these marriages being an alternative to many girls.[270] The accepted cultural practice[271] and the parents' decision to marry their daughters early, is often based on the stereotypes about sexuality and the role of women in the society. Under these circumstances, the marriage is seen as a way to protect the girl from sexual violence or to prevent premarital relationships.[272] In a state of conflict or humanitarian crisis, the risk of forced marriages is increasing not only because of the increased risk of poverty but also because of sexual violence against women and children. Furthermore, the absence of a strong legal framework for the prevention of such types of marriages is partly because in many countries there is a practice of favouring religious laws to the national ones.

[268] Child Marriage in Serbia - analytical report (2016) UNICEF, Belgrade, p. 10
[269] Marrying too Young – End Child Marriage (2012), UNFPA, New York, p. 12
[270] Ibid, pg. 50
[271] Preventing and Eliminating Child, Early and Forced Marriage (2014), UN,OHCHR, p.7
[272] In Nepal, three of the five main reasons for child marriage were: social pressure, culture or “everyone does this - it is normal”**,** Preventing and Eliminating Child, Early and Forced Marriage (2014), UN, OHCHR, p. 8

According to the data we possess, in 93 countries it is legal if a girl marries under the age of 18 with the consent of the parents.[273] Each year, about 14 million girls are married under the age of 18, and every third girl is a girl from developing countries. They are 1166666 per month, 269230 per week, 38461 per day, 27 every minute or one girl every 2 seconds. Every nine are married before they turn 15, some of them at the age of eight or nine. If this trend continues, 150 million underage girls will marry the next decade.[274]

Table 1: Countries with the highest number of child marriages[275]

	Country	**% of girls who got married under the age of 18**
1.	Niger	75
2.	Chad	68
3.	Central African Republic	68
4.	Bangladesh	66
5.	Guinea	63
6.	Mozambique	56
7.	Mali	55
8.	Burkina Faso	52
9.	South Sudan	52
10.	Malawi	50

Absence or lack of appropriate legislation, as well as litigation and its non-application or partial application when there is a lack of political will, insufficient resources for implementation, a lack of spark between paragraphs or training the professionals in charge of its implementation in order to understand and implement, as well as the insufficient funds addressed to the protection of children forced to marry, ensuring adequate cooperation between ministries and institutions (education, health, social affairs, judiciary) are the reasons that are associated with this problem and affect it.

Young people who are forced to marry often become alienated from their families. Sometimes they become trapped in the cycle of abuse, with serious long-term consequences, including self-harm and suicide. Many women forced to marry suffer further domestic violence. These women feel unable to leave because of a lack of family support, economic pressure, non-conformity, and other social circumstances. Isolation is one of the biggest problems that victims of forced marriages are faced with. They believe that they have no one with whom they can speak. These feelings of isolation are very similar to those experienced by victims of child abuse and other forms of domestic abuse.[276] Also, disappointment is an emotional response that prevails, they take into consideration that they have lost the ability to control important life decisions such as marriage.[277] In addition, in many cases, when a girl attempted to escape from her husband's home, she was often physically injured or was a victim of an "honour" murder.[278]

[273]World Policy Analysis Centre, Changing Children's Chances: New Findings on Child Policy Worldwide, (2013)
[274]https://www.girlsnotbrides.org/about-child-marriage/ accessed on 24.02.2018
[275] Child marriage, adolescent pregnancy and family formation in West and Central Africa, UNICEF, 2015
[276] Forced marriage and mental health, Singh, M. K., *Better Health Briefing*, (2011), p. 5-6
[277] De Langis, T., Strasser, J., Taing, S. (2014), *Like ghost changes body, A Study on the Impact of Forced Marriage under the Khmer Rouge Regime*, Transcultural Psychological Organization, p. 50
[278] *Victims of forced marriage - Guidance for health professionals*, Ethics Department, (2008), p. 3

So, the practice of such marriages is based on **structural inequality and discrimination**, and especially **gender inequality**, the impact of gender stereotypes, unequal distribution of power, control over women's bodies and their sexuality. The poverty, safety which concerns protection of girls, absence of quality education, and poor social and religious practices also contribute to these types of marriages.[279]

4. CONSEQUENCES OF FORCED MARRIAGES

Forced marriages deprive, impede, or disable girls and women in the use of many of their rights, leading to secondary victimization and (or) re-victimization. They are often victims of physical, psychological, economic, and sexual violence, and their freedom of movement is often limited. Many of them are in a **state similar to slavery,** and those who rebel against their position are often exposed to intimidating actions with negative consequences. In addition, because of the early age at which they become pregnant, they are exposed to health risks, including a high mortality rate and morbidity. Many of them have no right to be informed about their sexual and reproductive health, so they are not able to decide on the number of children they would give birth to, or the time of their birth, as well as the use of means of contraception, which increases the risk of transmission of sexually transmitted diseases. These marriages constitute an obstacle to obtain the right to education, employment, and other economic opportunities.

Since they are illegal, early marriages are often not registered and thus the birth of children in that marriage is also not registered. Thus, these children are more susceptible to trafficking and unlawful adoption. The gender dimension is the fact that this phenomenon - for example, Roma female children are discriminated against because they are poor, belong to a minority group, but also because they are women, and discrimination comes from the institutions, the wider social public, but it is also not a rare case inside their community or within families. The number of female children entering into forced marriage is far bigger than in boys, although they are not an exception. Because of the early marriage, most of the children are forced to leave their education permanently, and instead, they are forced to physical work, sexual exploitation, violence in family, etc.[280]

5. FORCED MARRIAGES IN THE REPUBLIC OF MACEDONIA

There is not a clear definition or classification of forced marriage in the Macedonian legislative system. It can be defined and punished according to the criminal offense of human trafficking, because in the background of a forced marriage is coercion. However, it can also be viewed from the aspect of family law. However, parents are the ones who give the consent to a marriage, sometimes against the will of one or both new spouses. In Article 418 of the Criminal Code[281], the following is prescribed: A person who by force, serious threat misleads, or other forms of coercion, abduction, fraud, abuse of his position or condition of pregnancy, powerlessness, physical or mental incapacity of another, or by giving or receiving money or another benefit for obtaining consent of a person who has control over another person recruits, transports, transfers, buys, sells,

[279] Girls not Brides, Report of the Office of the High Commissioner for Human Rights to the Human Rights Council on child, early and forced marriage, Submission on behalf of the Girls Not Brides secretariat. p. 1
[280] OSCE ODIHR CPRSI (2003), Child trafficking in Roma and Egyptian communities, p. 30
[281] Criminal Code (consolidated text), Academika, Skopje, accessed on 30.01.2018

harms or accepts persons for exploitation by means of prostitution or other forms of sexual exploitation, pornography, forced labour or cases abduction, **forced marriage,** forced pregnancy, unlawful adoption or similar treatment, begging or exploitation due to prohibited activity by law or unauthorized transplantation of parts of the human body shall be punished by imprisonment of at least four years."

Referring our Family Law[282], there is no provision prohibiting the conclusion of a contractual marriage or marriage for providing economic security, and there are no legally prescribed measures that will lead to eradication of arranged marriages. According to this law, for a child marriage, under the legal provisions it is prescribed that a person under the ageof 18 **cannot** be married. But the law permits an exception for a person who has reached the age of 16 if the competent court in an out-of-court procedure determines that this person is physically and mentally mature for practising the rights and duties in the marriage. In this case, the marriage can be concluded after previously received opinion from a health institution and provided expert assistance from the centres for social work. It isthoughtprovoking that living in an extramarital community with a child who has not reached the age of 14 is a crime that is qualified as a **sexual assault on a minor who has not turned 14** (article 188), i.e. a criminal act against sexual freedom and the sexual morality of the juveniles.

In our country, child marriages or forced marriages commonly occur among Roma population. However, they have not sufficiently been identified as a problem yet. They are often seen as a part of the Roma tradition, cultural feature that should be respected, tolerated and not talked about. The practice has shown that the number of marriages among Roma population has constantly been high and compared to other communities dramatically higher. The existence of extramarital communities between and with minors contributes for the girls to leave the educational process, thereby reinforces gender inequality.

There are quite big differences in the different ethnic communities in the category of girls aged 15-19 who are married or live in a community: versus the average national rate of 4% , there is the following rate in the Republic of Macedonia: for Macedonians 2%, for Albanians 6% and the rate for the Roma population is 22%. Additionally, the rate of young women aged 15-19 who have given birth or are currently pregnant at the national level is 3%, while among the Roma this rate is 18%. Referring to the poorest group, the national average is 5%, and for Roma is 25%, in terms of completed primary education, the national average is 12%, and for Romani women 24%.[283]

Within a field pilot-survey[284], 134 examined who are a part of the Roma households living in Prilep settlement Trizla 2 were covered. Target group of the survey were those who entered into a marital matrimony or extramarital community under the age of 18, covering the period from 2011 to 2016. According to the data from the field, in the period from 2011 to 2016, 122 marital communities were established between and with children under the age of 18. Moreover, 67% were communities among juveniles, and 37% were communities where juvenile girls were married to adult men aged 18-40. In 2011, 28 juveniles entered marital union, in 2012 the number was 11, in 2013 the number increased

[282]Law on family, Official Gazette of the Republic of Macedonia No. 80/1992, with changes and amendments: 9/1996, 38/2004, 33/2006, 84/2008, 67/2010, 156/2010, 39/2012, 44/2012, 38/2014, 115/2014, 104/2015 and 150/2015

[283]Children and women - what do the numbers say, Multi-indicating cluster research UNICEF, 2011

[284] Salioska, N. (2016) *Child marriage: from love to severe violation of human rights*, Foundation of Democracy of Westminster, Skopje

to 15, and in 2014 the number increased to 28. In 2015, the number is the largest (31 juveniles), 27 are girls and 4 are male. Regarding the question of how many juveniles entered the marital community, the answers are presented in a table from which you can see the age of girls and boys.

Table 2

How old were you when you got married?	Men	Women (primary education)	Women (secondary education)	Women (without education)
12-13	/	/	/	16
14-15	5	15	/	42
16	4	14	1	16
17	3	7	4	7

The peculiar fact is that only girls who were at the youngest age (12-13) got married and each of them was not educated. This points out to the fact of the importance of the educational process for the development of a person and for his correct judgment and decision-making (as well as recognizing paedophilia on the other side, hidden under the cover of the custom, tradition or economic and social reasons). Only 8 (or 6%) of them are in official marital union, the other 86 (or 64.2%) are in an informal community, a data which should be concerning.

According to Article 197 of the Criminal Code, extramarital life with a child is sanctioned when an adult lives outside a marriage with a child below the age of 16 but not yet 14 years of age shall be punished by imprisonment of three months to three years. The same penalty is also prescribed for a parent, an adoptive parent, or a guardian who will allow the child to live in an illegitimate community with another person.

Table 3 Source: Ministry of Internal Affairs

	2013		2014		2015		Jan - Sep 2016	
Number of reported crimes ”Extra marital life with a child” (Article 197, paragraphs 1 and 2, Criminal Code)	22		21		30		23	
Reported offenders	28		28		33		29	
Reported aggrieved	22		20		27		21	
Area (municipality) where they are reported	Skopje	6	Skopje	7	Skopje	11	Skopje	6
	Strumica	3	Prilep	3	Prilep	7	Kumanovo	4
	Kichevo	2	Delchevo	2	Bitola	3	Bitola	3
	Tetovo	2	K. Palanka	2	Kavadarci	2	Vinica	2

	Veles	2	Kichevo	1	Tetovo	2	Negotino	2
	Shtip	2	Veles	1	Kichevo	1	Tetovo	2
	Bitola	1	Shtip	1	Kochani	1	K. Palanka	1
	Kumanovo	1	Kumanovo	1	Struga	1	Prilep	1
	K.Palanka	1	Krushevo	1	Resen	1	Kichevo	1
	Prilep	1	Valandovo	1	Strumica	1	M. Brod	1
	Sv. Nikole	1	M. Brod	1				
Nationality of the offenders	Roma	15	Roma	17	Roma	17	Roma	11
	Macedonian	6	Macedonian	7	Albanian	10	Macedonian	10
	Albanian	4	Albanian	3	Macedonian	6	Albanian	6
	Serbian	1	the rest	1			the rest	2
	the rest	2						
Nationality of the aggrieved	Roma	9	Roma	8	Roma	12	Roma	8
	Macedonian	3	Macedonian	6	Albanian	5	Macedonian	7
	Albanian	2	foreign nationals	2	Macedonian	4	Albanian	2
	the rest	8	Albanian	1	the rest	6	the rest	4
			the rest	3				

The Law does not sanctify the situation when an adult person lives in an illegitimate community with an older minor who has reached the age of 16 and has not reached the age of 18 without the consent of the parents or caregivers. Due to this omission in incrimination, which is the existence of a legal gap, the institutions of the system cannot react and act in the best interest of the child.

According to the annual reports of the National Rapporteur on Combating Trafficking in Human Beings and Illegal Migration of the Republic of Macedonia regarding tothe crime of human trafficking which covers the period 2009 - 2014, the following situation can be notified:[285]

Table 4

	Report of forced marriages
2009	**3**
2010	**5**
2011	**1**
2012	**1**
2013	**2**
2014	**4**

[285]Report on Human Trafficking for 2015, Office for monitoring and combat against human trafficking

In the National Strategy and the National Action Plan to Combat Human Trafficking in the Republic of Macedonia for the period 2013 - 2016, forced marriages are qualified as a new trend where victims are only female persons of Roma population aged 14 - 17, it is pointed out, among other things, that traffickers are mostly citizens of Serbia or the Republic of Macedonia with temporary work in the EU. Once a girl comes to the country where she has to live, she is exposed to rape, torture, and physical punishment by her husband's family, and then work and sexual exploitation.[286]

6. INSTEAD OF A CONCLUSION

There is a thin line between coercion on one hand and child or arranged marriages on the other hand, due to the fact that the definition of forced marriage is at least one of the parties would not agree to the marriage, i.e. their consent is irrelevant. Therefore, in this paper we use them as synonyms. On the other hand, there is not official data on whether child marriages were made under coercion or voluntarily.

Here arises the essential: How to overcome, on one hand the"grey area" of tradition and on the other hand, the law? The poor social and economic situation, insufficient reference and awareness of the seriousness of the consequences arising from forced marriages, as well as the continuous problem of using children, customs and tradition, the insufficient cooperation among the institutions in the field of exchange of operational data and criminal intelligence, insufficient knowledge and / or respect for the procedures and standards (if any) for protection of the victims of forced marriages are just some of the reasons for the existence of this type of marriages.

We can sum up that the forced marriages leave the consequences of physical and psychological health, especially for girls, point to gender inequality as well as gender stereotypes and prejudices. "Forced marriage is a disgusting practice and unjustified / not defendable violation of human rights. It captures two souls without any respect and dignity of any of them. **Some people say it is a bit more than slavery**."[287]

7. LITERATURE

1. Bari, M. A. *Forced Marriage - grey zone of the law*http://balkans.aljazeera.net/vijesti/prisilni-brak-siva-zona-zakona accessed on 30.01. 2018
2. Changing Children's Chances: New Findings on Child Policy Worldwide, World Policy Analysis Centre (2013)
3. *Child marriage, Adolescent pregnancy and Family formation in West and Central Africa*, UNICEF, 2015
4. De Langis, T., Strasser, J., Taing, S., *Like ghost changes body, A Study on the Impact of Forced Marriage under the Khmer Rouge Regime*, Transcultural Psychological Organization, 2014
5. Child Marriage in Serbia - analytical report (2016) UNICEF, Belgrade

[286]National strategy and National action plan for combat against human trafficking in the Republic of Macedonia for 2013 - 2016

[287] Bari Muhammad Abdul, Forced Marriage - grey zone of the law, http://balkans.aljazeera.net/vijesti/prisilni-brak-siva-zona-zakona accessed on 30.01.2018

6. Children and women - what do the numbers say, Multi-indicating cluster research, UNICEF, 2011
7. Girls not Brides, Report of the Office of the High Commissioner for Human Rights to the Human Rights Council on child, early and forced marriage, Submission on behalf of the Girls Not Brides Secretariat
8. Report on Human Trafficking for 2015, Office for monitoring and combat against human trafficking
9. Criminal Code (consolidated text), Academika, Skopje, accessed on 30.01. 2018.
10. Marrying too Young – End Child Marriage, UNFPA, New York, 2012
11. Mijalković, S., Types and forms of human trafficking, Temida, Year 8. No.1, 2005
12. National strategy and National action plan for combat against human trafficking in the Republic of Macedonia for 2013 - 2016, Government of the Republic of Macedonia, National commission for combat against human trafficking and illegal migration, Skopje, 2013.
13. Preventing and Eliminating Child, Early and Forced Marriage, UN, OHCHR, 2014
14. Salioska, N. (2015) *The grey zone between tradition and human rights*, Roma organisation of multicultural affirmation SOS, Prilep, Office of UNICEF, Skopje
15. Salioska, N. (2016) *Child marriage: from love to severe violation of human rights*, Foundation of Democracy of Westminster, Skopje
16. Singh, M. K., Forced Marriage and mental health, *Better Health Briefing*, 2011
17. Child trafficking in Roma and Egyptian communities, OSCE ODIHR CPRSI, 2003
18. Victims of forced marriage - Guidance for health professionals, Ethics Department, (2008)
19. Law on Family, Official Gazette of the Republic of Macedonia No. 80/1992
20. https://en.wikipedia.org/wiki/Forced_marriage accessed on 18.01.2018
21. https://www.girlsnotbrides.org/about-child-marriageaccessed on 24.02.2018

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PRIVACY AND CHILDREN'S PROTECTION ON THE INTERNET

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Abstract

The Internet, the global network, with its size and potential, has applications in many aspects of life. It provides access to a variety of information, many advantages and easy availability. But beside these benefits, the Internet has also brought some drawbacks. The children and the youth are the most vulnerable group online. As it will be underlined in this paper, the protection of children's privacy on the internet is a very important topic that must not be ignored. It is not only a national or regional, but a global problem which calls for engagement of governments, educational institutions, companies and most importantly – parents to cooperate and provide adequate knowledge to the children and youth.

Keywords: privacy, children's protection, Internet, social networks, terrorism

Introduction

The internet facilitates the functioning of society. The world is more connected than ever, because the Internet is supranational - in cyberspace there are no borders, at least not physical ones. The Internet has changed the ways in which companies do business, governments work, people live, the youth think. It is also supposed to provide us a better and more peaceful future. However, the reality is different.

The protection of the children and youth on the Internet is becoming a burning issue on the global level. As Internet access becomes increasingly accessible, violence against children takes on new dimensions with deeply damaging consequences. The information provided by children and young people, gathered with and generally without their knowledge or consent, can easily be abused. This may contribute to the creation of insecurity and fear of young people but also their parents.[288]

The most common hazards for children and young people on the Internet are: easily accessible disturbing contents such as pictures, information, video clips, the possibility of exploitation and manipulation for sexual purposes, widespread pedophilia sharing personal information with strangers, the possibility of kidnapping - interaction with strangers who hide their true identity behind fake profiles, the possibility of joining different sects, cults, criminal organizations, terrorist groups, cyber bullying.

[288] Alexander Klimburg (Ed.), National Cyber Security Framework Manual, NATO CCD COE Publication,Tallinn 2012© 2012 by NATO Cooperative Cyber Defence Centre of Excellence, pg 15

These are just some of the activities that can jeopardize children in cyber space. The effects of the virtual world can be transformed into reality. In order to prevent any possible abuse of the children and youth it is more than important to make sure they are aware of the ways to protect themselves and their privacy online.

PRIVACY ON THE INTERNET

Privacy on the Internet is becoming a big issue. The concerns for the privacy of Internet users have started to increase. This comes in a time when there is still no clear legislation with respect to personal privacy online. Despite the different views on privacy and its meaning[289], there is an urgent need to clarify and ensure the privacy rights of the Internet users, including especially the children and youth.

Privacy is a fundamental human right and there is no question about it. It also impacts other universal rights and freedoms, such are freedom of expression, association and belief. Privacy may be defined as ''the claim of individuals, groups or institutions to determine when, how and to what extent information about them is communicated to others''[290]. The use of the Internet can ''affect the privacy rights a person has in his or her identity or personal data''.[291] The

Internet privacy is ''the privacy and security level of personal data published via the Internet. It is a broad term that refers to a variety of factors, techniques and technologies used to protect sensitive and private data, communications, and preferences''[292]. Privacy can also be regarded as ''having a dual aspect – it is concerned with what information or side of our lives we can keep private; and also with the ways in which third parties deal with the information that they hold – whether it is safeguarded, shared, who has access and under what conditions[293]''.

Privacy is the right of every citizen to control personal data and make decisions about them. It is: ''the basic human right which concerns:

1. Privacy of communication – no monitoring of an individual's communication
2. Privacy of information – no manipulation of data on individuals''[294].

In other words, as it is stated in UNESCO's 2011 publication ''Freedom of Expression: Freedom of Connection, the Changing Legal and Regulatory Ecology Shaping the Internet: ''At a time of rapid change, we are fully aware that freedom of expression on Internet is complex, and that this means working to find a balance between this right and other, sometimes conflicting, imperatives – such as national security, protection of authors' rights, and respect for privacy[295]''.

The fact is that cyber security cannot be considered separate from security in the real, physical world. The damages from cyber space activities are increasing, they are very real and they have real consequences in the offline world. Because of the unique characteristics

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[289] Meshal Al-Fadhli ''Internet and Privacy'' Research Training Program (RTP), Department of Information Studies, The University of Sheffield, 2008, p.3

[290] Westin AF, *Privacy and Freedom New York*: Atheneum, 1967, p. 7

[291] Toby Mendel, Andrew Puddephatt, Ben Wagner, Dixie Hawtin, Natalia Torres, ''Global Survey on Internet Privacy and Freedom of Expression'', UNESCO Series on Internet Freedom, 2012, p. 16

[292] https://www.techopedia.com/definition/24954/internet-privacy, 23.12.2017

[293] Toby Mendel, Andrew Puddephatt, Ben Wagner, Dixie Hawtin, Natalia Torres, ''Global Survey on Internet Privacy and Freedom of Expression'', UNESCO Series on Internet Freedom, 2012, p. 7

[294] https://www.rnids.rs/en/about-us/cyber-security, 24.12.2017

[295] Available at: http://unesdoc.unesco.org/images/0019/001915/191594e.pdf, 24.12.2017

of ICT technology, the issue of cyber security demands the special attention of all those involved in the Internet. Cyber security is a focus of attention in society today. As we already mentioned above, what can be used to the benefit of society can also be used against it. The issue of privacy and data protection on the Internet, especially on Facebook and other similar social networks in the past few years has definitely not lost its importance.

CHILDREN AS THE MOST VULNERABLE GROUP ONLINE

What we need to bear in mind when we talk about children's use of technology and Internet is that technology itself is not dangerous. The risk is the result of the user's risky behavior. Even minimal changes in behaviour can help reduce this risk. Parent need to understand that confiscation of the devices or prohibiting the use of the Internet will not yield any positive results, only a side effect - the child will only make a greater effort to hide from the parent what he or she is doing online[296]. And without any previous information, the child can itself jeopardize its own privacy.

The fact is that new generations are born, grow, and live in the computer or digital era. Young people and children commonly make the initial mistake of placing personal information online. One of the reasons why is that so is because they have little understanding of the concept of privacy. According to a number of researches, a significant number of young people have their social networking site profiles set to 'public' with no knowledge of how to change the profile setting to 'private' and why this setting is crucial for their own privacy. Although sharing information online has become common place for young people, and the risks of having potentially dangerous contacts offline are perceived by many children as real, it is certainly possible that many children and young people are operating on the Internet with concepts of boundary and privacy derived from the physical world, which cannot and do not apply in the online environment[297]. In the United States of America, the Children's Online Privacy Protection Act is designed to ensure that Internet sites receive parental consent before collecting data from individuals under 13[298].

Online chat provides a way for children to talk to other children and gain new friends. But online chatting also includes sharing some information. This information might be personal data, which makes it possible to identify the child or contact information (such as full name, home address, telephone number) should not be disclosed in the network. To protect online privacy, the child needs to know the importance of sharing and even more important - not sharing information and how they can be used for wrong purposes.

It is extremely important for parents to bear in mind that a person can be identified by connecting the different types of data the child provides, for example, school name, sports club, the area where they live, etc[299]. Children must be careful when they reveal contact details or other personal information. All photos that they send or the personal

[296] http://www.unicef.rs/files/Publikacije/RoditeljiProtivPredatoraNaInternetu.pdf, 24.12.2017

[297] Child Safety Online: Global challenges and strategies Technical Report, United Nations Children's Fund (UNICEF) May 2012, p.25

[298] Available at: https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule, 25.12.2017

[299] http://www.microsoftsrb.rs/obrazovanje/pil/sigurnost_ForDelete/html/v_keskustelut.htm#link3, 25.12.2017

information they disclose to an unknown person can become available to everyone on the Internet. Logs in the network can be made available to the public in a readable format for many years. When a text or photos are published on the Internet, the person loses control over them. They can be easily copied to many different locations, and may never be removed.

The protection of personal data on social networks, questions about the use of cookies for images, opinions and attitudes, has become too complex a problem for most people to tackle because the various settings on Facebook and similar networks often require more time and attention than people are usually willing to devote. This is a problem even for adults, let alone children, who are unaware of the possible consequences and very often act rashly.

The most important rule regarding safety on social networks is to never forget the fact that whatever a person puts online or posts, at some point, it becomes public. It becomes available to anyone who asks this kind of information. There is always a chance for someone to steal some information and use it for a bad purpose. The kind of behavior that would not expose them to risk in the physical world can take on different implications when shared online. For example, sharing the name, address, telephone number and photo with a group of friends at school is very different from posting that information on the Internet where it can be potentially accessed by a wide audience of unknown people.

Social networks are a great tool for online socializing and sharing information, but not for private conversations with friends and family. That is exactly why is it important to think before sharing data that can bring awkward and unpleasant consequences. Even with the best intentions, there is always the possibility that the wrong people gain access to private messages. The potential damage of jeopardized privacy is huge. The protection of personal information on social networks has become an overly complex problem to most people, but an especially vulnerable groups are the young and children.

CHILDREN AND THE SOCIAL MEDIA

Digital technology has permeated the everyday lives of people around the globe, digital media have become ubiquitous, the most widespread and most powerful media. The use of digital platforms - or popular social networks (Twitter, Facebook, Instagram, Snapchat ...) includes an increasing number of people, of younger ages as well. This ability to interact with others is the unique feature of social media and cyber space which provides powerful new ways for teenagers to create and navigate their social environments. Social media have a huge influence in children's lives and being constantly connected to the Internet also brings along many risks, including online sexual exploitation of children and adolescents.

Given that we live in the digital age, the relation between children and the use of Internet deserves greater attention from every individual, family, institution, and the educational system. As the Internet permeates every sphere of life, we all must come together on this issue, in an interdisciplinary way. The main focus should be on the improvement of formal and non formal education, workshops, and of course direct communication with children and youth about potential threats from cyber space.

Hate speech, ridicule of national minorities, violent content, mocking, posting threatening comments also represent a threat on the Internet and social networks. Unfortunately, these issues are becoming increasingly popular and more common among young people. Real footages of violent content that can be easily placed on the Youtube

channel and various social networks are also a problem. Not only that the victims face embarrassment, but this is also a direct threat to their privacy and private life. Not to mention the influence of these acts on their mental health.

According to the Report made by the Cyber Bullying Research "there have been several high profile cases involving teenagers taking their own lives in part because of being harassed and mistreated over the Internet, a phenomenon we have termed cyberbullicide – suicide indirectly or directly influenced by experiences with online aggression[300]".

The fact is that we are living two parallel lives - one real, the other one virtual. Social networks have become an important part of people's lives, especially of young people. Of course, as it was mentioned above, there are many positive aspects of social network that are useful for young people - maintaining communication with people who do not live in our neighborhood, with friends who live abroad, the ability to obtain and exchange information in a short period of time, to learn languages, promotions, potential for earnings. Some research showed that by using the virtual space, young people can also develop communication skills, which is a benefit.

In general, children need to know that according to the Convention on the Rights of Children, they have a right to privacy. Article 16 states ''Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes''[301]. Also they have their rights of freedom of expression (Article 13)[302], freedom of access to information (Article 17)[303], protection of every form of violence (Article 19)[304] and many others that can be directly implemented in cyber space as well.

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[300] *Hinduja, Sameer; Justin W. Patchin (2009).* „Cyberbullying Research Summary". *Archives of Suicide Research*. Available at: http://cyberbullying.org/cyberbullying_and_suicide_research_fact_sheet.pdf, 26.12.2017

[301] Article 16, Convention on the Rights of Children, available at: https://www.unicef.org/crc/files/Rights_overview.pdf, 27.12.2017

[302] Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

[303] Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children's books.

[304] Article 19 (Protection from all forms of violence): Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behavior – ones that are non-violent, are appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws

On the other hand, there are many negative aspects that we must consider when we are talking about social networks, especially those which are targeting young people. All widespread forms of cyber criminal activity, such as identity theft and information, the growing problem of child pedophilia, cyber bullying and insulting, are just some of the negative activities.

While the use of social media has become an integral part of the daily life of adolescents and children, there are a number of risks associated with social media use[305]. The risks that teens face online are similar to those faced offline. However, the risk profile for the use of various types of social media depends on the type of risk, a teen's use of the media, and the psychological aspect of the teen user. It is important to note that teens most at risk often engage in risky behaviors offline and also have difficulties in other parts of their lives[306] .

The problem lies in the lack of caution of the youngest users of social networks and their parents, their lack of information and ignorance. Young people often make the mistake of presenting themselves too openly on the social media. They share with the public personal data and information. They often communicate with strangers. All of this can be misused for illegal purposes. And all of this can jeopardize children's privacy.

THE TERRORIST INFLUENCE ON CHILDREN VIA CYBER SPACE

One of the biggest issues that must be tackled is how to protect children from the terrorist influence on the Internet and social media.

The most prominent terrorist organization, the Islamic State, recognized the importance of the Internet as a medium. Since the outbreak of the civil war in Syria and the creation of the Islamic State by a jihadist militant group in the territory of Syria and Iraq, the Internet has increasingly become one of the weapons in the hands of terrorists. Video footage of war crimes, killing, torture, hanging, burning, destruction of state and private property and cultural monuments flooded the "global network".

Placing horrific video and audio recordings, uploading photos, and publishing news, which are available to the world auditorium, are part of their strategy. The goal is to popularize their principles, especially with the younger population.

Popular social networks have contributed to radicalization and recruitment, primarily of young people. Modern ways of communication have enabled the terrorists to successfully increase their membership without direct, physical contact. Some terrorist groups have made their own online platforms specifically for attracting children and young people, creating content that is popular and appealing to them. The content is reflected in

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already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

[305] Such as: some of negative effects on mental health, cyberbullying, texting/sexting, exposure problematic and illegal content and privacy violations.

[306] Berkman Center for Internet and Society, Harvard Law School, Internet Safety Technical Task Force. (2008). Enhancing Safety and Online Technologies: Final Report of the Internet Safety Task Force to the Multi-State Working Group on Social Networking for the State Attorneys General of the United States. http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF_Final_Report.pdf, 27.12.2017

specially designed propaganda materials, such as texts on blogs for young people, songs, books, photographs, as well as films, documentaries[307].

What is more than specific is that the Islamic State is using the social media to recruit young people. The members of the Islamic State are the first terrorist group to use social networks as the most important part of the recruitment strategy[308].

The Islamic State has managed to assimilate a large number of children, young people and teenagers in its ranks not only from the war-torn regions of the Middle East, but from around the world. The IS differs from other terrorist organizations in terms of transparency when it comes to training, recruitment and indoctrination of children.

The success of IS to persuade young people from all over the world to join the fight against "unbelievers" shows the impressive ability and PR machinery that in the long run generate long-term plans and survival strategies. By using the cyberspace, the Islamic State has found a way to create a historical precedent by creating special sites for recruitment, just by creating groups and profiles on various social networks, blogs and chat rooms, by publishing an online magazine and manuals. These propaganda and psychological methods have proven to be more than successful.

One of the main goals of the use of the Internet by terrorists is to spread of propaganda in the form of multimedia communication and provides ideological or practical instruction, explanation, justification or promotion of terrorist activities[309]. Propaganda contains virtual messages, presentations, magazines, discussions, audio and video materials[310].

The profiles of young people joining the Islamic State are different and differ in their affiliation, religion, family heritage, age, social status, education[311].

So far, on the global level different international institutions have not carried out successful research which could provide precise and accurate results on the number of children and youth from all parts of the world who have left their homes and joined the fighting in Syria after communicating with recruits through the social platforms.

CONCLUSION

Data protection is a legal mechanism intended to ensure privacy. The European Network and Information Security Agency (ENISA) suggested that protecting the privacy of young people is one of the key strategies of combating cyber-bullying and online grooming[312]. The protection response needs to strike a balance between the right to

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[307] Carter Center (2017) **'***'The Children in Daesh: 'Future Flag Bearers' of the 'Caliphate''* https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/countering-isis/children-in-daesh.pdf,27.1.2017

[308] Cristina Martin Ristori M.''Online Jihad: ISIS's Foreign Recruitment Strategies-Who, What, and How?**''**Advanced Seminar in Global Studies Carnegie Mellon University, 2016, http://www.cmu.edu/hss/globalstudies/images/cristina-martin-79-400-paper-s16.pdf, 27.12.2017

[309] Bott C., ''The Internet as a terrorist tool for recruitment and radicalization of youth'' U.S. Department of Homeland Security, Science and Technology Directorate, 2011

[310] Gabriel Weimann *''How Modern Terrorism Uses the Internet'',* Washington, Dc: United States Institute of peace, 2004, p.8

[311] Anderson K., "Cubs of the Caliphate The Systematic Recruitment, Training, and Use of Children in the Islamic State'' International Institute for Counter -terrorism 2016., https://www.ict.org.il/Article/1629/Cubs-of-the-Caliphate

[312] Marinos, L., European Network and Information Security Agency. (2011). Cyber-bullying and online grooming: helping to protect against the risks. Heraklion, Greece.

protection from all forms of violence, sexual abuse and exploitation and the rights to information, freedom of expression and association, privacy and nondiscrimination as defined in the Convention on the Rights of Children[313] and other relevant international standards. That balance must be anchored in the best interests of children as a primary consideration, the right to be heard and taken seriously, and the recognition of the evolving capacities of children and young people.

At the moment it is a utopia and highly unlikely to remove all the risks to children and young people that exist in the online environment. However, increased global and state efforts should improve the situation and make cyber space a somewhat safer place.

Since the Islamic State spreads propaganda via different channels through the Internet, children around the world are exposed to violence and inappropriate materials. Children and pupils of elementary and secondary schools can easily get images and video clips in their educational institutions, as well as at home. For children the content that the terrorists place on the Internet is often incomprehensible, worrying, causing panic and a sense of fear.

Therefore, one of the most efficient ways of successful fight against the IS on the Internet should be the inclusion of the education system, schools and professors and educators who will be able to explain to pupils what these images are and to warn them about any potential consequences.

Literature:

1. Anderson K. (2016) "Cubs of the Caliphate The Systematic Recruitment, Training, and Use of Children in the Islamic State'' International Institute for Counter -terrorism 2016 https://www.ict.org.il/Article/1629/Cubs-of-the-Caliphate
2. Berkman Center for Internet and Society, Harvard Law School, Internet Safety Technical Task Force. (2008). Enhancing Safety and Online Technologies: Final Report of the Internet Safety Task Force to the Multi-State Working Group on Social Networking for the State Attorneys General of the United States. http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF_Final_Report.pdf
3. Bott C. (2011) ''The Internet as a terrorist tool for recruitment and radicalization of youth'' U.S. Department of Homeland Security, Science and Technology Directorate
4. Carter Centar (2017) *''The Children in Daesh: 'Future Flag Bearers' of the 'Caliphate''* https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/countering-isis/children-in-daesh.pdf,
5. Cristina Martin Ristori M.''Online Jihad: ISIS's Foreign Recruitment Strategies—Who, What, and How?''Advanced Seminar in Global Studies Carnegie Mellon University, 2016, http://www.cmu.edu/hss/globalstudies/images/cristina-martin-79-400-paper-s16.pdf
6. Cristina Martin Ristori Online Jihad: ISIS's Foreign Recruitment Strategies—Who, What, and How? Advanced Seminar in Global Studies Carnegie Mellon University
7. Child Safety Online: Global challenges and strategies Technical Report, United Nations Children's Fund (UNICEF) May 2012,

[313] Convention on the Rights of Children, available at: https://www.unicef.org/crc/files/Rights_overview.pdf, 27.12.2017

8. Convention on the Rights of Children, available at: https://www.unicef.org/crc/files/Rights_overview.pdf
9. Klimburg Alexander (Ed.), National Cyber Security Framework Manual, NATO CCD COE Publication,Tallinn 2012© 2012 by NATO Cooperative Cyber Defence Centre of Excellence,
10. *Hinduja, Sameer; Justin W. Patchin (2009).* „Cyberbullying Research Summary". *Archives of Suicide Research*. Available at: http://cyberbullying.org/cyberbullying_and_suicide_research_fact_sheet.pdf
11. Marinos, L., & European Network and Information Security Agency. (2011). Cyber-bullying and online grooming: helping to protect against the risks. Heraklion, Greece.
12. Meshal Al-Fadhli ''Internet and Privacy'' Research Training Program (RTP), Department of Information Studies, The University of Sheffield, 2008
13. Toby Mendel, Andrew Puddephatt, Ben Wagner, Dixie Hawtin, Natalia Torres, ''Global Survey on Internet Privacy and Freedom of Expression'', UNESCO Series on Internet Freedom, 2012
14. Westin AF, *Privacy and Freedom New York*: Atheneum, 1967
15. Weimann Gabriel *''How Modern Terrorism Uses the Internet'',* Washington, Dc: United States Institute of peace, 2004
16. https://www.rnids.rs/en/about-us/cyber-security
17. http://unesdoc.unesco.org/images/0019/001915/191594e.pdf
18. http://www.unicef.rs/files/Publikacije/RoditeljiProtivPredatoraNaInternetu.pdf
19. http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
20. https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule
21. http://www.microsoftsrb.rs/obrazovanje/pil/sigurnost_ForDelete/html/v_keskustelut.htm#link3
22. https://www.techopedia.com/definition/24954/internet-privacy

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