SECURITY HORIZONS

ISSN 2671-3624 DOI 10.20544/ICP.9.2.24.

INTERNATIONAL SCIENTIFIC CONFERENCE

CONTEMPORARY SECURITY CHALLENGES AND STRENGTHENING THE RESILIENCE OF THE COUNTRIES OF SOUTHEAST EUROPE

23-24 SEPTEMBER 2024, Ohrid

Volume IX, No. 2

Skopje, 2024

БЕЗБЕДНОСНИ ХОРИЗОНТИ

ISSN 2671-3624 DOI 10.20544/ICP.9.2.24.

МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

СОВРЕМЕНИ БЕЗБЕДНОСНИ ПРЕДИЗВИЦИ И ЈАКНЕЊЕ НА ОТПОРНОСТА НА ЗЕМЈИТЕ ОД ЈУГОИСТОЧНА ЕВРОПА

23-24 СЕПТЕМВРИ 2024, Охрид

Година IX, Број 2

Скопје, 2024

Издавачи:

Универзитет „Св. Климент Охридски“ Битола
Факултет за безбедност – Скопје

За издавачите:
Проф. д-р Игор Неделковски,
Ректор на Универзитетот „Св. Климент Охридски“ – Битола
Проф. д-р Јонче Ивановски,
Декан на Факултетот за безбедност – Скопје

Уредник на изданието:
Проф. д-р Катерина Крстевска Савовска

Преведувачи:
Радомир Трајковиħ

Компјутерска обработка:
Оливера Трајанова Ѓорѓијовски
Кемал Рушид

Печати:
Ри-графика“ - Скопје

Адреса на издавачите:
Факултет за безбедност
1000 Скопје
П. Фах 103
тел: 022546211
Универзитет „Св. Климент Охридски“
1ви Мај б.б. 7000 Битола,
тел: 047223788

Publishers:

University “St. Kliment Ohridski”- Bitola
Faculty of Security- Skopje

For the Publishers:
Dr. sc. Igor Nedelkovski, Rector of the University “St. Kliment Ohridski”- Bitola
Dr. sc. Jonce Ivanovski,
Dean of the Faculty of Security- Skopje

Editor in Chief:
Dr. sc. Katerina Krstevska Savovska

Proofreading:
Radomir Trajkovic

Computer Processing:
Olivera Trajanova Gjorgjijovski
Kemal Rusid

Print:
“Ri-grafika” - Skopje

Address of the Publishers:
Faculty of Security
1000 Skopje
P.O. Box 103
tel: ++389(0)22546211
University “St. Kliment Ohridski”
1 Maj b.b. 7000 Bitola
tel: +++389(0) 47223788

INTERNATIONAL PROGRAMME COMMITTEE:

Dr.Sc. Jonche Ivanovski, Vice Dean of the Faculty of Security – Skopje, University "St. Kliment Ohridski" – Bitola, Republic of North Macedonia, Chairman
Dr. Peter Hurrelbrink, Country Director of Friedrich Ebert Stiftung – Skopje
Dr.Sc. Vesna Trajkovska, Faculty of Security – Skopje
Dr.Sc. Bogdancho Gogov, Faculty of Security – Skopje
Dr.Sc. Rade Rajkovchevski, Faculty of Security – Skopje
Dr.Sc. Aleksandar Ivanov, Faculty of Security – Skopje
Dr.Sc. Natasha Peovska, Faculty of Security – Skopje
Dr.Sc. Dragica Odzaklievska, Dean of the Faculty of Economics – Prilep
Dr.Sc. Tatjana Spaseska, Faculty of Economics – Prilep
Dr.Sc. Juliusz Piwowarski, Rector of the Aperion University, Poland
Dr.Sc. Darko Trifunovic, Director of INIS, Belgrade, Serbia
Dr.Sc. Rastislav Kazanský, Matej Bel University, Slovakia
Dr.Sc. Zoran Djurdjevic, Rector of the University of Criminal Investigation and Police Studies, Serbia
Dr.Sc. Jasmin Ahic, Dean of the Faculty of Criminal Justice, Criminology and Security Studies, Bosnia and Herzegovina
Dr.Sc. Ivan Petrov Vidolov, Rector of the Academy of the Ministry of Interior, Bulgaria
Dr.Sc. Igor Bernik, Dean of the Faculty of Criminal Justice and Security, Slovenia
Dr.Sc. Ante Orlovic, Dean of the Academy of Criminalistics and Public Security, Croatia
Dr.Sc. Kastriot Jashari, Director of the Kosovo Academy for Public Safety
Dr.Sc. Mirzo Selimic, Director of the University College CESP, Bosnia and Hercegovina
Dr.Sc. Predrag Ceranic, Dean of the Faculty of Security Studies – Banja Luka, Republic of Srpska

ORGANIZING COMMITTEE

Dr.Sc. Jonce Ivanovski, Chairman
MSc. Nita Starova
Dr.Sc. Marina Malis Sazdovska
Dr.Sc. Svetlana Nikoloska
Dr.Sc. Snezana Mojsoska
Dr. Sc. Katerina Krstevska Savovska
Dr.Sc. Nikola Dujovski

SECRETARIAT

Aljosha Nedev, Dr.Sc
Olivera Trajanova Gjorgjijovski
Kemal Rushid

CONTENTS:

LAW SCIENCES

POLITICAL SCIENCES

CRIMINOLOGY

MILITARY SCIENCES

LAW SCIENCES

UDK: 323.15(495:=163.3):342.7
UDK: 323.15(497.2:=163.3):342.7
DOI: 10.20544/ICP.9.2.24.P01

SECURITIZATION OF HUMAN RIGHTS: THE CASE OF THE MACEDONIAN MINORITY IN GREECE AND BULGARIA

Marija Milenkovska
Faculty of Security – Skopje
marija.milenkovska@uklo.edu.mk
Saše Gerasimoski
Faculty of Security – Skopje
sase.gerasimoski@uklo.edu.mk

Abstract

The paper examines the causes of human rights violations against Macedonians by Greece and Bulgaria established by the human rights mechanisms founded within the Council of Europe, using the core concepts that constitute the structure of securitization theory. It argues that the rights of ethnic Macedonians in Greece and Bulgaria are securitized. To support the thesis the paper analyses the data collected within the research project "Macedonian minority in Greece and Bulgaria and Council of Europe" designed at the Faculty of Security – Skopje through the lenses of securitization theory. It explains that Greek and Bulgarian authorities legitimize the human rights violations against ethnic Macedonians by referring to the existential threat coming from the Macedonian minority based on the analysis. In addition, it identifies the referent object of securitization and discusses the role of the national authorities (government) as securitizing actor. The paper, in fact, briefly presents the main results of the above-mentioned research and underlines the issues that need to be a subject to further analysis. It contributes to the existing literature on securitization theory by applying the theory to explain that certain measures (human rights violations) are consequences of agreeing that something is a threat, instead of using it (as it is predominantly used in the literature) to describe the process by which issues become security issues.

Key words: *securitization, Macedonian minority, Greece, Bulgaria, human rights*

1. INTRODUCTION

The paper analyses the data collected within the research project "Macedonian minority in Greece and Bulgaria and Council of Europe" designed at the Faculty of Security – Skopje and conducted in the period 2022–2024. The starting point of the research was the significant body of literature that criticizes Greece and Bulgaria for human rights violations against the members of the Macedonian minority referring to the human rights mechanisms established within the Council of Europe (see, for instance: Stojkov, 2021; Daskalovski, 2002; Ringelheim, 2002; de Varennes, 2004; Anagnostou & Psychogiopoulou, 2010; Grigoriadis, 2008; Kyriakou, 2009; Ibraimi, 2013; Тасев, 2011; Triandafyllidou & Kokkali, 2010; Baltsiotis & Embrikos, 2001). The research attempts to explain the causes of these violations using securitization theory.

Securitization theory has been discussed in the literature on security many times so far. Despite certain critiques regarding its theoretical coherence, its methodology or its normative and critical status, many issues, such as religion, health, migration, energy and

environment, have been studied through the lenses of securitization theory (Baele & Thomson, 2022; Balzacq & Leonard, 2016, Nasu, 2021; Nyman, 2013; Vuković, 2022; Balzacq, 2018; Славески, 2010; Charrett, 2009; Jutila, 2006; Buzan, et al., 1998; Waever, 1995). As a new analytical framework, the theory has been used in many ways, but mainly to describe the process of securitization. This paper applies it to explain that certain measures (human rights violations against ethnic Macedonians in Greece and Bulgaria) are consequences of agreeing that something is a threat, and, thus, contributes to its further evaluation.

To support the thesis that the rights of ethnic Macedonians in Greece and Bulgaria are securitized, the authors of the paper applied qualitative contents analysis of the following documents: a) judgments of the European Court of Human Rights against Greece and Bulgaria finding a violation of the rights of Macedonians; b) reports of the European Commission against Racism and Intolerance (ECRI) concerning Greece and Bulgaria, ECRI conclusions on implementation of recommendations in respect of Bulgaria and Greece subject to interim follow-up and the government's comments to the ECRI reports; c) reports of the Commissioner for Human Rights of the Council of Europe concerning Greece and Bulgaria and comments of the national authorities to the reports; d) reports submitted by Bulgaria pursuant Article 25 (2) of the Framework Convention for the Protection of National Minorities adopted within the Council of Europe in 1995, opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities concerning Bulgaria, Bulgarian comments to the opinions, as well as the resolutions on implementation of the Framework Convention for the Protection of National Minorities concerning Bulgaria adopted by the Committee of Ministers of the Council of Europe. The paper analyses these documents[1] through the lenses of securitization theory.

Part I of the paper describes the core concepts that constitute the securitization theory. Using these concepts Part II of the paper provides arguments that the rights of ethnic Macedonians in Bulgaria are securitized, while Part III of the paper argues the same in respect to rights of ethnic Macedonians in Greece. Main findings of the paper which contributes to securitization theory are summarized in the conclusions.

2. SECURITIZATION THEORY

Securitization theory is "conceptual framework explaining the process through which certain issues come to be perceived and treated as security threats" (Baele & Thomson, 2022, p. 174) to a designated referent object and "subsequently treated as an urgent matter to be dealt with outside normal political parameters" (Baele & Thomson, 2022, p. 184). Besides providing a constructivist operational method (Buzan et al., 1998; Nyman, 2013) "for understanding who can securitize what and under what conditions" (Buzan et al., 1998, p. vii), it embraced a wider security agenda (open to different types of threats) – introduced five security sectors (military, political, economic, environmental and societal) and thus "allowed recognition of new referent objects of security beyond the state" (Nyman, 2013, p. 56), such as nation and global market.

[1] The paper analyses the judgements of the European Court of Human Rights available at the list of all judgments delivered by a Grand Chamber or Chamber, all advisory opinions and any related decisions as well as all decisions in key cases (Case-law references of judgments, advisory opinions and key case decisions) as updated until 22 November 2022) downloaded from the official web site of the Council of Europe. The same time limit applies to other documents as well. The paper analyses the documents adopted until 22 November 2022 or submitted to Council of Europe until 22 November 2022 available at the official site of the Council of Europe.

Securitization theory was first formed at the University of Copenhagen, but its roots can be traced back to sociological constructivist theories inspired by the book "The *Social Construction of Reality:* A Treatise in the Sociology of Knowledge" (B*erger* & Luckmann, 1966) and the latter developed group of social and cultural constructivist theories within the risk theories which argue that the security risk is a result of social and cultural construction (Douglas, 1992; Douglas & Wildavsky, 1982). According to this group of risk theories, the word *construction* has the meaning of creation, more precisely socio-cultural creation, creation through socio-cultural relations, not of invention, which means that any social and cultural issue can be constructed as security issue under certain circumstances. If the participants in a socio-cultural relation assess an issue as a security issue for them analogous to securitization theory it can be a security issue, such as threat or risk, justifying any further action to deal with it. Unlike the socio-cultural sphere, which does this informally, non-institutionally, securitization theory does the same, but in the sphere of security policy, i.e. institutionally, that is, formally.

As the founders of securitization theory (its initial framework usually referred as Copenhagen School) explained in their book "Security: A New Framework for Analysis" (builds on the previous work of Buzan and Waever) "the exact definition and criteria of securitization is constituted by the intersubjective establishment of an existential threat with a saliency sufficient to have substantial political effects" (Buzan et al., 1998, p. 25). We have a case of securitization "when a securitizing actor uses a rhetoric of existential threat and thereby takes an issue out of what under those conditions is "normal politics" (Buzan et al., 1998, p.24–25). By shifting an issue from the political to the security realm through intersubjective process, the actor (e.g. government) claims a right to take extraordinary measures (e.g. to place limitation on inviolable rights). It does not necessarily mean that a threat objectively exists. The issue is presented as security issue justifying action beyond normal politics through speech act. The Copenhagen school focuses on speech act, but securitization theory has broadened since its first formulation at the University of Copenhagen, "integrating linguistic processes beyond speech acts as well as non-linguistic factors (such as images and practices) and emotional dynamics" (Baele & Thomson, 2022, p. 179). In any case securitization depends on audience assent (acceptance). If the audience does not accept that something is a threat one cannot talk of successful securitization (of securitized issue), but only of securitizing move, that is of presenting an issue as an existential threat to designated referent object (Buzan et al., 1998; Balzacq et al., 2016; Stepka, 2022). Due to the fact that securitization is intersubjective is easier to securitize an issue than to desecuritize it. The process of construction or deconstruction of security issues consist of subjective and objective aspects. In the beginning the subjective aspect dominates, and as time passes, the process becomes objectified thanks to intersubjectivity.

We do not engage in the debate on the process of construction or deconstruction of security issues, but in the following parts we explain that the rights of ethnic Macedonians in Bulgaria and Greece are securitized using the original conceptual apparatus of the securitization theory: the securitization actor (in this case Greek or Bulgarian state (authorities), existential threat (in our case Macedonian national minority living in Greece or Bulgaria), referent object of threat (in this case state as object of threat and national identity as object of threat) and undertaken extraordinary measures (in this specific case several of them, such as: disabling /discouraging of self-identification as a member of a minority; discrimination; prohibition of gatherings (restriction of freedom of assembly); restriction of freedom of association).

3. SECURITIZATION OF HUMAN RIGHTS: THE CASE OF THE MACEDONIAN MINORITY IN BULGARIA

The literature on securitization theory has produced a number of arguments that security issues justify measures that "might not be normally acceptable in democratic systems" (Jutila, 2006, p. 173). The qualitative analysis of the documents under discussion in this paper (enumerated in the introduction) reveals that Bulgaria has taken a number of measures against the members of the Macedonian national minority in the country that cannot be considered as a necessary in a democratic society.

The reports of the European Commission against Racism and Intolerance on Bulgaria testify that Macedonians were subjected to discrimination. Additionally, they show that their right to peaceful assembly and the right to association have been restricted on several occasions. Such restrictions imply that Bulgaria prevent them to express their identity. The ECRI reports provide additional arguments in favour of the last observation by noting that Macedonians were not given the possibility to declare their ethnic identity in the 1992 census, but they "only had possibility of registering their ethnic origin under the category of 'Others'" (ECRI 1998, p. 10). It is also evident from the reports that Bulgarians of Macedonian origin are not members of National Council for Cooperation on Ethnic and Integration Issues (ECRI, 2014), and that they "have expressed the desire that the Bulgarian state should better acknowledge their existence as a national minority" (ECRI, 2003, p. 12). One may observe that national authorities in the country disable or discourage members of the Macedonian minority to self-identify as Macedonians based on the ECRI reports on Bulgaria.

The Commissioner for Human Rights of the Council of Europe in its reports on Bulgaria has identified similar problems concerning the right to self-identification of Macedonians (non-recognition of Macedonians as national minority and their exclusion from the National Council for Cooperation on Ethnic and Integration Issues; Commission for Protection against Discrimination lacks competence to examine complaints submitted by the ethnic Macedonians; restrictions of freedom of association).

Bulgaria has restricted freedom of association of "persons aiming to advance the recognition of the Macedonian minority in Bulgaria and the promotion of Macedonian culture" (Commissioner for Human Rights of the Council of Europe, 2020, 16) in a significant number of cases. Forming an association in order to express and promote identity of national and ethnic minority according to the European Court of Human Rights "may be instrumental in helping a minority to preserve and uphold its rights" (*Gorzelik and others v Poland, 2004, para. 93*). But, as the Commissioner for Human Rights of the Council of Europe notes in its 2020 report Bulgaria refuses to implement the long-standing judgements of the Court finding a violation of the right to freedom of association of Macedonians. It even dissolute two associations (registered in 2019) "on the grounds that there is no Macedonian minority in Bulgaria and that these associations constitute a threat to national unity" (Commissioner for Human Rights of the Council of Europe, 2020, p. 11).

The position of the Bulgarian authorities (in the concrete situation expressed by the Deputy Prime Minister) that associations advocating the recognition of a Macedonian minority threat the unity of the nation is also noted in the Fourth Opinion on Bulgaria adopted by the Advisory Committee on Framework Convention for Protection of National Minorities on 26 May 2020. Additionally, the Committee in this opinion observed that the registration of the United Macedonian Organization *Ilinden* (UMO Ilinden) and other similar organisation was refused based "either on formal grounds or on a combination of

formal and substantive grounds, namely considerations of national security, the protection of public order and the rights of others, the constitutional prohibition on associations pursuing political goals, and the non-recognition of the Macedonian minority" (Advisory Committee on FCPNM, 2020, p. 25).

The fact that Bulgarian authorities perceive and treat the Macedonian minority as source of threat to different referent objects (state and/or national identity) is particularly visible in the judgments of the European Court of Human Rights (ECtHR) finding a violation of rights of Macedonians in Bulgaria.

One may divide these judgments on judgments finding a violation of the right to freedom of association[2] and judgments finding a violation of the right to freedom of peaceful assembly[3] based on their content.

Judgments finding a violation of the right to freedom of associations concern the refusal of Bulgaria to register a non-profit organisation (UMO Ilinden) or political party of Macedonians (UMO Ilinden – Pirin). To justify the interference with the freedom of association Bulgarian authorities (government) in all of them reiterates the position that associations of Macedonians threat the state and nation (national identity), and thus keep this issue (for decades) in the field of security, that is, outside the normal policy. For instance, the judgment of the ECtHR in the case *the United Macedonian Organisation Ilinden – Pirin v Bulgaria* adopted in 2005 shows that the Constitutional Court in Bulgaria "declared the applicant party [aimed to achieve the recognition of the Macedonian minority in Bulgaria] unconstitutional because it considered that it posed a threat to the territorial integrity of the country and imperilled its national security" (*UMO Ilinden – Pirin v Bulgaria, 2005, para. 55*). Underlining the reasoning of the Constitutional Court, the Bulgarian Government in front of the Court of Strasbourg argued that the interference with the right to freedom of associations in this case "had pursued a wide range of legitimate aims: protecting national security, public safety, the territorial integrity of the country and the rights and freedoms of others' (*UMO Ilinden – Pirin v Bulgaria, 2005, para. 43*). According to the Government "the very fact that after its registration the applicant party could effectively strive towards power and thus get hold of the mechanisms to achieve its separatists' ideas posed an immediate threat to national security, the State's sovereignty, the country's territorial integrity and the nation's unity" (*UMO Ilinden – Pirin v Bulgaria, 2005, para. 47*). One may find the same or similar arguments which speak in favour of the thesis that Bulgaria treats the associations of Macedonians as security threat to certain referent objects in all other judgments of the ECtHR finding a violation of the right to freedom of associations under discussion in this paper.

Judgments of the ECtHR finding a violation of the right to peaceful assembly of Macedonians ("to commemorate historical events, to which they attached a significance different from that which was generally accepted in the country" (*Stankov and the UMO – Ilinden, para. 106*)) also support the thesis that the rights of the members of the Macedonian minority in Bulgaria are securitized. Particularly illustrative in this regard is

[2] The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2), 2011; The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria, 2005; The United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 2), 2011; The United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 3), 2018; The United Macedonian Organisation Ilinden and Others v. Bulgaria, 2006; Yordan Ivanov and Others v. Bulgaria, 2018.

[3] Ivanov and Others v. Bulgaria, 2005; Singartiyski and Others v. Bulgaria, 2011; Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, 2001; The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (no. 2), 2011; The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria, 2005; Kiril Ivanov v. Bulgaria, 2011.

the judgment in the case *Stankov and the United Macedonian Organisation – Ilinden v Bulgaria*. In this case the Court did not accept the position of the Bulgarian government that probability that separatist declarations would be made at meetings organised by UMO Ilinden (which according to the Government aspired to create a Macedonian nation among people belonging to the Bulgarian nation) or risk of minor incidents justify a ban on such meetings (see *Stankov and the UMO – Ilinden, para. 71, 94, 98*). Neither it accepted that it was necessary to limit the applicants' right to demonstrate in order to protect Bulgarian population from being convert in a Macedonian population. According to the Court "it has not been shown that unlawful means of "conversion", infringing the rights of others, have been or were likely to be employed by the applicants" (*Stankov and the UMO – Ilinden, para. 105*). It did not find that there is indication "meetings were likely to become a platform for the propagation of violence and rejection of democracy with a potentially damaging impact" (*Stankov and the UMO – Ilinden, para.103*) or convincing evidence for preparation for armed action by the applicant's association. To summarize, the ECtHR did not accept the Government's view that "the measures taken against Ilinden's commemorative meetings pursued several legitimate aims: the protection of national security and territorial integrity, the protection of the rights and freedoms of others, guaranteeing public order in the local community and the prevention of disorder and crime" (*Stankov and the UMO – Ilinden, para. 83*).

4. SECURITIZATION OF HUMAN RIGHTS: THE CASE OF THE MACEDONIAN MINORITY IN GREECE

Similar as modern Bulgarian state, the modern Greek state finds it suitable and justifiable to securitize the basic human rights of Macedonian minority living mainly in their northern part. The modern Greek state, acting as securitizing actor, treats the issue of the basic human rights of Macedonian minority as political and security one, and, on that ground, justifies the implementation of extraordinary security, legal and political measures to what it esteems to be security risk, threat or danger to their state and identity.

In order to support the findings, we've analysed the previously mentioned legal sources. In this respect, we analysed all three judgments of the European Court of Human Rights (ECHR) against Greece finding a violation of the rights of Macedonians: *Sidiropoulos and Others v. Greece*, *1998*; *Ouranio Toxo and Others v. Greece*, *2005;* and *House of Macedonian Civilisation v. Greece*, *2015*. It is important to note that most of the mentions that prove the securitization thesis regarding the human rights of the members of Macedonian national minority in Greece, were exactly found in these three judgements of the ECHR. These mentions were direct, explicit and unambiguous and they contributed significantly towards the verification of the securitization thesis.

The analysis of the formulations from the ECHR judgments against Greece shows a violation of the rights of Macedonians, where we can find the same wording which undoubtedly confirms the securitization thesis in our research. This can be supported with several examples. For instance, in the explanation of the ECHR judgment *Sidiropoulos and Others v. Greece* of 1998, when it comes to undertaken extraordinary measures by Greek authorities towards the members of the Macedonian national minority in Greece, in terms of disabling /discouraging of self-identification as a member of a minority, we can find the following formulation: "In the applicants' submission, all the arguments put forward by the national courts and the Government against the association's founders were baseless, vague and unproved and did not correspond to the concept of "pressing social need". There was nothing in the case file to suggest that any of the applicants had wished to undermine

Greece's territorial integrity, national security or public order. Mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture could not be said to constitute a threat to "democratic society" (*Sidiropoulos and Others v. Greece, para. 41*).

Considering the very existence of Macedonian national minority with distinctive national consciousness in Greece as existential threat to Greek state, the ECHR rightly states in its judgment of the *Ouranio Toxo and Others v. Greece* case of 2006, that "the Court considers that mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to "democratic society", even though it may provoke tensions. The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other" (*Ouranio Toxo and Others v. Greece, para. 40*).

Regarding the Greek state as securitizing actor, in this case represented through the Greek courts, we can mention one paragraph from the ECHR judgment in the case of *House of Macedonian Civilisation v. Greece* of 2015. "In the present case, the Court (ECtHR) notes that the domestic courts rejected the applicant association's application for registration… The Court of Appeal specifically concluded that there was no "Macedonian civilization or language". It considered that the statutes of the applicant association and the use of the term "Macedonian" could cause confusion in the country regarding the association's identity and disturb public order" (*House of Macedonian Civilisation v. Greece, para. 38*).

When analysing the reports, conclusions and comments of the European Commission against Racism and Intolerance (ECRI) concerning Greece, we can find many paragraphs that are proving the thesis that Greek state securitizes the human rights of the members of Macedonian minority living in Greece. Thus, for instance, considering the discrimination as undertaken extraordinary measure of Greek authorities against the human rights of Macedonians in Greece, we can find the following formulation in the ECRI report on Greece of 2009: "Representatives of the Macedonian community have further expressed their feelings of discrimination, inter alia, as concerns the use of their names in their own language" (ECRI, 2009, para. 114) and further recommends: "ECRI recommends that the Greek authorities investigate allegations of discrimination against members of the Macedonian and Turkish communities and take adequate measures to address them, including by ensuring the implementation of the relevant legislation where necessary" (ECRI, 2009, para. 117).

Finally, the reports of the Commissioner for Human Rights of the Council of Europe concerning Greece, also confirm the securitization of Greek state against the human rights of the members of Macedonian minority in Greece. Out of many examples of securitization, we can single out just one, regarding the restriction of freedom of association. Here is one paragraph that sufficiently supports this and can be found in the Report of the Commissioner for Human Rights of the Council of Europe concerning Greece of 2009: "The domestic courts' refusal to allow registration of this association (House of Macedonian Civilization) had been grounded, inter alia, in a perceived 'intention on the part of the [above association's] founders to undermine Greek territorial integrity' and found that 'the promotion of the idea that there is a Macedonian minority in Greece…is contrary to the country's national interest and consequently contrary to law'" (Commissioner for Human Rights of the Council of Europe, 2009, p.5).

From the previously mentioned formulations, as well as from almost all others found in the analysed legal sources, we can see that in fact, the Greek authorities securitize not only what they consider to be real threat, but, moreover, they securitize the risk, the potentiality of future threat or endangerment. This is particularly interesting and deserves to be elaborated thoroughly in separate paper. However, we can see that Greece is trying to base and justify their legal and political decisions against Macedonian minority by calling to the alleged threat, or risk, to their national and cultural integrity, security and public order, thus, in fact securitizing the threat or risk, more precisely. At the same time, this is why the ECtHR judgments criticize Greece for violation and not respecting the rights of Macedonian national minority living in Greece, since, according to the law, no legal authority can restrict or deny any human right on the basis of assumed risk or threat, but on their actual deeds undertaken in reality and in present time. Risk and threat are only security assumptions and if not sustained by real acts of undermining or threatening the core values of state or society, they cannot be considered as sufficient and necessary reasons for securitization. What the Greek state actually does is constructing the human rights as security issue, thereby trying to justify the usage of extraordinary political, legal and security measures against the members of Macedonian national minority in Greece. They are taking out the issue like human rights, which normally belongs in societal and cultural sphere and construct it as security and political one, thus later on justifying the extraordinary security, legal and political measures undertaken against the Macedonians in Greece. These are all elements which are found in the famous securitization theory developed within the Copenhagen school of security studies, which confirm our thesis that human rights of the members of Macedonian minority living in Greece are securitized by the Greek authorities.

5. CONCLUSION

The paper argued that the rights of the members of the Macedonian minority in Greece and Bulgaria are securitized by referring to data collected within the research project "Macedonian minority in Greece and Bulgaria and Council of Europe" designed at the Faculty of Security – Skopje. It analysed documents adopted within the Council of Europe or submitted to Council of Europe through the lenses of securitization theory. The analysis revealed that Bulgaria and Greece keep the issue of human rights of Macedonians in the field of security. The paper provided solid arguments that Bulgarian and Greek authorities perceive and treat the Macedonian minority as source of threat to different referent objects (state and national identity) by using the original conceptual apparatus of the securitization theory. Arguments that human rights of the members of the Macedonian minority living in Greece and Bulgaria are securitized (by the state authorities**)** are particularly visible in the judgments of the European Court of Human Rights finding a violation of rights of Macedonians by these two countries. Moreover, one may observe that Greece and Bulgaria securitize not only what they consider to be real threat, but, also the risk, the potentiality of future threat or endangerment based on the analysis provided in this paper. This position should be a subject of future analysis or research.

6. REFERENCES

Anagnostou, D. & Psychogiopoulou, E. (2010) The European Court of Human Rights and the Rights of Marginalised Individuals and Minorities in National Context. Martinus Nijhoff Publishers.

Baele, S. & Thomson, C. (2022). Securitization Theory. In A. Colins (Ed.), Contemporary Security Studies (pp. 173 –185). Oxford University Press.

Balzacq, T. (2018). Théories de la sécuritisation, 1989-2018. Études internationales, 49(1), 7–24.

Balzacq, T., Leonard, S. & Ruzicka, J. (2016). 'Securitization' revisited: theory and cases. International Relations, 30 (4), 494– 531.

Baltsiotis, L. & Embiricos, L. (2001). Speaking in Tongues: The Battle Over Minority Languages Hots Up. Index on Censorship, 2, 145-151.

Berger, P.L. & Luckmann, T. (1966). The Social Construction of Reality: A Treatise in the Sociology of Knowledge. Anchor Books.

Buzan B., Wæver O. & de Wilde J. (1998). Security: A New Framework for Analysis. Lynne Rienner Publishers.

Waever, O. (1995). Securitization and Desecuritization. In Lipschutz, R. D. (Ed.), On Security (pp: 46-86). Columbia University Press.

Charrett, C. (2009). A Critical Application of Securitization Theory: Overcoming the Normative Dilemma of Writing Security. Institut Català Internacional per la Pau.

Grigoriadis, I. N. (2008) On the Europeanization of Minority Rights Protection: Comparing the Cases of Greece and Turkey. Mediterranean Politics, 13(1), 23–41.

Daskalovski, Z. (2002). Human Rights in the Balkans – The Forgotten Few: Macedonians of Bulgaria. International Journal of Minority and Group Rights, 9(2), 143–160.

De Varennes, F. (2004). Using the European Court of Human Rights to protect the rights of minorities. In European Centre for Minority Issues (Ed.). Mechanisms for the Implementation of Minority Rights (pp. 83–108). Council of Europe Publishing.

Douglas, M. (1992). Risk and Blame: Essays in Cultural Theory. Routledge.

Douglas, M. & Wildavsky, A. (1982). Risk and Culture: An Essay on the Selection of Technical and Environmental Dangers. University of California Press.

Ibraimi, E. (2013). The Rights of Minorities in Greece. International Journal of Scientific & Engineering Research, 4 (12), 822-832.

Jutila, M. (2006). Desecuritizing Minority Rights: Against Determinism. Security Dialogue, 37 (2), 167-185.

Kyriakou, N. (2009). Minority Participation in Public Life: The Case of Greece. JEMIE, 8 (2), 1-18

Nasu, H. (2021). The Global Security Agenda: Securitization of Everything. In R. Geib & N. Melzner (Eds.), The Oxford Handbook of the International Law of Global Security (pp. 37–53). Oxford University Press.

Nyman, J. (2013). Securitization theory. In L.J. Shepherd (Ed.), Critical Approaches to Security An introduction to theories and methods (pp.51–62). Routledge.

Stepka, M. (2022). Identifying Security Logics in the EU Policy Discourse The "Migration Crisis" and the EU. Springer.

Stojkov, S. (2021). The continuation of communist-era totalitarian policies in the European Union the case of Bulgaria, the Macedonian minority and Macedonia's EU integration. Security Dialogues, 12(1), 49 –67;

Triandafyllidou, A. & Kokkali, I. (2010). Tolerance and Cultural Diversity: Discourses in Greece. European University Institute.

Vuković, S. (2022). Conflict management redux Desecuritizing intractable conflicts. In M. J. Butler (ed). Securitization Revisited Contemporary Applications and Insights. Routledge.
Славески, С. (2010). Етничкиот идентитет како мобилизирачка алатка. Безбедносни дијалози, (2), 141-156.
Тасев, Д. (2011). Македонците во Грција. Македонски информативен центар.
Commissioner for Human Rights of the Council of Europe (2009). Report of the Commissioner for Human Rights of the Council of Europe concerning Greece, 19.02.2009.
Commissioner for Human Rights of the Council of Europe (2020). Report following her visit to Bulgaria from 25 to 29 November 1919, Strasbourg 31 March 2019.
ECRI (2009). Report on Greece, adopted on 15.09.2009.
ECRI (1998). Report on Bulgaria, adopted on 15 June 1998.
ECRI (2014). Report on Bulgaria, adopted on 19 June 2014.
Gorzelik and others v Poland. (2004). App. no. 44158/98, ECtHR.
House of Macedonian Civilisation v. Greece. (2015). App. no. 1295/10, ECtHR.
Ouranio Toxo and Others v. Greece. (2005). App. no. 74989/01, ECtHR.
Sidiropoulos and Others v. Greece. (1998). App. no. 26695, ECtHR.
Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (1998). App. nos. 29221/95 and 29225/95, ECtHR.
The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (2005). App. no. 59489/00, ECtHR.

UDK: 351.746.5:340.13(4-13)
DOI: 10.20544/ICP.9.2.24.P02

LEGAL AND REGULATORY CHALLENGES IN RECOGNISING SECURITY AS A PROFESSION: PERSPECTIVES FROM SOUTHERN EUROPE

Orlando Mardner MSc CSM CMAS CFIP M-ISRM Dpi
Professional Security Academy UK
viperprosec_7@hotmail.com

ABSTRACT

The growing expansion of civilian private security services and the broadening scope of their activities across various countries underscore the need for effective mechanisms in regulation and oversight. Ensuring adherence to national and international rules and regulations becomes imperative. Despite the absence of specific United Nations instruments addressing civilian private security services, many standards exist within the broader security sector domain. These standards encompass the State's responsibility to prevent crime, safeguard human rights, and regulate the use of force, detention, and arrest. Additionally, they govern the relationship between the private sector and human rights and the protection of workers' rights. Methods: To address these issues, the study will adopt an expert interviews approach, conducting interviews with recognised security professionals, policymakers, legal experts, and representatives from relevant institutions in Southern Europe, specifically North Macedonia and Spain. The research aims to gather qualitative insights into the challenges, perspectives, and recommendations for recognising security as a profession. Results: The study anticipates unveiling the importance of proper regulation for civilian private security services, showcasing their potential as valuable state resources. Insights gathered through expert interviews will shed light on Southern Europe's specific challenges and perspectives, offering recommendations for recognising security as a profession. Conclusion: The study recognises the significance of incorporating existing international and national standards in formulating civilian private security services regulatory systems. When properly regulated, these services can be valuable assets for states. The resolution of challenges lies in strategic public policy initiatives, formalised cooperation frameworks, and increased State involvement.

Keywords. Hindrances, Private Security Industry, Private Security Industry Regulatory Authority, Southern Europe

CHAPTER ONE
Introduction

The private security division has seen exponential progress in recent years, highlighting broader societal deviations and the sprouting scene of security challenges. As these services increase in scope and relevance, there is an increase in demand and need for a reliable legal and regulatory framework to guarantee that operations are conducted within ethical and legal margins. This thesis pays attention to the precise context of Southern Europe, North Macedonia, and Spain to examine the legal and regulatory challenges in recognising security as a profession. The increasing expansion of civilian private security

services and the augmentation scope of their operations across several countries underscore the necessity for operative systems in regulation and oversight. They are ensuring observance of national and international guidelines and regulations, becoming imperative. Despite the need for more specific United Nations tools addressing citizen private security services, a surfeit of standards exists in the larger security sector sphere. These ethics encompass the State's duty to avert crime, protect human rights, and control the use of force, incarceration, and detention.

Moreover, they govern the association between the private sector and human rights, including protecting employees' rights. In the past, security was majorly a state-regulated role, with police and military forces acting as the prime providers of civilian safety and order. Nevertheless, the latter portion of the 20th century and the start of the 21st century have seen extensive growth in the private security sector. This growth can be attributed to several factors, such as the increasing complication of security threats, the globalization of trades, and the subcontracting of non-core occupations by public and private sector units. Subsequently, private security organizations are now a fundamental part of the security scene, providing a wide range of services from rudimentary guarding to cutting-edge risk mitigation and cyber security resolutions. The private security industry plays a vital role in modern-day society by complementing public law enforcement exertions and providing specialised services that accommodate the diverse security needs of individuals and associations.

Nevertheless, the swift expansion and diversification in the sector have brought about notable challenges. These include ensuring observance of national and intercontinental regulations, upholding high standards of professionalism, preserving human rights, and fostering civic trust. Despite the industry's growth, the acknowledgment of private security as a bona fide profession continues to be highly contentious, primarily due to varying regulatory standards, uneven oversight mechanisms, and the absence of uniform professional conditions.

One of the grave issues in this regard is the lack of specific United Nations instruments and policies that directly address citizens' private security services. While there are plentiful standards within the broader security sector and those correlated to the State's obligation towards crime prevention, the protection and preservation of human rights, and the regulation of force, detention, and custody, the private security sector often functions in a grey area. This absence of specificity generates significant challenges for the progression and execution of cohesive regulatory outlines that can sufficiently govern this career field.

In Southern Europe, commonalities and divergences across countries manifest the regulatory landscape for private security services. North Macedonia and Spain, for instance, exhibit exclusive regulatory environments designed by their historical, political, and socio-economic contexts. As a comparatively new state with continuing nation-building processes, North Macedonia faces distinct challenges in launching robust regulatory frameworks (Barkawi & Laffey, 2006). Conversely, Spain, with its stretched history of democratic governance and executed legal systems, offers a different viewpoint on regulating private security services. By investigating these two countries, this dissertation intends to highlight the region's diversity of challenges and approaches. The findings of this research are expected to underscore the importance of proper regulation for citizen private security services. Effective regulation increases the professionalism and dependability of security services and certifies their alignment with national and intercontinental standards. By acknowledging security as a profession, countries can

harness the potential of private security amenities as valuable resources that complement public law enforcement efforts and labour.

This dissertation intends to contribute to the ongoing discourse on the professionalisation of the private security sector by offering a detailed analysis of the legal and regulatory challenges in Southern Europe. It emphasises the need for strategic public policy initiatives, formalised cooperation frameworks, and amplified State involvement to mitigate these challenges. The research discoveries will offer practical commendations for enhancing the recognition and regulation of security as a profession, eventually contributing to developing a more effective, ethical, and professional private security segment. By exploring the perspectives from Southern Europe, this paper also seeks to provide insights that are regionally relevant and applicable to the broader international context. The professionalisation of security services is a critical issue that impacts global security and governance, and this research aims to shed light on the pathways and obstacles towards achieving this goal.

Section One: Research Objectives

The main objective of this dissertation is to investigate and examine the legal and regulatory challenges in recognising security as a profession in Southern Europe. The thesis aims to:

- Highlight the critical regulatory challenges the private security sector met in North Macedonia and Spain.
- Analyse the current legal frameworks and their efficiency in ensuring the professionalisation of the security industry.
- Collect insights from security professionals, policymakers, and legal specialists on the contemporary state of regulation and the prerequisite for reforms.
- Propose recommendations for enlightening the regulation and professionalisation of the private security sector in Southern Europe.

CHAPTER TWO: Literature Review

Section Two: Evolution of the Private Security Sector

The private security sector has archaeologically played an additional role in public law enforcement corporations. However, the recent upsurge in security demands, motivated by factors such as globalisation, suburbanisation, and technological developments, has positioned the private security sector as a vital entity that is a component of the general security apparatus. This evolution has raised queries on the adequacy of prevailing regulatory frameworks and the necessity for professionalisation within the field. The literature on the historical development of private security showcases its transition from a supplementary entity to a vital constituent of the security field. Initially, private security was restricted to guarding and patrolling services. It has expanded to include various services, such as risk management, forensic investigation, and cyber security. Academics like Shearing and Stenning (1987) have documented this evolution and highlighted the increasing complexity and importance of private security in contemporary society. The current literature on the regulation and professionalization of the private security sector is extensive. Intellectuals such as Button (2007) and Shearing and Stenning (1987) have studied the governance and regulation of private security, providing insight into the challenges and recommending various models for effective

oversight. However, there need to be more comprehensive studies concentrating explicitly on the regulatory challenges in Southern Europe, predominantly in the framework of recognizing security as a profession.

Early Advancement

Throughout the Middle Ages, the need and demand for private security services cultivated, particularly in Europe. Medieval lords hired private militias to guard their estates, while merchants and traders employed armed escorts to safeguard their goods during conveyance. The Industrial Revolution in the 18th and 19th centuries manifested a momentous turning point, with swift urbanisation and the growth of commerce generating new security challenges. The insufficiency of public law enforcement to mitigate these challenges led to the proliferation of private security services.

20th Century Expansion

The 20th century saw a substantial growth of the private security industry. Numerous factors contributed to this growth:

- **Urbanisation and Industrialisation**: The speedy growth of cities and industrial events formed multifaceted security needs that civilian police forces struggled to manage.
- **Technological Advancements**: Inventions in security technology, such as alarm systems and surveillance photographic cameras, have heightened the capabilities of private security companies.
- **Globalisation**: The growth of multinational corporations and global trade increased the petition for security services to protect assets and people across borders.

Within this period, private security firms commenced offering various services, including corporate security, personal protection, event security, and hazard management. Companies like Pinkerton and Securitas arose as pioneers, setting the standard for the industry and implementing professional conduct in private security services (Bigo, 2008).

Table 1

Evolution of the Private Security Sector: Data Table

Time Frame	Major Developments	Key Trends	Noteworthy Events/Organisations
Ancient Civilizations	Initial forms of private security (guards for affluent individuals, traders)	Informal, personal guard	Private security guards in Egypt, Rome, and Greece
Middle Ages	Medieval lords' militias, merchant aides	Amplified need for protection and safety in travel and trade	Legionnaires and private militaries
18th-19th century (Industrial Revolution)	Development of urban areas, industrialisation	Bigger demand for security in urban and industrial towns	Establishment of the Pinkerton National Detective Agency (1850)

Early 20th century	Enlargement of private security services	Variation of services like corporate security, individual guard/protection	Formation of major firms like Securitas (1934)
Mid-20th century	Regulatory frameworks and policies begin to arise	Professionalisation, increased regulation	US Private Security Regulatory Act (1968)
Late 20th century	High-tech advancements, globalization	Amalgamation of technology, global influence of security firms	The upsurge of international firms like G4S, ADT Security
Early 21st century	Cutting-edge technology (AI, biometrics, drones), cyber security	Emphasis on intelligence, risk management, cyber threats	Formation of certification programmes, industry standards
Contemporary	Incessant regulatory reforms, professionalisation	Worldwide collaboration, public-private partnerships	European Union advises on security services, formation of Security Industry Authority (SIA) in the UK

Present-Day Private Security Sector

Today, the private security sector is a multi-billion-dollar industry that employs thousands of individuals worldwide. The scope of services has extended to include cyber security, intelligence gathering, and advanced risk mitigation. Private security firms now operate and function in highly competitive and technologically progressive environments, offering bespoke solutions tailored to their client's needs.

Significant trends in the contemporary private security sector include:

- **Integration of Technology**: The employment of advanced technologies such as artificial intelligence, biostatistics, and drones has transformed private security operations, fostering efficiency and effectiveness.
- **Professionalisation**: The push and demand for professionalisation have directed the establishment of industry standards, certification programmes, and professional organisations. These efforts have facilitated the elevation of private security personnel and ensured advanced service delivery standards.
- **Globalisation**: The global nature of security threats, like terrorism and cybercrime, has demanded international cooperation and the formation of global standards for private security services.
- **Regulatory Reforms**: Incessant regulatory reforms intended to address emerging challenges and guarantee that the private security sector functions within a framework of accountability and ethical conduct.

Emerging Trends and Future Outlook on the Legal and Regulatory Challenges in Recognising Security as a Profession

The private security sector in Southern Europe, encircling countries like North Macedonia and Spain, has seen significant growth over recent years. This expansion has increased the demand for effective regulatory mechanisms and professional recognition within the trade. This segment studies the emerging trends in regulating private security services and provides a future outlook on the challenges and prospects of recognising security as a profession in Southern Europe.

Emerging Trends

Amalgamation of Technology in Security Services, implementing advanced technologies, such as artificial intelligence (AI), drones, and surveillance systems, is changing the private security sector. These technologies improve operational efficiency and effectiveness but also necessitate updated regulatory frameworks to mitigate privacy concerns, data protection, and ethical usage.

Growing Demand for Professional Standards: There is an increasing recognition and formulation of professional standards and certification procedures in the private security industry. This inclination is motivated by the yearning to ensure the competence and reliability of security personnel, thus enhancing public trust and safety.

Harmonisation and Coordination of Regulations: To simplify cross-border cooperation and standardisation, efforts are being exerted to harmonise regulatory frameworks transversely in Southern Europe. This comprises aligning training requirements, certification processes, and operational standards, which can support the streamlining of recognition for security professionals across various countries.

Stressing Human Rights and Ethical Practices: The emphasis on human rights and ethical practices is continuously becoming prominent in the regulation of private security services. Regulatory bodies are formulating guidelines to guarantee that security operations revere human rights and adhere to ethical standards concerning issues such as the use of force, detention, and the ill-treatment of people.

Public-Private Partnerships: The progress of public-private partnerships (PPPs) is evolving as a significant trend in the private security sector. These partnerships enable collaboration between state establishments and private security firms, permitting a more integrated approach to communal safety and security.

Future Outlook

Future Enhanced Regulatory Frameworks are expected to become more inclusive and adaptive to the sprouting nature of security threats and technological advancements. These contexts will need to balance the advantages of technological integration with the necessity to protect individual rights and warrant accountability.

- **Superior Professional Recognition**: The professionalisation of the private security sector will continue to gain drive. This will encompass the establishment of clear and straightforward career pathways, continuous professional development programmes, and robust certification procedures. Recognition of security professionals will also entail alignment with global standards and top practices.
- **Increased Collaboration and Teamwork** Boosted collaboration between state regulatory bodies, intercontinental organisations, and private security firms will be vital in addressing regulatory hurdles. This cooperation could

advance unified standards and practices, enabling the recognition of security as a profession across various jurisdictions.

- **Focus on Ethical and Sustainable Practices** The future of the private security field will be moulded by a strong emphasis on ethical and sustainable operations or practices. These consist of responsible technology usage, observance of human rights principles, and the endorsing of social responsibility within the industry.
- **Adaptive Training and Education Packages** Training and education programmes for security professionals will remain evolving to keep pace with the fluctuating landscape of security threats and technological developments. This comprises incorporating new skills and knowledge ranges, such as cybersecurity, data protection, and crisis management, into training syllabuses.

Table 2

Emerging Trends and Future Outlook Table

Trend	Description	Inferences
Technological Advancements	Use of AI, biometrics, drones, and cyber security tools	Enhanced efficiency and effectiveness of security services
Globalization	Expansion of multinational security firms, cross-border operations	Need for harmonized regulatory frameworks
Professionalization	Certification programmes, industry standards	Elevated status and professionalism of security personnel
Public-Private Partnerships	Collaboration between private security and law enforcement	Comprehensive and integrated security solutions

Section 2.1: Regulatory Developments

The extension of the private security sector highlighted the need for regulation to warrant accountability, professionalism, and ethical conduct. Regulatory frameworks started to emerge, varying significantly transversely in different countries. In the United States, the Private Security Regulatory Act of 1968 was among the first legislative exertions to regulate the industry, authorising licensing and training resources for private security personnel (Bigo, 2014).

In Europe, the regulatory landscape evolved differently. National states like the United Kingdom implemented stringent licensing requirements by utilising bodies like the Security Industry Authority (SIA), while others adopted a more laissez-faire tactic. The European Union additionally played a role in harmonising standards, predominantly through directives designed to regulate cross-border security services.

Regulatory Landscape in Southern Europe

Southern Europe presents a varied regulatory landscape for private security services. In countries like North Macedonia and Spain, the regulation of private security services is often fragmented, missing cohesive national standards and oversight systems. This

disintegration poses significant challenges in warranting that private security services observe ethical practices and function within the legal framework. The province's distinct socio-political and economic contexts mould the regulatory challenges in Southern Europe. Countries like Spain have diverse legal systems and fluctuating levels of economic development, which impact their regulatory approaches. The prevailing literature on Southern Europe is restricted, but lessons by Abrahamsen and Williams (2011) offer valuable insights into the region's wide-ranging regulatory and professionalisation challenges.

CHAPTER THREE: Importance of Professionalisation

Security sector professionalisation incorporates generating training, certification, and ethical conduct standards. Distinguishing security as a profession certifies that professionals, corporations, and businesses in the sector are upheld to high accountability and performance standards. Professionalisation also increases public trust in private security services, which is vital for their effective incorporation into the broader security infrastructure. Professionalisation is the progression by which an occupation or job becomes acknowledged as a profession, branded by the creation of detailed standards, qualifications, credentials, and ethical guidelines. It encompasses implementing a formal body of knowledge, educational requirements, documentation or licensing protocols, and professional associations or organisations to regulate, govern and endorse the profession's practice. A professional refers to an individual who belongs to a recognised profession and meets all the existing qualifications and standards associated with that profession.

Security professionals are expected to observe ethical principles and codes of conduct in their practice, maintain competence through constant education and training, and maintain the reputation and honour of their profession. A profession is well-defined as a vocation requiring specialised knowledge, skills, and proficiency in a particular field. From an academic viewpoint, professionalisation is often considered within the broader contexts of sociology, organisational behaviour, and management theory (Brooks et al., 2020). Academics study the processes in which occupations shift from informal or unregulated to recognised and established professions, such as the social, economic, and institutional features that shape professionalisation efforts. Theoretical contexts such as the institutional theory, professionalisation theory, and social capital theory are habitually used to analyse the dynamics of professionalisation and its effect on people, organisations, and society. Abbott (1988) has provided a theoretical outline for understanding the professionalisation process, emphasis the rank of jurisdictional claims and the implementation of professional associations.

Table 3

Regulatory and Professionalisation Efforts Table

Country/Region	Regulatory Body	Key Regulations/Standards
United States	Innumerable state-level agencies	Private Security Regulatory Act (1968), state licensing requirements and credentials.
United Kingdom	Security Industry Authority (SIA)	Licensing training credentials for security personnel.
European Union	Various State bodies, EU directives	Harmonisation of cross-border security services, worker protection standards
Global	International Organization for Standardisation (ISO), private organisations.	ISO 18788:2015 (Administration systems for private security operations)

CHAPTER FOUR: Methodology

Research Design

This dissertation utilises qualitative research. Expert interviews are conducted to collect in-depth insights into the regulatory challenges and viewpoints on professionalising the security sector in Southern Europe.

Scope and Limitations

While this dissertation focuses primarily on North Macedonia and Spain, the results, findings, and recommendations are anticipated to be relevant to other Southern European states with similar regulatory challenges. Nevertheless, the study recognises its limitations, potential variability in regulatory practices, and distinct socio-political aspects of diverse countries. Furthermore, the reliance on qualitative data from expert interviews may introduce subjectivity and partiality, although efforts will be made to warrant a balanced and objective examination.

CHAPTER FIVE: Results and Regulatory Challenges

Fragmentation of Regulatory Frameworks

One of the primary challenges identified in Southern Europe is the fragmentation of regulatory frameworks. In countries like North Macedonia and Spain, private security regulations vary significantly between regions, leading to consistent standards and enforcement. This fragmentation undermines professionalisation efforts and creates ambiguities that can be exploited by unscrupulous entities.

Lack of Standardised Training and Certification

Another significant challenge is the need for standardised training and certification programmes for private security personnel. With uniform training standards, the quality of services provided by private security companies can remain high, affecting the overall reliability and professionalism of the sector (Bures & Meyer, 2019).

Ethical and Human Rights Concerns
Ensuring that private security services operate within ethical boundaries and respect human rights is crucial. However, the lack of stringent oversight mechanisms often leads to incidents of misconduct and abuse. Addressing these ethical concerns requires robust regulatory frameworks that enforce accountability and transparency.

Table 4

Challenges and Opportunities Table

Problem Statement	**Description**	**Prospects**
Regulatory Fragmentation	Inconsistent standards across jurisdictions	Harmonization of global standards, international cooperation
Public Perception	Negative perceptions due to misconduct	Building trust through transparency, accountability
Integration with Public Security	Collaboration difficulties with public forces	Developing formal cooperation frameworks, joint training programmes

Section Four: Perspectives on Professionalisation: Southern Europe
Spain has taken commendable steps to regulate its private security sector through legislation such as the Private Security Act. However, challenges persist in ensuring compliance and maintaining high standards across the industry. The Spanish model highlights the importance of continuous oversight and the need for adaptive regulatory mechanisms to address emerging security challenges (Button, 2007). In North Macedonia, the regulatory landscape is still developing. The country needs help establishing a coherent framework encompassing domestic and international standards. The focus here is on building capacity within regulatory bodies and fostering collaboration between public and private security entities. As Southern European countries navigate this complex landscape, the lessons learned, and best practices adopted can serve as a model for other regions grappling with similar challenges.

Section 4.1: Importance of Regulatory Oversight

Experts emphasise the importance of regulatory oversight in professionalising the security sector. Effective oversight mechanisms ensure that private security services adhere to legal and ethical standards, enhancing public trust and confidence.

Role of Professional Associations

Professional associations play a critical role in advocating for the interests of private security professionals and promoting standards of excellence. By establishing codes of conduct and providing certification programmes, these associations contribute to the professionalisation of the sector.

Need for Public-Private Partnerships

Collaboration between public law enforcement agencies and private security companies is essential for addressing the complex security challenges of contemporary society. Public-

private partnerships can facilitate information sharing, joint training programmes, and coordinated responses to security threats.

CHAPTER SIX: Discussion

Implications for Policy and Practice

The findings of this study highlight the need for strategic public policy initiatives to address the regulatory challenges in the private security sector. Policymakers must prioritise the development of cohesive regulatory frameworks that standardise training, certification, and oversight across regions. Formulate public policies that prioritise the professionalisation of the security sector, including the creation of regulatory bodies to oversee the implementation of standards. Establish formal frameworks for cooperation between public authorities and private security firms, ensuring transparency and accountability. The State should proactively regulate the private security industry, including setting licensing requirements and conducting regular audits. State involvement in regulating and overseeing private security services is crucial for ensuring accountability and ethical conduct. Governments must allocate resources to regulatory bodies and empower them to enforce standards and address violations effectively. Formalised cooperation frameworks between public and private security entities can enhance the effectiveness of security operations. These frameworks should include protocols for information sharing, joint training exercises, and coordinated responses to security incidents.

The integration of advanced technologies in security operations poses both opportunities and challenges. While technology can enhance efficiency and effectiveness, it raises concerns about privacy and data security. Policymakers should regulate technological use by formulating regulations that govern the use of technology in security operations, ensuring that privacy and data protection laws are upheld (Caldara & Iacoviello, 2022). Promote technological literacy by encouraging continuous professional development to keep security personnel updated on the latest technological advancements and their ethical implications. Balancing the interests of the public sector with those of private security companies is crucial. The private security industry can be a valuable resource for states, but it requires careful regulation to avoid conflicts of interest and ensure public safety. This balance can be achieved by promoting partnerships between the State and private security companies to enhance public safety while maintaining oversight and defining the roles and responsibilities of private security firms to prevent overlap with public law enforcement agencies. Given the transnational nature of security threats, international cooperation is essential. Southern European countries should engage in international agreements and conventions that set global standards for private security services (Jones & Newburn, 2006)—developing collaborative training programmes with international partners to standardise skills and knowledge across borders. Policymakers must work towards harmonising regulations to ensure that regional security professionals adhere to consistent standards. This can be achieved through establishing common standards at the regional level, perhaps through the European Union, to guide the regulation of private security services. It enhances cooperation between countries to share best practices and develop joint oversight mechanisms.

CHAPTER SEVEN: Summary, Conclusion and Recommendations

The professionalisation of the private security sector in Southern Europe faces significant legal and regulatory challenges. However, by addressing these challenges

through strategic public policy initiatives, formalised cooperation frameworks, and increased State involvement, the sector can be transformed into a valuable asset for states. Recognising security as a profession requires establishing national standards, strengthening regulatory bodies, and promoting professional associations. By implementing these recommendations, Southern Europe can enhance the effectiveness, reliability, and ethical conduct of private security services;

Establishment of National Standards

Establishing national standards for training, certification, and ethical conduct is essential for professionalising the private security sector. These standards should be developed in consultation with industry stakeholders and aligned with international best practices.

Strengthening Regulatory Bodies

Regulatory bodies must be strengthened with adequate resources and authority to enforce standards and address violations. This includes training regulatory personnel and establishing mechanisms for public reporting and accountability.

Promoting Professional Associations

Professional associations should be promoted and supported to play a central role in professionalisation. These associations can provide certification programmes, advocate for industry interests, and promote standards of excellence.

Areas of Further Study

Studying emerging trends and the future outlook of legal and regulatory challenges in recognising security as a profession in Southern Europe opens up various avenues for further research. These areas of study are crucial for developing a deeper understanding and creating more effective strategies to address the complexities of the private security sector. Below are some critical areas for further investigation: Impact of Technological Advancements by examining how AI and machine learning are transforming security operations and exploring the ethical and regulatory implications of their use in private security (Andreas, 2003). Investigate the impact of advanced surveillance technologies on privacy rights and the regulatory measures needed to ensure ethical use. Study the integration of cybersecurity measures within private security services and the development of regulatory frameworks to address cyber threats. Explore the effectiveness of existing training programmes and the need for standardisation across different countries in Southern Europe. Assess the current certification processes for security professionals and identify gaps that need to be addressed to ensure competence and reliability.

Research the importance of ongoing professional development and how it can be integrated into the regulatory framework. Study the challenges and benefits of harmonising regulatory frameworks across Southern Europe to facilitate cross-border cooperation and recognition of security professionals. Conduct a comparative analysis of regulatory frameworks in different Southern European countries to identify best practices and areas for improvement. Investigate the regulations governing the use of force and detention by private security personnel and their compliance with human rights standards. Examine the ethical considerations in treating individuals by private security services and the role of regulatory bodies in enforcing ethical practices. Study the accountability mechanisms for private security firms and their effectiveness in ensuring compliance with ethical standards. Research the development of frameworks for public-private partnerships in the

private security sector and their impact on public safety and security. Case studies on successful public-private partnerships should be conducted to identify factors contributing to their success and potential areas for replication (De Waard, 1999). Explore the development of adaptive training curricula that incorporate new skills and knowledge areas relevant to the evolving security landscape. Investigate the impact of training programmes on the performance and professionalism of security personnel. Study the role of higher education institutions in providing specialised training and education for security professionals. Examine the integration of sustainability practices within private security operations and their impact on the environment and society. Investigate the role of corporate social responsibility in the private security sector and its influence on public perception and trust. Study the decision-making processes within private security firms and the role of ethical guidelines in shaping these decisions. Analyse existing policies related to private security services and identify gaps that need to be addressed to enhance regulation and oversight. Research the involvement of various stakeholders, including government agencies, private security firms, and civil society, in developing regulatory frameworks. Conduct impact assessments of regulatory changes on the private security sector and the broader society.

References

Abbott, A. (1988). *The System of Professions: An Essay on the Division of Expert Labor*. University of Chicago Press.

Abrahamsen, R., & Williams, M. C. (2011). *Security Beyond the State: Private Security in International Politics*. Cambridge University Press.

Andreas, P. (2003). Redrawing the line: Borders and security in the twenty-first century. *International security*, *28*(2), 78–111.

Barkawi, T., & Laffey, M. (2006). The postcolonial moment in security studies. *Review of international studies*, *32*(2), 329-352.

Bigo, D. (2008). Globalized (in) security: the field and the ban-option. In *Terror, insecurity, and liberty* (pp. 20–58). Routledge.

Bigo, D. (2014). The (in) securitization practices of the three universes of EU border control: Military/Navy–border guards/police–database analysts. *Security Dialogue*, *45*(3), 209–225.

Brooks, D.J., Coole, M. & Haskell-Dowland, P. (2020). Intelligent building systems: security and facility professionals' understanding of system threats, vulnerabilities, and mitigation practice. Security Journal, 33, pp.244–265.

Bures, O. & Meyer, J., (2019). The anti-mercenary norm and the United Nations' use of private military and security companies. Global governance: a review of multilateralism and international organizations, 25(1), pp.77-99.

Button, M. (2007). *Security Officers and Policing: Powers, Culture, and Control in the Governance of Private Space*. Ashgate Publishing.

Caldara, D. & Iacoviello, M., (2022). Measuring geopolitical risk. American Economic Review, 112(4), pp.1194-1225.

Ćurčić, M., (2018). Asymmetric Threats in Security Studies. *Thematic Collection of Articles-Asymmetry and Strategy, p. 20*.

De Waard, J. (1999). The private security industry from an international perspective. *European journal on criminal policy and research*, *pp. 7*, 143–174.

Jones, T., & Newburn, T. (2006). *Plural Policing: A Comparative Perspective*. Routledge.

Shearing, C., & Stenning, P. (1987). *Private Policing*. Sage Publications.

UDK: 343.343.62:343.9.024:[341.231.14
DOI: 10.20544/ICP.9.2.24.P03

ADDRESSING HUMAN RIGHTS IN THE CONTEXT OF ILLEGAL IMMIGRATION: A CALL TO ACTION

Teodora Dimitrovska,
PhD Candidate in Intellectual Property Law, Faculty of Law Iustinianus Primus,
dimitrovskateodora9@gmail.com

ABSTRACT

Illegal immigration presents a multifaceted challenge with profound implications for human rights. This paper explores the intersection of illegal immigration and the protection of human rights, emphasizing the urgent need for comprehensive and compassionate responses. Through an interdisciplinary approach drawing from legal frameworks, sociological perspectives, and ethical considerations, the paper examines the complex dynamics of migration, highlighting the vulnerabilities and rights violations faced by undocumented migrants. It also delves into the role of governments, international organizations, and civil society in safeguarding the rights of all individuals, irrespective of their immigration status.

Moreover, the paper analyses the ethical imperative of balancing border enforcement measures with respect for human dignity and rights. It advocates for policies that priorities humanitarian assistance, due process, and access to justice for undocumented migrants.

Additionally, it underscores the importance of fostering inclusive societies that embrace diversity and recognize the contributions of immigrants. By addressing the root causes of illegal immigration and adopting rights-based approaches, governments can uphold their obligations under international law and advance a more just and equitable global community.

Keywords: human rights, illegal migration, undocumented migrants, inclusive society, human smuggling.

1 INTRODUCTION

The problem of illegal migration is an issue that has been elevated to an international level. What characterizes this sensitive issue is precisely the interweaving of states and their sovereignties, the imperatives of the economic market, as well as the fundamental rights and freedoms of migrants.

This paper covers the issues of illegal migration, but also the human rights guaranteed in international documents that protect all people, regardless of their status in each society, highlighting the legal and ethical dilemmas faced by states in dealing with this problem.

Illegal migrants are most often victims of economic and sexual exploitation, inhumane working conditions, discrimination, and human trafficking, which ultimately leads to serious violations of internationally guaranteed fundamental freedoms and rights. In addition to their status as vulnerable groups, restrictive migration policies and security rules at border crossings can contribute to even greater marginalization and vulnerability of this category of people, which conflicts with internationally established standards for the inviolability of universal human freedoms and rights.

This paper aims to briefly define migration and migrants, the difference between the status of refugees and migrants, the abuse of vulnerable groups through acts of smuggling and human trafficking, the interdependence of geopolitics and migration, and of course, human freedoms and rights and their inviolability regardless of a person's status.
For the preparation of this paper, the method of analysis and the comparative method were used. The normative method and the numerus clauses method were used for studying and analysing the subject matter.

2 MIGRATION AND MIGRANTS

From an international perspective, it can be said that states, viewed as entities on the international stage, are increasingly experiencing expansion in the areas of economy, technological development, and achievements in technology, as well as in all other societal spheres. Globalization has been achieved universal in many sectors, among which the free movement of goods, services, and capital can be highlighted. However, when it comes to the free movement of people and the workforce, we can say that national rules still take precedence when it comes to regulating the movement of people from one national territory to another. Precisely due to the lack of comprehensive globalization in terms of the international movement of the workforce, as well as the differences in the legal systems of states in the regulation of migration and legal opportunities for foreign nationals, there is an opportunity for greater expansion of illegal migration[4] and serious difficulties in eradicating it. In the literature, migrants are often equated with a vulnerable group of people. What characterizes migrants as vulnerable is precisely their belonging or nationality. Namely, migrants are individuals who are citizens of another country, different from the country to which they migrate or in which they have temporary or permanent residence. As foreigners in each society, they may face serious difficulties, primarily in getting acquainted with the society they are coming to reside in, further, the language used in that country, the legal rules, procedures, and practices that the state employs, and most often, a lack of awareness of their rights and obligations as a vulnerable category of people. Furthermore, precisely because of their status, they may face discrimination both in carrying out everyday tasks and in performing work duties. Unequal opportunities in the workplace, exploitation and misuse of migrant labour, non-respect of workers' rights can be a daily reality for a migrant in a given country. Their status as foreigners in a particular country may contribute to their being treated as a threat to national security, especially if certain political tensions, unrest, or even civil wars occur in the state in which they are located. The very status of migrants leads to their being first suspected of disturbing the peace and security in the country of residence. Newcomers to the country of residence require accommodation, clothing, education, employment, social, and healthcare services, all of which entail costs that represent state expenses. This phenomenon leads to the perception that migrants only harm the country and represent a greater cost than a benefit. This perception and public image make migrants frequent targets of all the undesirable situations they may face, as well as serious violations of human freedoms and rights. Due to all the above-mentioned reasons, a range of legal rules and instruments has been established at the international level to serve as a basis for the protection of primary human

[4] "*Estimating the number of migrants who enter a country in an irregular or clandestine manner or the number that reside in the country in an irregular or undocumented situation is inherently problematic as, by its very nature*", p.2. Jandl, 2004

freedoms and rights, regardless of nationality or the territory where a person is located. These international instruments will be elaborated in detail in the remainder of this paper.

2.1 Refugees and migrants

To accurately address the question of what the terms illegal migration and illegal migrant entail, it is first necessary to define the difference between the category of refugee and the category of migrant.[5] The most significant document that protects and guarantees the rights of refugees is the 1951 Geneva Convention Relating to the Status of Refugees[6]. According to this international instrument, a refugee is a person who: "*has a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of their nationality, and is unable or, owing to such fear, unwilling to avail themselves of the protection of that country*".[7] For a person to be eligible for refugee status in a particular country, the Convention stipulates certain conditions that must be met to grant such status. If one of the mandatory conditions is not met, then a person cannot be granted refugee status. Thus, a person will be granted refugee status only if their fear of persecution[8] is based on one of the five specific grounds, namely: *(1) Race, (2) Religion, (3) Nationality, (4) Membership in a particular social group, (5) Political opinion*. The most significant document that protects and guarantees the rights of migrants at the international level is the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[9]. What is significant about this international instrument is its emphasis on human rights, regardless of a person's migrant status. By promoting the human rights of migrants, it ensures they are not treated merely as workers but as human beings. This Convention does not create new rights for migrants but reaffirms existing human rights established in the most significant international human rights instruments, such as preventing poor living and working conditions, prohibiting psychological and sexual torture and abuse, guaranteeing freedom of thought, expression, and religious belief for migrants, guaranteeing the right to access information about their rights, legal equality in terms of legal procedures, rules, and services in the country of residence, ensuring equal access to educational and social services, the right to join trade unions, and other rights provided for in this Convention.[10] In the literature, it is not always possible to clearly distinguish between a refugee and a migrant. When it comes to migrants, many leave their country for economic reasons. However, economic reasons are not the main driver of global migrations. Political reasons

[5] "Public opinion drawing on the date from online survey from Belgium, France, the Netherland and Sweden after the refugee crises in Europe in 2015 shows that public opinion differences within 'immigrants 'and 'refugees 'are found along three cleavages: ethnicity, the economic situation of the origin country, and region of origin." (De Coninck, 2019).

[6] United Nations. (1951). Convention relating to the status of refugees, 189 U.N.T.S. 137. Retrieved from: https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees.

[7] United Nations, 1951, Article 1.

[8] "The only concept that is fully understood in the notion of persecution is the concept of discrimination. Discrimination as the only criterion in this section, which unifies the relationship between the harm that can be inflicted on a person and the grounds provided for in the Convention, can serve coherently and most expediently to distinguish between the terms persecution and prosecution". Germov, R., & Motta, F. (2003). Refugee Law in Australia. Sydney: The Federation Press

[9] United Nations. (1990). International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers.

[10] United Nations, 1990.

are the second largest factor causing people to leave their country and migrate to other countries, even to other continents. Some of these individuals are immediately recognized as refugees, while others receive the status of asylum seekers. There can also be situations where asylum seekers are categorized as economic refugees because the reasons for leaving their country of origin are economic rather than political. It is possible for migrants to present themselves as asylum seekers as it represents the only way for them to legally enter a country.

2.2 Reasons for the emergence of illegal migration

There are several reasons why people migrate from one country to another. Economic and personal motives are the primary drivers behind the occurrence of migration and migratory movements. Regarding economic migration, the pursuit of better working conditions, greater personal economic benefit, and benefits for their families compel people to migrate from less developed countries to those with stronger economies. Moreover, employers in the migrant-receiving country also have a need for cheap labour that can perform demanding physical tasks. Thus, economic migration is the most common type of migration encountered today. Another factor contributing to migration may be political instability and ongoing military conflicts in the migrant's country of origin. Armed conflicts, civil wars, and armed confrontations can create an environment where people can no longer carry out their daily activities, and more importantly, can no longer feel safe and secure in their own country, prompting them to leave and migrate to another country. This category of reasons can also include a particular political opinion or political affiliation that is not acceptable in the migrant's country of origin, forcing the migrant to leave. Various social factors such as violation of human freedoms and rights, marginalization, discrimination, and abuse can also be reasons for leaving the country of origin. Certainly, reuniting with family or connecting with specific groups or networks can also emerge as a reason for migration.

2.3 Smuggling of migrants and trafficking in human beings

When discussing illegal migration, the first association is often the illegal crossing of national, state borders and unauthorized entry into the territory of a country. By the very act of illegally crossing a state border, the person committing such an act violates the laws of the country they enter. However, when talking about illegal migration, one cannot separate from this term the phenomena of migrant smuggling and human trafficking. These two terms encompass acts of two criminal offences, which are not only provided for in international criminal law, but are also regulated in the Macedonian Criminal Code. Futo, Jandl, and Karasakova[11] provide definitions from which the essential characteristics can be determined, as well as the significant differences between these two criminal offences. Thus, the act of migrant smuggling refers to an illegal migration process in which an agent is involved for payment to help a person cross a border illegally, while human trafficking involves coercion and exploitation of the migrant person. The indicator for these two phenomena is precisely the number of people who are involved, or who are victims of these criminal acts, which increases from year to year. As a statistic, it can be noted that

[11] Futo, P., Jandl, M., & Karsakova, L. (2005). Illegal migration and human smuggling in Central and Eastern Europe. Migracijske i etničke teme, 21(1-2)

from 2001, with 650,000 people being caught in illegal immigration, the number increased to 800,000 in 2003.[12]

Due to intensified border controls, the easiest method for migrant smuggling is the production of fake or falsified documents used to cross borders illegally from one country to another. Another method used for this illegal activity is hiding migrants in trucks, vans, and other vehicles when border crossings are under strict surveillance and control, where fake travel documents can be easily detected. After gaining full membership status in the European Union, some countries in Central and Eastern Europe[13] have reported abuse of their asylum seeker system, where illegal migrants are registered as asylum seekers. When it comes to human trafficking, apart from the economic benefit guaranteed to the perpetrators of this act, the essential goal lies precisely in in the act of various forms of exploitation of the victim.[14]

3 HUMAN RIGHTS AND ILLEGAL MIGRATION

A fundamental principle of human rights is that violating immigration laws by entering a country does not strip an irregular migrant of their essential human rights, nor does it eliminate the host state's responsibility to protect these individuals. While an individual may have broken the law and be subject to prosecution for a specific offense, they still retain their basic human rights to due process and humane treatment.[15] Over the last fifty years, human rights have evolved from abstract principles outlined in the Universal Declaration of Human Rights (UDHR) into legal entitlements for individuals and legal obligations for states. The result of this negotiation and agreement process is six core human rights treaties.[16] These international instruments for the protection of individuals worldwide aim to establish the fundamental connection, or link, between the individual and states, their territories, and their sovereignty. Through these documents, the primary focus is on the individual and their rights, which are set as a universal principle. From this value system, and the primacy of human freedoms and rights over state sovereignty, it is highlighted that the states that are signatories to these documents have an obligation to always protect, guarantee, and respect the fundamental rights and freedoms, regardless of the person's status within their country (citizen, stateless person, refugee, migrant, asylum seeker). These are established as inviolable value principles. The importance given by the international community to fundamental rights also establishes the foundations that serve as the starting point for how states treat people. It is undoubtedly essential to mention the most important principles and rules established by these documents: non-discrimination and equal treatment for all. Protection based on these international documents is also granted to refugees and migrants, who are categorized as a vulnerable group of people. Although a state, through its national and territorial sovereignty, can decide how many people will enter its territory, the protection of rights must be ensured, and these individuals cannot be deprived of the minimum rights

[12] Futo, Jandl, & Karsakova, 2005.
[13] Hungary, Poland, Slovakia, Slovenia.p.45, ibid.
[14] Križovský, Kavečanská, & Drotárová, 2020.
[15] Grant, S. (2005). International migration and human rights. Global Commission on International Migration.
[16] Convention on the Rights of the Child ('CRC'); Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'); International Convention on the Elimination of All Forms of Racial Discrimination ('CERD'); International Convention on Civil and Political Rights ('ICCPR'); International Convention on Economic, Social and Cultural Rights ('ICESCR').

guaranteed to them at the international level. While the protection of refugees is established at the international level, with a mandatory system for the protection of their rights that is globally binding, such a system for migrants is still not fully unified regardless of the fact of the existence of the ICCPR and the Migrant Workers Convention, and it cannot be said that there is a unified mandatory legal system that obliges signatory states to respect and implement it.

3.1 Interdependence of geopolitics and illegal migration

The Balkan Peninsula represents a central axis of migrant movements. Specifically, the geographic and geopolitical positioning of the Balkan Peninsula means that migrant routes often pass through the countries that are part of this region. Although one of the main routes for migrants from Asia and Africa passes through Western Balkan countries, these states are not their final destination, but rather a pathway connecting them to the countries of the European Union.[17] These routes are also major paths concerning international terrorism, human trafficking, migrant smuggling, and other serious international criminal activities. This fact is substantiated by the network involved in migrant smuggling in the EU, which generated significant profit in 2015 an estimate 4.7 billion EUR.[18] This problem has gained international attention and significance because illegal migration primarily poses dangers to the lives of the migrants themselves, their security, health, and the easy possibility of migrants becoming victims of organized crime, human trafficking, sexual exploitation, or forced labour. At the national level, this issue can threaten the security and well-being of citizens in a particular country, cause certain destabilizations in the political scene of a national state, and even lead to risks to national security and constitutional order. There are several significant routes that migrants use to reach Central and Western Europe. These include the West African route, the Western Mediterranean route, the Central Mediterranean route, the routes through Apulia and Calabria, the Western Balkan route, the Eastern Mediterranean route, and the less used route across the eastern borders to major European Union countries.[19] Where there are weak border controls, easily bribable police officers, a weak legal system, and a strong and effective network of organized criminal groups, migrant smuggling can be much more easily carried out. During the migrant crisis in 2015, criminal charges were brought against 398 individuals accused of migrant smuggling.[20] What we need to prepare for in the future is precisely a new wave of migrants resulting from the war in Ukraine, and even more so from the conflict between Israel and Palestine. The experience from the last migrant crisis should be our indicator for preparing the entire state apparatus to successfully deal with the next wave of migrants and refugees, providing care centres where vital life functions can

[17] *"The opening of the borders in late 1980s – early 1990s together with general improvements of communication technologies brought about a massive increase of migration in the region. Migration of Central Europeans to the West increased manifold, as well as transit migration and immigration to CEE from traditional migration countries further East and South. Given that Western European counties had already introduced sophisticated migration restrictions, much of the newfound migration was destined to be illegal.*" (Azamatova, 2021, p. 38)

[18] Milevski, T., & Pacemska, D. (2022). The geopolitical context of migrant routes and its impact on organised crime in the Republic of North Macedonia. International Studies. Interdisciplinary Political and Cultural Journal, 29(1/2022), 49-67.

[19] Milevski & Pacemska, 2022.

[20] Ibid.

be performed and fundamental human freedoms and rights can be protected and guaranteed.

3.2 European Union and illegal migration

The European Union, as an international entity with its own sovereign authority derived from its member states, has its distinct way of managing illegal migration within its framework. It combines regional and international elements that constitute the legal and political order of the EU, from which measures and policies are derived to regulate this complex issue, which often arises within the Union. Specifically, this chapter aims to provide answers on how illegal migration is defined within the territory of the European Union, the legal, ethical, and social rules and principles considered in dealing with this problem, and the legal framework established by the EU as a supranational entity in addressing illegal migration. Inter-governmental cooperation among the EU member states in combating illegal migration began as early as the 1990s, with the creation of the first ad hoc immigration group and the establishment of the Schengen group of EU member states. This period was characterized by a model of inter-governmental cooperation more inclined towards establishing a unified system of rules within a supranational organization, an ideal that the EU has yet to fully implement. Although it involved classic inter-governmental cooperation, the Schengen Agreement of 1985 abolished internal borders among EU member states and expanded cooperation in managing EU external borders and visa policy. This was followed by the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1997. While the Maastricht Treaty essentially established the three-pillar structure within the EU and set the framework for the EU's Common Foreign and Security Policy, which included issues related to migration, the Amsterdam Treaty strengthened cooperation among European states in the areas of justice and home affairs, particularly asylum and migration policy. The latest amendments to the founding treaties of the European Union, including the entry into force of the Lisbon Treaty on December 1, 2009, enabled the creation of the Common European Asylum System (CEAS). However, this did not lead to the conclusion that a level of harmonization in legislation regarding the prevention and combating of illegal migration has been achieved within the European Union. This system led to the establishment of legal instruments that are uniform for all EU member states in managing border crossings, common standards in asylum and migration, and solidarity among member states when dealing with illegal migration. However, full harmonization of EU legislation in this area has not been achieved, as evidenced primarily by the major migrant crisis in 2015 and 2016, during which the EU faced a significant challenge in managing the migrant crisis on its territory. This situation is also reflected in the United Nations High Commissioner for Human Rights report of 2017, immediately after the major migrant crisis on the territory of the European Union, which concludes that: "*human rights of the migrant women, men, boys and girls in the countries visited were often insufficiently addressed by migration and asylum governance measures. As a result, the migration systems in place at the time of the visits were often unable to address the human rights protection needs of migrants, leading to a number of protection gaps*".[21] This report underscores the overall picture that the necessary measures for the protection of human

[21] United Nations, Department of Economic and Social Affairs, Population Division. (2017). International migration report 2017: Highlights. Retrieved from https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf.

rights were often not implemented quickly and progressively enough by the member states, despite the progressive migrant crisis. It also points out that member states often prioritized intensive measures for national security and protection, implemented through restrictive policies, over the protection of basic human freedoms and rights, security, health, and dignity of migrants[22] Finally, it adds that: "*There were limited avenues available to identify migrants in vulnerable situations, along with a scarcity of referral mechanisms, qualified staff and access to services, all of which indicated a diminished priority afforded to these human rights concerns….the limited commitment to independent human rights monitoring and cooperation with civil society actors demonstrated the reluctance of States to improve the human rights situation of migrants*".[23]

4 CONCLUSIONS

Driven by the need for better living and working conditions, safety, organized and democratic political systems, stable economy, and equal labour market opportunities, people are often forced into positions of vulnerability that inherently pose risks to their lives, health, and safety, and severely compromise their guaranteed freedoms and rights. Through this effort, the interdependence between strengthening border controls and national policies regarding migrants is evident, alongside the degree of human rights violations and freedoms with such restrictions. The marginalization and exploitation of illegal migrants emphasizes the urgency of implementing a more humane and just approach in dealing with illegal migration. Hence, the need to protect national interests and security when establishing legal rules and procedures for dealing with illegal migration should not, and cannot, be separated from the concept of protecting the migrant and their rights. Promoting states as inclusive societies with a combined system of protection and prevention of migrant smuggling and human trafficking, on one hand, and promoting equality, dignity, respect, and protection of the individual, on the other hand, will contribute to advancing and solidifying international human rights principles. In combating such unwanted problems, states need to adopt rules that priorities the human being, their uniqueness, and dignity, regardless of their origin or legal status. While security is a top priority within any state, the fight for the advancement and universal guarantee of human freedoms and rights, and the basic universal principles of human existence, are the fundamental starting points in building modern and contemporary societies where peace and prosperity are guaranteed universal values.

[22] United Nations, Department of Economic and Social Affairs, Population Division, 2017.

[23] Ibid.

5 REFERENCES

1. Azamatova, G. (2021). Illegal Migration and Human Trafficking. Journal of Contemporary Issues in Business and Government, 27(2).
2. De Coninck, D. (2019). Migrant Categorizations and Europe Public Opinion: Diverging attitudes towards immigrants and refugees. Journal of Ethnic and Migration Studies. doi:10.1080/1369183X.2019.1694406.
3. Futo, P., Jandl, M., & Karsakova, L. (2005). Illegal Migration and Human Smuggling in Central and Eastern Europe. Migraciske I etnicke teme, 21(1-2), 35-54.
4. Germov, R., & Motta, F. (2003). Refugee Law in Australia. Sydney: The Federation Press.
5. Grant, S. (2005). International migration and human rights. Global Commission on International Migration.
6. Jandl, M. (2004). The Estimation of Illegal Migration in Europe. International Centre for Migration Policy Development. Studi Emigrazioni/Migration Studies, 41(153), 141-155.
7. Johnson, H., & Hill, L. (2011). Illegal Migration. At Issue. Public Policy Institute Of California.
8. Križovský, S., Kavečanská, A., & Drotárová, J. (2020). Criminal Aspects of Illegal Migration. Security Dimensions, 3(74-83).
9. Milevski, T., & Pacemska, D. (2022). The Geopolitical Context of Migrant Routes and Its Impact on Organised Crime in the Republic of North Macedonia. International Studies. Interdisciplinary Political and Cultural Journal, 29(1/2022), 49-67.
10. Walters, W. (2010). Imagined Migration World: The European Union's Anti-Illegal Immigration Discourse. The Politics of International Migration Management.
11. United Nations. (1951). Convention Relating to the Status of Refugees, 189 U.N.T.S. 137. Retrieved from: https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees.
12. United Nations. (1990). International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Retrieved from: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers.
13. United Nations, Department of Economic and Social Affairs, Population Division. (2017). International migration report 2017: Highlights. https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf.

UDK: 349.2:331.109.32:[351.74/.75:355.11(497.7)
DOI: 10.20544/ICP.9.2.24.P04

THE RIGHT TO STRIKE IN THE SECURITY FORCES – SECURITY RISK OR RESTRICTION OF LABOUR RIGHTS

Sofija Volčevska, LL.M
Demonstrator at Faculty of Law "Justinianus Primus"
Ss. Cyril and Methodius University – Skopje
Lazar Jovevski, Ph.D.
Full time professor at Faculty of Law "Justinianus Primus"
Ss. Cyril and Methodius University – Skopje

Abstract

This paper analyses the right to strike, as a right to trade union action with a view to realizing greater economic and social rights of employees in the security forces. Members of the army of R. N. Macedonia, as well as members of the Ministry of Internal Affairs, are subject to special rules regarding the exercise of their right to collective action, that is, the right to strike, as sectors of crucial importance for the security of the state.
The normative framework governing the right to strike will be a subject of analysis in this paper, along with issues related to the challenges that arise when applying these norms. The authors also raise the question of justification of the existence of restrictiveness in terms of trade union activity in these activities, especially if it is taken into account that the right to trade union association and the right to strike are constitutionally established rights, but above all they are also human rights, and on the other hand, the security of the state and citizens has absolute priority.

The paper elaborates on the specific topics in its focus, and explains in depth the phenomena that follow these legal institutes. This scientific paper emphasizes the importance of trade union action and the taking of trade union actions by members of the security forces in the context of the protection of their labour rights.

Keywords: security forces, labour, strike, discrimination

I. The strike as a collective right to trade union action

The right to strike follows the right to unionize throughout its historical development. The need to unite the workers in order to improve their economic and social position was followed by a large number of turbulences**.** The struggle against the cruel exploitation of workers in labour has been characterized by protests and strikes that have marked the workers' dissatisfaction with the poor conditions in which they worked in the past. The strike represents the ultima ratio or the most radical way of collective action in order to realize one's rights. In essence, the strike represents the last cry of the oppressed worker before the cruel capitalist.

Labour and issues related to it bring the possibility of peace or destabilization of society. Aware of the power possessed by the strike, for the authorities it was a prohibited action in most countries during the 19th century and the beginning of the 20th century, so the strike gained its legitimacy gradually, but also with different intensity from one country to another. The expansion of the strike as a way of collective action was experienced after

the Second World War, when the need for social peace was greater than ever. The world visibly affected by the negative implications of the terrible war begins to develop differently, giving primacy to social and labour relations that interacted with the economic relations in the country.

The strike as a powerful tool also represents a basic human right within the so-called social rights. The rapid development of society was paralleled by the development of human rights, where, in addition to civil and political rights, the new generations of human rights were established, among which the right to strike is considered one of the fundamental rights. This right is part of the concept of the modern understanding of the welfare state and the social function of the state (Jovevski,2022).

Today, the right to strike without hesitation is part of the basic social rights and has the same importance as the right to work, the right to unionize, the right of collective bargaining. Workers' rights are primarily human rights, hence the need to recognize the workers' right to strike as an elementary right.

The strike, defined as an industrial action, where the main subjects are the workers, organized through their trade unions or an organized group of employees and the employer himself or the association/union of employers, is used to resolve a certain collective labour dispute, and all with the aim of protecting social, economic and professional interests.

Within the framework of attempts to understand the strike, it is defined as an organized interruption of the work process, with the aim of exerting a kind of pressure on the employer to fulfil certain requirements that will enable the realization of certain interests (A.Baltic, M.Despotovic, 1981). The work stoppage is always of a temporary nature and involves a large number or all workers. The interruption of the work process can also be the result of a certain collective dispute that arose and which was not resolved peacefully, and also quite often the strike is used as an instrument that precedes the procedure of collective negotiation, where the workers decide on such a step in order to put pressure on the employers to sit down at the "negotiating table" in order to conclude a collective agreement.

In this context, the strike must not be used as a corrective for the lack of awareness and will for social dialogue between the social partners. The strike has serious economic-social implications that do not allow it to be the method by which workers will be served whenever they find themselves in a situation where their voice is not heard. On the contrary, a strike is considered the last option and is only considered when all other avenues for a peaceful resolution of the collective disagreement have been exhausted. Although, in general, strikes are relatively short, history also remembers strikes that were extremely massive and lasted for a long period of time.

The importance of strikes is also mentioned in the international acts that address this topic, but given the differences that exist between nations, it is impossible to unify the subject of strikes. The International Labour Organization, which in Conventions 87 and 98 talks about the right to collective action without explicitly talking about the strike, faced this kind of difficulty. However, it would be inappropriate to consider that the right to strike does not derive from the provisions of these conventions, as a tool for collective action to realize the economic and social rights of workers, which clearly derives from the established right of trade unions to initiate certain actions for the protection of their rights, which undoubtedly includes the right to strike. On the other hand, European organizations such as the Council of Europe and the European Union explicitly establish the right to strike.

II. Normative regulation of the strike in the Republic of North Macedonia

Even with the formation of the independent Macedonian state and the adoption of the Constitution of 1991, as the highest legal act, the right to strike was given importance as one of the elementary civil rights contained within the Constitution of the Republic of Macedonia. In particular, Article 38 of the Constitution guarantees the right to strike, and only by law can the conditions for exercising the right to strike be limited, specifically in the armed forces, the police and in the administrative bodies.

The definition of what constitutes a strike and further regulation is left to the laws. According to the then normative order, initially the issues related to the strike were regulated by the Law on Strike, which was valid until the adoption of the then new Law on Labour Relations, in 2005, where the right to strike was and still is regulated in a separate chapter - chapter twenty, within the framework of the Law on Labour Relations. Like any other law, the Law on Labour Relations was not without flaws, so the terminology used in the section explaining which organizations can initiate a strike was relatively confusing and did not reflect the generally accepted terminology of the International labour organization, the European Union and the theory.

Article 236 of the Law on Labour Relations provides that the strike can be organized by the trade union or its associations at a higher level, in this context the term trade union means trade unions at the employer level, while under associations at a higher level it implies branch (occupational) unions and alliances, trade unions or confederations of trade unions at the national level (Jovevski,2022).

The law also elaborates the issues related to the strike procedure, the compensation during the strike, as well as the legitimacy of the strikes and when they are illegal. Regarding the purpose of the strike as a collective action, the labour law states the protection of the economic and social rights of its members from the employment relationship, setting it relatively broadly where workers can use this right to protect any right arising from labour relations. Macedonian practice also knows the so-called solidarity strike, which can be organized as a sign of support for a certain union.

The procedural elements that must be fulfilled, first of all, refer to the announcement of the strike in order to consider it legitimate. The strike must usually be announced in writing to the employer, upon the appearance of a certain disputed issue in accordance with the provisions of the Law on Labour Relations, the parties are obliged to participate in a conciliation procedure, which precedes the strike, given that it cannot begin until such a procedure has not ended. On the other hand, the obligation to reconcile must in no case limit the right to strike. The solidarity strike can also start without carrying out a reconciliation procedure, but not before the expiration of two days from the day of the start of the strike for whose support it is being organized.

Regarding the strike notice, it must contain the reasons for the strike, the place of the strike and the day and time of the start of the strike, and it must be organized in a way that does not prevent or hinder the organization and progress of the work process for workers who do not participate in the strike, banning the entry of workers and responsible persons into the employer's business premises.

The trade union and the employer agree to prepare and adopt certain “rules of the game”, i.e. rules for production maintenance and necessary work that must not be interrupted during a strike. These rules especially refer to the part of the works that must be performed during the strike as well as the number of workers who should work during the strike, in order to enable the restoration of work after the end of the strike (production maintenance works), that is, with the aim of performing the works that are necessary for

the purpose of preventing threats to the life, personal security or health of citizens (necessary works).

From here we come to the issue of limiting the right to strike, where the Labour Law on the one hand determines that the right to strike must not be prevented or significantly limited, but on the other hand, the Constitution itself provides for certain exceptions in relation to the exercise of the right to strike, and then the Law on Labour Relations in Article 245 states that strikes in the armed forces, police, state administration bodies, public enterprises and public institutions are regulated by a separate law (Law on labour relations, 62/05).

In order to protect the interests of employees, the legislation also protects workers from retaliation on the part of the employer when limiting or instituting a strike. As the law expressly states, we cannot see taking part in and organizing a strike as a breach of the employment contract. The worker is also protected in relation to the termination of the employment contract as a result of trade union activities and participation in a strike. In addition, the worker must not be put in a disadvantageous position, i.e. discriminated against other workers due to organizing or participating in a strike, when it is organized in accordance with the provisions of the law and collective agreement.

The employer can remove workers from the work process only in response to an already started strike, and the number of workers must not exceed 2% of the number of participants in the strike. Of course, the strike in its essence is a democratic right, so its implementation must be democratic and in accordance with the laws. All those workers whose behaviour incites violent and undemocratic behaviour, which makes negotiations between the workers and the employer impossible, may be removed from work. We do not exclude the possibility that a certain number of workers do not want to take part in the strike, for which they must not be forced, and from this we see the democratic right of the citizen to decide according to his own will and conviction, the so-called negative freedom of the worker to make a decision whether he wants or does not want to participate in union actions.

III. The ban on strikes in the security forces

Speaking of labour rights and union action, the strike has been elevated to the pedestal, being synonymous with the workers' struggle for better rights. But in law there is a maxim that refers to the fact that an individual has as much right as long as he does not threaten the right of others. Then, by what standard is the right to citizens' security more important than the workers' right to defend their own rights?

Science determines the limitations of the right to strike, mostly in activities that are of vital importance, but what is important is to make a clear distinction about which activities are of absolutely crucial importance. To the greatest extent, these are the areas that refer to things, the interruption of which may threaten the life, health, personal safety of some or all citizens (ILO definition). Take France as an example, although it is a country with an extremely strong labour movement and trade union culture, whose strikes are some of the most radical in history, within the framework of the domestic legislation there is a ban on the right to strike for people employed in the police, the national capital, the military, prison employees (G.H. Gamerlynck, G.Luon-Caen, J. Pelissier). Hence, considering that the security forces are in the domain of activities whose interruption of the work process calls into question the security of the state, the limitation of the right to strike is logical and expected. But the question arises as to how much the same is realistically justified?

Looking at the limitation of the right to strike from the aspect of ratione materia, that is, because of its nature, it means that in certain activities which, as we mentioned, are of vital importance, a certain limitation is allowed due to a certain, greater general interest. This type of restriction is also related to the restriction that refers to certain employees, because those employees are the ones who perform specific work tasks.

For every nation, state security is of utmost importance. A nation's stability is preserved by the state apparatus, which is made up of the armed forces and the ministries of internal affairs. This keeps the nation from devolving into total disorder and anarchy.
In the Macedonian legislation, the right to strike in the public administration bodies, the police, the armed forces, the health system, customs is regulated by special bodies. At the same time, the legal provisions provide for the provision of the necessary conditions for the smooth functioning of these bodies and institutions (Jovevski,2022).

More specifically, the Police Law (No. 114/06) states that police officers can exercise the right to strike in a manner and under the condition that the regular execution of police work is not significantly disturbed. Of course, in the case of a police strike, the organizer of the strike must announce the strike to the minister and submit the decision to go on strike, as well as the program for the manner and scope of the police work that must be carried out during the strike at the latest. seven days before the start of the strike. At the same time, the Law clearly states which work tasks must be carried out, and this is about: prevention, detection and documentation of criminal acts, arresting the perpetrators and handing them over to the competent authorities and urgent matters of forensic technical work and expertise; regulation and control of road traffic; duty operation centres; police officers for intervention and inspection; provision of persons and facilities; security of the state border, control of crossing the state border, prevention of execution and resolution of border incidents and other violations of the state border and expulsion of foreigners and use of helicopters.

It is also forbidden to strike during a state of war or emergency, as was the case with the COVID pandemic. In the event of a complex security situation, disruption of public order and peace on a larger scale, natural disasters and other accidents or endangering the life and health of people and property on a larger scale, no more than 10% of the total number can participate in a strike at the same time police officers of the Ministry and the strike cannot last longer than three days. In case the strike started before the occurrence of any of the previously mentioned conditions, the police officers are obliged to stop the strike immediately.

The collective agreement for the Ministry of Internal Affairs (No. 149/21) foresees the strike while only copying the provisions of the Law on Police, referring to the fact that the workers in the ministry can exercise the right to strike in a way and under conditions so that the regular execution of internal i.e. police affairs. In order to prevent possible harmful consequences from non-execution of internal affairs during the strike, the minister or an employee authorized by him is obliged to ensure the necessary functioning of the organizational units in the work process.

The Defence Law (No. 42/01), also prohibits union organizing in the army entirely during a state of war or emergency. With regard to the strike, the same is prohibited within the army in crisis, emergency and war, as well as in the case of the execution of international agreements relating to exercise activities, training, peacekeeping or humanitarian operations, regardless of whether they take place in the country or abroad of it in which army units participate.

The right to strike can be exercised under the conditions that the combat readiness of the army and the life and health of the army members are not disturbed. In order to prevent possible harmful consequences for the combat readiness of the army and the life and health of the members of the army during the strike, the Minister of Defence and the Chief of the General Staff of the Army are obliged to ensure the realization of the vital functions of the army. For those reasons, during the strike, the participants in the strike are obliged to stay at their jobs and perform the activities necessary for the realization of the vital functions of the Army.

According to the Defence Law, the strike must be announced at least ten days before its commencement, and no more than 10% of the Army employees can participate in it at the same time, and it cannot last longer than three days.

This year, the Collective Agreement of the Ministry of Defence (No. 36/24) was signed and published, which contains provisions relating to the exercise of the right to strike, in doing so, these provisions, regarding the part of smooth functioning in the Ministry, that is, the combat readiness of the Army and the life and health of the employees were only rewritten of the Law on Defence.

The strike organizer's obligation to notify the authority when a strike is started is also fully taken over by the Defence Law, It says a lot about the lack of innovation in collective bargaining agreements and the necessity of raising awareness among Macedonian workers, employers, and the government about the value of positive social dialogue and collective bargaining that eventually results in collective agreements.

A strike in the Ministry of Defence during a crisis or emergency is prohibited. If the strike started before the onset of the crisis, the Unions are obliged to immediately inform the participants in the strike that it has been put on hold.

Collective agreements are an extremely powerful tool that can change the way labour relations are regulated only if there is sufficient awareness for proper and maximum use of the potential brought by collective agreements. The level of development of the social dialogue, especially in the area of activities of importance for the security of the state, is far from enviable. In addition to the fact that there are trade unions and trade union organizations within the Ministry of Internal Affairs, such as Police Union of Macedonia, the Independent Police Union and the Macedonian Police Union, while within the Ministry of Defence we have the Union for Defence and Security, the Independent Defence Union, the Independent Union of Professional Soldiers, their representation in the public is relatively low. The police unions have gone public on several occasions, they have even organized certain protests and introduced the public to the challenges faced by police officers, including poor working conditions, low salaries, and appealed to the political pressures they faced.

The trade union activity of members of the security forces is extremely important because the legal provisions themselves leave very little room for manoeuvre when it comes to “defending” their labour rights, for those reasons we need to have strong trade union organizations that will be aimed at promoting the rights of members of the security forces and who will continuously lobby for the advancement of their economic and social rights. The security of the state may have primacy, but in no case should it be the reason for violating the labour rights of this type of employees.

IV. Conclusion

A nation’s ability to maintain stability, unity, and prosperity depends on its ability to maintain the national security, which is made possible by the army and police force. Protecting the citizens from threats both internal and foreign is the army’s and the police's principal responsibility. This involves combating organized crime, terrorism, and other violent crimes that endanger public safety. The army is essential to defending a country's borders and sovereignty. They safeguard the nation's territorial integrity and provide defence against outside threats.

In disaster response and rescue efforts, both forces frequently have important responsibilities to play. Their qualified personnel and assets are crucial for rescue operations and preserving public order during crises, whether they are caused by man-made or natural disasters. A sense of cohesiveness and unity within the country can be enhanced by the presence of strong armed forces and law enforcement. They stand for an international law enforcement and defence system that cuts over national boundaries. In addition to taking proactive steps, the army and police also serve as barriers to possible threats by consistently being there and prepared.

The army and police carry out their security duties while operating under civilian control in democracies, guaranteeing the preservation of democratic values and human rights. However regardless of the importance of this forces their rights as workers must not be neglected.

The special nature of their duties means that police and military personnel are often bound by legal frameworks that restrict their ability to strike or protest. The idea of upholding discipline, order, and operational preparedness frequently serves as the foundation for these limitations. In order to handle complaints and enhance working conditions in the armed services, governments usually set up alternative methods. These could include independent oversight organizations, arbitration, or mediation to guarantee equitable treatment and representation of workers. There is a fine line between upholding workers’ rights and acknowledging the significance of national security and the larger obligations that go along with it. Policies must make sure that this balance is kept in place to support employee fairness and operational efficacy.

It is crucial to take into account the right of workers to strike, even though policies surrounding the rights of police and military personnel differ greatly between nations. While certain countries may have more moderate policies or particular laws permitting such acts, others may have stricter laws against strikes and protests by these organizations. Of course, advocating for better working conditions and resolution of issues could take the form of strikes or protests, but they could also be carried out through professional groups, unions (where permitted), or discussions with the government agencies in charge of military and police matters.

At the very end, we can summarize that these activities are extremely important for society as a whole, necessarily as the professions themselves require certain renunciations and sacrifices from the individuals who will perform them, analysed as a collective of workers undoubtedly, also face certain compromises regarding the exercise of their rights. Decent work is a prerequisite for satisfied workers, no matter what activity they are in. The right to be heard and to defend their rights must be ensured equally for all workers, without exception.

V. References

1. A.Baltic, M.Despotovic, *Osnovi radnog prava Jugoslavije*, 8-izd, Savremena administracija, Beograd, 1981;
2. B.A. Lubarda, Labour law, discussion on dignity at work and social dialogue, 2 ed., Law Faculty of the University of Belgrade, Belgrade, 2013;
3. B. Shunderić, Lj. Kovacević, Labour Law, 2 ed. Official Gazette, Belgrade, 2019;
4. Collective Agreement of the Ministry of Defense (Official Gazette of the RNM No. 36/24)
5. Collective Agreement for the Ministry of Internal Affairs (Official Gazette of the RNM No. 149/21)
6. G.H. Gamerlynck, G.Luon-Caen, J. Pelissier, Droit du travail, Dalloz, 1986
7. L. Jovevski, "Trade union law", Skopje, 2022;
8. L. Jovevski, Zh. Popovska "Anti-discrimination law", Skopje, 2019
9. Law on Defense (Official Gazette of the RM No. 42/01 and all further amendments and additions)
10. Law on Internal Affairs (Official Gazette of the RM No. 42/14 and all further amendments and additions);
11. Law on Labour relations (Official Gazette of the RM No. 62/05 and all further amendments and additions);
12. M.F. Clavel-Fauquenot, N. Marignier, *Le droit syndical*, Liaisons, Paris, 1999;
13. N. Kostadinovic, *Radnicki pokreti, radni odnosi I socijalno staranje*, EKVS, Beograd, 1946;
14. P. Humblet, *Social Dialog and Human Rights, The Essence of Social Dialogue in (South East) Europe*, Antwerpen-Oxford, 2006;
15. Police Law (Official Gazette of the RM No. 114/06 and all further amendments and additions)
16. T. Popovic, Labour Law, Sl. SFRY newspaper, Belgrade, 1980;
17. W. Rauws, *Collective Bargaining at the Enterprise Level: Same Comparative Observation, The Essence of Social Dialogue in (South East) Europe*, Antwerpen-Oxford, 2006.

UDK: 343.9.024:341.24(497.7:497.11)(083.77)
UDK: 343.9.024:341.24(497.7:497.5)(083.77)
DOI: 10.20544/ICP.9.2.24.P05

STAND-ALONE MONEY LAUNDERING IN CROATIA, SERBIA, AND NORTH MACEDONIA

Ana Profozić

ABSTRACT

The paper analyses the existing legal frameworks regulating the crime of money laundering in Croatia, Serbia, and North Macedonia. Specifically, the emphasis of this paper is on the possibility of prosecuting money laundering independently, i.e. without precise identification of the predicate offence (so-called "stand-alone money laundering"). Even though all three countries have a relatively high number of predicate crimes considered as main threats for money laundering, those figures are not properly mirrored by money laundering investigations and prosecutions. Moreover, the countries have a negligible number of stand-alone money laundering investigations, prosecutions, and convictions despite having legal frameworks in place that allow convictions for such type of crime.

Contrariwise, Dutch case law is a great example of how the conviction for the crime of money laundering can be efficiently and expeditiously secured by applying the indirect method of proof, i.e. without proving the predicate offence. The paper ultimately looks deeper into Dutch jurisprudence with the aim to discover the ways in which Croatia, Serbia, and North Macedonia can benefit from this approach, and gives some general recommendations for reaching greater number of money laundering convictions.

INTRODUCTION

The United Nations Office on Drugs and Crime (UNODC) estimates that between 2 and 5% of global GDP is laundered each year. That's between EUR 715 billion and 1.87 trillion each year.[24]

The crime of money laundering has been addressed in the UN Vienna 1988 Convention Article 3.1, describing the offence as: *"the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions".*[25]

The European Union follows the same "all crimes approach"[26], and, in its Directive (2018/1673) on Combating Money Laundering by Criminal Law, highlights that: "In order for criminal law measures to be effective against money laundering, a conviction should be possible without it being necessary to establish precisely which criminal activity generated

[24] https://www.europol.europa.eu/crime-areas/economic-crime/money-laundering.

[25] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. 20 December 1988. Art.3.1.

[26] *All crimes approach* means that all crimes that generate illegally acquired money can be a predicate offence for money laundering.

the property, or for there to be a prior or simultaneous conviction for that criminal activity, while taking into account all relevant circumstances and evidence".[27]

Prosecution of money laundering independently, without initiating criminal prosecution for a predicate offence, is in legal terminology often called "stand-alone money laundering"[28] and is a very powerful tool for tackling the crime of money laundering when there is no concrete sight or evidence regarding the true source of origin of an object or a specific predicate offence.

Even though a large number of countries have adopted this approach by amending their legislations, the casework of the European Union Agency for Criminal Justice Cooperation (Eurojust) shows that in some of these countries, although the precise identification of the predicate offence to prosecute money laundering is not required, supreme courts have set high standards for demonstrating the criminal origin of the money. On top of that, it was observed that prosecutors face a lack of clarity as to the standard of proof that is required to demonstrate that the money is of criminal origin.[29]

Eurojust's observation accurately depicts the situation in Western Balkans where, despite of high exposure to money laundering threats, convictions for that crime are seldomly reached, and a predicate offence is considered an essential part of money laundering offences.

The paper will examine to which extent Croatia, Serbia, and North Macedonia prosecute money laundering and where the systems fail despite having in place legal frameworks that allow convictions for autonomous money laundering offences.

Croatia was analysed in this paper due to the fact that it is the only European Union and Western Balkans state listed on the Financial Action Task Force's (FATF) grey list, and therefore put under the increased monitoring despite having adopted comprehensive anti-money laundering laws aligning with EU directives.

Serbia, on the other hand, has the highest level of criminal activity compared to other Western Balkan countries[30] with a relatively low number of money laundering convictions compared to the exposure to money laundering threats.

North Macedonia was chosen due to being criticized by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) for the relatively high number of predicate crimes (considered as main money laundering threats) that are not properly mirrored by money laundering investigations and prosecutions.[31]

Finally, the paper looks into the Dutch case law that has developed a highly efficient system of tackling the crime of money laundering (for example, in the period between 2016 and the first half of 2021, the Netherlands had 4,386 convictions for money

[27] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. Note 12.

[28] Financial Action Task Force. (2013.) Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems.

[29] European Union Agency for Criminal Justice Cooperation. (2022b). Eurojust Report on Money Laundering.

[30] Global Organized Crime Index. https://ocindex.net/country/serbia.

[31] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2023b). Anti-Money Laundering and Counter-Terrorist Financing Measures North Macedonia. Fifth Round Mutual Evaluation Report.

laundering)[32]. It sets the Netherlands as an example to prove that similar approach can be adopted in other countries as well.

"The original saying that evidence needs to point out that the object originates from a specific offence […] is no longer viable. Keeping in mind the purpose of the legal provision and its history means that it is no longer necessary to point out who, when and where the predicate offence was committed" – Dutch Supreme Court, 2004[33].

CROATIA

Country profile

Croatia faces money laundering threats from proceeds of crime generated both domestically and internationally. Tax evasion, drug-related crime and corruption are offences posing the highest threats for money laundering.[34]

Due to its geographical location, Croatia is exposed to cross-border illicit flows. It is an important transit point along the so-called "Balkan route" through which narcotics are smuggled to Western Europe, and is also used as a transit point for maritime shipments of South American cocaine bound for Western Europe.[35] Use of financial and real estate sectors, abuse of professional services and companies, and use of cash in money laundering-related schemes with the involvement of foreign nationals are, according to MONEYVAL, identified as long-standing patterns. The usual pattern involves foreign criminals attempting to transfer funds through the Croatian financial system. They do this by establishing legal entities that do not seem to have any real economic activities, then taking out money in cash, transferring it overseas, or investing in real estate in Croatia. This puts Croatia at risk of potential cross-border money laundering threats, including proceeds from tax evasion, drug trafficking, fraud, human trafficking, human smuggling, organized crime, and other criminal activities coming into the Croatian market from other countries.[36]

On the other hand, corruption is mostly detected as a domestic crime (according to Transparency International's Corruption Perception Index (CPI), Croatia scored 50/100, meaning it ranks 57th out of 180 countries)[37]. Illicit activities related to corruption involve budget payments for services that were not actually performed or were unreasonably priced, such as excessive marketing.[38]

---

[32] Financial Action Task Force. (2022). Anti-money laundering and counter-terrorist financing measures in the Netherlands. Mutual Evaluation Report

[33] Fiscal Information and Investigation Service of The Netherlands. (2019). Indirect method of proof. https://www.amlc.eu/wp-content/uploads/2019/04/Money-Laundering-the-Indirect-Method-of-Proof-2019.pdf

[34] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

[35] United Nations Office on Drugs and Crime. (2014). The Illicit Drug Trade Through South-Eastern Europe Report.

[36] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

[37] Transparency International. (2019). Croatia. https://www.transparency.org/en/countries/croatia

[38] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

Those, and other predicate offences are regularly investigated and prosecuted, but these investigations and prosecutions rarely trigger further investigation or prosecution of money laundering.[39]

In response to deficiencies in the country's prevention of money laundering, FATF added Croatia in 2023 to its so-called "grey list" of countries, or those under "increased monitoring".[40] Croatia is currently the only EU and Western Balkans state on the list.[41] While the follow-up Report noted that Croatia improved its measures to combat money laundering, there is still number of shortcomings Croatia needs to address.[42]

Legal Framework

The legal framework governing the prevention of money laundering and terrorist financing in the Republic of Croatia is defined in the Anti Money Laundering and Terrorist Financing Law[43] and the Criminal Code[44]. Other relevant pieces of legislation include the sectorial laws regulating the financial and DNFBP sector, the Criminal Code, the Criminal Procedure Code, Law on International Restrictive Measures, and other sectorial legislation.

According to article 265 of the Criminal Code, the criminal offense of money laundering can be committed as money laundering from one's own criminal activities (self-laundering), third-party money laundering, and stand-alone money laundering, by which the prosecution of money laundering is undertaken as a separate criminal offense, regardless of whether the predicate offense has been prosecuted.[45]

Even though the law provides for stand-alone money laundering, i.e. no legal requirement does exist requiring a prior conviction for the predicate offence to convict for money laundering, there are almost no such convictions. MONEYVAL acknowledges in this regard that Croatia has extensive legal powers enabling the identification and investigation of money laundering, but warns that a general lack of comprehensive understanding of the money laundering offence by the judges and to some extent by prosecutors is largely present.[46]

Statistics

In the period between 2019 and 2023 state attorney offices investigated and filed indictments in relation to all forms of money laundering. In 2023, there were 32 investigations (24 in 2022, 14 in 2021, and 5 in 2020), 49 indictments filed (16 in 2022, 16

[39] *Ibidem.*

[40] https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfgeneral/outcomes-fatf-plenary-june-2023.html.

[41] https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html.

[42] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2023c). Anti-Money Laundering and Counter-Terrorist Financing Measures Croatia 1st Enhanced Follow-up Report & Technical Compliance Re-Rating.

[43] Anti-Money Laundering and Terrorist Financing Law. Official Gazette of the Republic of Croatia (108/17, 39/19, 151/22).

[44] Criminal Code of the Republic of Croatia. Official Gazette (125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24).

[45] *Ibidem.*, Art.265

[46] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

in 2021, 4 in 2020) and 10 convictions for the offence of money laundering (10 in 2022, 9 in 2021, 2 in 2020).[47]

Conclusion

The low number of investigations and convictions for money laundering can be explained by the fact that, in practice, the judiciary requires a precise link between the laundered money and related predicate crime. Convictions presented as autonomous (stand-alone) money laundering are mainly simple cases, mostly related to the laundering of the proceeds of fraud or internet fraud committed abroad.[48]

2020 National Risk assessment highlighted a restrictive interpretation of the money laundering offence, confirmed by the two judgments of the Supreme Court of Croatia[49], as a very important vulnerability that seriously affects the money laundering risk appreciation of the authorities.[50] In addition, cumulative execution of all stages of money laundering (placement, layering and integration) is required.[51]

Furthermore, money laundering cases concerning proceeds of crime committed abroad are only pursued to a limited extent since prosecutors usually transfer the case to the foreign jurisdiction where the predicate offence has occurred.[52]

The above could be addressed by ensuring that judiciary and law enforcement authorities' interpretations and understanding of the money laundering offence are aligned with international standards. Developing formal guidelines drawing on international and domestic requirements for money offence and good practices for investigating and prosecuting money laundering offence, as well as promoting evolving jurisprudence on money laundering cases in line with the current criminalisation of money laundering and international standards could be beneficial tools in addressing the problem of low number of money laundering cases.

SERBIA

Country profile

2023 Global Organized Crime Index showed that Serbia has the highest levels of criminal activity compared to other Western Balkan countries.[53]

Serbia faces a range of significant money laundering threats and vulnerabilities and its exposure to cross-border illicit flows is serious. Major money laundering threats arise from organized crime. Serbia continues to be a source, transit, and destination country for

[47] State Attorney's Office of the Republic of Croatia. (2023) Report of the Chief State Attorney of the Republic of Croatia on the Work of State Attorney Offices in 2023.

[48] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

[49] Supreme Court of the Republic of Croatia, 28 May 2015, Kž 625/13–6.

Supreme Court of the Republic of Croatia, 28 November 2016, Kž 560/16–4.

[50] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

[51] *Ibidem.*

[52] *Ibidem.*

[53] Global Organized Crime Index. https://ocindex.net/country/serbia.

victims of human trafficking. The country also serves as a heroin transit hub connecting the east to the west, as well as a transit and destination country for the cocaine trade. Moreover, along with Bulgaria, it is the main source of synthetic drugs in Eastern Europe.[54] Tax evasion and corruption offences are considered to generate substantial criminal proceeds. The purchase of real estate, valuable moveable property and investments in, and the misuse of domestic and foreign (offshore) legal persons together with multiple use of wire transfers are common money laundering typologies.[55] The sectors most exposed to money laundering threats are the real estate sector, the online games of chance sector and the banking sector, followed by the casino sector, accountants and money changers.[56] New trend with growing threats in terms of money laundering is observed; environmental crime, the smuggling of protected plant and animal species, and the use of farm sectors for money laundering.[57]
The country was on FATF's grey list from February 2018 to June 2019.[58]

Legal Framework

Apart from the Criminal Code[59], the main provisions related to the criminal offence of money laundering are enshrined in the Law on the Prevention of Money Laundering and the Financing of Terrorism (Official Gazette of RS, Nos. 113/17 and 91/19, AML/CFT Law), adopted in 2017 and amended in 2018, 2019, 2020 and 2023. The Act prescribes that money laundering means the conversion or transfer of assets, the concealment or false presentation of facts about assets, the acquisition, possession or use of assets. Among other things, the AML/CFT Act also establishes the Administration for the Prevention of Money Laundering (APML) as the financial intelligence unit (FIU) of the Republic of Serbia.
Serbian legal system applies the "all crime" model, according to which all crimes can be predicate crimes, and does not require predicate offence to be proven to reach conviction for money laundering.[60]

Statistics on Money Laundering Cases

Serbian Administration for the Prevention of Money Laundering assessed that, in the period between 2018 and 2020, the total value of assets under investigation for suspected money laundering involved 467 individuals and surpassed 57 million euros. However, the Global Initiative against Transnational Organised Crime suggests that the actual amount could be anywhere from one to 2.5 billion euros.[61]

[54] Global Organized Crime Index. https://ocindex.net/country/serbia.

[55] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2016). Anti-money laundering and Counter-Terrorist Financing Measures Serbia. Fifth Round Mutual Evaluation Report.

[56] Administration for the Prevention of Money Laundering. Ministry of Finance of the Republic of Serbia. (2021). National Risk Assessment.

[57] *Ibidem.*

[58] https://www.fatf-gafi.org/en/publications/fatfgeneral/documents/outcomes-plenary-june-2019.html.

[59] Criminal Code of the Republic of Serbia. Official Gazette of RS (85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019). Art.245.

[60] *Ibidem.*

[61] https://balkaninsight.com/2023/09/14/bosnia-risks-return-to-money-laundering-grey-list/.

National Risk Assessment determined that in the period of January 2018-December 2020, investigations against 568 persons were initiated for the predicate offense, against 416 persons for money laundering, and against 51 persons for the criminal offense of money laundering committed without a predicate offense (stand-alone money laundering). In the same period, indictments were filed against 278 persons for the predicate offense, and against 231 persons for the criminal offense of money laundering (of which against 55 persons for the criminal offense of money laundering committed without a predicate offense).[62]

During the course of 2023, criminal charges were filed against 189 persons (against 243 in 2022) and the courts issued judgments against 65 persons out of which 64 were found guilty and one person was acquitted. There were 128 indictments in 2023 (115 in 2022), and 78 first-instance verdicts (69 in 2022 with all 69 resulting in convictions).[63]
Even though the numbers show that the judiciary and prosecution deal to a certain extent with money laundering and, more precisely, stand-alone money laundering cases, figures are still low if the level of criminal activity and the number of offences posing a high risk for money laundering are taken into account.

NORTH MACEDONIA

Country profile

North Macedonia ranked best for its criminality level and strongest for resilience among the five Western Balkans countries rated in the 2023 Global Organized Crime Index[64]. However, in its Fifth Round Mutual Evaluation Report, MONEYVAL highlighted that a relatively high number of predicate crimes that have been considered as main threats to the state are not properly mirrored by money laundering investigations and prosecutions.[65]
The authorities identified that the money laundering risks in North Macedonia are mostly linked to domestic criminal activities such as abuse of official position and corruption, tax evasion, migrant smuggling, illegal drug trade, damage or privilege of creditors, financial and insurance fraud, burglary or forest devastation.[66]
From 2017 to 2021, there were 24 money laundering investigations (4 in 2021), 19 money laundering prosecutions (5 in 2021), and 19 convictions (8 in 2021) in cases related to money laundering.

These numbers can be explained by the fact that, based on information provided by prosecutors and judges on the site, the commission of the predicate offence must be admittedly demonstrated with a remarkable level of certainty to pursue money laundering, in other words, the court decision on this matter is needed to confirm the existence of a

[62] Administration for the Prevention of Money Laundering. Ministry of Finance of the Republic of Serbia. (2021). National Risk Assessment.

[63] Republic Public Prosecutor's Office. Republic of Serbia. (2023). Annual Report on the Work of Public Prosecutor's Offices.

[64] https://see.globalinitiative.net/hotspots/iffs/single-macedonia.html.

[65] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2023b). Anti-Money Laundering and Counter-Terrorist Financing Measures North Macedonia. Fifth Round Mutual Evaluation Report.

[66] *Ibidem.*

predicate offence. That, in turn, results in a small number of third-party laundering cases and a total absence of stand-alone money laundering prosecutions.[67]

Legal Framework

In determining the crime of money laundering, the Criminal Code of North Macedonia, just as the codifications of other countries observed in this paper, adopts "all crimes approach" and does not require predicate offence to be proven to reach conviction for money laundering. Nonetheless, the National risk assessment acknowledges that, when prosecuting money laundering cases, the judiciary requires the predicate offence to be proven by conviction.[68]

Apart from the Criminal Code, North Macedonia in 2022 adopted the new Law on Anti-Money Laundering and Countering Financing of Terrorism to harmonise the legislation with the Fifth EU Anti-Money Laundering Directive[69].

Even though the institutional framework has been marked as appropriate to investigate and prosecute money laundering, MONEYVAL warns that the investigations are mostly conducted in relation to predicate offences.[70]

Conclusion

In its Fifth Report, MONEYVAL set out a number of recommendations emphasising the importance of prosecuting autonomous money laundering crimes (i.e. stand-alone money laundering). It, therefore, highlights that the existence of a conviction for the predicate offence is not a pre-condition for bringing money laundering charges before the court.[71]

Achieving a larger number of money laundering investigations/convictions should be accomplished by ensuring that the judiciary's interpretation and understanding of the money laundering offence are aligned with international standards (especially when it comes to stand-alone money laundering). It is also recommended that prosecutorial authorities adopt policy guidelines that would emphasise the importance of proceeding in money laundering cases without waiting for a conviction for the predicate offence. These guidelines should, among others, include minimum evidential requirements for the prosecution of stand-alone and 3rd party laundering in the absence of a conviction for the predicate offence and good practices in gathering evidence relevant to the conversion, transfer, and integration of illicit proceeds.[72]

[67] *Ibidem.*

[68] *Ibidem.*

[69] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

[70] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2023b). Anti-Money Laundering and Counter-Terrorist Financing Measures North Macedonia. Fifth Round Mutual Evaluation Report.

[71] *Ibidem.*

[72] *Ibidem.*

THE NETHERLANDS

Introduction

Dutch money laundering cases of the last decade have shown that it is possible to fairly convict suspects of money laundering without proving a predicate offence.
The Netherlands established the so-called "step-by-step" plan approach where it is sufficient to prove that the object 'originates from any crime'. This means that if an object does not derive from a legal source, it has to derive from an illegal source. This indirect method of proof can be used in cases where there are no direct leads of a predicate offence in relation to the object. Even in such cases, the court can reach a conviction for money laundering, as no requirements exist to prove the time, place and perpetrator of the offence.[73]

"6-step judgment"

The Court of Appeal in Amsterdam summed up the assessment framework for the stand-alone money laundering in the so-called "6-step judgment[74]";
Step 1: No direct evidence of a specific predicate offence;
The specific predicate offence is unknown or cannot be proved.
Step 2: A suspicion of money laundering;
Is there a suspicion of money laundering on the basis of facts and/or circumstances? Money laundering indicators (such as general knowledge and money laundering typologies) can be used.
Step 3: Statement by the suspect;
If there is a suspicion of money laundering, the suspect can be expected to make a statement about the origin of the object that is suspected to originate from money laundering. The facts and/or circumstances "call for an explanation". If a suspect refuses to make a statement, this may also be taken into consideration in the conclusion that an object originates from a crime.
In one money laundering case, the Supreme Court of the Netherlands explicitly confirmed that the suspect may be expected to provide an explanation for the origin of the money and highlighted that this does not automatically mean that it is then up to the suspect to demonstrate that the money did not originate from crime.[75]
In *Murray v.The United Kingdom* [76], the ECtHR established that a refusal to make a statement, provided that the conditions mentioned in the judgment have been fulfilled, may be taken into consideration in the evidence and that this is not contrary to the right to a fair trial.
Step 4: Requirements for a suspect's statement;

The statement about the origin of the object must be concrete, more or less verifiable, and not highly unlikely in advance. In addition, the court determined that, apart from the possible legal source, the flows of money must also be set out clearly.
Step 5: Investigation by the Public Prosecution Service;

---

[73] Moolenaar, B. (2021). Step by Step Plan, Handout. https://www.amlc.eu/step-by-step-plan-handout/#_ftn1.

[74] Amsterdam Court of Appeal, 11 January 2013, ECLI:NL:GHAMS:2013:BY8481

[75] Supreme court of the Netherlands, 13 July 2010, ECLI:NL:HR:2010:BM0787

[76] ECtHR. 8 February 1996., *Murray v. The United Kingdom*

If the statement meets the criteria of step 4, it is up to the Public Prosecution Service to investigate (have) the mentioned alternative origin of the object (investigated).
Step 6: Drawing conclusions;

If, on the basis of the investigation referred to in step 5, it can be ruled out with a sufficient degree of certainty that the object the suspicion relates to has a legal origin, it can be argued that it "originates from crime". After all, the only acceptable explanation for the origin of the object is a criminal origin.[77]

This was, among others, confirmed by the Supreme Court's judgment establishing that "the fact that cash found on a suspect 'originates from a crime' can, if no direct link can be established with a specific crime on the basis of the available evidence, nevertheless be considered proven if, on the basis of the established facts and figures, it cannot be otherwise than that the money originates from a crime."[78]

Whereas Croatia, Serbia, and North Macedonia focus exclusively on defining the crime of money laundering in their criminal codifications, Dutch policy maker took a step further by issuing the Explanatory Memorandum and clarifying that: "It is sufficient that it is (charged and) proven that the object originates from any crime. The judge is not required to identify which crime exactly underlies the object. This will often not be possible, while it is also not relevant for the criminality of money laundering. For example, does this concern actions by suspect Y with regard to a bank account into which he and his associate used to deposit the proceeds of their various criminal activities (human trafficking, extortion, drug trafficking), but it is not clear from which of those activities. The funds involved originated (perhaps from all of them), then it can nevertheless be considered proven that those funds originated from any crime."[79]

This was also confirmed with the Supreme Court's judgment that concluded that "the evidence does not have to show that the object in question originates from a precisely specified crime and by whom, when and where this crime was specifically committed."[80]

Zschüschen v. Belgium

Dutch indirect method of proof was often questioned from the perspective of the right to a fair trial and the right to remain silent. This was especially concerning the fact that, as described above, the suspect may be expected to provide an explanation of the origin of the money.

In *Zschüschen v. Belgium*[81], the ECtHR touched upon that question and ruled that the conclusions drawn from the refusal to provide a statement are not unfair or unreasonable, but prompted by common sense.

The Court ruled that the European Convention on Human Rights does not prohibit a court from taking into account the silence of an accused person in finding him or her guilty unless the conviction is based exclusively or essentially on his silence.

[77] Moolenaar, B. (2021). Step by Step Plan, Handout. https://www.amlc.eu/step-by-step-plan-handout/#_ftn1.

[78] Supreme Court of the Netherlands, 13 July 2010, ECLI:NL:HR:2010:BM0787

[79] House of Representatives of the Netherlands. (2000.) Parliamentary Papers II 1999-2000, 27159, no. 3, p. 16.

[80] ECtHR, 28 September 2004, ECLI:NL:HR2004:AP2124

[81] ECtHR, 1 June 2017, App. No(s). 23572/07

The facts:

Mr Zschüschen had opened an account in a Belgian bank and, within two months, paid a total of 75,000 euros (EUR) into it. Questioned by the authorities about the origin of the money, he remained silent throughout the proceedings. Also, Zschüschen has a history of drug trafficking and no income (in the Netherlands). [82]

The legal questions:

After being convicted for money laundering, he complained, among others, of a violation of his right to a fair trial, breach of the presumption of innocence, and the right to remain silent relying on article 6, par. 1 and 2 of the ECHR.[83]

Court's findings:

The Court found that this complaint was manifestly ill-founded, taking the view that the approach of the trial courts, which did not find it necessary to define the predicate offence to convict a person of money laundering, had not had the effect of shifting the burden of proof from the prosecution to the defence. The Court held that it was not incompatible with the notion of a fair criminal trial that the persons concerned should be obliged to give credible explanations about their assets.[84]

The Court noted in particular that the domestic courts had convincingly established a body of circumstantial evidence sufficient to find Mr Zschüschen guilty and that his refusal to provide the requisite explanations about the origin of the money had merely corroborated that evidence. If Mr Zschüschen's account about his financial transactions had corresponded to the truth, it would not have been difficult for him to prove the origin of the money, and therefore the conclusions drawn from his refusal had been dictated by common sense and could not be regarded as unfair or unreasonable.[85]

[82] European Court of Human rights. (2017). Press release of 1 June 2017. ECHR 178 (2017)

[83] *Ibidem.*

[84] *Ibidem.*

[85] *Ibidem.*

CONCLUSION

Despite having legal and institutional frameworks that provide for successful prosecution of the crime of money laundering, Croatia, Serbia, and North Macedonia still have low numbers of money laundering cases brought before the courts (and subsequently low number of convictions).

All three countries adopted the "all crimes approach" and don't require predicate offence to be proven for the prosecution of the crime of money laundering. However, the judiciary still considers predicate offence as an essential part of that crime.

By focusing on stand-alone money laundering cases, countries can secure convictions even in cases where there is no (or not enough) evidence for the predicate offence. Moreover, a money laundering investigation can be started without having sight of a previous predicate offence. Also, it makes possible to confiscate proceeds of crime from a previous offence through a conviction for money laundering without jeopardizing the *ne bis in idem* principle. [86]

Dutch case law is a great example of how money laundering (and most importantly, stand-alone money laundering) cases can be successfully and efficiently investigated while upholding fundamental rights such as the right to remain silent, the right against self-incrimination, and the presumption of innocence.

The same approach towards the fight against money laundering can be adopted in other countries as well. Since the legislative frameworks in Croatia, Serbia, and North Macedonia already provide for the prosecution of stand-alone money laundering crimes, the approach to enhance the number of such cases should be taken from other angles.

Hence, Serbia, Croatia, and North Macedonia should develop case law in the field of stand-alone money laundering and ensure that the judiciary's interpretation and understanding of the money laundering offence are aligned with international standards. Developing guidelines, issuing policy papers that would highlight the importance of prosecuting stand-alone money laundering crimes, and organizing educational trainings for judges and prosecutors could be part of the solution. However, adopting the fight against money laundering as the national policy objective would be the first and crucial step in tackling this crime.

[86] Fiscal Information and Investigation Service of The Netherlands. (2019). Indirect method of proof.

REFERENCES

Administration for the Prevention of Money Laundering. Ministry of Finance of the Republic of Serbia. (2021). National Risk Assessment.

Amsterdam Court of Appeal, 11 January 2013, ECLI:NL:GHAMS:2013:BY8481

Anti-Money Laundering and Terrorist Financing Law. Official Gazette of the Republic of Croatia (108/17, 39/19, 151/22).

Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2023b). Anti-Money Laundering and Counter-Terrorist Financing Measures North Macedonia. Fifth Round Mutual Evaluation Report.

Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2021). Anti-money laundering and Counter-Terrorist Financing Measures Croatia. Fifth Round Mutual Evaluation Report.

Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). (2016). Anti-money laundering and Counter-Terrorist Financing Measures Serbia. Fifth Round Mutual Evaluation Report.

Criminal Code of the Republic of Croatia. Official Gazette (125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24).

Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. Note 12.

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

ECtHR, 1 June 2017, App. No(s). 23572/07

ECtHR, 28 September 2004, ECLI:NL:HR2004:AP2124

ECtHR. 8 February 1996., Murray v. The United Kingdom

European Court of Human rights. (2017). Press release of 1 June 2017. ECHR 178 (2017)

European Union Agency for Criminal Justice Cooperation. (2022b). Eurojust Report on Money Laundering.

Financial Action Task Force. (2013.) Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems.

Financial Action Task Force. (2022). Anti-money laundering and counter-terrorist financing measures in the Netherlands. Mutual Evaluation Report

Fiscal Information and Investigation Service of The Netherlands. (2019). Indirect method of proof.

Global Organized Crime Index. https://ocindex.net/country/serbia.

House of Representatives of the Netherlands. (2000.) Parliamentary Papers II 1999-2000, 27159, no. 3, p. 16.

https://balkaninsight.com/2023/09/14/bosnia-risks-return-to-money-laundering-grey-list/.

https://see.globalinitiative.net/hotspots/iffs/single-macedonia.html.

https://www.europol.europa.eu/crime-areas/economic-crime/money-laundering.

https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Fatfgeneral/outcomes-fatf-plenary-june-2023.html.

https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html.

https://www.fatf-gafi.org/en/publications/fatfgeneral/documents/outcomes-plenary-june-2019.html.

Moolenaar, B. (2021). Step by Step Plan, Handout. https://www.amlc.eu/step-by-step-plan-handout/#_ftn1.

Republic Public Prosecutor’s Office. Republic of Serbia. (2023). Annual Report on the Work of Public Prosecutor's Offices.
State Attorney’s Office of the Republic of Croatia. (2023) Report of the Chief State Attorney of the Republic of Croatia on the Work of State Attorney Offices in 2023. f
Supreme Court of the Netherlands, 13 July 2010, ECLI:NL:HR:2010:BM0787
Supreme Court of the Republic of Croatia, 28 May 2015, Kž 625/13–6.
Supreme Court of the Republic of Croatia, 28 November 2016, Kž 560/16–4.
Transparency International. (2019). Croatia. https://www.transparency.org/en/countries/croatia
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. 20 December 1988. Art.3.1.
United Nations Office on Drugs and Crime. (2014). The Illicit Drug Trade Through South-Eastern Europe Report.

UDK: 351.941:351.74(497.7)
DOI: 10.20544/ICP.9.2.24.P06

THE OMBUDSMAN AS A MECHANISM FOR CONTROL AND SUPERVISION OVER THE POLICE

Marko Vidaček
Faculty of Security – Skopje, PhD Candidate
vidacek.m@gmail.com
Marika Ristovska
Faculty of Law – UKIM Skopje, Full Professor
m.ristovska@pf.ukim.edu.mk

Abstract

Not a single state should deprive its citizens of the possibility for additional, out-of-court, and mediative procedure, especially when such mechanism – the Ombudsman – is largely built on the principle of "cheap and simple". With regard to this, the most important question is how the police act, which, in the ring of the state system, are the most exposed ones to risks and threats, under a constant need for fast and discretionary action, and yet, they are under the obligation of legal and expedient action. A special institution which deals with the issue of police actions with regard to human rights and freedoms undoubtedly is the Ombudsman, who it also assigned the role of National Preventive Mechanism (NPM). Firstly, the research deals with the constitutional and legal position that the Ombudsman has on police actions, examines the changes in the legislation through a chronological presentation, and then gives review of the supervision and control over the police in the period between 2012 and 2022. We can see the foundation for the answers to the key questions in the annual reports of the Ombudsman, in which, in a separate section, his acting upon the police authority is noted and evaluated. The research shows that the Ombudsman is a recognised and profiled protector of the citizens, which is confirmed by the number of annually received petitions as well as the trends related to that. Still, numbers indicate new trends and should serve as a guide which the police must not ignore.

Keywords: *ombudsman, human rights, police, supervision*

1 INTRODUCTION

The concept of human rights is developed on the idea of a fair arrangement of relations between the individual and the state government. According to this conception, the individuals cease to be slaves in the state in which they only had duties. As citizens, they have certain rights and the state must respect those rights (Milosavljević, 2004). Through a social agreement, citizens give up their full sovereignty and transfer part of it to the state and in return it guarantees their security and respect for their rights (Džinić, 2021), using all the levers of power and force.

The search for solutions that will limit absolute power and its arbitrariness can be seen in the Great Charter of John the Landless in the 13th century, which represents one of the first historical examples where the ruler does not undertake neither to deprive the free

people of life, liberty, rights and property, nor that he will pursue them, except on the basis of a decision of courts ("equal to them"). Similar, but more advanced solutions are also noted in the Heabes Corpus Act[87].

How does the police act today as the most visible link of the state where the power is concentrated, and even the use of force and deadly weapons? How to control and prevent illegal and unwanted actions?

A special institution that deals with the issue of police actions in relation to human freedom and rights is undoubtedly the Ombudsman, who in our country is assigned the role of the National Preventive Mechanism (NPM). It is an external mechanism of control which exists in parallel with the internal mechanism – the Department for Internal Control and Professional Standards, but also in parallel with other external ones, such as the public prosecutor's office (for criminal acts), the Parliament, international missions and organizations.

This "extraordinary" institution, behind which there is no state coercion and imperium[88], through clearly articulated and expert views and opinions can often be positioned as a protector of citizens, a controller over institutions and a catalyst for changes in society.

The paper aims to present in detail the Ombudsman's function, especially the relationship with the police. Firstly, an argumentation and a theoretical presentation related to the need for supervision and control for the police is offered, which is actually a "pontoon bridge" between the police and the Ombudsman, in order to present further the current legal framework and capture the essence of this extraordinary organ. Towards the end, an analysis of the published reports of the Ombudsman over a period of 10 years is presented, followed by conclusions.

Conceived in this way, this paper, complemented by an analysis of the reports, also contains a modest intention of the author for the greatest possible popularization of the Ombudsman function and the creation of a natural centre of gravity in the legal system which, like the sword of Damocles[89], will stand pointed at the authorities and potential violators. But the most important thing is to, firstly, understand what this institution is and, then, approach its analysis.

[87] It proclaims the principles of the prohibition of illegal arrest without a court order, the prohibition of long-term detention in prison without obvious evidence of the crime, the protection of a person from harassment in the investigation and other principles.
More: Glass, A. S. (1934). Historical Aspects of Habeas Corpus. John's Law Review, 9, 55.

[88] Imperium is a Latin word that can be "roughly" translated as power, meaning one's powers. Here, it refers to an institution behind which there is state power and coercion, as an authority whose opinions are legally non-binding.

[89] The expression "Sword of Damocles" means a danger that is constantly threatening, "dangerous situation", "threat", and it was noted by the Roman orator Cicero referring to the period of power of Dionysus II and his servant – Damocles (who never missed an opportunity to praise power and pleasures). The ruler decides one day to replace himself with his associate, in order to show him his constant insecurity. This contributor has noticed that above the throne hangs a large, sharp sword that was suspended by a single horse hair.

2 BETWEEN HUMAN RIGHTS AND THE POLICE – THE NEED FOR SUPERVISION AND CONTROL

For centuries, it has been a matter of interest how former military and security officials treated the population. Especially the acceptance of democratic traditions and theories, after the Second World War, keeps this issue current. Today, we can talk about this as a police-community relationship. The remark of the authors Mojanoski and Dujovski (2018) is completely correct according to which "the main feature of modern police work is the idea that the police and citizens work to achieve common goals – a safe community and a secure life for citizens. In order to affirm its successes and to strengthen the trust among citizens, the police should constantly work to ensure that the public approves its actions. As a prerequisite for receiving support from the public, there is publicity in police work and fostering communication and mutual understanding between the police and citizens".

When the state fails to guarantee its citizens the free and unhindered enjoyment of the right to life, liberty and security, it really fails in its task of preserving and supporting the very basis of all human rights. When the police resort to breaking the law by abusing or exceeding their powers in carrying out tasks within their jurisdiction, they lose the trust and authority (Avramović & Marković 2011).

The duties of the police are to maintain public order and peace, to protect and respect the basic human rights and freedom of individuals, prevent and fight against crime, as well as provide assistance and serve the citizens. Police powers are actions defined by law that enable a police officer to act and perform his duties.

Kralj (2014) in the work dedicated to the internal control and supervision of the police, states that "the police received from the state the right to detect and limit the crime and illegal behaviour of all citizens, therefore they also received a general right to use force limited by law in order to influence the behaviour of citizens, and avoided the phenomenon of 'taking justice into one's own hands', i.e. citizens' self-government". According to him, the police is at the heart of the problem of establishing a balance between governance as one of the essential functions of the state, and the freedom and rights of citizens.

Writing about the need for independent control over the police and their illegal, unprofessional or unethical behaviour, which of course has its emanation in the Ombudsman, Prosaroska (2015) notes that "the issue becomes especially important when the application of the powers resulted in death, severe physical injuries, there are indications of possible exposure to torture and injury to the physical and mental integrity of the person or illegal deprivation of liberty, before all else, due to the severity of the consequences". According to her, it is necessary to take into account that respecting the individual freedom and rights of citizens is one of the basic goals of the police in democratic societies.

We can accept that, if everything is allowed to the citizens that is not prohibited by the (Constitution and) law, the opposite is true for the police. For them, everything that is outside the law is forbidden. Because overstepping the authority of the police can have fatal consequences and even death. Therefore, these provisions and concepts are in the direction of "restraint".

No one like the police is exposed to the risk of acting quickly, hastily, and requiring the use of force or weapons. But whatever the situation, it is still the law that determines their competences. Modly (2007), on the other hand, in "What awaits the police tomorrow?" notes the following: "Police officers often take the initiative themselves within the discretionary powers and take risks. It should be noted that there is no activity in the

public administration that is so associated with risks and danger as the police. Police officers must react promptly and adequately without overstepping their authority".
Especially for countries that do not belong to the group of countries with a long and continuous legal tradition and protection of human rights, such as developing countries or countries in transition, for example the Republic of North Macedonia, the issue of surveillance and control over the police is crucial.

3 HISTORICAL DEVELOPMENT AND THE CONCEPT OF OMBUDSMAN

Historiography records the sending of secret officials throughout the state territories, directly appointed by the dynasty who secretly followed the work of the administration and officials back then. Some rudimentary forms reminiscent of today's Ombudsman are also found as such in ancient states such as Ancient Rome, China and Egypt, manifesting its nascent form (Ristovska, Spiroska, Veljanovska, Tuntevski & Masalkovski 2023).

At the beginning of the second half of the last century, after the period of the Second World War, the topic and the idea of the informal form of protection of human freedom and rights, manifested directly through the institution of Ombudsman (introduced as the parliamentary Ombudsman in Sweden, in 1809) attracted serious attention.
Damir Aviani, in the "Concept and Types of Ombudsman" (1999), rightly notes that "the appearance of the Ombudsman opens a new chapter in the relations between those who rule and those who are ruled, between the state and citizens, between public officials and the publics. The Ombudsman appears in a dual role". It is equally an instrument for the protection of human rights and a unique mechanism for democratic control over the administration. The Ombudsman is an institution, Aviani states, which is more properly established by a constitution or law, headed by one or more independent public servants of (higher) rank responsible to the government or parliament, towards whom citizens' dissatisfaction with illegal and/or the improper behaviour of the public administration bodies and the employees of these bodies will be directed. They can also act on their own initiative, have the authority to conduct investigations, publicly criticize, make recommendations and publish reports, but they do not have the ability to annul, cancel or change the decisions of the administration.

The Ombudsman as a generic term[90], no matter under which name and with what attributes it appears in the legal systems of the states, everywhere, nearly without exception is an extrajudicial, non-repressive and moral body which weapon is, undoubtedly, the public and publicity and its action is based on expertise and the personalization of the institution.
The American Bar Association (ABA) and the International Bar Association (IBA) have made a great contribution to the reduction of possible misunderstandings and the (too) broad understanding of the term and the institution itself. The ABA, in a resolution from 1971, established 12 criteria for what the Ombudsman should represent[91].

[90] Also, this term is a coinage that traces its origins to the primitive legal systems of the Germanic tribes denoting a "punishment (compensation) man", who collected fines from law-breaking families at the expense of the families of the injured.

[91] In these criteria, as common, the association states, among others: the authority of the Ombudsman in relation to officials (except courts), the independence of the Ombudsman towards others, except for the responsibility he has before the legislative body, appointment by a legislative or executive body with confirmation of the legislative body, mandate which must not be shorter than 5 years, etc. More: Carl, S. (2018). The history and evolution of the Ombudsman model. In *Research Handbook on the Ombudsman* (pp. 17-33). Edward Elgar Publishing.

3.1 "Cheap and easy" solution for out-of-court, mediation and additional protection

Human and civil liberties and rights[92] represent a kind of "litmus paper" that will show the role that citizens have in society. However, the protection of human freedom and rights is not always tied to an authority that will "cut" on merit with a binding decision behind which the entire state apparatus, and even the international one, will stand. The Ombudsman is a non-judicial, non-repressive and mediating body. And, it is this body that will use the power of the word, persuasion and the public which is not reserved for the judicial and executive bodies. No matter how weak his means of work may seem from afar, the power that the Ombudsman has as an additional system of protection of human freedom and rights is indisputable and almost unpredictable, making this institution sui generis protector of human freedom and rights. And that's why the key dilemma appears here – how can the Ombudsman, who has almost no power or coercion, exercise control and supervision over the police, in whose hands almost all state power is concentrated? That's why this question is interesting to consider, which probably reminds us of the famous coinage of *David and Goliath*, as facing a giant challenge.

Not a single state must deprive its citizens of the possibility of additional, extrajudicial and mediation proceedings, especially not when such a mechanism is largely built on the principle of "cheap and easy" as Walter Gellhorn (1967) would say. He is a professor of administrative law, who is one of the most deserving of the introduction and popularization of the Ombudsman.

He will rightly note that "modern administration is complex and powerful". However, like most other human creations, internal control often does not work as it should, and their activation often requires efforts and engagements that exceed the effects that citizens would be interested in. Therefore, he states that they are not satisfactory. For those reasons, in recent decades, the search for cheaper and easier means and mechanisms for determining and removing various deficiencies in the work of the administration has intensified.

4 CONSTITUTIONAL AND LEGAL POSITION AND COMPETENCES OF THE OMBUDSMAN IN THE REPUBLIC OF NORTH MACEDONIA

The Ombudsman in the Macedonian legal system was established for the first time by the Constitution of 1991 (Official Gazette of the Republic of Macedonia, No. 52/91) when this institution was provided for under the name of the Ombudsman, while the first law regulating this matter was passed in 1997. The Constitution mentions the Ombudsman in only one article (77) in the context of the competences of the assembly[93]. It states the following: "The Assembly elects the Ombudsman. The Ombudsman protects the constitutional and legal rights of citizens when they are violated by the bodies of the state administration and by other bodies and organizations that have public powers".

[92] The idea of human rights arose in ancient Greece, in the sense of protecting individuals from tyranny. That awareness and idea of distinguishing between the rational, ideal and natural world and the emphasis on Athenian reason was inherited by the Romans, developing their Roman law.

[93] The constitutional "physiognomy" set in this way, looking at the arrangement of the articles, places the Ombudsman between the existing and occasional working bodies of the assembly (Art. 76) and the council for inter-national relations (Art. 78, i.e. Committee for relations between communities according to the later wording of amendment XII29). Although this dilemma is not the subject of this paper, it is worth noting that our Ombudsman is neither a body of the parliament nor of the government, but is a separate, independent body of the republic. Especially the legal decisions confirm this.

It is interesting to mention, with regard to the first years of the introduction of this institution, that the prisoners were the first to realize the importance of the role of the Ombudsman.

The legal solutions, however, are more than clear when it comes to the position and powers of the Ombudsman. The law clears up the dilemma of whether the Macedonian Ombudsman is an independent body of the Republic or is it some kind of parliamentary representative. All the more, this legal precision is at the level of a Solomonic solution that successfully and skilfully "buffers" the possible dilemma. In 2003, a new Law on the Ombudsman was adopted. For example, in Article 2 of the Law on the Ombudsman, the Ombudsman is defined as "a body of the Republic of Macedonia that promotes and protects the constitutional and legal rights of citizens and all other individuals when they are injured by acts, actions and omissions of actions from the bodies of the state administration, from the bodies of the local self-government unit and from other bodies and organizations that have public powers and who undertakes actions and measures to protect the principles of non-discrimination and adequate and fair representation of the members of the communities in the bodies of the state government, the bodies of the local self-government units and public institutions and services, as well as perform other tasks established by another law".

Article 2 of the current law (from the unofficial version of the refined text) continues with the following paragraphs: "In order to promote human rights and freedoms, the Ombudsman monitors the state of respect for human rights and indicates the need for their protection, conducts appropriate research, organizes educational activities, timely and regularly informs the public, cooperates with the civil sector, international organizations and the academic public, as well as provides initiatives for harmonizing legal regulations with international and regional human rights standards". What is particularly significant is that the Ombudsman prevents torture and other types of cruel, inhuman or degrading treatment or punishment by conducting regular and unannounced visits to places where individuals are or may be deprived of their liberty.

The latest amendments and additions (2018) strengthen its control and supervisory function, making it a de facto Police Ombudsman, whose scope is further strengthened by the inclusion of new clear rights and duties when it comes to police powers and actions. These strengthened competences, especially in the police sphere, are particularly visible in Articles 11-v and 11-g[94].

Also, the Ombudsman carries out prevention and provides special protection of the rights of children and people with disabilities, prevention and protection from torture and other types of cruel, inhuman or degrading treatment or punishment in places where persons are or may be deprived of their liberty, as well as prevention and special protection of the principles of non-discrimination and adequate and fair representation of the members of the communities in the bodies of the state government, the bodies of the local self-government units and public institutions and services (Article 11-b).

The Ombudsman, together with representatives of competent organizations (associations), takes actions and measures to ensure support and protection of the victim(s), their rights and the presentation of their interests in all proceedings conducted in the bodies of the state administration, as well as proceedings before the prosecutor's office and the courts through efficient and transparent investigation of the conduct by individuals

[94] Particularly interesting is the wording that gives the Ombudsman (mechanism for civil control) the authority to take actions and measures for "early warning of persons with police powers and members of the prison police". In such provisions we see the foundation for the existence of a de facto Police Ombudsman.

with police powers and members of the prison police for crimes committed while performing an official action and for crimes committed outside the service with the use of serious threat, force or means of coercion resulting in death, serious bodily injury, bodily injury, unlawful deprivation of liberty, torture and other cruel, inhuman or degrading treatment and punishment if the law provides for criminal prosecution ex officio. In cases where it is necessary, in accordance with the powers of Article 32 of this law, the Ombudsman will propose the re-implementation of a certain procedure before the competent public prosecutor's office (Article 11-v).

Furthermore, in Article 12, the rest of the competences of this independent body are determined: "The Ombudsman takes actions and measures to protect against unjustified prolongation of court proceedings, respect of the principle of trial within a reasonable time and negligent and irresponsible performance of the work of the judicial services, without violating the principles of autonomy and independence of the judiciary. For the sake of protection of human freedoms and rights, when the party or the Ombudsman requests to act as a friend of the court, the court allows the Ombudsman to act as such (amicus curiae[95])".

The Ombudsman only suggests, indicates, initiates and advises, but it does not decide and judge, which means that this organ is moral and not a commanding or judicial authority (Denkova, Dzamtoska-Zdravkovska, & Denkova 2018).

As determined in Article 21, the Ombudsman will initiate a procedure following a submitted complaint or on his own initiative if he deems that a violation has occurred. The Ombudsman can take the following actions and measures: request necessary explanations, information and evidence for the allegations in the complaint, to enter the official premises and perform an immediate inspection of the objects and matters under their jurisdiction, as well as provide material and verbal evidence, to call for an interview an elected or appointed person, an official and any other person who can provide certain data in the procedure, etc.

5 THE ACTIONS OF THE OMBUDSMAN TOWARDS THE POLICE IN THE REPUBLIC OF NORTH MACEDONIA (2012-2022)

No matter how much his position is understood in an affirmative and fruitful connotation, he cannot be positioned as some kind of imaginary super-judge or super-lawyer, because he is not, nor can he be. However, his active involvement in solving legal situations and legal dilemmas using his authority, professionalism and consistency, can raise him to the position of leader in the legal system when it comes to reforms and correct interpretation and action.

Its task as a corrective and non-repressive body can be subject to all kinds of interpretations, observations and comments, however, the source of more serious observations and conclusions regarding its actions is undeniably found in its annual reports. The annual obligation, expressed through a written report and an oral defence before the deputies in the Parliament, is actually a rounded and systematized plea given by the Ombudsman as an obligation both to the citizens and to his "principals".

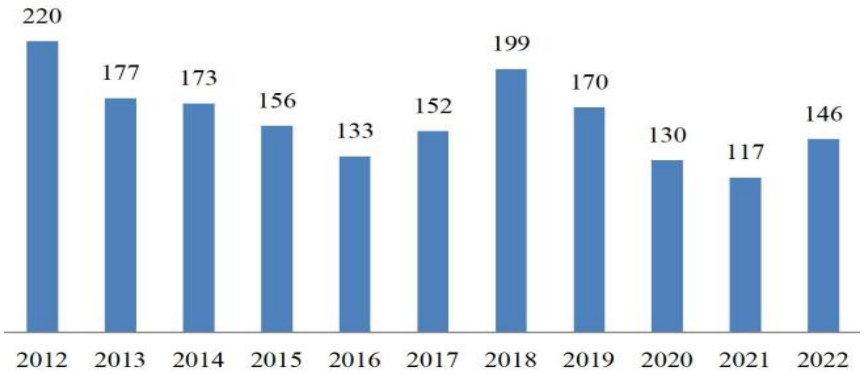
[95] A Latin phrase that literally means "friend of the court". It is a professional person or organization that assists the court by providing information or advice on legal or other related issues.

In this paper, we will move on to the analysis of the data published in the annual reports of the Ombudsman[96], which in the most complete and most adequate way that can give an account of his (lack of) promptness. Of course, the statistical data expressed in the reports themselves are not able to provide answers related to the subjective side of the data[97].
The motivations, awareness, sociological and psychological background and meaning behind these figures and, in general, behind the work of the Ombudsman (starting from the process for submitting a complaint, until the final decision and after it) will be evaluated and concluded according to qualitative methods and techniques, which are not presented here, appreciating the space limitation, but also due to methodological precision. These values require a qualitative approach, so they are subject to additional analyses.

The subject of the presented research is the action of the Ombudsman towards police powers in the period from 2012 to 2022. The Ombudsman is an insufficiently investigative body, which is sometimes misunderstood in the legal system and legal traffic (note from conversations conducted with Ombudsman employees). The main method that is in dominant use in this research is the statistical method, followed by the method of content analysis where there are descriptive and textual data, which are not amenable to processing through mathematical and statistical operations.

The Ombudsman, in his work so far, published his first report in 1997, while the last one dates from 2022 (considered in 2023). From the collected data for the period of 10 years, it can be noted that the largest number of complaints received was recorded in 2015, when their number was 4403 cases, while the year ended with 5336 complaints in work.
The analysis shows that in the relevant period, 2020 is the year in which the Ombudsman received the fewest complaints, i.e. 2448. From the display (chart no.1) it can be determined that the largest number of complaints characterized as complaints related to or from police powers were received in 2012, whose number is 220 complaints. Furthermore, it is noticeable that in 2021 the Ombudsman received the lowest number of complaints, i.e. a total of 117 complaints.

Chart no. 1 / Number of complaints related to police powers



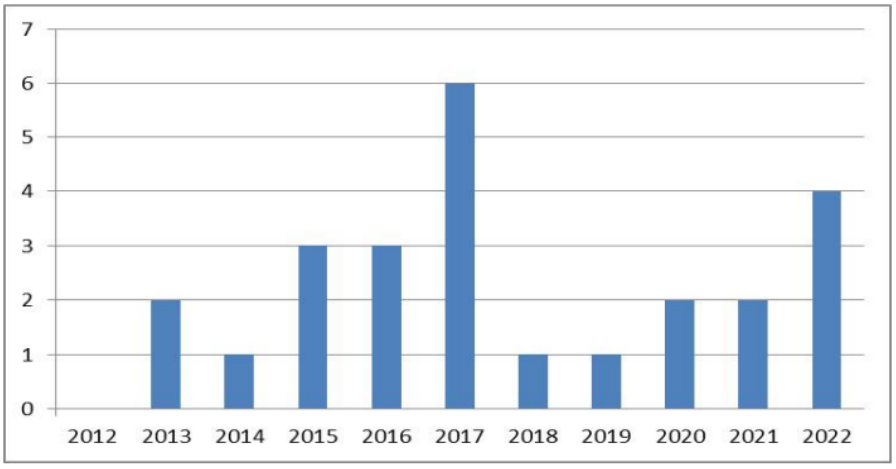
[96] The reports, in accordance with positive practices, are available on the website of the Ombudsman, where, in addition to the annual and adopted reports, monthly reports are also available. In this research, the subject is directed exclusively to the annual, accepted and adopted reports of the relevant period. This means that 10 reports have been processed, in which the time unit is actually the calendar year.
[97] Therefore, the interpretation and conclusion of the collected, systematized and analyzed data refers to the objective side of his work.

Also, an important issue is the share or ratio that exists between the matter related to police powers and the complaints in other areas. But since it is about a period of 10 years, below will be shown the share in relation to the whole and not in relation to other categories.
From the attachment (chart no. 2), it can be seen that the largest share was observed in 2018, a total of 5.75% of received complaints in the area of police powers in relation to all received complaints. Conversely, the lowest share percentage was recorded in 2016, when we recorded 3.52%.

Chart no. 2 / Share of complaints about police powers over the total number of complaints received

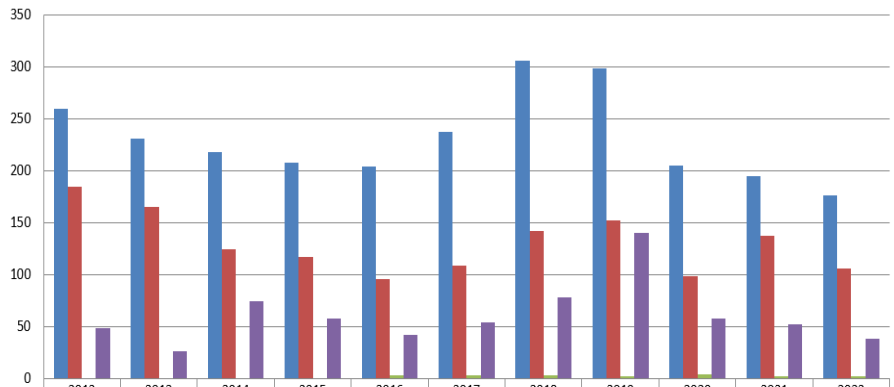
Conversely, the biggest increase compared to the previous year was observed in 2018, when 199 complaints were received, in contrast to the previous year when 152 complaints were received (in the area of police powers).
So, from the available data from 2012 onwards (chart no. 3), it is noteworthy that we have the largest number of cases established on our own initiative in 2017, while not a single such case was recorded in the first year (2012). This reporting cycle ends with the establishment of four cases in 2022.

Chart no. 3 / Formation of cases on one's own initiative



Of course, it is worth noting that in the situation of a pandemic with Covid-19, which broke out at the end of 2020, the reduction of citizens' complaints against police officers was significantly influenced – this should certainly not be understood in an absolute sense, however the focus was on personal/public health.
The following graph (chart no. 4) aims to show the ratio of several parameters, through the analysis of which it is easier to draw deeper conclusions regarding the Ombudsman's conduct.
So, at the beginning, the overall actions on complaints related to police powers are marked in blue, while the rest refer to the decision-making on complaints. Decisions to stop, i.e. not to initiate further proceedings, in relation to police actions are marked with red, the legal advice is marked with green, while the found injuries are marked with purple (as a sublimation of four categories: 1) given opinions, suggestions and recommendations, 2) acted upon the intervention of, 3) taken all legal actions by the Ombudsman and 4) not acted upon).
Furthermore, it can be noted that the lowest number of complaints received in work is in 2022, as the last reporting year. We are talking about 176 pending complaints related to police powers, out of which 106 were closed with a decision to stop or not initiate. It is noted that two legal advice were given and the Ombudsman found 38 violations in the area of police actions.

Chart no. 4 / Total complaints at work, decisions to stop, legal advice and ascertained violations



	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total complaints in work	260	231	218	208	204	237	306	299	205	195	176
With a decision to stop or not start	185	165	124	117	96	109	142	152	98	137	106
Legal advice				0	3	3	3	2	4	2	2
Injuries found	48	26	74	58	42	54	78	140	58	52	38

Until 2015, the Ombudsman's reports did not indicate exactly how much legal advice was given. Their exact number can be determined during a more detailed analysis of the work of the Ombudsman, which would include a field examination among the employees.
Furthermore, it can be noted that the lowest number of petitions received was in 2022, as the last reporting year. It is a question of 176 complaints in work (related to police powers), of which 106 have been closed with a decision to stop or not initiate. It is noted that two legal advice were given, and the Ombudsman ascertained 38 violations in the area of police actions.

From what is shown, it can be concluded that the average number of complaints taken into action is 230, while the average number of stops or non-initiation of proceedings is 130. The average number of advice given is 1.7. The average number of determined violations/injuries is 60.7. This means that almost every second complaint ends up being stopped or not initiated. Hence, it can also be concluded that about 1/4 of all complaints that have been taken into action have been concluded with established violations.
Of course, when it comes to the part related to the Covid-19 period, this does not have to be understood in its absolute sense, but - the social situation dictated that the issues of personal and public health should receive primacy. In this direction, it is worth adding that during the period in question, the contacts of citizens with police officers were reduced almost to a minimum. Especially here, the question of how the police acted during an emergency situation and an extraordinary crisis arises.

CONCLUSION

From the very first introduction of the Ombudsman in 1991, until today, it can no longer be a question of a "new" institution, and even if it is unknown and "unpopular" in terms of legal prestige and scientific interest, it is an institution that has a serious past behind itself. It is as old as the Constitution of the country.
The Ombudsman, as an organ of the republic that protects the rights of citizens in its developmental stage, has established itself as an additional control and preventive mechanism, without repressive and executive powers.
The Ombudsman is a recognized and profiled protector of citizens, which is confirmed by the number of received complaints on an annual level as well as the trends related to it (an increase in the received complaints has been observed again in recent years).
The strength of the Ombudsman is reflected in his constructive criticisms, proposals and requests for respect for constitutionality and legality. He, as a "megaphone", has the task of detecting legal problems and inappropriate actions of the administration, and with the help of professional and legal interventions, to try to restore justice and equity in the everyday system of legal relations. However, it is wrong to idealize this function and to give it some "superlegal" characteristics.
The legal amendments from 2018, which gave the Ombudsman de facto Police Ombudsman powers, partially did not affect the increase in complaints against the police. On the contrary, a slight decrease in complaints against the police was observed.
The Ombudsman records a low number of cases that he initiates on his own initiative. It is necessary to increase the average number of only 2 self-initiated procedures per year.
Despite the repeated trend of increasing complaints to the Ombudsman, we note a trend of decreasing complaints regarding police powers.
The quantitative reduction of complaints against the police to a certain extent can be considered as a result of the police reforms and the processes of democratization, publicity, transparency and training.
The covid-19 pandemic has a partial impact on the number of complaints to the police, in the direction of their reduction due to the omission of contacts.
Almost one half of the complaints related to the police officers ends with a decision to stop or not initiate a procedure, which opens up space for additional legal education among citizens and the legal profession about writing complaints for the Ombudsman and, in general for understanding the powers of the Ombudsman.

On average, the petitions for police power amount to around 5%, which means that it is not an extremely high percentage, but it is necessary to influence fair, legal and appropriate behaviour through active education and campaign. In this direction, it can be suggested that the police, through their training and education, set an "imaginary" benchmark of an initial 4%, so that in the long term, they can reduce complaints to an average of 3%, or even less.

REFERENCES

Publications and articles:

- Avramović, N., & Marković, M. (2011). Harmonizacija prava policije Republike Srbije sa evropskim standardima u oblasti zaštite ljudskih prava. GODIŠNJAK FAKULTETA PRAVNIH NAUKA, 1(1), 79-88.
- Carl, S. (2018). The history and evolution of the ombudsman model. In Research Handbook on the Ombudsman (pp. 17-33). Edward Elgar Publishing.
- Damir, A. (1999). Pojam i vrste ombudsmana. Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave, 1(1), 67-94
- Denkova, J., Dzamtoska-Zdravkovska, S., & Denkova, B. (2018). Вонсудска контрола за работата на јавната администрација-Народен правобранител.
- Džinić, A. (2021). Rousseauov" Društveni ugovor" (Doctoral dissertation, Josip Juraj Strossmayer University of Osijek. Faculty of Humanities and Social Sciences. Department of Philosophy).
- Gellhorn, W. (1966). Ombudsmen and others: Citizens' protectors in nine countries. Harvard University Press.
- Glass, A. S. (1934). Historical Aspects of Habeas Corpus.. John's Law Review, 9, 55.
- Kralj, Ž. (2014). Unutarnja kontrola i nadzor policije. Policija i sigurnost, 23(1/2014), 73-81.
- Milosavljević, B. (2004). Ljudska prava i policija: standardi ljudskih prava za policiju: priručnik. Centar za antiratnu akciju.
- Modly, D. (2007). Što policiju očekuje sutra?. Policija i sigurnost, 16(3-4), 257-271.
- Просароска, Ж. (2015). Можности за воспоставување независен механизам за контрола врз работата на полицијата во Република Македонија во функција на јакнење на јавната доверба (Doctoral dissertation, Филозофски факултет, Скопје).
- Ристовска, М., Спироска, Е., Вељановска, С., Тунтевски, Н., & Масалковски, И. (2023). Функционална анализа на Народниот правобранител во Република Северна Македонија. IRIS.
- Цане, М. Т., & Дујовски, Н. (2018). Полицијата и јавноста (Анализа на истражувачки резултати 2009-2017 година).

Links:

- https://ombudsman.mk/
- https://www.sobranie.mk/ustav-na-rm.nspx
- https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Interni%20akti/Zakon%20na%20NP/Preisten%20tekst%20na%20Zakon%20za%20NP-29.03.2018.pdf

UDK: 340.131:351.74(100)
DOI: 10.20544/ICP.9.2.24.P07

THE GOOD FAITH EXCEPTION TO EXCLUSIONARY RULE

Tanja Kesić, PhD, Full Professor, University of Criminal Investigation and Police Studies, Belgrade, Serbia[98]
Aleksandar Bošković, PhD, Full Professor, University of Criminal Investigation and Police Studies, Belgrade, Serbia
Jelena Joksimović, PhD Student, Ministry of Interior of the Republic of Serbia, Serbia

Abstract:

The good faith exception to exclusionary rule directs courts to admit unlawfully collected evidence if the police can show they relied in good faith on existing authority (a statute, warrant, or other authority). The US Supreme Court has justified this doctrine on the grounds that excluding evidence is only worthwhile if it deters misconduct by police officers. When officers rely in good faith on existing authority there is no misconduct to deter, and exclusion is unjustified. In this paper, we are going to challenge this account of the good faith exception. In order to do so, we will theoretically and empirically analyse what good faith exception means. Empirical analysis implies comprehensive re-examination of the decisions of the US Supreme Court, and the decisions of the Supreme Court in the Republic of Serbia. The methodology to be used includes the normative method, the comparative method and a case study. Through this research, we want to answer the question whether the application of this exception to exclusionary rule is justified, or its application through the back door introduces illegal evidence into criminal proceedings. And if it is unjustified, what the reasons for its acceptance are, bearing in mind that this violates one of the most important rights of the defendant, i.e. the right to a fair trial. Since the doctrine of the fruits of the poisonous tree is indirectly expressed in Serbia's Criminal Procedure Code, we want to determine whether the good faith exception applies, to what extent it is applied, and how its application is justified by the court.

Keywords: good faith exception, evidence, justice.

1. INTRODUCTION

Exclusionary rules, as the crown of the rule of law in the United States of America, appeared at the beginning of the 20th century, when the Supreme Court set itself up as a protector of accused persons from the illegal actions of police officers, at the same time showing police officers the guidelines for the legal collection of evidence, and setting the limits that they must not exceed in the process. The rules on the exclusion of evidence are "a procedural institution that prevents the use of evidence gathered illegally or unconstitutionally, i.e. in violation of basic human rights, and as such is *the conditio sine qua non* of a fair procedure, in which the violation of evidentiary prohibitions must be sanctioned" (Pisarić, 2010:374). This represents the constitutional principle stating that evidence, which would otherwise be allowed in a criminal trial, cannot be used if it was obtained due to unlawful actions by the police.

[98] Corresponding author: tanja.kesic@kpu.edu.rs

The essence of these rules is the uncompromising exclusion of evidence that was obtained through illegal means, and their purpose, from the criminal proceedings, in addition to the protection of the Constitution of the United States of America, its amendments and the rights of accused persons, primarily includes the prevention of unconstitutional actions of police officers, the correction of their illegal work, and a form of disciplining police officers, which confirms the rule that not everything that is not expressly forbidden is allowed. Essentially, it is a judicial creation "designed to avoid the evil of judicial complicity in official lawlessness" (Shenfield, 1972:872).

Exclusionary rules were first published by case law in the case of *Weeks v. United States* in 1914 when the Supreme Court stated that the Fourth Amendment, which protects the right to privacy and provides protection against unreasonable searches and seizures, would be invalidated if items seized as a result of warrantless searches were accepted as evidence (Weeks v. United States, 1914). An equal protection enjoyed by the Fourth Amendment was to respect the privilege against self-incrimination and the right to due process. This affirmed the authority of the Constitution, its amendments and other legal regulations, and the ideal of the rule of law and the foundation of fairness became even more deeply rooted when, alongside the originally illegal evidence, the evidence derived from it was also recognised as illegal (the *fruit of the poisonous tree* doctrine). It was also said that the purpose of exclusionary rules is "to deter, to compel respect for the constitutional guarantee in the only effectively available way by removing the incentive to disregard it" (Elkins v. United States, 1960).

However, the utopia and expansion initially experienced by the exclusionary rules, in the years that followed, were gradually restrained by precedent-setters, who increasingly expressed the opinion that the benefits of excluding evidence should outweigh the costs incurred by its loss and that it should not serve as "remedy" for the violation of the Constitution. Fear gradually grew due to the loss of reliable evidence and the potential acquittal of the guilty. If the purpose of exclusionary rules is to discourage the police from engaging in illegality, "the question of whether illegally seized evidence should be excluded depends on whether exclusion will sufficiently advance the rule's deterrent purpose" (Cammack, 2010:640). Weighing between costs and benefits, jurisprudence confirmed that there is no rule without exceptions, so the influx of illegal evidence contributed to numerous convictions and long prison sentences, justifying later that the exclusionary rule's "costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging (its) application" (Parole v. Scott, 1998). "No vehicles in the park might forbid ambulances from entering, but a separate rule of law may nevertheless provide an exception for government vehicles or responses to an emergency" (Baude, 2018:50).

In parallel with the rule on the exclusion of evidence, exceptions were created that the courts were happy to resort to so that the fight against illegality would not appear as primary to the fight against crime. Exceptions gradually showed a tendency to spread and to be used more frequently, which caused numerous controversies due to the devaluation of the defendant's right to a fair trial. Motivated by the half-century phenomenon of the rise and fall of exclusionary rules in the American legal system, their glorification, and then their challenge, we will limit the subject of our research to one opponent of these rules – the *good faith exception*, which is challenging for research because, although in our opinion it is intriguing, abstract, undefined and unprovable, yet it has made its immodest contribution to numerous illegalities and contributed to a multitude of convictions.

In addition to the introductory part, in which the genesis and the nature of exclusionary rules are briefly explained, in the following text, the fruit of the poisonous tree doctrine with exceptions is presented and court decisions are analysed in which the fruits of illegality, which are justified through the good faith exception, are primarily marked as disputed. The positions of American judges were analysed, along with their critical review of certain exceptions to this doctrine and the judicial practice in the Republic of Serbia, to find an answer to the question of justification of the application of the exception of good faith.

2. THE FRUIT OF THE POISONOUS TREE DOCTRINE AND THE GOOD FAITH EXCEPTION

The definition that evidence is "something which shows that something else exists or is true" (The Britannica Dictionary, 2024), is useful in everyday life but is unusable in the legal sense. For authors in the Republic of Serbia, the most acceptable definition of evidence is the one according to which evidence is defined as "the basis from which a conclusion is drawn about the truth or falsity of the facts established in the proceedings" (Bošković & Kesić, 2015:112, as cited in Vasiljević, 1981), while for the United States, we single out the definition accepted in the codes of several states: "Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact" (Burr & Horwitz Jones, 1913:17, as cited in the California Code of Civil Procedure, 1823).

Proving is a complex and legally prescribed activity of criminal procedure subjects and is carried out to determine the facts in the procedure on which the application of the law is directly based. The objective of proving is not merely the collection of evidentiary grounds to end the procedure by rendering a verdict. It is important to satisfy procedural, material and moral criteria when gathering evidence and to forget the maxim that "the end justifies the means". Feješ specified that the information content of the evidence must be credible and that the evidence must be created within the legally prescribed framework. By not complying with the second condition, the evidence is declared illegal, and the mechanisms of procedural sanctions are activated (Feješ, 2015:527). One of those sanctions is the absolute exclusion of evidence from the proceedings, which is (in principle) characteristic of the Anglo-Saxon legal ground. In the countries of the Continental European legal system, to which the Republic of Serbia belongs, the principle of "weighing", or the relative exclusion of evidence, is characteristic, where, by the principle of the judge's free opinion, illegal evidence can but does not necessarily have to be excluded from the proceedings, depending on their importance and by the once key principle of truth. Thus, illegal evidence in the Criminal Procedure Code of the Republic of Serbia has significant support and credibility, because there is no violation of the provisions of the criminal procedure when "considering other evidence, the same judgment would have been passed even without that evidence" (Criminal Procedure Code, 2011, Art. 438) – a segment of the Code that will perhaps be (mis)used too often.

The story of illegality took an upward trajectory on American soil when, just a few years after the ground-breaking *Weeks*, the case of *Silverthorne Lumber Co. v. United States* opened new dilemmas regarding admissibility of evidence. Can a copy of illegally seized documents, which were duly returned to the holder after being copied, be accepted as evidence? Acting Judge Holmes advocated the position that justifying such behaviour would nullify the institution of exclusionary rules and would reduce the Fourth Amendment to a "dead letter on paper" (Silverthorne Lumber Co. v. United States, 1920).

Here, the position crystallized that, in addition to the originally illegal evidence, the evidence that arose from it, the so-called "secondary" or derivative evidence, must also be sanctioned. Justice Frankfurter, in the case of *Nardone v. United States*, a few years later gave the evidence obtained in this way a specific name – the *fruit of the poisonous tree* doctrine, and the American Supreme Court formulated this doctrine as follows: "If the tree is poisonous, its fruit will be poisonous, and the person who eats the fruit will also be poisoned" (Feješ, 2015:528).

The Supreme Court took the position that information obtained through unauthorized wiretapping cannot be used as evidence, and not only that but any evidence derived from it must be excluded (Nardone v. United States, 1939). Nevertheless, the metaphorical question of "whether the cost in lost convictions and diminished public confidence in law enforcement are worth the benefit in doors not broken down" (Crocker, 1993:311) was being asked more and more often in theory. Exclusionary rules caused numerous criticisms. First of all, their use was questioned, considering that they are not a constitutional category, but a creation of the courts. It has been objected that these rules exclude reliable evidence, thereby leaving the guilty unconvicted, and they do not achieve their primary purpose of disciplining the police. Therefore, it was not a surprise that, along with the exclusion rule, its exceptions arose. The independent source theory, the purging the taint theory, the inevitable discovery theory, and the silver platter theory are just some of the exceptions that aim to make up for any potential shortcomings of the exclusionary rules. However, the good faith exception tried to eliminate the conditions for possibly the most significant objection to the rules on the exclusion of evidence, the tendency to treat and sanction intentional mistakes by police officers in the same way as unintentional, accidental mistakes, as a result of which the rule on the exclusion of evidence was called discriminatory (Ball, 1978). Although it seems logical, the concept of good faith has often been inexplicable. However, we can use a definition from the Webster's Third New International Dictionary which defines "good faith" as "a state of mind indicating honesty and lawfulness of purpose" (Esseks, 1990:653).

Addressing this concept, Justice Friendly questioned why a court should exclude evidence when a police officer makes a mistake. In laying the groundwork for the "good faith" exception, he wrote that the exclusionary rule's salutary purpose of curbing police misconduct may be sufficiently accomplished by a practice that prohibits the use of evidence obtained only by flagrant, intentional violation of rights. He opined that any judge would rather bear the burden of impunity for a police officer who negligently and minorly violated the law than allow a dangerous criminal to remain free because of his petty and inadvertent mistake (Friendly, 1965). An inadvertent mistake by police officers, made with the best intention to gather evidence against the defendant to conduct criminal proceedings, must not lead to conviction, and the exception of good faith implies that "such an exception would provide that when an officer acts in the good faith belief that his conduct is constitutional and where he has a reasonable basis for that belief, the exclusionary rule will not operate" (Ball, 1978:635). The arguments that justified the good faith exception, in theory, were identical to those that supported the negation of the exclusionary rules. Justice White emphasized that, when law enforcement officers make a mistake in a good faith and based on reasonable grounds, and the evidence they gather is later excluded, it may not serve as a deterrent, adding that, in that way, the police officers would only have less motivation to carry out their duties ("Rethinking the Good Faith Exception to the Exclusionary Rule", 1982). "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in wilful, or at the very least,

negligent conduct which has deprived the defendant of some right... Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force" (Esseks, 1990:633, as cited in Michigan v. Tucker, 1974).

However, in practice, concern grew due to the vagueness of the terms "good faith" and "reasonable grounds", and the opinion was expressed that the courts would spend considerable resources checking whether the police officers acted in good faith and based on reasonable grounds, which would result in an inconsequential violation of the Constitution and its amendments and making exclusionary rules meaningless. There was a fear that the good faith exception would not only conflict with the exclusionary rules but could lead to the complete disappearance of this rule. On the other hand, the mechanism of its proof is demanding. To invoke the good faith exception, it must be established by the prosecution that the evidence-seizing officer's actions were taken in both subjective and objective good faith. The officer must prove that he believed he was acting constitutionally (subjective good faith), and it must be demonstrated that the officer's belief was reasonable (objective good faith). Nevertheless, the courts focused more on the objective component of good faith, compared to the subjective component, thereby omitting the investigation of the police officers' intentions themselves. Complaints were made that the actions of police officers in good faith were unprovable, as the only proof of this could be their statement. Ball claims that "Such testimony, whether truthful or perjured, is almost impossible to refute" (Ball, 1978:655). Although it was not entirely clear how to prove the intention of the police officers, the good faith exception was increasingly insisted upon and there was no visible limit where it ceases to be valid. Perhaps its difficult provability contributed to its too frequent use. Justice Breyer rightly concluded that the logical endpoint of the Court's approach is an exclusionary rule that operates "against only those searches and seizures that are egregiously unreasonable" (Review, 2013:777). It was also correctly concluded that "a rule that protects all but the incompetent or those who knowingly violate the law", the good faith exception has metastasized into a protection for nearly any investigative activity with a plausible connection to an existing precedent or statute" (Tokson & Gentithes, 2023:2).

Numerous circumstances supported the illegal behaviour of police officers, which evolved from day to day. The technological revolution and legislative innovations in information technology will often offer cover for reasonable reliance on outdated laws. Criticism is also justified that it is not enough for the courts to just state that the defendant's rights have been violated, if they do nothing about it, because there is no legal remedy that can repair the damage caused. This is supported by the controversial concept of the "defence of good faith", better known as the qualified immunity doctrine, which protects all civil servants (and police officers) exercising discretionary power under certain conditions when they violate legal or constitutional provisions. "Qualified immunity balances two important interests: the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably" (Harris, 2021:511, as cited in Pearson v. Callahan, 2009). "Government officials are entitled to qualified immunity as long as their actions do not violate 'clearly established statutory or constitutional rights' of which a reasonable person would have known" (Whitney, 2023:1). Similar to the definition and justification of the good faith exception, it seems that the conditions for the application of qualified immunity are set even more abstractly. "Whether one 'knew or reasonably should have known' that the action was unconstitutional or whether a principle was 'clearly established' are questions that invite a broad range of answers" (Rudovsky,

1989:41). The principle of weighing between benefit and harm led, in practice, to these two doctrines being said to be synonymous, but the qualified immunity doctrine was preferred because, unlike the good faith doctrine, it covered all reasonable mistakes of every description.

Rudovsky claimed that even judges who saw the justification of lawsuits against police officers due to the violation of the defendant's rights skilfully justified the establishment of immunity for police officers, respecting their position that lawsuits against them would affect the innocent as well as the guilty, and even the entire public (Rudovsky, 1989:41). Judge Powell expressed his fear that concern about facing lawsuits will "diminish the enthusiasm of all but the most determined, or the most reckless (public officials), in carrying out their duties without hesitation" (Harlow v. Fitzgerald, 1982). Also, the Court has opined that "judicial inquiry into subjective motivation... may entail broad-ranging discovery and the deposition of numerous persons", which "can be peculiarly disruptive of effective government" (Pozen, 2016:911). It is clear that the victims still lack a mechanism for compensation for damages and satisfaction when their rights are violated, because the courts become complicit by not correcting the violation of the law, and the police officers receive deadly weapons to search for the truth through lies, finding a way out in the fact that the doctrine does not protect only them. In the years that followed, the courts dealt with the issue of illegality less and less and automatically affirmed good faith, where it was questionable, and immunities were routinely recognized. Correctly, Andrew Taslitz argued that the good faith exception "places the judicial imprimatur on a violation of constitutional rights" (Tokson & Gentithes, 2023:9).

Objection to the "exclusion" of the exclusionary rules and its compensation, the good faith exception, is the loss of the basic function of the courts – judicial control over the executive power, and without that corrective mechanism, the vital principles of separation of powers lose their importance. Considering all the objections that are made, we were not wrong when we characterized the good faith exception as the most controversial exception. In practice, there is agreement that the too frequent and too wide use of this exception has prevailed, but it remains unclear who should make the "first cut", whether it is the same judge who established it, or whether it is a justified expectation that his mistake should now be corrected by the legislator, while the consequences remain unremedied.

3. EXCEPTION OF GOOD FAITH IN COURT PRACTICE

In this section, we will present and analyse cases that were heard by the courts in the United States of America and we will try to get to the motives that guided the acting judges, to how they justified the good faith exception and we will gain an insight into whether they acted in good faith or bad faith when they allowed illegalities to creep into the American legal system through the back door. Drawing a parallel with the judicial practice in the Republic of Serbia, through the analysis of numerous decisions of the Supreme Court, we noticed that there are no matches because the courts in the Republic of Serbia did not refer directly or indirectly to this exception. This was largely contributed to by the practice of relative separation of evidence and the almost unavoidable argument that "considering other evidence and without the disputed evidence, the same verdict would have been reached". It seems that, unlike his Serbian colleague, the American judge carries a heavy burden, especially because he can see that each of his decisions causes a chain reaction and that in the quadrangle-defendant-prosecutor-judiciary-public, there will

always be a party to whom the precedent will not suit. It is up to him to weigh who it will be.

The very beginnings of the establishment and application of the doctrine did not foresee its turbulent development. The American Supreme Court took the position that "the marginal or non-existent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion" (Tokson & Gentithes, 2023:5, as cited in United States v. Leon, 1984), when they first officially recognized this exception. The Leon Court acknowledged but refused to discard the evidence, highlighting that exclusion is warranted only when it effectively serves its "remedial objectives", primarily its deterrent effect on curbing police misconduct. These objectives must outweigh the "significant social costs" of exclusion, which disrupts the jury's fact-finding role and could potentially result in the release of some guilty individuals (United States v. Leon, 1984). Through the reasoning of this ruling, the Court concluded that the benefit of deterring the police from illegality would have to outweigh the costs that would arise from the exclusion of evidence. In this case, there could be no question of illegality, because the police reasonably relied on the order issued to them by the Court, and punishing the policemen for the mistake of the judge would lead to a paradoxical situation and would in no way achieve a deterrent effect. The court emphasized that reliance on a warrant must be reasonable and that any average police officer will be able to recognize a warrant that is flawed and added that these rules apply to all police officers in the process, whether they are gathering information, initiating the warrant, or just executing a search (United States v. Leon, 1984).

That same year, the case of *Massachusetts v. Sheppard* denied *Leon*. The form that Detective O'Malley initiated the search with the judge listed "controlled substance" as the subject of the search, even though they were not wanted. Although he declared that he would correct the mistake, the acting judge did not do it, so Osborne Sheppard was convicted of murder after finding the incriminating items. The court justified the non-exclusion of the evidence by saying that the detective had acted correctly because he should not have questioned the word he had been given by the judge – that he would correct the order and therefore not carry out the search. The court added that the judges' decisions, even if they were wrong, are valid and binding for police officers until they are annulled in some legally recognized procedure (Massachusetts v. Sheppard, 1984). As a justification, it was also stated that Detective O'Malley acted in good faith because he was involved in the entire process from the very beginning and was familiar with the items that should be searched, adding that, in the case of acting in good faith, these rules lose your strength. The Supreme Court of Cassation in the Republic of Serbia referred to the violation of a relative character and, by the principle of free assessment of evidence, justified the actions of the police officers who, by the order to search the apartment, crossed out with a ballpoint pen and changed the name of the authority that will search (VKS Kzz 488/ 2020).

The US Supreme Court remained consistent in *Illinois v. Krull* when police officers arrested three men under a law that has expired. The evidence remained in the files, with the explanation that officers conducting such looks are essentially satisfying their duty to implement the statute as composed. In the event that a statute is not clearly unlawful, officers cannot be anticipated to address the judgment of the assembly that passed the law (Illinois v. Krull, 1987). Unlike his American colleague, the judge of the Supreme Court of Cassation of the Republic of Serbia used the right "not to present a defence" and referred to the decision of the lower court when he declared unfounded the

appeal due to the conviction as a result of the application of the Law on Road Traffic Safety, which has ceased to be valid (Verdict of VKS Kzz 668/2019).

In the *United States v. Giancarli*, which the US Supreme Court considered two years before Krull, the facts were atypical. Detective Ramsey obtained a search warrant verbally and without the necessary oath, which provided him with significant evidence. He took the oath "after the work done". In other words, "the affiant was not an affiant" (Essex, 1990:635). The court declared that Agent Ramsey "was unaware of the lack of swearing at the time of the warrant application, ... (h)is reliance upon the facial validity of the warrant was objectively reasonable" (Esseks, 1990:635). "Neither the judge nor the policeman was punished when the judge did not issue a search warrant, and the search was carried out and incriminating items were found. They represented valid evidence because the evidentiary action was the crime scene investigation, not the search of the apartment and other premises (VKS Kzz 1477/2018).

The American court has gradually introduced the practice of expanding the situations in which it will recognize good faith. Thus, in the *United States v. Luk*, it took a position according to which the evidence obtained in a search by a person who does not have the authority to do so will be recognized, which it repeated later in the case of *United States v. Freeman*. Esseks argues that the Court misapplied the good faith exception here because it is expected that every police officer knows his powers and capabilities, especially when it comes to violating the privacy of citizens (Esseks, 1990:635). However, an even further reach of the exclusionary rule's exception was expressed by the Court in *Arizona v. Evans*, where it was reiterated that their purpose cannot be achieved if the police officers who acted on it are punished for the failure of judicial officers who did not remove from their base an invalid warrant of arrest (Arizona v. Evans, 1995).

Mistakes resulting from the negligence of police officers who keep records were rewarded, so in the case of *Herring v. United States*, evidence stemming from an outstanding warrant secured the suspect a 27-month prison sentence (Herring v. United States, 2009). The court took the position that relying on one's own mistakes is allowed, "at least where those mistakes result from 'isolated negligence attenuated from the arrest', rather than systemic error or gross negligence" (Herring v. United States, 2009:137).

It was not only the evidence generated by the illegal arrest and search that was problematic. The most delicate case in the recent practice was represented by the *United States v. Davis*, which describes the illegal DNA profiling of a suspect by police officers and his murder conviction. The court balanced between the rights of the accused and the legitimate interest of the state to shed light on the crimes. In its analysis, the court balanced the benefits of deterring police misconduct against the costs of "letting guilty and possibly dangerous defendants go free" (Review, 2012b:640).

Through the above examples, the difficulty of weighing can be seen through the lack of criteria by which different situations will be evaluated. We will agree that exclusionary rules are too strong a sanction for all conduct and that it would be cruel to equate an illegal intrusion into someone's home with an administrative or spelling error in a search warrant. Justice Powell also noticed this, so in the case of *Brown v. Illinois*, he set up a scale of behaviour for police officers. Powell distinguished between two ends of a spectrum, with flagrantly abusive violations on one extreme and "technical" violations on the other. Flagrant violations encompassed actions such as pretext arrests or excessively invasive intrusions into personal privacy. On the other hand, technical violations involved arrests made in good faith based on a warrant that was later found to be invalid, or arrests carried out under a statute that was later ruled unconstitutional (Ball, 1978). If police

officers were to be punished for every omission by excluding evidence, there is a concern that, due to fear, they would fail to search, arrest or seek out criminals, which would result in the loss of time, evidence and the escape of perpetrators of serious crimes, with the risk that some of them would never be found or not be discovered. Judge Friendly said that "recognition of a penumbral zone where a mistake will not call for the drastic remedy of exclusion would relieve (courts) of exceedingly difficult decisions whether an officer overstepped the sometimes almost imperceptible line between a valid arrest or search and an invalid one" (Friendly, 1965:953). Similarly, Justice White claimed that excluding evidence would not serve as a deterrent, as officers fulfilling their obligations would behave similarly in comparable future situations. Therefore, the only outcome of suppression would be the omission of truth from the process of establishing facts (Stone v. Powell, 1976).

The evolution of the good faith exception began its journey from covering illegal search warrants, mistakes by judges and their officials, out-of-date police officers, through acting according to invalid laws and court precedents, to the taking of evidentiary actions by unauthorized persons. The principle of weighing and promoting the claim that the purpose of the exclusionary rules is fulfilled if the police officers are really "re-educated" is characteristic, and it could not be fulfilled in all the mentioned situations, because they were not aware, not only of their own mistakes but also of others, for which they should not answer at all.

4. CONCLUSION

By analysing the normative bases in the United States of America and the Republic of Serbia through the prism of illegal evidence, we observed a key difference between the two major legal systems. The judge would rather choose to refer to a legal provision and thereby legitimately remove responsibility from his decisions than to dare step forward and create a precedent by which he will oppose his own decisions and challenge the position he heartily advocated. Judges in the Republic of Serbia, who are supported by the legal text and who do not create law, do not need to refer to the good faith exception, nor fear that they will be bound by their own decisions. Unlike them, judges in the United States of America, by creating law, hold a "magic wand" in their hands with which they can greatly influence the change of the entire socio-political climate. As too much power brings too much responsibility, judges choose good old conformity, and they get legitimacy for the promotion of lawlessness from the public and the authorities, and even from the people themselves who are affected by their decisions, who have lived in silence for years.

It seems that the unlimited and unjustified appeal to acting in good faith has violated and threatened the ideal of the former rule of law and that the judges focused more on the concept of truth than on the concept of justice, because their inaction, which is supported by the vague wording of the good faith exception, paved the way for all future police abuses, based on the principle of "keep pushing until they tell you to stop, and then push somewhere else". Whether it is to be expected that the legislator will set a precedent this time, and refresh the Constitution with the provision's exclusionary rules and the fruit of the poisonous tree doctrine with clearly specified exceptions, or it is time for the court to recover the lost pendulum of justice, remains an open question to which we do not have an answer.

5. REFERENCES

Arizona v. Evans, 514 U.S. 1 (1995), https://supreme.justia.com/cases/federal/us/514/1/

Ball, E. F. (1978). Good faith and the Fourth Amendment: the "Reasonable" exception to the exclusionary rule. *Journal of Criminal Law & Criminology, 69*(4), 635. https://doi.org/10.2307/1142571

Baude, W. (2018). Is qualified immunity unlawful? *Social Science Research Network*. https://doi.org/10.2139/ssrn.2896508

Bošković, A., & Kesić, T. (2015). *Krivično procesno pravo*. Beograd: Kriminalističko policijska akademija.

Burr, W., & Horwitz Jones, L. (1913). *Commentaries on the Law of Evidence in Civil Cases*. San Francisco: Bancroft-Whitney.

Cammack, M. E. (2010). The Rise and Fall of the Constitutional Exclusionary Rule in the United States. *The American Journal of Comparative Law, 58*, 631-658.

Crocker, L. (1993). Can the Exclusionary Rule Be Saved? *Journal of Criminal Law & Criminology, 84*(2), 310. https://doi.org/10.2307/1143817

Elkins v. United States, 364 U.S. 206 (1960), https://supreme.justia.com/cases/federal/us/364/206/

Esseks, D. C. (1990). Errors in good faith: the Leon exception six years later. *Michigan Law Review, 89*(3), 625. https://doi.org/10.2307/1289386

Feješ, I. I. (2015). Sistem izuzetaka od primene "Teorije ploda otrovnog drveta." *Zbornik radova Pravnog fakulteta u Novom Sadu*, 521-541.

Friendly, H. J. (1965). The Bill of Rights as a code of criminal procedure. *California Law Review, 53*(4), 929. https://doi.org/10.2307/3478984

Harlow v. Fitzgerald, 457 U.S. 800 (1982), https://supreme.justia.com/cases/federal/us/457/800/

Harold Shenfield, M. (1972). Fruit of the poisonous tree doctrine. *California Law Review*, 870-881.

Harris, S. K. (2021). Have a little (good) faith: towards a better balance in the qualified immunity doctrine. *Temple Law Review, 93*, 511-531.

Herring v. United States, 555 U.S. 135 (2009), https://supreme.justia.com/cases/federal/us/555/135/

Illinois v. Krull, 480 U.S. 340 (1987), https://supreme.justia.com/cases/federal/us/480/340/

Massachusetts v. Sheppard, 468 U.S. 981 (1984), https://supreme.justia.com/cases/federal/us/468/981/

Nardone v. United States, 308 U.S. 338 (1939), https://supreme.justia.com/cases/federal/us/308/338/

Novak, W. K. (2020). Policing the Police: Qualified immunity and considerations for Congress [February 21, 2023]. *Library of Congress. Congressional Research Service*. https://crsreports.congress.gov/product/details?prodcode=LSB10492

Parole v. Scott, 524 U.S. 357 (1998), https://supreme.justia.com/cases/federal/us/524/357/

Pisarić, M. (2010). O nedozvoljenim dokazima u krivičnom postupku. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 363-384.

Pozen, D. E. (2016). Constitutional Bad Faith. *Harvard Law Review, 129*(4), 885-955. https://dialnet.unirioja.es/servlet/articulo?codigo=5672234

Presuda VKS Kzz 1477/2018, 31.01.2019. godine, https://www.vrh.sud.rs/sr-lat/kzz-14772018-nezakonit-dokaz

Presuda VKS Kzz 488/2020, 24.06.2020. godine, https://www.vrh.sud.rs/sr-lat/kzz-4882020-nezakonit-dokaz

Presuda VKS Kzz 668/2019, 26.06.2019. godine, https://www.vrh.sud.rs/sr-lat/kzz-6682019-povreda-kriv-zakona

Rethinking the good faith exception to the exclusionary rule. (1982). *University of Pennsylvania Law Review*, *130*(6), 1610. https://doi.org/10.2307/3311984

Harvard Law Review. (2012). *Harvard Law Review: Volume 126, Number 2 - December 2012*. Quid Pro Books.

Harvard Law Review. (2013). *Harvard Law Review: Volume 127, Number 2 - December 2013*. Quid Pro Books.

Rudovsky, D. (1989). The qualified immunity doctrine in the Supreme Court: judicial activism and the restriction of constitutional rights. *University of Pennsylvania Law Review*, *138*(1), 23. https://doi.org/10.2307/3312179

Silverthorne Lumber Co. v. U.S., 251 U.S. 385 (1920), https://casetext.com/analysis/silverthorne-lumber-co-v-us-case-brief

State v. Freeman, 450 N.W.2d 826 (1990), https://law.justia.com/cases/iowa/supreme-court/1990/88-1879-0.html

Stone v. Powell, 428 U.S. 465 (1976), https://supreme.justia.com/cases/federal/us/428/465/

The Britannica Dictionary. (2024, May 11). Retrieved from Encyclopædia Britannica, Inc.: https://www.britannica.com

Tokson, M., & Gentithes, M. (2023). The reality of the good faith exception. *Social Science Research Network*. https://doi.org/10.2139/ssrn.4414248

United States v. Leon, 468 U.S. 897 (1984), https://supreme.justia.com/cases/federal/us/468/897/

United States v. Luk, 859 F.2d 667 (1988), https://casetext.com/case/us-v-luk

Weeks v. United States, 232 U.S. 383 (1914), https://supreme.justia.com/cases/federal/us/232/383/

Zakonik o krivičnom postupku. (2011). *Službeni glasnik Republike Srbije*. https://www.paragraf.rs/propisi/

UDK: 616.89:343.1(497.7)
DOI: 10.20544/ICP.9.2.24.P08

FROM OBSESSION TO CRIME: LEGAL AND CRIMINALISTIC ASPECTS OF STALKING IN NORTH MACEDONIA

Boris Murgoski
Faculty of Security – Skopje
boris.murgoski@uklo.edu.mk
Angela Jankoska
Law Office Jankoska & Trajkovska Attorneys
ajankoska@jt-law.mk
Vladimir Murgoski
TAV Macedonia – International Airport Skopje
vmurgoski@yahoo.com

Abstract

Stalking, an insidious form of harassment often overlooked by both victims and society was finally acknowledged as a criminal offence in North Macedonia in 2023. This momentous step followed the country's commitment to the Istanbul Convention, which was signed in 2011 and ratified in 2018.

This paper embarks on a comprehensive exploration of the theoretical underpinnings of stalking, tracing its historical origins and examining comparative perspectives. With a focus on the legal elements delineated in the Criminal Code, the study provides a thorough legal analysis of stalking. Moreover, the paper elaborates into the criminalistic profile of the crime, employing inductive methods to profile perpetrators and unravel their behaviour, motives, and patterns.

In addition to theoretical discourse, the paper investigates the practical application of the law through an examination of court precedents and case law. It also anticipates future trends in the adjudication process, police investigations, and prosecutorial strategies, shedding light on the evolving landscape of combating stalking in North Macedonia. Through this interdisciplinary approach, the paper aims to contribute to academic discourse aimed at addressing and preventing the scourge of stalking in Macedonian society.

Keywords: *stalking; criminal code; criminalistics; criminal procedure*

1. INTRODUCTION

Stalking has emerged as a critical issue in criminal justice and victimology, underscoring its profound psychological and social impacts. Despite its pervasive nature, stalking often remains underreported and misunderstood due to the covert tactics employed by perpetrators and the lack of awareness among victims and law enforcement. This crime is distinct because stalkers are not typical offenders, and victims are rarely chosen randomly, highlighting the intentional and targeted nature of stalking.

In defining stalking, it is important to recognize the various interpretations in the literature. Most definitions describe stalking as a pattern of harassing or menacing behaviour linked to a threat. In this context, stalking is defined as a course of conduct directed at a specific

person that involves repeated visual or physical proximity, nonconsensual communication, verbal, written, or implied threats, or a combination thereof that would cause fear in a reasonable person. The United States Department of Justice defines the term as "a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress" (Tjaden P., Thoeness N., 1993, p. 3). The New South Wales' Domestic and Personal Violence Act 2007 defines stalking as "the following of a person about or the watching or frequenting of the vicinity of, or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity". (Domestic and Personal Violence Act 2007, art.8). Unlike other crimes that involve a single incident, stalking is characterized by a pattern of behaviour. It often consists of individual acts that may seem harmless or noncriminal on their own but, when viewed in the context of a stalking situation, constitute criminal acts.

All definitions of stalking, despite variations in wording, encompass the same core elements: a pattern of harassing behaviour, persistent unwanted contact, and actions that cause fear or distress in the victim. The consistent recognition of these elements across different legal frameworks underscores the importance of addressing stalking as a serious crime. However, criminalizing stalking is only the first step. In practice, victims often do not recognize they are being stalked or understand the seriousness of the actions against them. Even with the criminalization of stalking, law enforcement agencies may not always treat it as a serious offence, often dismissing it as a "relationship" problem and undermining the victim's experience.

Therefore, it is crucial to theoretically analyse the criminalization of stalking, the limited practical experience available, and the theoretical underpinnings of the crime to better recognize, understand, and combat it. The greatest danger of stalking is that anyone can become a victim.

2. JOURNEY TO CRIMINALIZATION IN NORTH MACEDONIA

Stalking was initially recognized as a punishable offence in common law jurisdictions before being incorporated into the legal systems of countries following the European continental law tradition. In North Macedonia, this transition involved adapting the legal definitions and criteria to fit the local context. The criminalization of stalking in North Macedonia is part of a broader legislative effort linked to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The country signed the convention in 2011 and ratified it in 2018, signalling its dedication to addressing various forms of gender-based violence. This commitment set the stage for subsequent legislative developments aimed at enhancing the legal framework for protecting victims of stalking.

In 2019, the preparation of a new Criminal Code began, reflecting North Macedonia's evolving societal needs and international obligations. This ongoing process aims to modernize the country's legal system, ensuring it is equipped to handle contemporary issues such as stalking effectively. The inclusion of anti-stalking provisions within this broader legislative overhaul demonstrates the country's proactive approach to aligning its laws with international standards.

Significant efforts were also made to amend existing legislation. The Law on Amendments to the Criminal Code was prepared and presented to the Assembly in July 2021. This law was designed to address specific gaps in the legal framework concerning stalking and other forms of harassment. After extensive deliberations and consultations

involving various stakeholders, including legal experts, policymakers, and advocacy groups, the amendments were adopted in 2023.

3. STALKING THROUGH THE LENSES OF THE MACEDONIAN CRIMINAL CODE

Stalking in North Macedonia is addressed under Article 144-a of the Criminal Code, encompassing repeated acts of unauthorized surveillance, pursuit, interference with personal life, or other forms of psychological abuse that induce feelings of insecurity, distress, or fear for safety. This includes persistent following, intrusive attempts to establish contact, misuse of personal data, and the use of media to intimidate or disturb. Central to this offence is the intent to instil fear or distress in the victim or their close associates. Perpetrators can be anyone, with aggravated offences specified when directed at individuals with whom the perpetrator has or had an intimate relationship, or against minors (Criminal Code, art.144-a, paragraph 1 and 2).

Penalties for stalking vary, ranging from fines to imprisonment for up to three years for basic offences and from six months to five years for aggravated cases. The subjective element of the offence requires intent, where the perpetrator knowingly engages in actions that intrude upon the private life of another against their will, causing distress. Legal knowledge of the offence classification is not required; awareness of the circumstances suffices.

The prosecution of stalking is initiated upon a proposal by the public prosecutor after a criminal charges report is submitted (Criminal Code, art.144-a, paragraph 3). This procedural detail underscores that victims cannot independently initiate criminal proceedings against the perpetrator. The public prosecutor's submission of a proposal to the court initiates the formal process required to address instances of stalking under Macedonian law.

4. COMPARATIVE ANALYSIS OF STALKING LAWS

4.1. Stalking in the United States

Stalking is universally criminalized across all 50 states, the District of Columbia, U.S. Territories, and under federal law. It is recognized as a serious and potentially violent crime that can escalate over time. Legal definitions and penalties vary significantly depending on the jurisdiction.

Under U.S. law, stalking is generally defined as a pattern of behaviour directed at a specific person that would cause a reasonable person to feel fear. The specifics of this definition can vary, but generally include behaviours such as repeated following, harassing, or threatening another person. For example, in California, stalking is defined under Penal Code, Section 646.9, which prohibits wilfully, maliciously, and repeatedly following or harassing another person and making a credible threat with the intent to place that person in reasonable fear for their safety or the safety of their immediate family (Penal Code, Section 646.9).

According to data from the Bureau of Justice Statistics, stalking behaviours in the United States include:

- **66%** involve unwanted calls and messages;
- **30%** include unwanted letters and emails;
- **35%** involve spreading offensive rumours;
- **31%** feature the stalker showing up at places frequented by the victim;

- **30%** include the stalker waiting for the victim;
- **12%** involve the stalker leaving unwanted gifts for the victim.

Statistically, stalkers are often individuals known to the victim:

- **30%** are current or former intimate partners;
- **45%** are other familiar individuals like friends, neighbours, or colleagues;
- **10%** are unknown to the victim;
- **15%** have an unidentified identity.

Significantly, nearly **70%** of stalking victims in the U.S. are female, emphasizing the gendered nature of the crime. Victims frequently experience repeated unwanted contact and fear for their safety, with **24%** experiencing property crimes and **21%** facing physical assault following stalking incidents.

Common stalking activities in the U.S. include:

- Repeated phone calls and hang-ups
- Following and appearing uninvited at various locations
- Sending unwanted communications
- Damaging property or monitoring via technology
- Making threats against victims or their loved ones

Victims often report feeling fearful, vulnerable, and uncertain about their safety, leading to significant emotional distress and lifestyle disruptions (Morgan Rachel E., Truman Jennifer L., Stalking Victimization, 2019, pp. 2-5).

4.2. **Stalking in Croatia**

Stalking in Croatia is regulated under Article 140 of the Criminal Code, termed as "Persistent Harassment". It involves persistent and prolonged efforts to follow or harass another person, attempt unwanted contact, or intimidate them to disturb their safety or peace of mind. The law provides for imprisonment up to one year, which escalates to three years for offences against children or close individuals. The elements of the crime in Croatia closely resemble those stipulated in the Macedonian Criminal Code, focusing on intent and qualifying forms of the offence against intimate partners or children (Criminal Code, art.140).

4.3. **Stalking in Germany**

Germany addresses stalking under Section 238 of its Criminal Code, defining it as persistently pursuing or attempting to establish contact with another person through telecommunications or other means. The offence includes threats of harm or actions that seriously disrupt the victim's daily life. Penalties range up to three years' imprisonment or a fine, escalating to five years if the victim faces life-threatening situations or serious harm. In cases resulting in death, the penalty can extend to fifteen years' imprisonment (Criminal Code, Section 238).

4.4. **Stalking in Serbia**

Serbia addresses stalking through Article 138a of its Criminal Code, defining it as persistent actions aimed at physically approaching or establishing contact with another person against their will. This includes unauthorized monitoring, use of personal data for harassment, and threats against the victim's life, body, or freedom. Penalties range up to three years of imprisonment, increasing to five years if the offence poses life-threatening risks or causes serious harm. In cases resulting in death, the penalty can be extended to fifteen years' imprisonment (Criminal Code, article 138a).

5. CRIMINALISTIC PROFILE OF A STALKER

"Stalkers are like naughty third graders. They don't care what kind of attention they get, as long as it's attention" (Wood R., Wood N., 2002, p. 200). Their behaviours encompass a wide spectrum, from ambushes and relentless phone calls to threats and property damage. Despite this diversity, all stalkers share a persistent pattern of unwanted behaviour that severely disrupts their victims' lives.

Unlike typical offenders, many stalkers have no prior criminal record and fixate exclusively on a specific individual. Surprisingly, stalkers come from diverse educational backgrounds, spanning from elementary education to doctoral degrees. Higher educational attainment correlates with a lower likelihood of violence and specific threats (Sherman W., 1994).

Certain demographics are more vulnerable to stalking. Single women and women who have recently terminated a relationship or marriage are particularly at risk, alongside homosexual men, due to unreciprocated attraction or bias. In contrast, married people and widowers are considered least vulnerable to stalking (Tharp M., 1992, p. 28).

Psychologically, stalkers often exhibit low self-esteem and self-consciousness, frequently holding menial jobs and living alone. They struggle to maintain relationships and often rely on alcohol (Burgess A., Baker T., Greening D., Hartman C., Burgess A., Douglas J., Halloran R., 1997, p. 389). Many stalkers also suffer from mental disorders, including mood disorders, schizophrenia, and various personality disorders like narcissism, paranoia, and borderline personality disorder (Meloy J., 1997, p. 180).

Stalkers can be categorized into different types based on their motivations and behaviours. The classification includes *erotomania* (a delusional belief that the victim loves them), *love obsession* (fixating on someone after initial contact), and *simple obsession* (inability to let go of a past relationship). Each type presents varying degrees of danger to their victims, with those categorized under simple obsession being more prone to causing harm (Meloy J., 1998, p.196).

In contrast to popular portrayals, stalkers are typically older and more intelligent than the average offender. They often know their victims personally; contradicting the misconception that stalking primarily occurs between strangers. Around 90% of stalkers are men, a demographic trend consistently observed in surveys and studies on stalking behaviours and patterns (Tjaden, 2000). They are commonly aged between 30-40, targeting victims who are typically aged between 20-30 (Tharp M., 1992, p. 28).

In conclusion, stalkers defy typical offender profiles, with their behaviours rooted in complex psychological and emotional motivations. Their actions disrupt the lives of their victims and necessitate nuanced approaches from both legal and psychological perspectives to mitigate harm and ensure safety.

6. CHALLENGES IN PRACTISE AND CASE LAW WITHIN MACEDONIAN COURTS

Although the criminalization of stalking is a significant step forward in the Macedonian criminal justice system and will undoubtedly raise awareness and understanding of this offence among the general public, it is still too early to boast that the system responsible for the efficient apprehension of perpetrators, their punishment, and reintegration is adequately prepared. From the commission of the offence to the punishment of the perpetrator, the path is very long, and victims often face numerous other challenges and obstacles within the system, as well as secondary victimization.

In practice, the problems begin as early as the reporting stage at the police station, where victims encounter tasteless reactions, jokes, and comments from police officers that diminish the significance of the offence, deny its existence, question how the victim contributed to it, or direct the victim to go home as there is nothing to report. Victims have even faced the ignorance of police officers regarding the existence of the criminal offence, often requiring multiple attempts to report at the police station and insistence before the police officers or the presence of a lawyer to convince them to write an official note. It is not considered that the victim needed time and courage and had likely been facing harassment for a long time before coming to the police station to report.

Furthermore, even after the initial report at the police station, no measures are taken to protect the victim. In practice, it happens that the victim is contacted again by the perpetrator because someone from the police station informed them, leading to further harassment of a different kind. Multiple reports against the same person are often necessary for the police to start taking the case seriously and to take actions that would lead to a criminal prosecution.

Partial indecisiveness of institutions and partial unawareness of citizens have led to a very modest judicial practice regarding this criminal offence. Of course, the fact that it has been in effect for only one year has its own contribution. At the time of writing this paper, only one verdict has been rendered regarding stalking as a criminal offence, while several proceedings are currently ongoing before the criminal courts in the country. Therefore, we will focus on the sole verdict rendered by the Basic Court in Tetovo.

Namely, a simple analysis of the verdict reiterates all the characteristics of stalking as a crime previously discussed in this paper, and somewhat reflects the stereotypical nature of the offence. The perpetrator was found guilty of committing the criminal offence under Article 144-a, Paragraph 2 of the Criminal Code, because over a period of two months, he repeatedly and unauthorizedly followed and attempted to establish communication with the victim with whom he had previously been in an intimate relationship for three months. After the termination of the romantic relationship, he followed her to her workplace, entered inside attempting to establish unwanted contact with her. When she changed her workplace, he continued to harass her by parking opposite her new workplace throughout her working hours. When she went home, he followed her with his car, shouting offensive words at her, causing her to feel insecure and afraid (Judgment К-198/24 adopted by Basic Court Tetovo on 28.02.2024).

The case from practice fully confirms the criminalistic profile of the perpetrator: he is unmarried and unemployed but has completed higher education. The defendant admitted his guilt and was sentenced to nine months of imprisonment, with a conditional sentence and protective supervision, meaning that the prison sentence will not be executed if the defendant does not commit a new criminal offence within two years.

The prescribed low penalties and their replacement with conditional sentences only call into question the effectiveness of this criminal offence. Although the prescribed penalties indicate a relatively light criminal offence, the experience and practice of Macedonian courts suggest that high penalties will not be imposed in practice. Nevertheless, the actions of this criminal offence have a serious impact on the lives of the victims. The lack of any effect from reporting and punishing can even have the opposite effect – the perpetrators may become fearless and unyielding in their actions, and the victims may continue to be victimized even after a final verdict in their favour, becoming discouraged and losing faith in a system in which trust is already low. Therefore, practice will need to find an effective way of dealing with this offence so that courts truly achieve the purpose of punishment, and not just administratively close the case.

7. CONCLUSION

The introduction of stalking as a crime in the Macedonian criminal code represents a significant and often challenging step forward. However, much work remains to ensure that these laws are not merely symbolic but actively contribute to punishment and prevention, fostering a safer and more informed society. Criminalizing stalking will undoubtedly raise awareness and strengthen advocacy for victims' rights. Yet, efforts are needed to raise awareness among institutions and streamline the law's implementation, overcoming unnecessary bureaucratic hurdles that may unfairly burden victims.

First and foremost, police stations, as the initial point of contact with victims, must demonstrate empathy and understanding from the first report, promptly assessing whether protective measures are necessary. Moreover, not every case should require multiple reports for action; historical context and provided evidence should sometimes suffice for swift responses from law enforcement and public prosecutors.

Secondly, the judiciary must be encouraged to make decisive judgments. Experience shows that Macedonian judges tend to hesitate when deciding on certain matters. Judges should ensure that justice, especially in relatively straightforward cases, is swift, and their decisions are objective and fair. As enforcers of justice, they should accurately balance sentencing not only to solve cases but also to protect victims and facilitate the rehabilitation and reintegration of offenders. The judiciary should be cautious when ordering conditional prison sentences, considering that such measures may not sufficiently punish or deter the perpetrator. Conditional sentences are often perceived as lenient by the public and can be very discouraging to victims. Although prison overcrowding is a valid concern, it is a societal problem that requires a comprehensive solution. Judges must recognize that monetary fines and conditional sentences do not always fulfil the aim of punishment and can sometimes have the opposite effect.

Thirdly, academia, criminalists, and psychologists should collaborate to better understand the profile of a stalker, despite their diverse nature. Currently, stalkers are often not regarded as serious threats to society. Understanding their behaviour can help address these cases more effectively, assist judges in making just decisions, and enable victims to take precautionary measures against potential perpetrators.

Looking ahead, we anticipate that fines and conditional prison sentences will become common for these offences, with time revealing their effectiveness. Future analysis will benefit from a richer judicial practice and diverse court rulings. Nonetheless, it is respectable that we have moved beyond "romanticizing" stalking and are now focused on

its appropriate criminalization. As the saying goes, "*There is a fine line between serendipity and stalking"*.

8. REFERENCES:

1. Burgess A., Baker T., Greening D., Hartman C., Burgess A., Douglas J., Halloran R., "Stalking Behaviors Within Domestic Violence" Journal of Family Violence 12, no.4, 1997;
2. Criminal Code (Official Gazette of Republic of Macedonia no. 37/96);
3. Crimes (Domestic and Personal Violence) Act 2007 of New South Wales; (https://legislation.nsw.gov.au/view/html/inforce/current/act-2007-080), Last visited on: 01.07.2024;
4. Criminal Code of Croatia *(The Official Gazette of the Republic of Croatia "Narodne novine" No. 110/1997, 27/98, 129/2000, 51/2001, 111/2003);* (https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf); Last visited on: 01.07.2024;
5. Criminal Code of Germany *(Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 22 November 2021 (Federal Law Gazette I, p. 4906)*, (https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html); Last visited on: 01.07.2024;
6. Criminal Code of Serbia *(Službeni glasnik RS, Nos. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19);* (https://www.mpravde.gov.rs/files/Criminal%20%20%20Code_2019.pdf); Last visited on: 01.07.2024)
7. Crimmins J., Stalking. What is the Psychology behind the stalker?, The Behavior Institute; (https://thebehaviourinstitute.com/stalking-what-is-the-psychology-behind-the-stalker/); Last visited on: 01.07.2024;
8. Feiter T., 7 Different Types of Stalkers; Fighter Law; (https://www.fighterlaw.com/7-different-types-of-stalkers/), Last visited on: 01.07.2024;
9. Judgment K-198/24 of Basic court Tetovo dated 28.02.2024;
10. Jürviste U., Shreeves R., The Istanbul Convention: A tool for combating violence against women and girls, 2021;
11. Meloy J. Reid, "The Psychology of Stalking: Criminal and Forensic Perspectives (San Diego, CA; Academic Press, Harcourt Brace & Company, 1998;
12. Meloy J. Reid, " The Clinical Risk Management of Stalking: Someone Is Watching Over Me", American Journal of Psychotherapy 51, no.2, 1997;
13. NSW Police Force, What is stalking?, (https://www.police.nsw.gov.au/crime/domestic_and_family_violence/what_is_stalking) Last visited on: 01.07.2024);
14. California Penal Code (https://codes.findlaw.com/ca/penal-code/pen-sect-646-9/); Last visited on: 01.07.2024;
15. Psychology Today, Stalking, (https://www.psychologytoday.com/us/basics/stalking); Last visited on: 01.07.2024;
16. Raising awareness of children as hidden victims of domestic violence and abuse in Europe, Council of Europe (https://rm.coe.int/stalking-and-the-istanbul-convention-eng/16808c6592#:~:text=The%20Convention%20requires%20states%20parties,the%20safety%20of%20the%20victim) Last visited on: 01.07.2024;

17. Russo F., Psychologists Struggle to Explain the Mind of the Stalker, 2023 (https://www.scientificamerican.com/article/psychologists-struggle-to-explain-the-mind-of-the-stalker/);
18. Sherman W., "Stalking: The Nightmare that Never Ends", Cosmopolitan, April 1994;
19. Tharp M, "In the Mind of a Stalker", U.S. News & World Report, February 1992;
20. Tjaden P., Thoenness N., U.S. Department of Justice, National Institute of Justice and Centers for Disease Control and Prevention, Stalking in America; Findings from the National Violence Against Women Survey, NCJ 169592, Washington, DC, April 1998;
21. UN Women, New amendments in North Macedonia's Criminal Code expand protection for various forms of violence against women, 2023;
22. Wood R., Wood N., Stalking the Stalker: A Profile of Offenders, FBI Law Enforcement Bulletin, Volume 71, Issue 12, 2002.

UDK: 7.075:343.9.024(100)
DOI: 10.20544/ICP.9.2.24.P09

ART MARKET IN THE FUNCTION OF CRIMINAL PROFIT LEGALIZATION

Aleksandar Čudan, PhD
University of Criminal Investigation and Police Studies, Belgrade, Serbia
Email: aleksandar.cudan@kpu.edu.rs
Dr. Gyöngyi Major[99]
Institute for Strategic Research, Budapest
Email: major.gyongyi@gmail.com

Abstract:

Very often the opinion can be heard that money earned in a particularly reckless and criminal way at the moment when it passes into the domain of art becomes what it is not otherwise – dishonourable. With this approach, art joins the sphere of economics and criminology, which by nature are not close, and it is precisely the area where there are many uncertainties, ranging from those resulting from conceptual and terminological ambiguities, to moral dilemmas and condemnations due to the involvement of contaminated money in the sphere of art.

The growth and increasing use of new technologies and techniques in the area of laundering criminal proceeds is practically unlimited. Money laundering in this area is still a new and legally controversial issue. Naturally, it is a phenomenon involving a whole spectrum of hard-to-measure negative impacts. This scientific paper aims to implement that auction houses, prosecution authorities, tax authorities, financial intelligence services and financial institutions are currently facing challenges in understanding money laundering techniques through art trade and at the same time detecting such activities. We should not ignore the danger of one part of the artistic potential becoming fully functionalized, that is, existing only to serve a certain criminal purpose.

General as well as special scientific methods and procedures of logical reasoning, statistical, and positivist legal method were used in the paper. The research method includes: selection and application of scientific methods, selection of data, and of the scope of research.

The scientific goal is a theoretical and empirical understanding of the characteristics and forms of crime related to the art market as a modern security problem. The art market in the function of criminal profit legalizing is a complex topic that has only been partially explored in our country.

Keywords: crime, art, money laundering, art market.

INTRODUCTION

"Art never receives the world as found, or leaves it as it is." Tin Ujević

The primary task of this scientific paper is to investigate the causes and forms of tension between art, money laundering and crime by analysing the key moments of this complex relationship, trying to bring these concepts into a functional connection. Abuse and destruction in this sector of human creativity, which is not only found in current reality but also in ancient history, where the position of each of the participants in the process is considered. Money laundering is a complex process of concealing the illegal origin of money, or property acquired through criminal activities. Accordingly, a number of transactions are carried out with the ultimate aim of presenting the said money or assets as lawfully acquired. Money and assets in this process often change their form and title holder.

In the analysis by national entities, there is evidence of increasing movements of activities suspected of constituting money laundering from regulated and regulated to unregulated sectors. The art market is very unregulated, and often non-transparent, and as such, very suitable for actors of criminal activities. In this scientific work, the classification was accepted, according to which works of art are considered: fine arts, objects of art application, antiques, ethnographic objects, oriental, Islamic art, as well as other works of art.[100]

Money laundering in the art and antiques market can be implemented in several ways, but there are some main methods including those listed below. Art in the function of economic destruction, especially in the field of money laundering, is most often manifested in two ways:

- When money laundering is criminalized on the basis of all criminal offenses as predictive criminal offenses using the art market that *offers* instruments, techniques, goods and services that enable the legalization of criminal proceeds.
- When money laundering is criminalized solely on the basis of criminal offenses that have been manifested in recent times, which concern the unauthorized appropriation of counterfeiting and trafficking in stolen works of art and antiques.

Various investors, including those from the criminogenic milieu, are panicking for alternative forms of investing illegal income, trying to get money from stocks and real estate whose value has dropped in recent years. It is this fast-growing industry that is constantly looking for new methods and techniques of money laundering acquired in a dishonourable way. It is for these reasons that the state's policy on art crime must have a multidisciplinary basis.

In the absence of reliable research data on the impact of a part of the criminalized art market and the amount of money and property obtained from it, or which is laundered and legalized through it originating from other predictive crimes, it is not possible to measure. It is this scientific work that shows that the level of understanding of money laundering through the art market has been significantly changed compared to the perception we had until just a decade ago.

[100] International Foundation for Art Resarch (IFAR).

1. THE ART MARKET AS GREY AREA VENUE OF ECONOMIC CRIME

Very often, the terms art market, artwork market, as well as many others are used in the professional public, which largely depends on the social context in which it is realized, artistic tradition, but always has a common denominator, which is that it indicates the place of confrontation of supply and demand of the subject of artistic effort. The exchange in the art market takes place permanently in some space and time. The art market space can be quite small such as a local gallery, but it can also be a national market such as art fairs, auction sales.[101] Global art markets initiate the expansion of the circle of relevant actors participating in the review of the aesthetic, artistic, and even economic criteria of the valorisation of a work of art, but also open up space for the legalization of criminal profit.

The economization of art has always existed, but its content and significance differed from the historical or social context. Viewed from a historical distance, the economic dimensioning of art has always been associated with centres of financial and political power, and often with carriers of criminal activities. The interdependence of markets and art has always been a place of numerous discussions and contradictory attitudes, which have occupied the attention of theoreticians, historians, artists for centuries, and increasingly criminologists in the new millennium.

The art market as we know it today began to develop in the late Renaissance. The first data on the sale of works of art on the primary market date from the 15th century in the territory of Florence and Bridge, while secondary markets with specialized resellers were created with a delay of over fifty years, so the first data on this type of art market date from the beginning of the 17th century in Amsterdam, at the end of the 17th century in London, and in the first half of the 18th century in Paris. In the same period, there is an increasing occurrence of auction sales that take place at first in taverns and restaurants. The first auction sale of works of art as we know it today was held in 1741, and works from the art collection of *Edward Harley*, a British politician and patron of the arts, were offered.[102] The intensive and systematically organized sale of works of art through auctions experienced its full development in 1913.

The first thefts of artworks were recorded in one of the oldest documents of Pharaonic Egypt, on the Amherst papyrus from 1134 BC. More recently, at the top of the list of this form of crime is the theft of artwork from Iraqi museums and archaeological sites during the US invasion of the said country in 2003. 80% of the collections, or more than 170,000 items, have been stolen from the National Museum in Baghdad alone, and art[103] theft can be an extremely economically lucrative endeavour today. There is hardly a valuable painting that has not been stolen. Some more than once.[104]

It is more than clear that illegally alienated masterpieces participate in the official or parallel art market, with the achieved symbiosis with money laundering as one of the most complex and common offenses in the field of economic crime. This redirection occurred because art objects are not priorities of security services and governments, which

[101] Mikić H., *Ekonomski profil tržišta umetnosti i njegov savremeni razvojni trendovi*, Beograd, 2012, p.

[102] A precedent in the development of art auction sales was the year 1754, when works from the collection of the famous British physician *Richard Mead* were sold for almost 16,000 pounds.

[103] In recent years, only a few thousand have been returned to this institution. In 2004, the FBI formed a special art theft team, which found over 100 artworks worth more than $50 million in the first year, including the most valuable statue of Iraqi King Entemena.

[104] Today it sounds unreal that someone ever dared to steal *Mona Lisa*. This was done by a former employee of the Louvre, decorator Vincenzo Peruggia, who stole the most famous painting in the world in the morning on Monday, August 21, 1911. Peruggia was sentenced to one year in prison.

are oriented towards the combat against corruption, combat against terrorism, drugs, human trafficking, domestic violence etc.

Since this is one of the most serious fusions of various forms of economic crime, it is difficult to make accurate estimates of the magnitude and severity of the problem. Uncertain assessments can be made based on the degree of criminal activity in the areas most commonly associated with this phenomenon (art crime, art market abuse, money laundering, shadow economy, tax evasion, corruption etc.). Research in terms of measures, scope and prevalence of these negative phenomena is a difficult and thankless job for several reasons. One of them is because of the pronounced *dark number*. The presented methodological procedure has its limitations and is unreliable, because the *dark number* of crimes is very high in them. It is estimated that the number of detected criminal offenses, especially when it comes to art crime in relation to the number committed, is insignificant.

In recent decades, the *underground economy* has emerged more intensively, offering new markets, instruments, goods and services for the performance and symbiosis of new forms of economic crime in which artistic creativity, as a special form of man's creative activity, has certainly found its place. Considering that when the art market and financial institutions are used to launder the proceeds of criminal activities, the ethics and stability of the institutions involved in this segment, as well as trust in the financial system, can be seriously jeopardized, thus losing public trust. Money laundering has an evident impact on the increase in organized crime in general, and especially in the field of illegal trade in works of art and art crime.

Economic crime perpetrators have a permanent need to eradicate the traces of money they have illegally acquired, however, it should never be forgotten that money laundering, especially the most serious ones, is dealt with by professional experts in areas such as finance, banking, accounting, law, and in our case, experts who monitor the art market. This could explain the limited number of investigations into offences with elements of money laundering related to art crime. Therefore, it is very important that there be accusations and judgments, especially in these cases.

Economic history has repeatedly shown that the safest forms of financing and safeguarding the value of money were gold and artwork. One of the main reasons why artworks should also be seen as an investment is that it has always been a good form of it, which often retains a high level of value despite the general economic crisis, or the dubious origin of money. What is also important is that artworks never react immediately to the arrival of a crisis, but with a deferred period of as much as two years.[105] It is an indisputable claim that the current economic situation has encouraged collectors and owners of money of dubious origin to invest in the purchase of artwork that will always have high value. Once money is transformed through the market and financial flows, and reaches the stage of transformation into a work of art, it is very difficult and almost impossible to discover its illegal origin.[106]

---

[105] Trbović I., *Investirajte u umetnost*, Beograd, 2011, str. 71.

[106] The thesis on the abuse of art in the function of economic destruction was demonstrated by the US investigative authorities when they found a lithograph of Pablo Picasso, which was stolen from the house of former Ukrainian Prime Minister Pavlo Lazarenko. The appointed Lazarenko is serving a prison sentence in the Federal US prison after being convicted of laundering through financial transactions the money he illegally acquired while he was Prime Minister of Ukraine. The contemporary history of art crime is richer by the example of another prime minister. 40 artworks found in a subsequent search in the hidden room of his house were nevertheless confiscated from the former Croatian president Sanader, which were subsequently deposited in a museum of contemporary art. The Prosecutor's Office for Corruption in Vienna, meanwhile, has opened an

The specialized journal *Arts Economics* for 2024 presented the findings of the research on the global art and antiquities market in 2023. The information presented in the report is based on data collected and analysed from dealers, auction houses, collectors and other entities involved in the artwork trade.

During 2023, the art market evolved despite wartime events, clashes of economic forces, and nevertheless showed an exceptional level of resilience. After two years of growth, art market sales decreased by 4% in 2023 to an estimated $65 billion. Despite the fact that sales remained above the level before the COVID pandemic, partly due to the continuous growth of online sales, they now account for 18% of turnover, which is almost twice the level before the aforementioned pandemic. Digital innovations for viewing and purchasing works of art through web applications and mobile payment methods, as well as increased engagement of galleries, auction houses, dealers and collectors, point to the increasing importance of the digital sphere in creating new opportunities.[107]

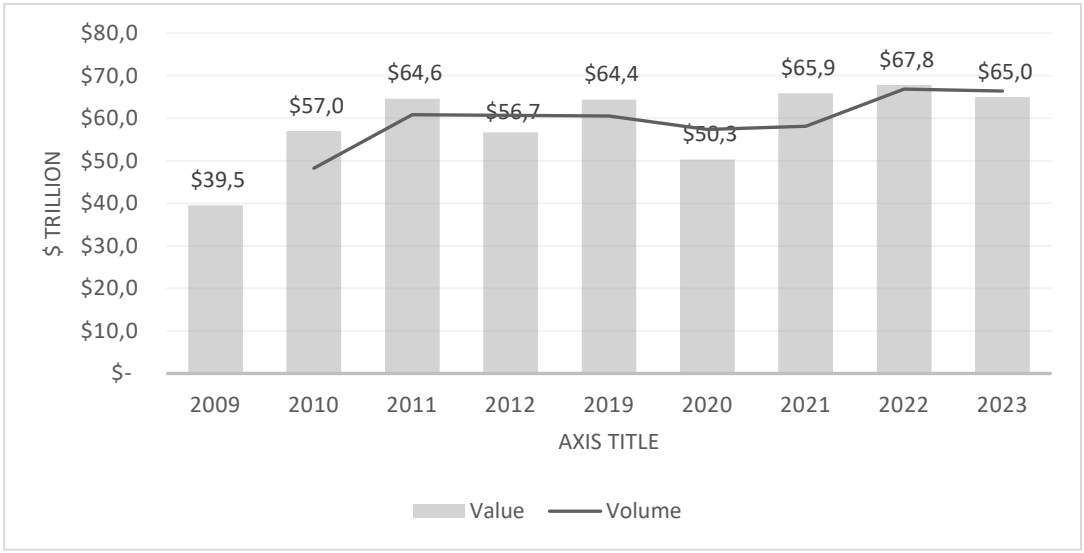


Chart No. 1 Sales in the Global Art Market 2009-2023

Source: *Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art*, February 2022

2. MONEY LAUNDERING RISK MAPPING

Risk is a potential problem or potential opportunity. In both cases, it appears in these spheres, so from these explanations it is necessary to analyse and find the right ways to manage risks.[108] Monetary destruction in all its forms has taken on a very powerful and

investigation against Sanader on the basis of a report from a bank in Tyrol for money laundering. During 2019, he was reported by the Supreme Court of Croatia and sentenced to six years in prison.
In 2018, Spanish investigative authorities arrested two men on reasonable suspicion of having committed the crime of smuggling works of art looted from locations in Libya by members of the ISIS terrorist organization. The suspected Spanish art dealers were part of a group based in Catalonia, which sold the said artworks. The charges against the applicants included terrorist financing and trafficking in stolen goods.

[107] Arts Economics, *Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art*, February 2022, p. 28.

[108] Čudan A., *Rizici i prevencija pranja novca*, Subotica, 2015, p. 19.

broad momentum on the world stage. Art is increasingly being treated as an alternative financial means of value investment. The analysis of this market in the function of mapping the risk of money laundering and terrorist financing in the last decade has recorded a growing trend of using a piece of fine art as an alternative investment. Artworks, as a result of creative engagement and specific goods on the market, show that in times of economic crisis on the financial market they can be a good guardian of values, barriers to inflation and currency fluctuations, which were adopted by the actors of financial destruction a long time ago.[109]

Auction houses are the main player in the sale of works of art on the secondary market, and the price is formed in such a way that it provides a commission to the auction house on average of 20% of the sale price of the artwork.[110] In well-known auction houses such as Sotheby's and Christie's, they range from 10% to 35% depending on the value of the artwork and the auction room where the sale takes place. Today, it is a common rule that the discretion of the owner of the artwork is whether to publish the designation of ownership or not in the catalogue.[111]

Table 1. Top 10 Auction Houses by Austion Turnover (2022/23)[112]

Auction house	Turnover	Lots sold $	Best result
Christie's	650,990,907	3,698	67,110,000
Sotheby's	595,017,364	4,317	28,634,000
Detective Phillips.	260,940,150	3,017	10,681,735
China Guardian	82,094,843	694	4,467,226
Beijing Yongle	54,367,621	315	2,381,174
RomBon Auction	51,436,381	439	7,837,611
Poly Auction	81,707,045	745	13,452,278
Bonhams	36,648,399	2,445	3,146,861
Holly International	28,512,837	201	2,686,530
SBI Art Auction	25,677,721	1,651	1,328,112

Source: The 2023 Contemporary Art Market Report

The art and collectibles market is subjected to double scrutiny: while on the one hand, investors' interest in art as a financially viable investment is growing, on the other hand, there is a growing need to eliminate threats such as price manipulation, conflicts of interest and lack of transparency, which make this market very risky and prevent the more intensive development of legal business.[113] Highlighting new trends of laundering criminal profits and linking them to art was an indisputable and provable fact, which greatly complicates the process of mapping the risks and threats of money laundering. Among the

[109] Čudan A., Nikoloska S., *Ekonomski kriminal*, Beograd, 2018, p. 356.
[110] Helburn, J., and Ch Gray, *The Economics of Arts and Culture*, Cambridge, 2019, p. 172.
[111] The auction itself is conducted according to the English auction model, which implies that at the auction the works are offered at a minimum price, and buyers' bids are initiated at an increasing price. There are also such forms of auction sales where the bids are enveloped and represent secrecy. Each auction has its own number to indicate it.
[112] Ehrmann, N., *The 2023 Contemporary Art Market Report*, Lyon, 2024, p. 14.
[113] Cvetićanin, A., *Umetnost pod lupom*, Biznis & finansije, Belgrade, 2023, p. 22.

perpetrators, it is also possible to find persons from reputable professions: art historians, restorers and the like, and their role is mainly to be resellers and go-betweens who facilitate the purchase and sale thanks to their knowledge. Also, the very characteristics of the art market such as portability, specificity, flexibility, anonymity, not having legal regulations, make it vulnerable and risky.

Specificity. They are characterized as investments by growing demand combined with a completely limited supply and the ability to mitigate the impacts of economic crises and increase the profit rate. Once purchased, a work of art can disappear from public view for years or even decades.

Flexibility and fluidity of prices in the art trade is one of the key features, and therefore the advantages of using artworks for money laundering, which should be considered when mapping risks. The basic methods of determining the price of artwork are the direct method, the indirect method, the administrative method and the method of parity, which depends on which part it is, who the actors of purchase and sale are, whether the sale is carried out on the primary or secondary market etc.[114] Auction sales of artworks have certain specificities when it comes to determining the price, and most often for their clients, the price estimate is made by the auction houses themselves.[115] Under US law, any fixing of interest amounts, which prevent competitive ways of conducting business, is an illegal way of conducting trade transactions and is subject to a fine and imprisonment for several years. Entities involved in the circulation of artwork point out the argument that art, unlike other regulated markets, deserves an exemption, because it is the result of creative effort and not a commodity with a certain value.

Anonymity. Methods of anonymous payment, purchase and financing, with a lack of data on the identity of participants in the art market, could lead to insufficient traces of transactions, the origin of money, or the absence of any trace in the case of criminal investigations on money laundering or terrorist financing. Secrecy has long been a staple in the art world. Theorists and criminologists point out that this type of discretion is unnecessary in conditions where art is traded as with any other commodity and used for money laundering, and also hinders the ability to trace ownership, which is a key factor in determining the authenticity of the work. In such circumstances, the relevant international standards and the national regulations based on them regarding the knowledge of the client's identity, have a positive effect. Further complicating the problem is the fact that participants in the art market are irregular clients and have a short-lived relationship with an entity in this market. Determining the identity of a client is very often not enough to know who actually uses certain services. Identification of one legal entity does not offer an answer to the question which natural person bears legal or economic consequences.[116] If it

[114] The direct method involves determining the price of a work of art based on the bargaining power of the artist and the buyer. An indirect method of determining the price of a work of art is applied when the price is determined by a third party. The administrative method of determining the price represents arbitrary pricing. The method of parity is the most common method of determining the price, especially in the auction sale of a work.

[115] During 1997, an investigation was launched by the FBI that pointed to the participation of *Christie's* and *Sotheby's* in the agreed price fixing, i.e. the increase in interest rates. Lawyers allegedly possessed data on lists with the names of important collectors who were exempt from the stated interest prices, which these houses formed together. Prices of certain artworks were so exaggerated that there were suspicions of organized financial crime in terms of laundering a large amount of money.

[116] It is still unclear who owns one of Jackson Pollack's most expensive paintings, *No. 5, 1948*, which was sold for 140 million dollars in 2006. It did not change hands at auction, but was sold by producer David Geffen at a private meeting. A painting by Paul Cézanne, *Card Players*, set a new record for the most expensive artwork in early 2012, when it was sold for over 250 million dollars, also privately,

is unknown who is behind legal or natural persons and who makes actual decisions on their behalf, there can be no talk about effective prevention of money laundering and terrorist financing. On the other hand, there are views in the art world that eliminating anonymity would harm the market and usurp privacy.

Digital payment system. In most countries, the knowledge of the risks associated with new electronic payment systems and new methods of money laundering and terrorist financing is not particularly pronounced. Due to the rapid growth and development of technology, payment systems have made great strides in terms of transaction speed, payment methods, billing options, and even virtual currency. The wider the geographical scope of the payment system, the higher the money laundering and terrorist financing risks. Criminals know all the weaknesses and find inventive solutions to exploit them.

Online store. Online auction sites are favourite places to buy expensive goods, including artwork. Money transfers in connection with such transactions are particularly vulnerable, and vulnerable to money laundering, which poses another risk. When making contact in the digital space, direct contact between clients is minimal or non-existent. These are transactions that are not performed face-to-face, so clients quite often do not know each other. *Sotheby*'s auction house was among the first in the early 1990s to begin the era of *online* auctions by selling paintings and sculptures by famous authors. It is estimated that online business will play a dominant role in the artwork market. Innovation, such as the use of Blockchain technology, is also an example of how new technologies can contribute to the development of investment in the arts.

3. BASIC TECHNIQUES AND METHODS OF MONEY LAUNDERING VIA ART TRADE

Artworks are sometimes even idealized as the perfect way for the perpetrators of criminal activity to legalize money acquired in dishonourable ways. The art world usually accepts those who want to buy works of extremely high value anonymously, and on top of that, the art market allows large cash transactions. For those who want to legalize money, it is difficult to project a more attractive set of circumstances than those outlined. Also, financial practice identifies a multitude of cases where art has played a crucial role in the process of legalizing money.[117] The growing trend of free capital flows on the global markets has enabled money of dubious origin to spill almost unhindered into huge everyday cash flows, and it is impossible to distinguish between the actual commercial movement of capital and movements that reflect attempts to launder criminal money. Money laundering in an unregulated market, such as the trade of artwork, involves methods, techniques and procedures that conceal the illegal origin of property or money, giving it the appearance of legal income.

The aim and purpose of the money laundering process is to completely exclude, or reduce to a tolerable measure, the risk of seizure of unlawfully acquired financial revenues, as well as sanctions for incriminated acts. The execution of the money laundering operation itself does not have any unique rules, but the process and technique are adapted to the given situation. Depending on practical experience, analysts agree that, despite the diversity of methods, the process of money laundering generally takes place in three stages, which can include numerous individual transactions. All of them may indicate an association of a financial institution with criminal activity. In practice, it can be difficult to

[117] Pogacar, C., *How Money Laundering Works in the Art World*, London, 2023, p. 38.

distinguish between individual phases. The legislations of many countries identify three separate stages in the money laundering process, namely:

- placement;
- layering;
- integration.

These activities represent one of the activities of the second phase of the development of organized crime. During the first phase, the money is provided, in the second phase when there is too much of it, due to fear of investigative and tax authorities, the holders of criminal activities are forced to conceal its actual source. The third phase is integration, which is realized when the funds that are laundered come into the ownership of the criminal activity holder through various transactions that seem legitimate. In this way, the dealer of narcotics, illegal arms trafficking, an actor of organized classical or financial crime can use illegal funds that are integrated into legitimate cash and financial flows, which are at his disposal to buy art from auction houses or galleries. Practice shows that there are deviations from the mentioned phases and models. It is often the case that money acquired through criminal activities in the laundering process does not go through all stages. Money laundering methods and techniques are changed in response to countermeasures taken by official state authorities.

As individuals with high net worth, including those coming from the crime zone, increasingly viewed art as a method of diversifying their portfolios, prices in the global high-end art market have exploded in the last decade.[118] With the expansion of radical Islamism, art crime as a method of money laundering has been increasingly linked to terrorist financing. The epicentre of counter-terrorism is aimed not only at detecting terrorist groups, but also at tracking the money flows used by terrorists.[119] Financial stability and secured financial resources are of great importance for the success and functioning of terrorist activities, using money in all its functions, as a general means of exchange but also as a means of savings. The impact of money laundering on terrorism, its development and financing are very strong and intense. It is precisely this influence that can be related with a combination of various methods, techniques and means, which requires a high degree of professionalism and organization in action, using the considerable potential of the art and antiques market given the low level of regulation and lack of standards in this area.

[118] United Nations, *Security Council, Adopting Resolution 2195 (2014), Urges International Action to Break Lines between Terrorists, Transnational Organized Crime*, December 19, 2014.

[119] Financing of terrorism through money laundering is defined as a very complex process, of various relationships that are realized in order to try, or successfully secure, raise funds or assets in order to use it, or with the knowledge that they can use it in its entirety, in part for the implementation of a terrorist act by a terrorist or terrorist organization.

Figure 1: The most expensive paintings sold in art history *Salvator Mundi*, Leonardo da Vinci, $453.3 million (2017), Sotheby's, and *When Will You Marry?*, Paul Gauguin, $300 million (2015)

Fictitious trade in art and antiques is another recently known method of money laundering. It is not uncommon for a scrubber to buy their artwork at an auction at reserve prices, if the highest bid price is insufficient, and then transfer it to another auction, this time in another city, in order for an identical process to start again. In the UK, auction houses and galleries are subject to mandatory reporting of suspicious transactions, but reports of this type are a rarity. The received check at auctions is accepted by the bank as representing profit from legal business activities.

The potential role of high-budget art and antiquities in money laundering and terrorist financing methods and techniques has attracted increasing attention in the last decade, because the prices of such artwork are constantly rising. Given that a high percentage of the euro, as the world's reserve currency, is at all times in circulation outside the European Union, the factual situation indicates that a huge amount of value has been inserted into the global financial system. The surplus of effective money in the global financial market is noticeable. Stocks on stock exchanges are valued more than ever, the amount of sports transfers is growing, real estate prices have also recorded a significant growth rate in recent years, and the prices of artwork have also risen several times. Financial institutions increasingly create money, while they do not stimulate savings as they did in previous years. The financial analysis shows that saving loses 1.2% of the purchasing power of money, which practically means that saving money at the current inflation of 1.7% per year would halve purchasing power for the next 21 years. In order to prevent the loss of value of the money itself, the owners are trying to preserve and increase the real value by investing in real estate, shares, and in recent times, more and more often, in artwork.[120]

Auction sales are one of the most commercial forms of this market competition, which quite frequently makes art prices unrealistically high. Criminals may overestimate the value of art to move assets out of the country or underestimate the value to avoid fiscal

[120] McAndrew C., *The Art Market 2018: An Art Basel & UBS Report*, Art Basel & UBS, 2018, p. 33.

or customs obligations. It is quite frequent to open fake companies or offshore companies in order to conceal the true ownership of a work of art and launder money through these entities, all with the aim of not being detected by the legal system.

With the emergence of new elites, which is especially characteristic of countries in transition, a lot of money of dubious origin was acquired, which should have been legalized, and the purchase of art is the best way to realize this, while also enabling the creation of additional profits. The desire to gain a social reputation is an additional motive to devote themselves to a new hobby with extreme enthusiasm, and many really end up as lovers and good connoisseurs of art.

So far, no studies have been made on methods, techniques and trends regarding money laundering, however, monetary authorities indicate that some of the money laundered from cases of economic crimes ends up on the art market. A number of recommendations and obligations arising from expert debates relate to a set of different applicable international standards, as well as a system of supervision that will have to be considered during the implementation of relevant project activities and applied to entities involved in the circulation of works of art such as galleries, auction houses, museums.

4. PHENOMENOLOGICAL ASPECT OF ART CRIME AND MONEY LAUNDERING IN NATIONAL FRAMEWORKS

Art crime is an old phenomenon, but this time in a modern form. Accordingly, its definition must be very broadly covered not only by criminal offenses such as art theft and counterfeiting, but also by its research from all aspects, including the laundering of criminal profits. The crime of art counterfeiting and illegal trade in works of art, from a phenomenological point of view, is not accidentally present in countries in transition. Large earthquakes in financial markets around the world are evident, not leaving Serbia behind either. Many investors and owners of money of dubious origin are panicking for alternative forms of investment, trying to get money out of stocks and real estate whose value has dropped significantly in the last decade. With the emergence of new elites after the fall of socialism, a lot of money has been gained that needs to be laundered, and the purchase of art is the most efficient way to do it, and it is a lucrative business.

Emerging forms became even more dangerous, modified by new relationships, and at the same time new forms of monetary destruction were emerging, seeking new destinations and markets. A very topical example of the above claims is the emergence of money laundering as one of the relatively new forms of monetary destruction, and as one of the main activities of organized crime. Theoretically and *de jure*, most countries are committed to condemning this phenomenon, which is causing great damage to national economies. However, practically and *de facto*, most national jurisdictions have a relationship to money laundering, which can most generally be defined as a lesser or greater discontinuity of theory and practice, said and done, although not always as a discrepancy of the real and the possible. Organized crime quickly understood this feature of the market and developed mechanisms of smuggling, art counterfeiting, combining with various methods and techniques of legalization, i.e. hiding the illegally acquired money.

Perpetrators of criminal activities perform a wide range of jobs that bring money and profit, so increasingly different forms of economic and classical crime are interactively associated with artistic creativity. In order to avoid consequences for the international reputation of the country, it is necessary to take the issues discussed seriously, and above all to accept the fact that money laundering exists and that our country is a suitable

destination for the activities of owners of criminal assets.[121] The *Financial Action Task Force* (FATF), as an interstate body that develops and improves measures and actions to combat money laundering and terrorist financing, has positioned Serbia on the list of high-risk countries, where national entities that have not fully adopted certain recommendations and measures are due. Many state institutions and bodies have made a great effort to remove Serbia from this list, which has resulted in the entry into force of twelve laws, among which the new Law on Prevention of Money and Financing of Terrorism, as well as amendments to the Criminal Code in the part related to the criminal offense of money laundering, stand out. Also, our country has adopted a number of regulations that have led to a better understanding of risk factors, controls, approximation to standards, guarantees of adequate and effective investigations and processing. The decision to remove Serbia from the list of high-risk countries is important for both business and future investments, as well as for negotiations with the European Union and cooperation with other international organizations. Through a report in June 2019, the FATF assessed that Serbia had met all requirements related to the fight against money laundering and terrorist financing.

Among the many unpredictable, and as a rule unpleasant, surprises befalling our public, careful analysts will also discern a kind of paradox of atrophying critical thought in the field of finance, criminology and forensics when it comes to the phenomena of monetary destruction and other forms of endangering the money sphere, which are associated with the legalization of criminal revenues or money laundering in any way.

Perpetrators of criminal activities from the territory of Serbia are among the largest dealers of stolen artwork in Western Europe and, among experts in this field, they are considered very well-coordinated and dangerous. Some of the missing precious artwork has also been found in our country thanks to inter-police cooperation. Four stolen paintings worth several tens of millions of euros were discovered in a Belgrade apartment, which had originally been owned by the Slovenian collector Franz Reimer until six years earlier. Among the 35 works stolen in total, the most valuable are Picasso's *Bullfight* and Raphael's *Fellowship*.

In a spectacular armed robbery on February 10, 2008, four paintings worth a total of 180 million Swiss francs were stolen from the museum of the Emile Birle Foundation. This is the largest theft of works of art committed in Switzerland so far, and certainly one of the largest in Europe, supported by the citizen of the Republic of Serbia Raško Mladenović. Four paintings by Vincent van Gogh, Claude Monet, Edgar Degas, and a painting by Paul Cézanne, *The Boy in the Red Vest*, valued at one hundred million Swiss francs, were stolen. At the beginning of 2012, the arrest of four persons representing logistical support to Mladenović was carried out on the territory of the Republic of Serbia, where a painting by Paul Cézanne was found.[122] At the same time, the aforementioned action represents one of the largest seizures in financial terms, since another 1.5 million euros and 60,000 francs in effect were found and confiscated from the detainees. The arrests came after cash flows, that is, payments that were received by four suspects, were previously found. Mladenović legalized part of the criminal profit by buying an

[121] Spanish police and prosecutors discovered property in the Iberian Peninsula that was purchased by members of the Zemun Clan, Darko Šarić and Luka Bojović. The money laundering mechanism was very elaborate. They have paid a number of small amounts via offshore companies in the Seychelles, Virgin and Cayman Islands, and so far a hundred such accounts have been identified. Members of this group bought mostly real estate and art for the money. The arrested group is linked to cocaine smuggling and money laundering, and the Spanish police found and confiscated 840,000 euros in cash from the immediate family of Bojović.

[122] *Akcija prsluk*, "Policija danas" No. 31, April 01, 2012, Beograd, p. 4-5.

apartment.[123] The appointee is also wanted by the police of Belgium, also for the theft of artwork.

Paintings by Spanish painter Pablo Picasso *Head of a Horse* and *Glass and a Pitcher*, valued at about 3 million dollars, which were stolen from an exhibition in the Swiss town of Pfäffikon on February 6, 2008, were found in a bank vault in Belgrade by operatives of the Anti-Organized Crime Service in cooperation with colleagues from Switzerland.

In Novi Sad on January 08, 2008, two masked persons in an armed robbery stole paintings from the permanent exhibition of the Foreign Art Collection. Paintings of the *Head of Christ* by an unknown author of a German or Dutch school from the 16th century, *A Landscape with Fisherman* by Pier Francesco Mola, 17th century, Italy, *Portrait of Seneca* by Rubens, Flanders, 17th century, and *Portrait of a Father* by Rembrandt, were stolen.[124]

At the beginning of this millennium, ninety paintings signed by Lubarda, Konjović, Dobrović, Prica, Milić of Mačva disappeared from the House of the National Assembly during the October 5 demonstrations. One of the most valuable stolen paintings by Milan Konjević was withdrawn just a day before the start of the exhibition at the largest auction house in our country, *Madl'Art*, where it was supposed to be sold for an initial price of 18,000 euros. On the website of the Ministry of the Interior, it is still announced that 55 paintings are missing. More than 100 extremely valuable paintings have disappeared from the vault of the History of Yugoslavia, primarily by Serbian artists of the 20th century, but also foreign old painting. At the same time, the documentation of each work of art has been kept in detail for decades.[125]

The frightening consequences are the reason for the state to do everything in its power, including effectively monitoring cash flows, in order to prevent these consequences. States develop anti-money laundering systems in accordance with the specificities of the legal and economic system. Each of these systems can be viewed from two basic sides, repressive and preventive. The repressive side of the system is reflected in the criminal prosecution and punishment of the perpetrators of these crimes. Penalties for money laundering in all countries of the world are very severe and often exceed the penalties that are imposed for criminal offenses in which the money that is laundered is obtained. In the Republic of Serbia, in Article 245 of the Criminal Code of the Republic of Serbia, the penalty for the criminal offense of money laundering is between 6 months to 5 years in prison, and if the amount of money that is the subject of the criminal offense exceeds one million dinars, the penalty is up to 10 years in prison. In addition to imprisonment, all money, or property that is the subject of a criminal offense, must be confiscated.

[123] The money from the various robberies that the arrested people had earned so far was not a criterion by which they would deserve attention. Raško Mladenović, the perpetrator of the robbery at the Zurich Museum, worked in a bakery in recent years. A painting by Paul Cézanne valued at 100 million Swiss francs was found in the roof of a *Renault* passenger car where it was hidden.

[124] The paintings have not yet been found, and the last one is on a poster of Interpol's most wanted works of art and is valued at 2.5 million pounds. At the Vrška Čuka border crossing, customs officers prevented an attempt to take 68 paintings and 4 sculptures of contemporary American artists out of the country for several years.

[125] The curators of the Memorial Centre "Josip Broz Tito" precisely listed that there were 4,774 exhibits in the ethnological collection, and 3,886 exhibits in the fine arts collection.

Table 2: Share of criminal offenses in the field of economic crime and money laundering in the structure of the total number of criminal offenses in the territory of the Republic of Serbia

Year	Total criminal offences	Total criminal offences in the field of economic crime	Money Laundering CCRS Art. 245
2017	91,595	8,221	37
2018	85,658	6,199	49
2019	82,068	5,715	126
2020	72,313	4,460	104
2021	75,296	5,559	194
2022	75,219	4,556	163
2023	70,078	3,982	147

Source: The Ministry of the Interior of the Republic of Serbia

Some progress has been made in the field of anti-money laundering. However, practical results in the fight against money laundering are still insufficient. A number of recommendations and obligations arising from the aforementioned set of international standards and surveillance systems will have to be considered during the implementation of project activities and applied to entities engaged in the circulation of works of art such as galleries, auction houses, museums.

Legal norms in national frameworks aimed at preventing money laundering will have an overall positive effect on the art market. The European Union initiative resulted in the adoption of a new law against money laundering and terrorist financing that will enter into force in 2020, which will apply to art galleries and auction houses.[126]

The biggest problem for art dealers is the high administrative burden, the responsibility to get to know all clients, which can also have a negative potential effect on the art market. This burden would be particularly problematic for small and medium-sized players in this market, who do not have the resources, as financial institutions do. Entities in this market would have an obligation to control and train their employees in identifying suspicious transactions and applying buyer and seller analysis. These efforts aimed at identifying the end seller and tracking cash flows would be time-consuming, costly and would pose a particular challenge for smaller galleries or auction houses. These laws are likely to help change the unfavourable narrative that periodically follows the art market and makes it susceptible to all money laundering and terrorist financing activities. The change in the character of art has opened the door to new investment opportunities, but it has also left the art markets particularly vulnerable to various techniques and methods of money laundering. The existing characteristics of the art market, including the lack of uniform standards, record keeping, activities of a speculative nature, also make it hospitable to the most serious forms of economic crime. In light of the vulnerability of the aforementioned market to money laundering, there is a clear need for international and national legislation that must specifically address this fast-growing industry.[127]

[126] European Commission, *Security Union: Cracking down on the illegal import of cultural goods used to finance terrorism*, July 13, 2018.

[127] Nešić, D., Samardžić, R., Simeunović, D., *Uništavanje i prisvajanje kulturnog nasleđa: od Luvra, do Kosova i Palmire*, Službeni glasnik, Beograd, 2023, p. 18.

Table 3. Art and Gallery Infrastructure of the Republic of Serbia

Year	Art museums	Belgrade region	Galleries	Belgrade region
2017	31	13	338	87
2023	34	15	342	89

Source: Republic of Serbia, Statistics Office of the Republic of Serbia.

CONCLUSION

Indirect and direct conclusions of criminalization concerning art in the function of economic destruction of money laundering are significant for further research that is to be continued. This stems from the firm belief that the need for such research is becoming more and more topical every day. Knowing the phenomenon means the possibility of an adequate struggle to overcome it, and therefore it is necessary to constantly explore the forms of endangering the money sphere. One of the hypotheses of the research is to propose a broad coordinated research project involving all subsystems, which would be the subject of analysis by experts of numerous profiles in the field of arts, economics and legal sciences.

Therefore, in order to solve these problems, it is necessary to develop professional standards for professionals in the artwork market, strengthen ethical requirements and invest in education of art professionals, so that they know what is illegal and are more informed about legal regulations. It is also necessary to encourage states to invest more in the implementation of existing laws, strengthen cooperation between countries and make more effective measures to protect cultural goods from criminalization.

The fact that more problems have been pointed out in the paper than designed and specified solutions is fully justified. Under the given title and in a scientific paper of this kind and faced with this phenomenon of modern cash flows, it is inevitable. There were no role models in the overall research and presentation. This modest scientific effort is an attempt to raise the voice not only in favour of justice but also against attempts to criminalize the art market, and to give information an impulse to the civilizational that exists in man and to oppose the negative impulse that persists in him.

Therefore, those who do not create art but live from it, selling it, and thus experiencing it, most often kill the art itself through their ignorance and greed for money, putting it in the function of economic crime. Art must not have any other goals for itself, nor become a means, which it certainly is today. If the ultimate goal of science is truth, and art is enjoyment, how much effort is needed to convince someone to enjoy the current proclaimed art, instead of criminalizing it and focusing on criminology.

By exploring the causes of the misuse of artwork and the ethics of the art act, the reader will find inspiration in this paper for completely new interpretations of the ever-present phenomenon of dirty money in art and we hope that the views expressed will be a valuable guide to today's art market and point out the risks emanating from the crime zone. The only new thing is that the degree of naivety of ordinary people over the events on the occasion of, and about money, is decreasing.

BIBLIOGRAPHY

1. Arts Economics, Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art Februar 2022.
2. Nikodijević D., "Marketing umetnosti", Megatrend University, Belgrade, 2006.
3. United Nations, Security Council, Adopting Resolution 2195 (2014), Urges International Action to Break Lines between Terrorists, Transnational Organized Crime, December 19, 2014.
4. Zirojević A., "Savremene tedencije u načinima pranja novca i sprečavanja terorizma u Republici Srbiji", Novi Sad, 2017.
5. Samardžić R., "Umetnost i kriminal", Novi Sad, 2017.
6. **Cvetićanin, A., "**Umetnost pod lupom**", Biznis i finansije, Beograd, 2023**
7. Strange A., Fiat Lj, "Risks and Prevention of Money Laundering Rizici i prevencija pranja novca", Subotica, 2015.
8. Strange A., Nikoloska S., "Ekonomski kriminal", Beograd, 2018.
9. European Commission, Security Union: Cracking down on the illegal import of cultural goods used to finance terrorism, July 13, 2018.
10. Ehrmann N., The 2023 Contemporary Art Market Report, Lyon, 2024,
11. Mikić H., "Ekonomski profil tržišta umetnosti i njegova sodobeni razvojni trendovi", Beograd, 2012.
12. Trbović I., "Investiranje u umetnost", Beograd, 2011.
13. Arun Srivastava, Mark Simpson, Richard Powell. International Guide to Money Laundering Law and Practice, 2019.
14. Nešić, D., Samardžić, R., Simeunović, D., Uništavanje i prisvajanje kulturnog nasleđa: „od Luvra, do Kosova i Palmire" Službeni glasnik, Beograd, 2023.
15. Pogacar, C., "How Money Laundering Works in the Art World", London, 2023,
16. Steven Mark Levy. Federal Money Laundering Regulation: Banking, Corporate and Securities Compliance, Second Edition, 2019.

UDK: 364.63-027.553:343.1(497.7)
DOI: 10.20544/ICP.9.2.24.P10

RELIEVING THE VICTIMS OF THE DUTY TO TESTIFY AS A POSSIBLE OBSTACLE TO THE CRIMINAL PROSECUTION OF DOMESTIC VIOLENCE

Milan Žarković
PhD, Full Professor, University of Criminal Investigation and Police Studies, Belgrade
milan.zarkovic@kpu.edu.rs
Marija Tasić
PhD, Teaching Assistant, University of Criminal Investigation and Police Studies, Belgrade
marija.tasic@kpu.edu.rs
Darko Marinković
PhD, Full Professor, University of Criminal Investigation and Police Studies, Belgrade
darko.marinkovic@kpu.edu.rs

Abstract:

Witnesses, especially victims, represent one of the most important sources of knowledge about domestic violence. However, in certain procedural situations, witnesses can enjoy the privilege of being relieved of the duty to testify, which can further become a possible obstacle to the criminal prosecution of this criminal offence. This article explores the evidential challenges related to the privileged witnesses, through determining the circle of persons who may use this privilege and the reasons underlying the victims' decision not to testify in cases of domestic violence.

An effort is made to specifically answer the question of various factors which affect victim of domestic violence not to cooperate with the authorities conducting the proceeding or to terminate the started cooperation. In addition to factors related to the victim and existing relationship with the offender, factors related to the environment, legal and political system were also taken into account. Victims' decision to use the privilege not to testify is considered through the provisions of the law, but also in the context of the cycle of violence, and primarily through understanding the situation and behaviour of the victims.

Keywords: *domestic violence, victims, privileged witnesses, testifying, criminal proceedings*

INTRODUCTION

Domestic violence is a criminal offence that is continuously expanding in the Republic of Serbia, but also in other countries. The causes of this problem, which has been increasing for a decade in terms of its crime rate, are not contained in just one sphere of social life, but have their roots in the sphere of personal life, as well as in the sphere of society, politics, law and other spheres. It is a challenge of the modern society that requires a multidisciplinary approach, with the understanding that it leaves long-term and severe consequences not only for family members, but also for the entire community.

In the Criminal Code of the Republic of Serbia (hereinafter: CC RS, *The Official Gazette of RS*, No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012,

104/2013, 108/2014, 94/2016, and 35/2019), the consequences of domestic violence are defined as endangering the tranquillity, physical integrity or mental condition of a member of family, and the offender can cause these in several alternatively determined ways, such as: use of violence, threat of attacks against life or body, insolent or ruthless behaviour[128] (Art. 194, Para. 1 CC RS). A more severe form of this offence will exist if, for committing the offence, the offender used weapons, dangerous implements or other means suitable to inflict serious injury to body or seriously impair health[129] (Art. 194, Para. 2 CC RS). An even more serious consequence of domestic violence will exist if the offence specified in Paragraphs 1 and 2 of the Art. 194 CC RS results in grievous bodily harm or serious health impairment or if committed against a minor[130], while the legislator prescribes the death of a family member as the most severe consequence[131] (Art. 194, Para. 3 and 4 CC RS).

Domestic violence is also determined by the provisions of the Family Law of the Republic of Serbia (hereinafter: FL RS, *The Official Gazette of RS*, No. 18/2005, 72/2011 – other law, and 6/2015), in which the consequences of the violence are defined as endangering the physical integrity, mental health or tranquillity of another family member, whereby the behaviours that constitute it are listed in more detail: 1) inflicting or attempting to inflict a bodily injury; 2) incitement of fear by threatening to murder or inflict a bodily injury to a member of the family or another person close to him/her; 3) forcing to sexual intercourse; 4) abetting to sexual intercourse or sexual intercourse with a person who has not reached fourteen years of age or an incapable person; 5) restricting the freedom of movement or communication with other persons; 6) insulting, as well as any other insolent, unscrupulous or malevolent behaviour (Art. 197, Para 1 and 2 FL RS).

Provisions of the FL also determine the circle of persons who can be considered family members, listing them exhaustively. Those are: 1) spouses or former spouses; 2) children, parents and other blood relatives, in-laws or adoptive relatives, and persons related by foster care; 3) persons who live or have lived in the same family household; 4) cohabitees or former cohabitees; 5) persons who have been or still are in a mutual emotional or sexual relation, or have a common child, or the child is to be born, although they have never lived in the same family household (Art. 197, Para 3 FL RS). There are dilemmas as to whether family members are defined too broadly in the provisions of the FL RS – e.g. whether this term should include persons who have been or still are in a mutual emotional or sexual relation (Kolarić & Marković, 2018: 50).

However, with the adoption of the new Law on Prevention of Domestic Violence in the Republic of Serbia (hereinafter: LPDV RS, *The Official Gazette of RS*, No. 94/2016, and 10/2023 – other law), the term of family members has been further expanded, as well as the forms of violence to which the victim may be exposed.[132] Family member is considered to be a person with whom the offender is either presently or has previously been in a matrimonial relationship or common-law marriage or partnership relation, or with a person he/she is blood-related to in the direct line, or side line, up to the second degree, or with whom he/she is in an in-law relation up to the second degree, or to whom

[128] The offender shall be punished with imprisonment of three months to three years.

[129] The offender shall be punished with imprisonment of six months to five years.

[130] The offender shall be punished with imprisonment of two to ten years.

[131] If the offence specified in Paragraphs 1 and 2 of the Article 195 CC RS results in death of a family member, the offender shall be punished with imprisonment of five to fifteen years, and if a family member is a minor, the offender shall be punished by imprisonment of at least ten years.

[132] In addition to physical, sexual and psychological violence, a family member may also be exposed to economic violence (Art. 3, Para. 3 of LPDV).

he/she is an adoptive parent, adopted child, foster parent or foster child, or with another person with whom he/she is living or has lived in a common household (Art. 3, Para. 3 of the LPDV RS).

On the basis of the aforementioned legal solutions, it can be concluded that this form of violence occurs in interpersonal relationships in a family environment, i.e. within family or intimate relationships. Therefore, the offender and the victim know each other, i.e. they are banded by some kind of relationships defined by the provisions of the mentioned laws. The complexity of their mutual relations, regardless of the length of their duration or the circumstance that it takes place in a matrimonial, common-law or partnership union, with or without common children, in the common or separate household, affects how both parties relate to violence, as well how they are affected by it.

The intimate aspect of domestic violence can be further complicated by factors related to the environment, but also the legal and political system, which can further lead to the occurrence of potential barriers in its processing. On the one hand, the victim is a key source of knowledge about the violence that occurs within the family,[133] and her statement about the violence she suffered is crucial for the initiation and successful closing of criminal proceedings. On the other hand, the achievement of this goal may be limited due to the possible decision of the victim to refrain from testifying as a witness in the criminal proceedings. In addition to the direct victim of violence, other persons who witnessed the violence or have knowledge of it, can also use the privilege not to testify. Those persons must be relatives of the offender, up to the prescribed degree of kinship, or be in a legal or factual relationship with him/her that constitutes grounds for exclusion from the duty to testify (Bošković, 2022: 218).

The privilege not to testify is designed to strike a balance between the need to gather evidence and prove a criminal offence and the potential damage that can be done to the relationship between the witness and the offender (Munstermann, 1996: 359). Therefore, it is necessary to consider all possible factors that can influence the victim to use this privilege, with an understanding of the nature of the relationship within which violence occurs, in order to create more effective interventions to prevent, identify and prosecute domestic violence, while providing appropriate protection and support for victims.

1. VICTIMS OF DOMESTIC VIOLENCE AS PRIVILEGED WITNESSES

Domestic violence is a serious crime that is prosecuted ex officio. In practice, its prosecution is limited, primarily due to the fact that the defendant, rather than the state, has functional control over the victim as a key witness (Meier, 2006: 23). Although the institute of privileged witnesses primarily refers to the main criminal proceedings, when there is a legally prescribed duty to testify, it is important to emphasize that the victim essentially uses this privilege long before the case of domestic violence reaches the court. This means that the victim is affected by the same factors that apply to the refusal to testify at the court in the moment of discovering or reporting domestic violence, when she/he does not want to cooperate with the police or the public prosecutor, or terminates the started cooperation. Such victim's behaviour may create challenges in the prosecution of this offence, which may lead to the same consequence – domestic violence remains an unpunished offence, and the offenders remain free and can repeat it.

[133] These can also include other persons who witnessed the violent act against the victim, or noticed its consequences on her/him.

In the first scenario, the victim does not cooperate with the authority conducting the proceedings, primarily the police, by completely rejecting to talk about the event which potentially involved violence, but it is also possible that the victim denies, minimizes or justifies it as if it was provoked by her fault. Consequently, the police may not file a criminal complaint to the public prosecutor, especially when the victim is the only witness to the offence and there is no material evidence (Borović, Pavlica, & Žarković, 2014). If the criminal complaint is filed, the public prosecutor cannot expect that the victim will participate in prosecuting the offender.

In the second scenario, the victim decides to terminate the cooperation, although she/he has already presented the circumstances of the domestic violent event and expressed her/his will to participate in the criminal prosecution of the offender. Precisely, the victim is recanting, which means that she/he is taking back or withdrawing a statement that has been made (Orford et al., 2017: 77). Given that the victim gave up on having an active role in the following criminal proceedings, the public prosecutor must assume that there is a high possibility of the victim using the privilege not to testify, which further may create difficulties in proving the domestic violence in the criminal proceeding. If this happens, the public prosecutor can decide to abandon further criminal prosecution, or the court may, due to the lack of evidence, issue an acquittal judgment (Borović, Pavlica, & Žarković, 2014).

The fact that the victim was cooperating in the pre-investigation and investigation phase and there are written acts about the violence made by the police does not mean that it will have evidentiary value in the criminal proceedings.[134] The reason for this lies in the principle of immediacy as one of the key evidentiary principles in criminal proceedings, which requires that judgments must be based only on the evidence presented at the main trial (Turanjanin, 2021: 75). Given that the court must have immediate contact with the source of knowledge from which it establishes the facts, the witness must be examined directly before that court. Finally, the judgment will be issued based on a fact whose truth the court has determined itself, without mediator, with the victim as the source of knowledge (Škulić, 2020: 65).

According to the principle of immediacy, the victim must be examined as a witness at the main trail, so that her/his testimony can have evidentiary significance. In general, the victim of domestic violence meets the requirements for obtaining the status of the witness in the criminal proceedings prescribed in the Criminal Procedure Code of the Republic of Serbia (hereinafter: CPC RS, *The Official Gazette of RS* No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the CC, and 62/2021 – decision of the CC). Namely, the victim of violence is sometimes the only person who can provide information about the criminal offence, the offender and other important circumstances, so the authority conducting the proceedings will always have a need to invite her/him to testify about it (Bejatović, 2014: 697).

[134] There are several written acts that can be made by the police, such as: an initial report on domestic violence made by the uniformed police officers who first arrived at the scene and determined its circumstances; an official note on the information provided by the victims or other persons; and report or criminal complaint made by the police investigators. However, those acts have no evidentiary value in the criminal proceedings. In cases where the victim was injured, it is possible that the police and the public prosecutor have a certificate of injuries issued by a competent medical institution, but it is necessary to prove before the court that the injuries were caused by the offender in the context of domestic violence.

The victim can give her/his testimony to the public prosecutor during the investigation phase or to the court at the main hearing. Although there are certain duties on the part of the witness, such as obligation to respond to the summons of the authority conducting the proceeding, to testify and to tell the truth, the victim of domestic violence may concurrently belong to a special category of persons for which the legislator stipulates the possibility of being relieved of the duty to testify (Bošković & Kesić, 2020: 431). In that sense, the victim may refuse to give a statement as a witness, if the defendant is her/his: 1) spouse or common-law spouse or other person with whom she/he lives in a common law marriage or other permanent association; 2) blood relative in the direct line, collateral relative to the third degree, and in-laws final and inclusive of the second degree; 3) adopter and adoptee (Art. 94, Para. 1 CPC RS). If the domestic violence was committed against minors, who, in view of their age and mental development, are not capable of understanding the significance of the right not to have to testify, they may not be examined as witnesses, except if the defendant so demands (Art. 94, Para. 2 CPC RS).

In cases of domestic violence, the authority conducting the proceedings definitely learns about the victim's relationship with the offender from the beginning, so there is an obligation to caution the victim that she/he does not have to testify and to enter the warning and the victim's response in the record (Art. 94, Para. 3 CPC RS). From the moment the victim is informed, and so aware, that she/he is not obliged to testify against the offender, she/he has a legitimate opportunity to exercise her/his right as a privileged witness. Therefore, instead of considering what the authority conducting the proceedings may do after the victim has used the privilege not to testify, it is necessary to consider the more important question – how to prevent or, at least, mitigate the victim's tendency to do so. The answer to this question is not simple and requires a fundamental understanding of the reasons underlying this decision of the victim.

2. VICTIM'S REASONS FOR EXERCISING THE PRIVILEGE NOT TO TESTIFY ABOUT DOMESTIC VIOLENCE

There are many reasons why the victim may choose not to testify about domestic violence. Although reasons underlying that decision may be classified in different categories, based on the factors that contribute to their occurring, in most cases, victims can be affected by several different reasons which work combined and cause victim's recantation from the criminal proceedings. The significant, and sometimes also crucial, role that the victim of domestic violence can have as a witness in the process of securing evidence and adjudicating a criminal matter often makes their personal situation very delicate (Žarković & Ivanović, 2020: 322).

Therefore, factors related to the victim and the existing relationship with the offender have the greatest impact on her/his fulfilling the duty to testify as a witness, but those factors cannot be considered as completely separated from the factors operating in the victim's environment, as well as in the sphere of the legal and political system. Therefore, they must be carefully considered as a whole, not as separate parts that operate independently of each other.

2.1. Factors related to the victim and the existing relationship with the offender

Many cases of domestic violence include long-term violence against the victims, so the victim's fear from the offender is reasonable – she/he could easily be exposed to the offender's retaliation (Orford et al., 2017: 80). There is a possibility that the offender may further escalate in violence, causing the victim more troubles and serious injuries, driven by anger that the victim reported him/her as an abuser, or as a result of being strongly affected by the imposed protective measures.[135] Retaliation of the offender towards the victim may occur during the pre-investigation and investigation phase, as well as during the criminal proceedings, especially if the offender has not been detained by the authority conducting the proceedings.[136]

Sometimes, victims are reporting domestic violence simply because they want to stop the current escalation of violence, believing that, by doing so, they will prevent the future attacks (Felson et al., 2002–620). However, this does not always mean that the victim wants a punishment to be imposed on the offender, especially when it comes to receiving a prison sentence, which is a possible outcome of her/his decision to participate in the criminal proceedings. For example, the victim may be financially dependent on the offender or living in his/her household, i.e. not having the material conditions for an independent life. In order to avoid poverty and homelessness, victim may recant from further participation in the criminal prosecution of the offender (Orford et al., 2017: 7).

The fear and anxiety of the victim is justified, because entering into criminal proceedings can be life-changing for her/him. For example, the victim is likely to have to change her/his dwelling or housing location and may suffer harassment and even additional violence, because the offender knows the victim's family, friends and work environment, as well as the potential locations where she/he could reside. The findings of one study that analysed cases of domestic violence in the Republic of Serbia are supporting the fact that the offender can have permanent access to the victim, even after reporting of violence and conducting its prosecution. According to the data in this study, the courts did not order custody of the offenders in a significant number of cases, which means that they were at large during the proceedings (Turajanin, Ćorović, & Čvorović, 2017: 95).

On the one hand, the offender of domestic violence is familiar with the victim's daily routines and vulnerabilities, so he/she is able to maintain a certain type of control over her/him. On the other side, victim struggles with the fear, pain and injuries caused, but also with the existing complex intimate or family relationship with the offender (Ganley, 1995: 17). In this sense, the offender can have a strong influence on the victim's decisions, especially after she/he has shown determination to report the violence or has already done so. It should not be overlooked that victims of violence often remain with the offender, driven by the love they have towards him/her (Sichimba et al., 2020: 11). For these reasons, victims are susceptible to various methods of emotional manipulation that the offenders often use to prevent them from leaving abusing relationship and avoiding criminal prosecution (Heron, Eisma, & Browne, 2022: 689). For example, the offender can minimize or justify the act of violence, evoke pity and shift the burden of guilt to the side

[135] For example, if, after the risk assessment, the competent police officer determines the immediate threat of domestic violence, he/she shall render an order imposing an urgent measure on the offender who has been brought in to the competent organisational unit of the police. The urgent measures shall be: measure of temporary removal of the offender from the apartment, and measure of temporarily prohibiting the offender from contacting the victim of violence and approaching her/him (Art. 17, Para. 1–2 LPDV RS).

[136] In some cases, the offender's retaliation occurs after he/she has been convicted, i.e. after serving his/her sentence of imprisonment.

of the victim, apologize and express love and emotions towards the victims, showering her/him with attention and gifts, and promising that it will never happen again etc. (Barnett, 2001). The mentioned methods of manipulation can contribute to the victim's recanting in the criminal proceedings and to return into the harmful relationship with the offender.

Finally, the victim's ability to comprehensively provide a detailed statement of the violence she/he was exposed to should be considered. From the moment of reporting the domestic violence to the moment of victim's testimony at the main hearing, a significant period of time may pass, during which the victim's health may deteriorate. In one of the studies that examined the medical and psychological problems to which victims of violence were exposed, it was documented that a significant proportion of victims experience an increase in anxiety and that they are often diagnosed with clinical depression (Bonomi, 2009: 1694). The mental disorders the victims suffer as a result of experienced violence may impair their ability to have an active role in the criminal proceedings, and testifying before the court may further worsen their mental health.

2.2. Environmental factors

The victim's decision not to testify about the violence can also be caused by environmental factors, especially if it is an environment where domestic violence is tolerated and traditional gender norms are nurtured – e.g. the male traditional role is to be the head of the family, which grants him all the authority and power and the right to make all the decisions, while the role of the woman is to be absolutely submissive to the man (Milašinović & Andrić, 2021: 57). The problem of domestic violence and abuse as a highly pervasive social problem may be grounded in normative gender hierarchies, patriarchal systems of power, and ideologies of gender inequality, which together, legitimatise the subordination of women to men (Wild, 2020: 9). In such an environment, violence can be rationalized on the basis that the victim has deviated from a socially desirable behaviour, thereby reducing her willingness to leave the abusive relationship and report the violence.

Given that the most widespread form of domestic violence is precisely in intimate relationships and that the offenders are mostly spouses or ex-spouses (Opsenica-Kostić, Todorović, & Janković, 2016: 149), there may even be an environmental pressure on the victim that the marriage needs to be preserved at all costs. Reasons related to having children with the offender may also interfere. Sometimes, victims fear losing custody over their children, but also wish that their children will have the opportunity to grow up with both parents and not have to go through a stressful situation in which their parents are confronted and opposed parties during criminal proceedings (Stephens & Melton, 2017).

It is not rare that the victim is blamed for reporting the violence and having an active role in the prosecution of the offender, which may lead to the victim's social shaming and rejection, both from the family members and other members of community (Abayomi & Olabode, 2013: 57). Finally, environmental factors can also have damaging influence on the identification, assessment and intervention of competent authorities regarding the domestic violence.

2.3. Factors contained in the legal and political system

Factors affecting the victims of domestic violence to recant on the criminal proceeding can also be contained in the sphere of the legal and political system – e.g. domestic violence is not understood as a serious problem and a criminal offence with severe and long-term consequences, there is no appropriate legal regulation, assistance and support systems for victims are not established or they are not effectively implemented in practice, competent state authorities, such as the police, public prosecutor, court, centres for social work, have an insensitive treatment of the victims etc. (Naik & Naik, 2016: 1699). It seems that the victim must have confidence in the competent authorities, especially the police, already at the stage of reporting the violence, in order to feel safe enough to engage in criminal proceedings.

The way in which the victim perceives the work of the competent police officers on addressing her/his problem also matters in the context of victim's recantation. According to the findings in one study on domestic violence, reasons why victims do not report the violence again are the following: 1) victims had a previous disappointing experience with the police; 2) victims perceive that police officers do not have enough understanding of their problem; 3) victims think that the police will not deal effectively with the submitted criminal complaint, especially if their case is not considered serious enough (Birdsey & Snowball, 2013: 5–6). Such a perception can strengthen the victim's decision to recant, i.e. to withdraw her/his criminal complaint, which consequently leads to the difficulties in proving domestic violence in criminal proceedings, if the case even reaches that stage.

Therefore, it is necessary to address the importance of the first contact and interview with the victims of domestic violence by the competent police officers. Some of the recommendations include: it is necessary to talk with the victims in private, without the presence of other family members; consider and understand the intensity of their feeling of being threatened and the concern that there will be retaliation from the offender due to the reporting of violence and filing the criminal complaint; do not be judgmental against the victims; and respect the victims' decisions, as well as the time they need to make them (Opsenica-Kostić, Todorović, & Janković, 2016: 162). Police officers, and also the public prosecutor, should not overlook that victims go through an active process of withdrawal and reconsideration while trying to resolve the dilemmas related to the situation in which they found themselves, so it is necessary to allow them a certain period of reflection, before they are asked to decide on whether they will further participate in the criminal proceedings (Baly, 2010: 2307).

Even in the stage of the main criminal proceedings, the victim may decide not to testify if she/he perceives that her/his testimony is not sufficient for the public prosecutor to prove the domestic violence case, especially if she/he did not suffer physical violence and has no visible injuries (Letendre, 2000: 978). When there are no other persons who witnessed the violence and there is no material evidence, the victim may believe that the court is unlikely to convict the offender, which is why the victim may become convinced that the efforts and the sacrifices she/he has to make are worthless, in the sense that her/his testimony will only bring more problems, rather than a solution.

3. CONCLUSION

In order to mitigate the tendency of the victim to use the institution of a privileged witness, it is necessary to take appropriate steps already during the initial contact with the victim as a source of knowledge about the domestic violence. Victims should be carefully informed about the legal procedure following the criminal complaint in a way that is comprehensible to them. Police officers should advise the victims that their statements play a crucial role in the criminal prosecution of the offender, but also to give them enough time to consider their delicate situation and to decide whether to participate in the criminal proceedings.

Although the victims' statement about the domestic violence is sometimes the condition for initiating the criminal proceedings and may significantly contribute to its successful closure, the burden of proof should never be shifted absolutely to the victims. Instead, the victims should be honestly and carefully heard about the problems that bother and disturb them, such as: fear of retaliation from the offender, lack of support from family members and community, health problems they have, but also the lack of material resources for an independent life. Therefore, victims must be informed about the support and assistance services available to them, so that they can have the opportunity to deal with all the mentioned issues in an effective way. Covering victims' financial needs and temporary accommodation, but also giving them employment opportunities, would make a great difference in this sense.

Given that violence may deteriorate the mental health of the victims, it is important that they have access to health care services and are provided with psychosocial treatment that will empower them. Police officers, and especially the public prosecutor, must recognize the possible limitations related to the victims, which can have a great effect on their decision to testify before the court, but also their ability to give a statement about the violence in a proper manner. In some cases, the public prosecutor must make additional efforts to prepare the victims before they give a formal statement as witnesses, along with understanding their vulnerabilities and the contribution that they can have in the proceedings.

Finally, the victims' participation in the criminal proceedings should be part of the solution to their problem, not a contributing factor to further complicating it. The motivation of the victims to contribute to the successful conviction of abusers always exists, because they honestly want to stop the cycle of violence and to get some justice. The main problem is that, in this process, the victims are often left to fend for themselves and have no systemic support and help. Therefore, the entire society must make additional efforts to respond to the victims' needs, in order to arrive at the point where the perpetrators, too, will be punished, and not only the victims who are already suffering the most severe consequences.

REFERENCES

1. Abayomi, A. A., & Olabode K. T. (2013). Domestic violence and death: Women as endangered gender in Nigeria. *American Journal of Sociological Research*, *3*(3), 53–60.
2. Baly, A. R. (2010). Leaving abusive relationships: Constructions of self and situation by abused women. *Journal of Interpersonal Violence*, *25*(12), 2297–2315
3. Barnett, O. W. (2001). Why battered women do not leave: Part 2. *Trauma, Violence, & Abuse*, *2*(1), 3–35.
4. Bejatović, S. (2014). *Krivično procesno pravo – 3. izmenjeno i dopunjeno izdanje*. Službeni glasnik, Beograd.
5. Birdsey, E. & Snowball, L. (2013). *Reporting violence to police: A survey of victims attending domestic violence services*, *Bureau Brief no 9*. Sydney: NSW Bureau of Crime Statistics and Research. Available at: https://www.bocsar.nsw.gov.au/Publications/BB/bb91.pdf
6. Bonomi, A. E. (2009). Medical and psychosocial diagnoses in women with a history of intimate partner violence. *Archives of Internal Medicine, 169*(18), 1692–1697.
7. Bonomi, A. E., Gangamma, R., Locke, C. R., Katafiasz, H., & Martin, D. (2011). *"*Meet me at the hill where we used to park": Interpersonal processes associated with victim recantation. *Social Science & Medicine*, *73*(7), 1054–1061.
8. Borović, A., Pavlica, N., & Žarković, M. (2014). Žrtve nasilja u porodici kao privilegovani svedoci. U: *Nasilje u Srbiji – uzroci, oblici, posledice i društvene reakcije* (ur. D. Kolarić), (tom 2, str. 275–285), Kriminalistilčko-policijska akademija, Beograd.
9. Bošković, A. & Kesić, T. (2020). *Krivično procesno pravo – 2. izmenjeno i dopunjeno izdanje*. Kriminalističko-policijski univerzitet, Beograd.
10. Bošković, M. (2022). Izuzeci od neposrednog izvođenja dokaza i privilegovani svjedoci u krivičnom postupku Crne Gore. *Revija za kriminologiju i krivično pravo*, *2*, 217–230.
11. Ganley, A. L. (1995). *Understanding domestic violence. Improving the health care response to domestic violence: A resource manual for health care providers*, 15–42. Available at: https://www.futureswithoutviolence.org/userfiles/file/HealthCare/improving_healthcare_manual_1.pdf
12. Heron, R. L., Eisma, M., & Browne, K. (2022). Why do female domestic violence victims remain in or leave abusive relationships? A qualitative study. *Journal of Aggression, Maltreatment & Trauma*, *31*(5), 677–694.
13. Felson, R. B., Messner, S. F., Hoskin, A. W., & Deane, G. (2002). Reasons for reporting and not reporting domestic violence to the police. *Criminology*, *40*(3), 617–648.
14. Коларић, Д., & Марковић, С. (2018). Поједине недоумице у примени Закона о спречавању насиља у породици. *Анали Правног факултета у Београду*, *66*(1), 45–71.
15. Letendre, L. A. (2000). Beating again and again and again: Why Washington needs a new rule of evidence admitting prior acts of domestic violence. *Washington Law Review*, *75*(3), 973–1004.

16. Meier, J. S. (2006). Davis/Hammon, domestic violence, and the supreme court: the case for cautious optimism. *Michigan Law Review First Impressions*, *105*(22), 22–27.
17. Milašinović, S., & Andrić, S. (2021). Fenomenologija nasilja u porodici kao društveno devijantne pojave u Srbiji. *Napredak – časopis za političku teoriju i praksu*, *2*(1), 57–68.
18. Munstermann, J. (1996). Rescinding the hitting licence: compelling victims of domestic violence to testify. *Current Issues in Criminal Justice*, *7*(3), 356–367.
19. Naik, I. B. & Naik, A. R. (2016). Domestic violence: its causes, consequences and preclusions strategies, *IJARIIE*, *2*(2), 1697–1705.
20. Opsenica-Kostić, J., Todorović, J., & Janković, I. (2016). *Izazovi savremene porodice*. Niš: Univerzitet u Nišu.
21. Orford, A., Hobbs, C., Loginsky, P., & Martin, D. (2017). *Prosecutors' domestic violence handbook*. Washington Association of Prosecuting Attorneys and the King County Prosecuting Attorney's Domestic Violence Unit. Available at: https://waprosecutors.org/wp-content/uploads/2019/04/FINAL-DV-MANUAL.pdf
22. Sichimba, F., Nakazwe, K. C., & Phiri, T. (2019). Untold stories of women living in violence: Lived realities of why women stay: A case study of Ngombe and Kanyama Compounds in Lusaka. *Journal of Aggression, Maltreatment & Trauma*, 1–18.
23. Stephens, E. & Melton, H. C. (2017). The impact of children on intimate partner abuse victims' service seeking. *Women & Criminal Justice*, *27*(3), 191–203.
24. Škulić, M. (2020). *Krivično procesno pravo*. Beograd: Univerzitet u Beogradu – Pravni fakultet.
25. The Criminal Code of the Republic of Serbia, *The Official Gazette of RS*, No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).
26. The Criminal Procedure Code of the Republic of Serbia, *The Official Gazette of RS*, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the CC and 62/2021 – decision of the CC.
27. The Family Law of the Republic of Serbia, *The Official Gazette of RS*, No. 18/2005, 72/2011 – other law and 6/2015.
28. The Law on Prevention of Domestic Violence in the Republic of Serbia, *The Official Gazette of RS*, No. 94/2016 and 10/2023 – other law.
29. Turanjanin, V. (2021). The principle of immediacy versus the efficiency of criminal proceedings: Do changes in the composition of the trial panel violate the right to fair trial? *Nordic Journal of Human Rights*, *39*(1), 73–87.
30. Turanjanin, V., Ćorović, E., & Čvorović, D. (2017). Domestic violence in Serbia. *Zbornik radova Pravnog fakulteta u Nišu*, *56*(77), 75–101.
31. Wild, J. L. (2020). *Domestic violence & abuse: Prevention, intervention and the politics of gender* (Doctoral dissertation, University of Leeds – School of Sociology and Social Policy). Available at: https://etheses.whiterose.ac.uk/28214/2/WILD%20J._thesis_27Dec2020-correctversion.pdf
32. Žarković, M. & Ivanović, Z. (2020). *Kriminalistička taktika – 3. izdanje*. Kriminalističko-policijski univerzitet, Beograd.

UDK: 35.071.2:004.6/.7(497.7)
UDK: 342.51:004.6/.7(497.7)
DOI: 10.20544/ICP.9.2.24.P11

E-GOVERNMENT AND DIGITAL PUBLIC SERVICES AS ENABLERS OF PUBLIC ADMINISTRATION REFORM

Iskra Akimovska Maletić, *PhD*
Faculty of Security – Skopje
iskra.maletic@gmail.com

Abstract

The paper analyses the concept of e-government and the provision of digital public services as an imperative of modern societies. The subject of the research are the e-government and the electronic services in the context of public administration reform in North Macedonia. For this purpose, starting from the theoretical basis of public services as activities of public interest and especially e-services, an analysis of the legal and institutional framework in this area is carried out, as well as of reports from relevant international and national institutions, from which a more complete opinion on the practical implementation of digital services in the country can be obtained, that is, on their availability, competent authorities that provide them and the degree of sophistication. To achieve quality performance of public services as electronic services, and e-government to function on principles of efficiency, availability, responsibility and transparency in fulfilling its obligations it is necessary to work on public administration reform, to carry out full harmonization of European and international standards in this area, to change the administrative culture of employees in the administration and to improve their digital skills.

Keywords: digital services, public services, e-government, e-services, public administration reform

1. INTRODUCTION

The interest for studying public services has been significant from long ago, with the aim of organizing them better, so that they could satisfy as more citizens as possible. In terms of the apprehension of the legal theory on public services, a theoretical concept of public services may be determined, according to which they represent activities performed by the state in order to satisfy certain needs of the citizens (education, science, culture, social care, health care, etc.) that are not characterized by giving orders, while in case of their interruption it would come to serious problems during the normal functioning of the society (Akimovska Maletić, 2006, p. 29).

The fact is that digital technology is increasingly blurring the lines between the physical, digital and biological spheres and is rapidly changing the way people live, work and communicate. Especially after the pandemic, the modern way of communication and working requires increased use of digital means for communication or ICT which in a way highlighted the need for delivering digital or electronic public services to the citizens and the companies. Digitalization can help increase the efficiency of public administrations, reduce red tape, and facilitate the interactions among public administrations, businesses, and citizens (Dilimegani, 2014, acc. Campmas, Iacob, Simonelli, 2022). Nowadays, in

terms of policies, strategies, institutions, and tools, we can say that there is no longer a clear distinction or separation between government and e-government (United Nations, 2020).

Regardless of the terms used in modern circumstances, such as *e-government, e-administration, electronic,* or *digital public administration* generally, the biggest benefit of using e-administration means efficient, appropriate and better accessibility to public services. The escalation of the e-government services begins with easy access to governmental information and passes through the e-transaction between citizens and the public organization and reaches the electronic delivery of the requested document (Drigas, Koukianakis, 2009). The use of ICT in the public sector is fundamental to serve the needs of citizens and businesses, and can bring governments closer to their citizens and businesses and enhance transparency. E-administration can help improve efficiency in government and improve online access to information and service quality, enabling the delivery of services to citizens and businesses. Considering the complexity of the e-service phenomenon, it is not easy to formulate one general accepted definition of what a public e-service refers to. However, basically they can be viewed first as services, which are electronic, and which are public. Each of them is a dimension that defines the electronic service as such.

2. E-GOVERNMENT, E-SERVICES AND PUBLIC ADMINISTRATION REFORM

It can be said that between academia and practitioners there is no clear distinction between the terms e-government, digital government, and e-administration. One of the definitions is that E-government is "the use of information and communications technologies (ICTs), and particularly the Internet, to achieve better government" (OECD Recommendation, 2014), but it is also used as a powerful instrument to transform the structures, process and culture of government and make it more efficient, user- oriented and transparent. E-government can help improve efficiency in government and improve online access to information and service quality, enabling the delivery of services to citizens and businesses. **Further, e-**government should provide effective way of contemporary state and public administration in 21 century (regulated state – service state – information state). Therefore, it is considered that e-government is a key part of the strategy for development of modern political systems (Димитријевић 2009, acc. Akimovska Maletic, 2013, p. 3).

We can say that e-government is practical, transparent, interactive with citizens. The interactivity of electronic administration can be seen both internally, between bodies in the public sector, and externally, that is, it not only provides services to citizens, but also seeks feedback and evaluations about them. This, in addition to saving funds, is accompanied by greater availability of electronic administration, in contrast to official working hours, which limit the delivery of administrative services. Effective digital public services, or e-Government, can provide a wide variety of benefits. These include more efficiency and savings for governments and businesses, increased transparency, and greater participation of citizens in political life. ICT is already widely used by government bodies, but e-government involves more than just the tools, it involves rethinking organisations and processes, and changing behaviour so that public services are delivered more efficiently to people. Implemented well, e-government enables citizens, enterprises and organisations to carry out their interactions with government more easily, more quickly and at lower cost (European Commission, 2024).

It is not easy to formulate one general accepted definition of what a public e-service refers to. In the e-government context, e-services typically deal with intangible goods such as exchange of information in order to receive permits, disbursements, register tax or similar. The main characteristics of services that have important implications for understanding the public e-services are that a service can be understood as a process in which someone is being served and value for the user must be created. Furthermore, service quality is assessed based on the value created for the consumer of the service, hence there is an asymmetrical relationship between user and supplier, in which the experience of the user is of outmost importance (Lindgren, Jansson 2013).

It is not disputable that one of the main reform trends in last decades is one in the service delivery and digitalization. A lot of measures are taken to raise the efficiency and quality of public services, increase access to services and customer orientation. Despite the development of e-government, we should not forget that for a long time users of administrative services will choose direct personal contact among various forms of communication. E-government should be a possible path to services that the user can or do not have to choose (Virant, 2005, acc. Kavran, 2004). It can be said that there is no longer a clear distinction or separation between government and e-government. In modern conditions, after more than a decade, we can say that citizens, especially the younger population, primarily would choose digital communication with public bodies or receiving services through ICT, which indicates that in addition to the significantly developed digital operation of the public bodies, also the communication and administrative culture of citizens has changed to a significant extent.

In order to achieve a high level of development of digital public administration in a country in accordance with the foreseen international standards, it is very important that the entire public administration functions in a way that will ensure efficiency, availability, responsibility and transparency in fulfilling its obligations. In order for the e-government to function on such principles, it is necessary to complete public administration reform, especially regarding the digital transformation of public administration, to change the administrative culture of employees in the administration and to improve their digital skills, as well as the digital skills of the citizens. It can be said that, regarding the content of reform, despite all country differences, there are substantial commonalities in the topics of public administration reform. These are also increasingly influenced by agenda setting and support mechanisms of the European Commission (e.g. with regard to one stop shops, regulatory impact assessment, administrative burden, digitalisation and open government) especially in the Southern and Eastern European Member States (European Commission, 2018).

3. LEGAL AND INSTITUTIONAL FRAMEWORK IN NORTH MACEDONIA

Appropriate legal regulation has been adopted in North Macedonia related to the use of e-government and enabling efficient and effective provision of electronic services, such as: Law on Electronic Management and Electronic Services, Law for electronic documents, e ID and confidential services, Law on General Administrative Procedure (LGAP), Law on Personal Data Protection, The Law on the Central Population Register and The Law on free access to public information. They, particularly regulate enabling of electronic public administration, providing a basis for the provision of electronic services to citizens, electronic identification, use of electronic signatures, electronic delivery of documents between authorities and regulates issues related to the establishment and

functioning of the National Portal for electronic services, the Catalogue of Services and One Point for Services. Law on General Administrative Procedure (LGAP) represents a general legal basis for the practical application of ICT solutions in all processes that a procedure implies, and paves the way to more efficient, simpler and faster administrative procedures that facilitate economic activities. The responsibility for the collection of evidence ex officio and electronically by the institutions is a key provision, which practically establishes a one-stop shop system that represents the integration and rationalization of public services from the point of view of the parties. But with the adoption of a new Law on Electronic Management and Electronic Services, LGAP is no longer compliant with the latest digitalization legislation (State Audit Office, 2014).

The strategic approach to the development of the digital society and electronic government in North Macedonia is being developed through the adoption of several strategic documents from this area, firstly the National Strategy for the Development of an Information Society of 2005, and later the national strategy for the development of electronic communications with information technologies. The Strategy for e-Government for the period 2010-2012 represents a planned approach on how to guide state institutions in using the benefits of ICT to improve administrative processes, providing that public administration services must be available to everyone without any discrimination. Central body was established for the creation and development of an information society - planning, management and approval of all ICT-related projects in the Government and state institutions. That was the Ministry for Information Society and Administration (MISA), as a body responsible for the promotion and wide use of ICT. In order to efficiently and effectively implement measures arising from national strategies related to the development of an information society, the Government established a National Council for Information Society (Decision, 2008), composed of representatives from all stakeholders in the building and development of the information society: private, public, non-governmental and the academic sector. National Short-term ICT Strategy 2016-2017, aimed to use the power of ICT for public services, in order to make plans, structures, managing and laying the foundations of a digital government ecosystem. The government additionally established the National Council for Digital Transformation of Society (Decision, 2022), which adopted the Concept for Digital Transformation of Society in March 2023. The concept, as an umbrella document defines the basic principles on which the digital transformation will be based, as well as the activities and measures with which it should be achieved in all areas of society. The Concept is based on several principles: rule of law, social cohesion and public private partnership, free access to public information, reliable sources of data, as well as the "once only" principle, according to which data once entered into a public register, may not be requested again by individuals and legal entities. According to the Concept, the electronic ID card should be introduced and the importance of the "digital is standard" principle is highlighted, where the digital version is more important than the paper version. In order to achieve the goals set by the Concept and to follow the Roadmap for Digital Transformation, the establishment of an Agency for Digitalization was envisaged, as a responsible body for managing the environment for secure data exchange, setting standards for ICT and cyber security for all concerned. parties, providing guidelines for change management during the digital transformation of the administration and raising public awareness of this issue, coordination of activities (including collection, processing and storage of data) between all government institutions and coordination for the preparation of laws. Within the

framework of decentralized activities, it is foreseen that the provision of public electronic services and keeping registers is the task of every public institution.

The Draft National ICT Strategy 2023-2027 was prepared and published for public discussion as a key document that will guide all government actions regarding the digitization of the country and according to which the progress and achievements in this field will be measured. The draft Strategy, which was later adopted, is based on 4 basic pillars, which include digital connectivity and ICT infrastructure, development of digital skills among citizens, development of a digital Government, as well as enhanced support for digitization of businesses, ICT enablers and encouragement of digital innovations.

Considering the necessary need for public administration reform, and its digitalization in the direction of successful functioning of e-government and digital public services, mutually connected with ICT Strategy is the Public Administration Reform Strategy 2023-2030 with Action Plan 2023-2026. One of the foreseen areas in the Strategy is the Provision of services and digital transformation with the general goal of achieving a digitalized public administration, with two specific goals: a digital environment for better operation of the administration and increased quality and availability of services.

Also, the National Development Strategy 2024-2044 stresses the need to speed up the digitization process in all areas is emphasized, so that it will start with automating the process of data collection and processing and their electronic exchange, as well as e-services to the parties that they use, which will enable further mutual and multidirectional sustainable communication and interaction. It is noted that the existence of high private costs for certain services (e.g. healthcare, court fees and other extrafiscal costs of citizens and legal entities) is complemented by administrative barriers, and the poor quality of services is the result of the slowness of procedures and their insufficient or non-functional digitization. Therefore, in the context of good governance, the digitization of the administration bodies and the public sector in general is crucial, especially in terms of creating conditions and opportunities for providing services to citizens electronically. It implies serious investments in the improvement of the National Portal for electronic services and the Platform for Interoperability of Public Institutions. So, the goal is to achieve digitized institutions that offer high-quality public services to all businesses and citizens in the country.

As it was mentioned, MISA was established as a central body in the Government, by the Law on the Organization and Work of State Administration Bodies (LOOSAB) of 2008, with competences in addition to the public and state administration and in relation to the development and promotion of the information society. Also, it had broad competences in the field of electronic operations and the provision of electronic services, including the supervision of the application of laws in this area. With the amendments to the LOOSAB of 2024, this public administration body was divided into Ministry of Public Administration and Ministry of Digital Transformation. While the first remains responsible for the state and public administration, including its reform, the Ministry of Digital Transformation performs the tasks related, among other things, to the development and promotion of the information society; preparation of strategic documents in the field of digitization; security of networks and information systems; digitalization of public services etc.

4. E-SERVICES IN NORTH MACEDONIA: SITUATIONS AND CHALLENGES

The legal regulation adopted in this area lays down the electronic services as administrative services for the provision of which the bodies are responsible in accordance with their legal competence, and they are also provided electronically. User of electronic services is a natural or legal person, who submitted a request for the provision of an administrative service electronically, in accordance with the law. Provider of e-services is a competent authority and other entity, which provides administrative services electronically to individuals and legal entities, within the scope of its work established by law or performs activities for which it is registered.

National e-services portal (www.uslugi.gov.mk) ensures the execution of electronic services. It is an electronic platform through which the use of electronic services is enabled, which is accessed by using information and communication technologies based on logically connected processes. The Portal contains standardized forms that the user of the electronic services needs to exercise their rights or fulfil their obligations, in accordance with the law. The processing of requests in electronic form is carried out in a manner and in a procedure determined by the law that determines the right or obligation for the user. When processing the request through the Portal, the electronic service provider uses the user data contained in the Central Population Register. The portal contains a description of the service through a certain technical standard and specification. Each competent authority is obliged to record the services in a clear, precise and simple way in the Catalogue of services it provides in accordance with the law. Before their publication on the Portal, the verifier of the processes for providing electronic services verifies the content of the standardized electronic forms and verifies the administrative processes related to the services provided by the authority. The competent authority is obliged to update each electronic service it provides individually in case of any changed circumstance affecting the provision of that service.

Specifically, the portal consists of a public part and a private part. The public part is available to all visitors, without the need for login or identification. In the public section, data on the services provided by the competent institutions and public service providers are published. For each service, the following is listed: its description, competent authority for the service, location of the authority and contact, required forms, submissions, conditions for obtaining the service, required evidence/documents, deadlines for each step of the procedure, payment information, as well as legal regulation that regulates the service. Services can be searched and found according to several criteria: life event, category and subcategory, alphabet, competent authority and with the search tool. It lists the categories according to which the services are distributed: Family and children, Care and social assistance, Personal documents, Healthcare, Transport and Environment, Education and training, Housing and property, Culture, sport and recreation, Farming, Travel and Transport, Justice and human rights, Taxes and public charges. It is also possible to search according to the most common events in the life course of citizens: a newborn, education, marriage/divorce, housing and residence, employment, starting a business, retirement, death, illness/disability, natural disaster, vehicles and travel, and personal documents.

The Catalogue of Services, managed in electronic form by MISA, is a catalogue of services which contains the data on the administrative services provided by the competent authorities, grouped by related administrative areas. It is a unique register of services, in which the following are clearly and unequivocally determined: the competent authority that provides each individual service, the law from which the service derives and the

competence of the body, the conditions required for the use of each individual service, as well as the evidence required for using the specific service. The responsibility for the accuracy and up-to-dateness of the information for a particular service is on the provider of the service.

In order to obtain a clearer picture of the provision of electronic services on the National Portal for e-Services in North Macedonia, the table below presents data from the Progress Report for North Macedonia (European Commission, 2023), the Report Efficiency of the National Portal for e-Services (State Audit Office, 2024), with a cross section of November 2023 and data published on the National e-Services Portal in July 2024.

Table 1. - Comparison of data on registered electronic services, e-services and users of the National e-services portal

Source	Institutions	Institutions with a service on portal	Registered users	Requests submitted	Number of services	Number of electronic services	Number of electronic services on portal
Progress Report for NM, 2023	-	-	96,940	-	-	230	
Report, State Audit Office, 2024 (cross section November 2023)	-	-	111,322	61,868	912	234	
Data from the National e-services Portal (cross-section July 2024)	1,288	173	132,042	83,623	-	264	125

From the data presented, an increasing trend is evident of registered users of the Portal, from 96,940 to 132,042, as well as of the number of submitted requests. A slight

increase is observed in the number of electronic services from 230, to 234 and to 264 electronic services in July 2024. It can be seen from the data published on the National Portal that the number of electronic services through the portal is 125 e-services. From the research done and the data presented in the table, it can be noted that there is no accurate and reliable data based on the same criteria about the services provided electronically. The absence of synchronization of statistics between the portals of the institutions that offer electronic services and the national portal is also noted, which does not allow to determine the total number of implemented electronic services in the country (State Audit Office, 2024).

During the practical implementation of the operationalization of the digital transformation and enabling the electronic provision of public services, a series of challenges and problems arise that slow down or make the process impossible. On the one hand, there is a lack of appropriate ICT equipment, but also the need for a substantial change in the administrative culture, such as the habits of the administrative servants and their mentality, but also the awareness and conscientiousness of the officials and their commitment. The level of digitization of registers, the development of electronic services as well as the availability of facilities differ between institutions. Despite a functional interoperability platform, it is assessed to be underutilized.

Reports from relevant institutions assess that North Macedonia is moderately prepared in the field of digital transformation with limited progress made in the previous years. Despite the improvements in digitalisation, many services are still only provided in a traditional form and could be streamlined to improve the services to citizens. The perception of the quality of digital services by businesses has declined. State institutions offering services to citizens need to demonstrate more commitment to providing services through the e-portal (European Commission, 2022*)*. The number of registered users and completed services on the portal is increasing but remains below expectations. Many of these services remain purely informational and cannot be fully performed online (OECD/SIGMA, 2021).

The 2023 Progress Report addresses that the number of digital services in North Macedonia available to its citizens is symbolic and mainly consists of services that are rarely requested with the most common services, such as issuing of personal documents, not yet available online. Even offline, these basic services have deteriorated with additional administrative requirements from citizens. So, there was limited progress made consisting of a slight increase in the number of electronic services offered to citizens and businesses. There is remark that the quality of data in the population register needs to improve as it is the country's principal register. Also, the legislation on an interoperability framework is not updated in line with the latest EU standards, while the tool itself is not used to its full potential by the relevant institutions, which is an obstacle for progress on provision of digital services. Moreover, no progress was made in simplifying the administrative procedures. The law on general administrative procedures is still not systematically implemented across the administration (European Commission, 2023).

5. CONCLUSIONS

In order to have quality performance of public services and their digital delivery, which is immanent to modern societies, it is necessary to continue to work on the reform of the public administration and to achieve full compliance with European and international standards in this area. The PAR Strategy 2018-2022 focused mostly on improving e-services, while the focus on improving the quality of traditional services was quite poor. This is relevant, as the level of digital literacy in North Macedonia is still low (OECD/SIGMA, 2021). The new 2023 PAR Strategy envisages the establishment of an ICT Agency in order to improve the institutional and legal framework of ICT. The ICT Strategy 2023-2027, which was also adopted late, should contribute to increasing the quality of digital services. In the same period, a proposal for the Law on Security of Networks and Information Technologies (published at ener.gov.mk) was prepared, which provided, among other things, for the establishment of an Agency, which would also be responsible for digital transformation. This law was not adopted. The overdue adoption of the strategic documents in the state, the low percentage of implementation of the measures and activities foreseen in them and undertaking of partial changes in legal and institutional aspects lead to the unsuccessful completion of the reform processes.

Appropriate legal regulations have been adopted in the country, which enables the implementation of strategic documents. However, the administrative barriers in the special procedural laws that are not in line with the LGAP are still an obstacle to digitization of processes and consistent application of the LGAP, as well as to the monitoring of background work and administrative procedures. Finally, there are the regulations governing archival work, which should regulate the storage of electronic documents, and it is currently highlighted that there are no technical prerequisites for safe storage and archiving of these materials. These findings are also confirmed by the content of the reports of relevant international and national institutions and the reports of the civil society sector.

From the analysis of the relevant sources, it can be concluded that there exists no database for the use of electronic services offered by public institutions. There is no accurate and reliable data about the number of services provided electronically, compared to the services offered in physical presence. In the country, limited number of electronic services are offered. While the expansion and advancement of the number of fully electronic services is still a challenge, the numbers of electronic services and of their users increase from one year to the next. The digitization of the registers should be completed. Certainly, there is a need for greater involvement and activity of competent bodies in the provision of e-services. Until now, MISA had a mandate to co-ordinate the entire service delivery area, but the views were that the modernisation of public services is still fragmented and despite the improvements in digitalisation, many services are still only provided in a traditional form. So, the need for a body that will have the competences and professional staff to implement, as well as supervise, the work in this area cannot be disputed. The latest amendments to the LOOSAB of June 2024, according to which it was separated from MISA and the Ministry of Digital Transformation, began to operate, which may be the initial motivating factor for strengthening the process of digital public service delivery by the public administration. Certainly, the new Ministry should take clear ownership and leadership of the co-ordination of overall public service delivery, e-services, in order to guarantee a uniform approach across different sectors and develop relevant competences. In addition to the need to modernise and digitalise the public sector, more efforts and better cooperation among institutions are still required. Thus, through the

creation of policies and coordination in the field of service provision and digital transformation, the process of public administration reform can be accelerated, which will contribute to the achievement of digitalized public administration.

REFERENCES

1. Akimovska Maletić, I, (2006) *EUROPEAN LEGAL FRAMEWORK FOR PUBLIC SERVICES*, FACTA UNIVERSITATIS Series: Law and Politics Vol. 4, No 1.
2. Akimovska Maletić, I, (2013) *GOVERNMENT AS A KEY ELEMENT OF PUBLIC SECTOR REFORM IN THE REPUBLIC OF MACEDONIA*, 21st NISPAcee Annual Conference, Belgrade.
3. Campmas, A, Iacob, N, Simonelli, F, (2022) *How can interoperability stimulate the use of digital public services? An analysis of national interoperability frameworks and e-Governmet in the European Union*, Cambridge University Press, available at https://www.cambridge.org/core/journals/data-and-policy/article/how-can-interoperability-stimulate-the-use-of-digital-public-services-an-analysis-of-national-interoperability-frameworks-and-egovernment-in-the-european-union/62ACD1B9160C3ABF7AF6CF637B1A124C (accessed 5 July 2024)
4. Димитријевић, П, (2009) *Електронска управа и информационо друштво*, Модерна управа, Часопис за управно-правну теорију и праксу, Агенција за државну управу, Република Српска.
5. Drigas, A, Koukianakis, Л, (2009) *Government online: An E-Governemt Platform to Improve Public Administration Operations an Services Delivery to the Citizen*, available at https://link.springer.com/chapter/10.1007/978-3-642-04754-1_53 (accessed 2 July 2024)
6. Kavran, D, , (2004) *Evropski upravni prostor, reforma i obrazovanje državne uprave*, Pravni život, Beograd.
7. Lindgren, I, Jansson, G, (2013) *Electronic services in the public sector: A conceptual framework*, Government Information Quarterly, Vol. 30, Issue 2, Elsevier available at https://www.sciencedirect.com/science/article/abs/pii/S0740624X13000026 (accessed 1 July 2024)

Publications, Reports, Documents, Legal acts

1. Decision to establish a National Council for Digital Transformation of Society ("Official Gazette of the R. Macedonia" 202/2022, 253/2022)
2. Decision to establish a National Council for Information Society ("Official Gazette of the R. Macedonia" 97/2008),
3. Draft Concept for Digital Transformation of the Society, March, 2023, available at https://ener.gov.mk/PublicDocuments/%D0%9D%D0%B0%D1%86%D1%80%D1%82%20%D0%9A%D0%BE%D0%BD%D1%86%D0%B5%D0%BF%D1%82%20%D0%B7%D0%B0%20%D0%B4%D0%B8%D0%B3%D0%B8%D1%82%D0%B0%D0%BB%D0%BD%D0%B0%20%D1%82%D1%80%D0%B0%D0%BD%D1%81%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D0%B8

%D1%98%D0%B0%20%D0%BD%D0%B0%20%D0%BE%D0%BF%D1%88%D1%82%D0%B5%D1%81%D1%82%D0%B2%D0%BF%D1%82%D0%BE_%D0%9D%D0%B0%D1%86%D1%80%D1%82_id=49_version=1.pdf, (11.04.2023) (accessed 2 July 2024)

4. EGovernment and digital public services, available at https://digital-strategy.ec.europa.eu/en/policies/egovernment (accessed 2 July 2024)
5. EUROPEAN COMMISSION Brussels, 12.10.2022 SWD(2022) 337 final COMMISSION STAFF WORKING DOCUMENT North Macedonia 2022 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, available at https://neighbourhood-enlargement.ec.europa.eu/document/download/48ba61f0-41ae-4cff-9517-29fac190f4bd_en?filename=North%20Macedonia%20Report%202022.pdf (accessed 2 July 2024)
6. EUROPEAN COMMISSION Brussels, 8.11.2023 SWD(2023) 693 final COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, available at https://neighbourhood-enlargement.ec.europa.eu/document/download/28a9322a-3f18-434e-89d2-0890c90b2f96_en?filename=SWD_2023_693%20North%20Macedonia%20report.pdf (accessed 4 July 2024)
7. European Commission, eGovernment and digital public services, available at https://digital-strategy.ec.europa.eu/en/policies/egovernment (assessed on 25 June 2024)
8. EUROPEAN COMMISSION, Public Administration Reform in Europe: Conclusions, lessons learned and recommendations for future EU policy, 2018, p.10
9. Law for electronic documents, e ID and confidential services (Official Gazette of R. Macedonia 101/19 и 275/19)
10. Law on Electronic Management and Electronic Services (Official Gazette of R. Macedonia 98/19 и 244/19)
11. Law on free access to public information (Official Gazette of R. Macedonia 101/2019)
12. Law on General Administrative Procedure (Official Gazette of R. Macedonia 124/2015)
13. Law on Personal Data Protection (Official Gazette of R. Macedonia 42/20 и 294/21)
14. Law on the Central Population Register (Official Gazette of R. Macedonia 98/19 и 275/19)
15. Law on the Organization and Work of State Administration Bodies (Official Gazette of R. Macedonia 58/00, 44/02, 82/08, 167/10, 51/11 „Official Gazette of R.N. Macedonia 96/19, 110/19 и 121/24)

16. National Development Strategy - situations and challenges available at https://www.nrs.mk/content/NSR%20Sostojbi%20i%20predizvici%20-%20MKD%20complete.pdf (accessed 5 July 2024)
17. National ICT Strategy of the Republic of North Macedonia, 2023-2027, Draft version, December 2022,available: https://ener.gov.mk/PublicDocuments/%D0%9D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B0%20%D0%98%D0%9A%D0%A2%20%D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%20%D0%B7%D0%B0%202023%20-2027%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0%20-%20%D0%94%D1%80%D0%B0%D1%84%D1%82_%D0%9D%D0%B0%D1%86%D1%80%D1%82_id=46_version=1.pdf (accessed 1 July 2024)
18. OECD, e-Government for better Government, 2005, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2005/11/e-government-for-better-government_g1gh47c4/9789264018341-en.pdf, (accessed 29 June 2024)
19. OECD/SIGMA, Monitoring Report, The Principles of Public Administration REPUBLIC OF NORTH MACEDONIA November 2021, available at https://www.sigmaweb.org/publications/Monitoring-Report-2021-Republic-of-North-Macedonia.pdf (accessed 2 July 2024)
20. Public Administration Reform Strategy 2018-2022' including Action Plan, fevruary 2022
21. Public Administration Reform Strategy 2023-2030 with Action Plan 2023-2026 available at https://www.mioa.gov.mk/content/Strategija%20RJA_MK%2003.pdf (accessed 1 July 2024)
22. Recommendation of the Council on Digital Government Strategies, OECD Legal/0406 15.07.2014 available at https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0406 (accessed 2 July 2024)
23. STATE AUDIT OFFICE, FINAL REPORT FOR A PERFORMANCE AUDIT PERFORMED IT AUDIT, THE EFFECTIVENESS OF THE NATIONAL E-SERVICES PORTAL, March 2024, available at https://dzr.mk/sites/default/files/2024-06/60_RU_IT_Efektivnost_nacionalen_portal_E_uslugi_2023.pdf (accessed 6 July 2024)
24. United Nations, General Assembly, "Road map for digital cooperation: implementation of the recommendations of the High-level Panel on Digital Cooperation", report of the Secretary-General (A/74/81), 29 May 2020, available at https://www.un.org/en/content/digital-cooperation-roadmap/
25. United Nations Department of Economic and Social Affairs, E-Government Survey 2022, The Future of Digital Government, New York 2022, available at https://desapublications.un.org/sites/default/files/publications/2022-09/Report%20without%20annexes.pdf (accessed 1 July 2024)

POLITICAL SCIENCES

UDK: 342.8:328(497.7)"2024"(047)
UDK: 342.8:342.511(497.7)"2024"(047)
DOI: 10.20544/ICP.9.2.24.P12

AN ANALYSIS OF THE 2024 PRESIDENTIAL AND PARLIAMENTARY ELECTIONS IN N. MACEDONIA

Adrian Waters, University of Graz, adrianw.waters11@gmail.com

Abstract

In April and May 2024, the Republic of N. Macedonia held elections in which its citizens voted for the head of state as well as for the parliament. Arguably these have been the most important ballots in the country's recent history, especially because the outcome displayed a shift in domestic political dynamics as the seven-year rule of SDSM and DUI came to a close. Their administration was marked by the adoption of controversial policy decisions, state capture, corruption and democratic backsliding. The Macedonian electorate demonstrated their disillusionment towards the government and the desire for change by providing the centre-right opposition party VMRO-DPMNE its best parliamentary election result in a decade and thus the ability to form a new executive with a stable majority. Other political forces, such as the VLEN coalition representing the opposition groups from the ethnic Albanian camp, as well as Levica and the newly-formed ZNAM also enjoyed relative success in this electoral round, meaning that these will also be influential factors in the coming years. As such, the aim of this paper is to analyse the presidential and parliamentary elections in N. Macedonia and how the axis of power tilted away from SDSM and towards VMRO-DPMNE. It will start with an overview of the context behind the two ballots, before continuing with an outline of the electoral conduct of and results received by the political forces involved and explaining the implications for the future of the country's internal politics and foreign policy.

Keywords: *Macedonia, elections, VMRO-DPMNE, SDSM, Levica*

Introduction

In April and May 2024, N. Macedonia held its most decisive presidential and parliamentary elections after a turbulent period marked by political crises and democratic backsliding. These ballots brought an end to the rule of the Social Democratic Union of Macedonia (*Socijaldemokratski sojuz na Makedonija*, SDSM) and of the Democratic Union for Integration (*Demokratska unija za integracija*, DUI), the largest party representing the ethnic Albanian minority in the country, and have brought the centre-right Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (*Vnatrešna makedonska revolucionerna organizacija – Demokratska partija za makedonsko nacionalno edinstvo*, VMRO-DPMNE) back into power after a seven-year hiatus. The results were the culmination of the growing public discontent towards the SDSM-DUI, government which was evident during the last local elections held in 2021. These presidential and parliamentary elections were also significant because they saw the continuing rise in popularity of the Left (*Levica*) party and the emergence of a new political movement known as For Our Macedonia (*Za naša Makedonija*, ZNAM), both of which could become influential in the country's politics in the near future. The

goal of this paper is to analyse the conduct and results of the presidential and parliamentary polls held in N. Macedonia and explain their implications for both internal political dynamics and external relations. It will start with an overview of the context that led to the ballots, before analysing the conduct of and results obtained by the main political groups which participated in this process. In the final part, the ramifications of the change of government will be discussed.

The context of the elections

As mentioned above, the 2024 presidential and parliamentary elections happened in the context of political turmoil caused by the divisive conduct and policies of the SDSM-led governments headed by Zoran Zaev from 2017 until 2022 and by Dimitar Kovačevski until January 2024. The rule of the former was characterised by state capture, corruption scandals (such as the 2019 extortion affair), an inefficient management of the COVID-19 pandemic and the adoption of the Prespa Agreement with Greece (that changed Macedonia's constitutional name to North Macedonia) via illegal means, namely bribing and coercing eight opposition MPs to approve the treaty (Daskalovski & Jankovski, 2023). His successor, Kovačevski, was not better as his mandate was stained by corruption allegations (especially one involving employees of the State Oncology Clinic who sold expensive treatments to foreign black markets) and by the ratification of amendments to the Criminal Code that reduced penalties for abuse of office and participation in criminal enterprises (Vangelov, 2024). These were rubber-stamped using an EU flag procedure which hinders filibustering, limits parliamentary debates and is supposed to be used only for proposals aligning Macedonian laws with the EU ones (Republika English, 2023). Such action was criticised even in the 2023 annual report prepared by the European Commission, which also noted that corruption was still a major issue (European Commission, 2023). Due to these factors, N. Macedonia has been labelled as a hybrid regime with the largest democratic decline in the Western Balkans after Serbia (Kocovska, 2024).

This democratic backsliding was evident due to irregularities, e.g. vote buying and ballot stuffing in the 2017 local and 2019 presidential elections won by SDSM and its allies (Waters, 2020). They also used these tactics in the 2020 parliamentary elections to retain their majority. Moreover, the results of this vote were disputed by the opposition parties because the State Election Commission website was hacked on election night (Pankovski et al., 2020). Nonetheless, increasing popular disillusionment with the SDSM-led government led to the opposition party VMRO-DPMNE winning control over most of Macedonia's municipalities in the 2021 local elections (Bliznakovski, 2022). This trend continued to grow and became apparent during the 2024 presidential and parliamentary ballots.

The 2024 Presidential elections

After months of negotiations between the government and the opposition, the first round of the presidential elections was set for 24 April 2024, with a possible second round to be held on 8 May together with the parliamentary elections. In Macedonia, the President of the Republic is elected by a majoritarian popular vote by all citizens residing in the country and abroad. If no candidate receives more than 50 per cent of the vote in the first round, a second round is organised within two weeks in which the two most voted candidates compete. In addition, there is a minimum turnout threshold of 40 per cent for

the results to be valid, otherwise the process is repeated (Vasilev et al., 2024).

This year there were seven candidates for the role of head of the Macedonian state, the first being the incumbent president Stevo Pendarovski. He was the candidate backed by SDSM and DUI who won the 2019 ballot. This was his third time running for the position since he was the SDSM candidate in the 2014 elections, too, but was defeated by the VMRO-DPMNE nominee Ǵorge Ivanov. The second candidate for the presidency was Gordana Siljanovska-Davkova, who was supported by VMRO-DPMNE and its allies. Like Pendarovski, she also ran in 2019, but lost. Nevertheless, she gained a parliamentary seat in 2020 as an unaffiliated candidate within the VMRO-DPMNE electoral coalition. The third candidate was Stevčo Jakimovski, the mayor of the municipality of Karpoš within the Macedonian capital Skopje and leader of the Civic Option for Macedonia (*Graǵanska opcija za Makedonija*, GROM). Bujar Osmani, the Foreign Affairs minister, was the fourth candidate and was put forward by DUI and its electoral coalition. The fifth contender was the political science professor Biljana Vankovska, backed by Levica. The sixth competitor was Arben Taravari, the mayor of Gostivar and head of the Alliance for the Albanians (*Alijansa za Albancite*, AA), who was supported by the ethnic Albanian opposition parties grouped in the VLEN coalition. Lastly, there was Maksim Dimitrievski, the mayor of the second-largest city in Macedonia, Kumanovo, who is also a former SDSM member and currently the leader of ZNAM, of which he was the candidate (Vasilev et al., 2024).

Even before the campaign began it was clear from the opinion polls that most Macedonians would vote for any contender proposed by VMRO-DPMNE (Republika English, 2024a). After Siljanovska-Davkova was announced as the main opposition candidate, another survey showed that she was leading decisively over Pendarovski, whose presidency was largely assessed as negative. The majority of respondents also declared that he did not deserve a second mandate and that the VMRO-DPMNE MP would win in the second round if there was one. In the same survey, Dimitrievski was the third most popular candidate among ethnic Macedonians, while in the ethnic Albanian block Osmani enjoyed higher support than Taravari (Republika English, 2024b). The advantage of Siljanovska-Davkova over Pendarovski in the polls was maintained during the campaign, particularly in the eastern parts of the country which are largely inhabited by ethnic Macedonians. He was more competitive in areas with significant ethnic Albanian populations. The third highly rated candidate in eastern Macedonia was Dimitrievski, followed by Vankovska and Jakimovski (Republika English, 2024c). So, the majority of Macedonians were prepared to punish the government by voting for the VMRO-DPMNE contender, but it was also clear that support for non-traditional political forces was becoming even more visible.

The first round went smoothly apart from certain irregularities perpetrated by the ruling parties, including pressure on voters (Republika English, 2024d). Anyhow, the results were not surprising for those who followed the opinion polls (see Table 1). Siljanovska-Davkova achieved an astounding victory over her competitors with just over 40 per cent of the vote, especially against Pendarovski who came second with around 19 per cent. For her, this was an improvement compared to the first round of the 2019 ballot when she received less votes than him (Ilievska-Pačemska, 2024). Moreover, this was the first time SDSM obtained less than 200,000 votes. Before 2024, the worst result for a SDSM-backed contender in the first round of a presidential election was in 2009, when the then candidate Ljubomir Frčkoski gained 202,691 preferences (Republika English, 2024e).

Siljanovska-Davkova's lead was notable in certain municipalities, like in Gradsko, where she gained 64.48 per cent, while Pendarovski 23.95 per cent, or in Mogila, where she had 63.42 per cent, and her main opponent 24.38 per cent (State Election Commission, 2024a). This overwhelming support made the VMRO-DPMNE candidate's triumph in the second round highly likely. The failure of SDSM to gather DUI's endorsement of Pendarovski (like in 2019) diminished their electoral prospects even further as it was obvious that it no longer had a sizable voter base due to its divisive policies and corruption. As a matter of fact, it has been claimed that disillusioned former SDSM members and supporters voted for Dimitrievski, who left his previous party due to disagreements with the leadership (Republika English, 2024f).

Table 1: Results of the first round of the presidential elections

Candidate name	**Number of votes**	**Vote share percentage**
Gordana Siljanovska-Davkova (VMRO-DPMNE)	363,085	40.09
Stevo Pendarovski (SDSM)	180,499	19.93
Bujar Osmani (DUI)	120,811	13.34
Maksim Dimitrievski (ZNAM)	83,855	9.26
Arben Taravari (VLEN)	83,337	9.20
Biljana Vankovska (Levica)	41,331	4.56
Stevčo Jakimovski (GROM)	8,121	0.90
Turnout	905,622	49.92

Source: State Election Commission (2024a).

The results shifted the axis of power in Macedonia away from SDSM and DUI and towards VMRO-DPMNE. After the first round, Hristijan Mickoski, the centre-right party's leader, appealed to the other opposition forces to back Siljanovska-Davkova in the second round (Republika English, 2024g). This proposal was accepted by Dimitrievski (Republika English, 2024h), as well as the representatives of the VLEN coalition, who gave indirect support to her by calling on their electorate to vote for one of the two presidential candidates. This was the result of meetings between VMRO-DPMNE and the ethnic Albanian opposition parties, whom they saw as potential coalition partners for a future government (Republika English, 2024i). With regards to Levica, its leader Dimitar Apasiev refused to openly endorse Siljanovska-Davkova, explaining that although the

party had backed her for the second round of the 2019 presidential elections, the pro-VMRO DPMNE television channel Alfa had banned Levica members from participating in its programmes ever since. Vankovska, who also supported the VMRO-DPMNE candidate five years before, publicly declared that she would not vote for Siljanovska-Davkova, citing differences of opinion. This did not mean that Levica members and supporters would not vote in the presidential elections as they were given a blank cheque vis-à-vis their voting intentions (Nezavisen, 2024a) and it was clear that they would prefer the VMRO-DPMNE contender over Pendarovski.

The second round of the presidential election was held simultaneously with the parliamentary election. What became noticeable since the start of the day was that turnout for the former ballot was lower than for the latter, particularly in the municipalities with an ethnic Albanian-majority population (Republika English, 2024j). This was because DUI had discreetly told its members and sympathisers to boycott the presidential poll (Republika English, 2024k), arguably in order to trigger a political crisis for its own gain and possibly achieve its goal of having the President elected by parliament (Republika English, 2024l). In fact, the overall turnout for the second round was slightly lower than the first, but it passed the 40 per cent threshold and saw Siljanovska-Davkova defeat her rival by a landslide (see Table 2). The outgoing president, who was hoping to gain votes from the ethnic Albanians, blamed the DUI boycott for his defeat. Moreover, the results confirmed that the VMRO-DPMNE candidate received votes from supporters of the VLEN coalition (Republika English, 2024k), as well as from the ZNAM and Levica electorate. Apart from becoming the first woman president of Macedonia, she is also the presidential contender with the second-highest number of votes obtained in the second round, after Boris Trajkovski, the VMRO-DPMNE-backed candidate who gained 582,808 votes in 1999 (Ilievska-Pačemska, 2024).

Table 2: Results of the second round of the presidential elections

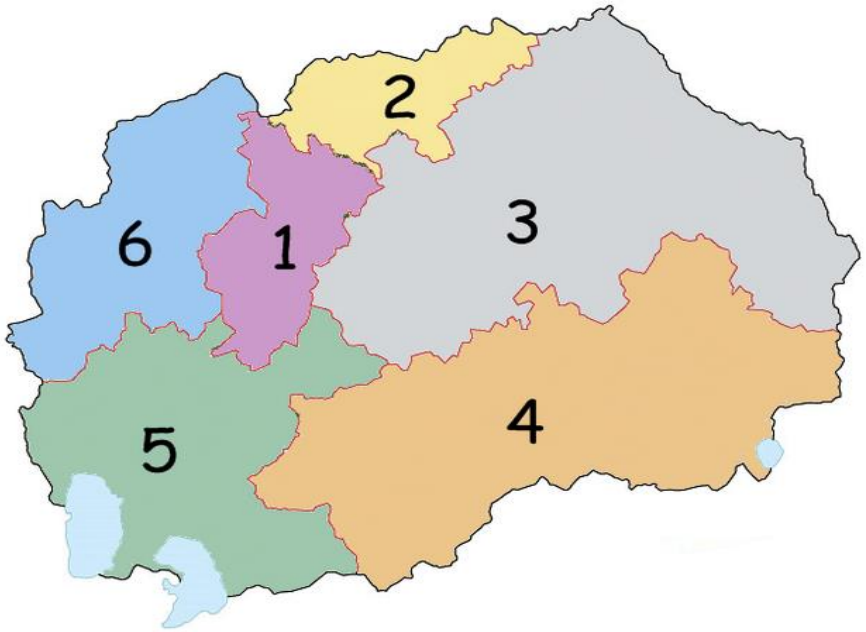
Candidate name	**Number of votes**	**Vote share percentage**
Gordana Siljanovska-Davkova	561,000	65.14
Stevo Pendarovski	251,899	29.25
Turnout	**861,218**	**47.47**

Source: State Election Commission (2024b).

The 2024 parliamentary elections

The 120 members of the Macedonian parliament are elected every four years within six electoral units using proportional representation with closed lists for candidates (see Diagram 1). Each unit has 20 seats that are assigned according to the share of votes for every candidate list using the D'Hondt formula. Due to the closed list system candidates win a seat in the order in which they appear on the list (Treneska et al., 2024).

Diagram 1: Electoral units in Macedonia



Source: Berisha, D. (2016). The Politics of Electoral Systems in the Former Yugoslav Republic of Macedonia. *Indiana Journal of Constitutional Design* 2 (article 1), p. 9.

Just like in the case of the presidential elections, it was apparent from the polls that VMRO-DPMNE would win the most seats, while SDSM would face a decline. These polls also showed that Levica would witness an increase in seats and that the emerging political movement ZNAM would gain a small, but significant number of MPs (Republika English, 2024m). Seeing that SDSM was going to return to the opposition, some minor parties, including three from the ruling coalition, decided to side with VMRO-DPMNE, especially because it supported a major request from these groups to reduce the number of electoral units to one, so that they could win seats independently without having to join one of the main parties in an electoral coalition as they have done until now (Republika English, 2024n).

As a matter of fact, many of the parties running in the parliamentary elections were part of electoral coalitions. SDSM led the Coalition for a European Future (*Koalicija za Evropska idnina*), while VMRO-DPMNE headed the Coalition for Your Macedonia (*Koalicija za tvoja Makedonija*). The ethnic Albanian block also had its lists comprising different groups. DUI was part of the so-called European Front (*Evropski front)*, which also included other ethnic Albanian parties, a faction of the AA led by Taravari's rival, Zijadin Sela, and political organisations representing Turks, Bosniaks and Roma. The above-mentioned VLEN coalition was composed of AA members loyal to Taravari, as well as the ethnic Albanian opposition parties: Besa, Alternative (*Alternativa*) and the Democratic Movement (*Demokratsko Dviženje*). GROM headed a list known as Bravely for Macedonia (*Hrabro za Makedonija*), incorporating the conservative group Integra and a minor party representing Roma people, which backed Jakimovski in the presidential

elections. Other parties, such as Levica and ZNAM ran independently (Treneska et al., 2024).

As mentioned above, after the first round of the presidential election, VMRO-DPMNE initiated talks with the VLEN coalition, which was their preferred potential partner from the ethnic Albanian block (Republika English, 2024g). Although DUI used to govern the country together with the centre-right party in the past, it was no longer trusted because it had violated an oral agreement from 2008 between the two groups saying that the largest ethnic Macedonian party should form a ruling coalition with the largest ethnic Albanian party by joining forces with SDSM in 2017 even though it had less MPs than VMRO-DPMNE (Republika English, 2024o). ZNAM also sought the favour of VMRO-DPMNE since it did not wish to enter any government that comprised SDSM and DUI (Republika English, 2024g). Meanwhile, Levica showed readiness to enter a new government, but on the condition that the other parties accepted a Macedonian platform guaranteeing the unitary character, territorial integrity and sovereignty of the country and rejecting any blackmails from the ethnic Albanian parties (Fokus, 2024; Kolekevski, 2024).

The results of the parliamentary election confirmed the pro-opposition trend seen in the polls (see Table 3). Most seats were assigned to the VMRO-DPMNE coalition (58), which achieved its third best electoral result after gaining 63 seats in 2008 and 61 in 2014. In contrast, the SDSM list won only 18 mandates, the lowest number since 2008 when it gained 27 MPs (Pankovski et al., 2020). This year it also received the lowest number of votes since 2006 when it had 218,463 votes (Republika English, 2024e). Moreover, for the first time it was also surpassed by DUI in terms of seats, but this was due to the high number of mandates obtained by the ethnic Albanian party in the sixth electoral unit, where most ethnic Albanians live (see Table 4). Despite the fact that the VLEN coalition has fewer MPs than DUI, it can be argued that they have an equal, if not higher, number of ethnic Albanian votes since the European Front led by DUI encompasses parties representing Bosniaks, Turks and Roma, too (Republika English, 2024p). Levica tripled its mandates from 2 to 6 seats, while the newcomer on the Macedonian political scene, ZNAM, was assigned the same number of MPs despite having less votes. Meanwhile, for the first time in its history, GROM attained zero seats (Nordsieck, 2024). The turnout was 55.44 per cent, slightly higher than in the last parliamentary elections in 2020, when it was 52 per cent (Nordsieck, 2024), meaning that there was a greater public interest in political participation.

The outcomes of both the second round of the presidential elections and the parliamentary ballot demonstrate that the electorate took the opportunity to initiate a long-awaited change of government in the hope that VMRO-DPMNE and its allies would reverse the damage left by their predecessors. The high number of mandates they have signifies that they are in a strong position to form the new ruling executive, together with potential partners, such as the VLEN MPs. As for SDSM, it is obvious that they were punished for their behaviour over the last seven years and so now they are entering a process of *Pasokification*, a term used to define the drastic decline of social-democratic parties combined with their former core voters increasingly supporting centrist, far-right or radical left-wing groups based on the experience of the centre-left PASOK in Greece whose vote share decreased from 43.9 per cent in 2009 to 6.3 per cent in 2015 (Henley, 2017). The victory of a centre-right party also means that Macedonia is following the rightward shift in Europe that was later exemplified by the results of the June 2024 European Parliament elections in which radical right-wing parties made significant gains

(Ioanes, 2024). In the ethnic Albanian camp, DUI has in reality 10 seats (five less than what they gained in 2020), while the remaining seats were given to the other ethnic Albanian and Turkish parties within the European Front (Nezavisen, 2024b). Hence, it has lost its monopoly of the ethnic Albanian electorate to the VLEN coalition. Levica's increased number of MPs is a testament to the surging popularity of this party, thus vindicating its position as the fastest-growing left-wing movement in Europe (Waters, 2024). The presence of ZNAM in the parliament confirms its appeal among voters, especially those who previously backed SDSM. Its future as a political force is uncertain, but together with Levica they can prove to be influential factors in the new parliamentary mandate. The seats they won confirm that in Macedonia there is a strong appetite for options beyond the establishment parties.

Table 3: Results of the parliamentary elections

Coalition/Party	**Number of votes**	**Vote share percentage**	**Number of MPs**
VMRO-DPMNE coalition	436,036	43.32	58
SDSM coalition	154,687	15.37	18
European Front	137,511	13.66	19
VLEN coalition	107,049	10.64	13
Levica	68,713	6.83	6
ZNAM	56,318	5.60	6
Turnout	1,006,432	55.44	

Source: State Election Commission (2024c)

Table 4: Seats assigned in each electoral unit (EU).

Coalition or Party	EU 1	EU 2	EU 3	EU4	EU 5	EU 6
VMRO	10	8	14	13	10	3
SDSM	3	2	4	5	3	1
European Front	2	4	0	0	4	9
VLEN	2	3	0	0	1	7
Levica	2	1	1	1	1	0
ZNAM	1	2	1	1	1	0

Source: State Election Commission (2024c)

The aftermath of the elections

Some indications about how the new president will behave became clear during her inauguration, when she referred to her country as 'Macedonia', without the adjective 'North' that was added by the Prespa Agreement. This sparked strong reactions from Greece, Bulgaria, the European Commission President Ursula Von Der Leyen and the head of the European Council Charles Michel who all condemned Siljanovska-Davkova's choice of words as a violation of the treaty (Euractiv, 2024). Mickoski responded to these claims that it is not an infringement of the Agreement, which neither his party nor the governing centre-right party in Greece have favourable views of (Republika English, 2024q). Moreover, it can be said that Athens acted hypocritically because it has not implemented its part of the deal, as the traffic signs in northern Greece pointing towards Macedonia still use the former provisional international name for the country FYROM (Former Yugoslav Republic of Macedonia) or Skopia, and not 'North Macedonia' (Kolekevski, 2023; Republika English, 2024r). Some commentators have said that Macedonia's EU accession process is in jeopardy due to the President's behaviour (Delauney, 2024). However, it was already undermined before due to the disputes initiated by Greece and Bulgaria, who, alongside France, blocked the start of the country's accession negotiations, as well as the EU's enlargement fatigue (Crowther, 2017; Fouéré, 2024). Furthermore, the Prespa Agreement's lack of popular support among Macedonians was guaranteed to cause instability and other issues in the near future (Coffey, 2018).

After the elections, VMRO-DPMNE held negotiations with the VLEN coalition and ZNAM over the formation of a government, while excluding Levica seemingly due to fundamental ideological differences as well as diverging views on NATO and the EU. As the winner of the parliamentary elections, it was in their interest to have a stable majority in order to reorganise the executive branch, i.e. minimum 61 seats (Gjorgjioska, 2024a, 2024b). In the meantime, the DUI-led alliance lost a seat to the VLEN coalition after voting was repeated in certain polling stations in western Macedonia due to irregularities (Republika English, 2024s). On the 23rd of June, the country's parliament elected a new government with Mickoski as prime minister, supported by deputy prime ministers and ministers from the VMRO-DPMNE and VLEN electoral lists, as well as from ZNAM

(Nikolik, 2024a). This administration has certainly a more comfortable majority than the previous one, as it comprises 78 MPs. The strength of such a majority was seen by the adoption of a law that enabled the creation and reorganisation of new ministries with two-thirds of legislators voting in favour, including those from the European Front (Gjorgjioska, 2024a). In any case, most Macedonians hope that their new government will fulfil its goal of ending the pervasive corruption of their predecessors (Fouéré, 2024; Nikolik, 2024b) and thus improve the country's democratic standards. This was clear from a poll in which more than half of respondents expect that Mickoski's executive would be better than the previous one (Nikolik, 2024c). The local elections set for 2025 will provide a concrete assessment on how the new ruling parties have performed.

Following its electoral defeat, SDSM held a leadership contest won by the former health minister Venko Filipče. It can be argued that such a decision will further reduce the party's prospects because of his ties to the former premier Zaev, his mismanagement of the COVID-19 pandemic and involvement in corruption (Republika English, 2024t). Meanwhile, Levica has emerged as a vocal opposition force that is holding the new government to account. It was the only party that opposed the appointment of Afrim Gashi from Alternative as parliamentary speaker, claiming that he is an ethnic Albanian chauvinist and that Mickoski was damaging his legitimacy by giving an important position to a minor coalition partner. The Levica MPs were also adamantly against the law concerning the reorganisation of the ministries due to the shortened procedure that was used to approve it without debate or analysis (Gjorgjioska, 2024a).

Regarding foreign policy, Mickoski aspires to have good relations with his country's neighbours, while also ensuring that Macedonia is not in a weaker position (Republika English, 2024u). When it comes to the Prespa Agreement, he asserted that his government will adhere to it, but he will use the name 'Macedonia' in his public statements (Republika English, 2024v). This was exemplified by his mention of the adjective 'North' when he took his oath as premier (Veljanovska-Najdeska, 2024). Given that the new ruling parties are pro-EU and pro-NATO, it is certain that, regardless of any future disagreements with Greece and/or Bulgaria, the republic's pro-Western orientation will persist. However, this does not exclude possible disagreements with strategic partners. After the US ambassador made critical remarks about the new government's proposed judicial reforms, Mickoski lamented how foreign ambassadors tend to interfere in domestic affairs (Damceska, 2024), although it is still early to say how this will affect his foreign policy. When it comes to Macedonia's EU accession process, it will largely depend on two factors. Firstly, the relations with the above-mentioned neighbours, which both threatened to stall the country's membership if their demands are not fulfilled, e.g. the continued implementation of the Prespa Agreement (Sajn, 2024). Secondly, the new European Commission that will be approved by the recently-elected European Parliament and whether it will facilitate further enlargement in practice, which at the moment does not seem likely.

Concluding remarks

The results of the 2024 presidential and parliamentary elections in N. Macedonia revealed the Macedonian populations' dissatisfaction with the SDSM-DUI governments that enacted unpopular decisions, e.g. the Prespa Agreement, and were marred by corruption. They also allowed for the return to power of the centre-right VMRO-DPMNE which promised changes in the country's political system and foreign policy. The shift of the political axis towards this party was confirmed by its success in forming a new

executive with a stable majority that includes the VLEN coalition and ZNAM. In addition, the rise of ZNAM as a novel force on the Macedonian political scene and the growth of Levica indicate that these will become even more important for the country's politics, especially since the former is part of the new government while the latter has become an outspoken opposition force. As for SDSM and DUI, it is probable that they will continue to face electoral decline in the near future, even if they reform themselves. With regards to foreign affairs, much will depend on the attitude of Greece and Bulgaria, which are not amicable at the moment, as well as on the direction the EU will take on the enlargement process. The VMRO-DPMNE, VLEN and ZNAM coalition government will certainly have the time until the next local elections in 2025 to prove whether they are able to govern effectively and to end Macedonia's status as a hybrid regime.

References

Berisha, D. (2016). The Politics of Electoral Systems in the Former Yugoslav Republic of Macedonia. *Indiana Journal of Constitutional Design 2* (article 1).

Bliznakovski, J. (2022). 2021 Local Elections in North Macedonia: A Prelude to Alternation of Power? *Contemporary Southeastern Europe*, *9*(1), 33-46.

Coffey, L. (2018, May 29). *The U.S. Must Pressure Greece to Resolve Its Name Dispute with Macedonia*. The Heritage Foundation. https://www.heritage.org/defense/report/the-us-must-pressure-greece-resolve-its-name-dispute-macedonia.

Crowther, W. (2017). Ethnic Condominium and Illiberalism in Macedonia. *East European Politics and Societies: and Cultures*, *31*(4), 739-761.

Damceska, M. (2024, July 4). *Overhaul of the Judicial Council: Ambassadors should not interfere in the internal affairs of the state, Mickoski said*. Sloboden Pečat. https://www.slobodenpecat.mk/en/remont-na-sudskiot-sovet-ambasadorite-da-ne-se-meshaat-vo-vnatreshnite-raboti-na-drzhavata-poracha-mickoski/.

Daskalovski, Z. & Jankovski, Z. (2023). State Capture and Corruption in (North) Macedonia* during Zoran Zaev's Rule (2017-2021). *Bulgarian Journal of International Economics and Politics*, *3*(2), 70-108.

Delauney, G. (2024, May 17). *Row over North Macedonia's name flares up again*. BBC News. https://www.bbc.com/news/articles/c3g5rj4y24do.

Euractiv. (2024, May 13). *North Macedonia president stokes controversy at inauguration*. https://www.euractiv.com/section/enlargement/news/north-macedonia-president-stokes-controversy-at-inauguration/.

European Commission. (2023, November 8). *North Macedonia Report 2023*. https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2023_en.

Fokus. (2024, April 29). *Levica do makedonskite partii: Ajde da potpišeme "makedonska platforma"*. https://fokus.mk/levitsa-do-makedonskite-partii-ajde-da-potpisheme-makedonska-platforma/.

Fouéré, E. (2024, May 22). *Criticism of New President Highlights EU's Double Standards on North Macedonia*. Balkan Insight. https://balkaninsight.com/2024/05/22/criticism-of-new-president-highlights-eus-double-standards-on-north-macedonia/.

Gjorgjioska, A. M. (2024a, July 4). *Macedonia's New Government and Its Strategic Reorganization*. China - CEE Institute. https://china-cee.eu/2024/07/04/north-macedonia-political-briefing-macedonias-new-government-and-its-strategic-reorganization/.

Gjorgjioska, A. M. (2024b, July 2). *Analysis of the Party Programs in Macedonia's 2024 Parliamentary Elections*. China - CEE Institute. https://china-cee.eu/2024/07/02/north-

macedonia-political-briefing-analysis-of-the-party-programs-in-macedonias-2024-parliamentary-elections/.
Henley, J. (2017, December 29). *2017 and the curious demise of Europe's centre-left*. The Guardian. *https://www.theguardian.com/politics/ng-interactive/2017/dec/29/2017-and-the-curious-demise-of-europes-centre-left*.
Ilievska-Pačemska, M. (2024, April 25). *Vo prv krug za pretsedatel e izbran samo Kiro Gligorov so osvoeni 715.087 glasa, Siljanovska-Davkova i Pendarovski vtorpat odat vo vtor drug*. Makfax. https://makfax.com.mk/makedonija/%D0%B2%D0%BE-%D0%BF%D1%80%D0%B2-%D0%BA%D1%80%D1%83%D0%B3-%D0%B7%D0%B0-%D0%BF%D1%80%D0%B5%D1%82%D1%81%D0%B5%D0%B4%D0%B0%D1%82%D0%B5%D0%BB-%D0%B5-%D0%B8%D0%B7%D0%B1%D1%80%D0%B0%D0%BD-%D1%81%D0%B0%D0%BC/.
Ioanes, E. (2024, June 10). *Why Europe is lurching to the right*. Vox. https://www.vox.com/politics/354601/european-parliament-elections-macron-afd-national-rally-far-right-fidesz-france.
Kocovska, S. (2024, April 11). *North Macedonia records decline in Freedom House's Nations in Transit 2024 report*. Media Information Agency. https://mia.mk/en/story/north-macedonia-records-decline-in-freedom-houses-nations-in-transit-2024-report.
Kolekevski, I. (2023, September 13). *Zaev: Expecting Greece to fulfill its part of Prespa Agreement on traffic signs*. Media Information Agency. https://mia.mk/en/story/zaev-expecting-greece-to-fulfill-its-part-of-prespa-agreement-on-traffic-signs.
Kolekevski, I. (2024, May 1). *More Levica lawmakers in Parliament guarantees no Bulgarians in Constitution, Apasiev tells MIA*. Media Information Agency. https://mia.mk/en/story/more-levica-lawmakers-in-parliament-guarantees-no-bulgarians-in-constitution-apasiev-tells-mia .
Nezavisen. (2024a, May 4). *Apasiev ne saka po vtor pat da se izgori so poddrška na Siljanovska*. *https://nezavisen.mk/apasiev-ne-saka-po-vtor-pat-da-se-izgori-so-poddrshka-na-siljanovska/*.
Nezavisen. (2024b, May 9). *Od 19 pratenici na "Evropski front" samo deset se na DUI*. https://nezavisen.mk/od-19-pratenici-na-evropskiot-front-samo-deset-se-na-dui/.
Nikolik, N. (2024a, June 23). *Parliament elects new government with Hristijan Mickoski as Prime Minister*. Media Information Agency. https://mia.mk/en/story/parliament-elects-new-government-with-hristijan-mickoski-as-prime-minister.
Nikolik, N. (2024b, June 23). *Restoring trust in institutions, eliminating corruption, rule of law, economic progress - new gov't priorities*. Media Information Agency. https://mia.mk/en/story/restoring-trust-in-institutions-eliminating-corruption-rule-of-law-economic-progress-new-govt-priorities.
Nikolik, N. (2024c, June 26). *IPIS poll: Mickoski most popular politician, citizens expect new government to be better than previous one*. Media Information Agency. https://mia.mk/en/story/ipis-poll-mickoski-most-popular-politician-citizens-expect-new-government-to-be-better-than-previous-one.
Nordsieck, W. (2024). *North Macedonia*. Parties and Elections in Europe. http://www.parties-and-elections.eu/northmacedonia.html.

Pankovski, M., Jovevska-Gjorgjevikj, A., Janeska, S., Ilievska, M. & Mladenovska, S. (2020). *The Republic of North Macedonia's 2020 Parliamentary Elections Handbook.* 2nd ed. Konrad Adenauer Foundation, Institute for Democracy "Societas Civilis" Skopje.

Republika English. (2023, September 6). *Parliament promptly adopts changes to the Criminal Code, slashes penalties for abuse of office.* https://english.republika.mk/news/macedonia/parliament-promptly-adopts-changes-to-the-criminal-code-slashes-penalties-for-abuse-of-office/.

Republika English. (2024a, February 7). *Poll: The next president of Macedonia will be from VMRO-DPMNE.* https://english.republika.mk/news/macedonia/poll-the-next-president-of-macedonia-will-be-from-vmro-dpmne/.

Republika English. (2024b, April 1). *Siljanovska-Davkova leads decisively ahead of Pendarovski, Osmani just ahead of Taravari.* https://english.republika.mk/news/macedonia/siljanovska-davkova-leads-decisively-ahead-of-pendarovski-osmani-narrowly-ahead-of-taravari/.

Republika English. (2024c, March 13). *Siljanovska enjoys nearly double lead over Pendarovski is the eastern electoral districts*. https://english.republika.mk/news/macedonia/siljanovska-enjoys-nearly-double-lead-over-pendarovski-is-the-eastern-electoral-districts/.

Republika English. (2024d, April 24). *VMRO-DPMNE noted some irregularities, congratulates the citizens on their dedication to democracy*. https://english.republika.mk/news/macedonia/vmro-dpmne-noted-some-irregularities-congratulates-the-citizens-on-their-dedication-to-democracy/.

Republika English. (2024e, April 25). *Pendarovski lost over 140 thousand votes compared to the first round in 2019 and 2014, SDSM for the first time with a number below 200,000*. https://english.republika.mk/news/pendarovski-lost-over-140-thousand-votes-compared-to-the-first-round-in-2019-and-2014-sdsm-for-the-first-time-with-a-number-below-200000/.

Republika English. (2024f, April 25). *Tectonic political change announced by Siljanovska's margin of victory over Pendarovski*. https://english.republika.mk/news/macedonia/tectonic-political-change-announced-by-siljanovskas-margin-of-victory-over-pendarovski/.

Republika English. (2024g, April 29). *Mickoski urges all opposition parties to support Siljanovska and help send DUI to the opposition*. https://english.republika.mk/news/macedonia/mickoski-urges-all-opposition-parties-to-support-siljanovska-and-help-send-dui-to-the-opposition/.

Republika English. (2024h, May 2). *Maksim Dimitrievski endorses Siljanovska, calls on his supporters to turn out in large numbers on Wednesday*. https://english.republika.mk/news/macedonia/maksim-dimitrievski-endorses-siljanovska-calls-on-his-supporters-to-turn-out-in-large-numbers-on-wednesday/.

Republika English. (2024i, May 6). *Mickoski meets with likely future coalition partner Taravari*. https://english.republika.mk/news/macedonia/mickoski-meets-with-likely-future-coalition-partner-taravari/.

Republika English. (2024j, May 8). *Gap of 50,000 votes between the general and the presidential election turnout*. https://english.republika.mk/news/macedonia/gap-of-50000-votes-between-the-general-and-the-presidential-elections/.

Republika English. (2024k, May 8). *Pendarovski admits defeat, blames DUI*. https://english.republika.mk/news/macedonia/pendarovski-admits-defeat-blames-dui/.

Republika English. (2024l, May 8). *In the municipalities with a dominant Albanian population, the turnout in the parliamentary elections is up to three times higher than in the presidential elections*. https://english.republika.mk/news/in-the-municipalities-with-a-dominant-albanian-population-the-turnout-in-the-parliamentary-elections-is-up-to-three-times-higher-than-in-the-presidential-elections/.
Republika English. (2024m, April 17). *VMRO-DPMNE up to 54, SDSM up to 30 deputies in the future parliament, the latest poll shows* https://english.republika.mk/news/macedonia/vmro-dpmne-up-to-54-sdsm-up-to-30-deputies-in-the-future-parliament-the-latest-poll-shows/.
Republika English. (2024n, March 26). *With the polls indicating disaster for SDSM, its smaller coalition partners are running toward VMRO*. https://english.republika.mk/news/macedonia/with-the-polls-indicating-disaster-for-sdsm-its-smaller-coalition-partners-are-running-toward-vmro/.
Republika English. (2024o, April 30). *What Osmani said in 2017: DUI did not make a decision on a coalition with VMRO-DPMNE even though it won the elections*. https://english.republika.mk/news/macedonia/what-osmani-said-in-2017-dui-did-not-make-a-decision-on-a-coalition-with-vmro-dpmne-even-though-it-won-the-elections/.
Republika English. (2024p, May 8). *VLEN leads DUI in Skopje and Tetovo, gets in position to claim that it won the Albanian vote*. https://english.republika.mk/news/macedonia/vlen-leads-dui-in-skopje-and-tetovo-gets-in-position-to-claim-that-it-won-the-albanian-vote/.
Republika English. (2024q, May 16). *Mickoski believes that using the name Macedonia in public does not violate the Prespa Treaty*. https://english.republika.mk/news/macedonia/mickoski-believes-that-using-the-name-macedonia-in-public-does-not-violate-the-prespa-treaty/.
Republika English. (2024r, May 28). *There is Skopia or FIROM, the name they ask us to respect, they have not highlighted it anywhere, says president Siljanovska Davkova*. https://english.republika.mk/news/macedonia/there-is-skopia-or-firom-the-name-they-ask-us-to-respect-they-have-not-highlighted-it-anywhere-says-president-siljanovska-davkova/.
Republika English. (2024s, May 22). *DUI loses one seat to VLEN, but saves the seat won by oil tycoon Ismail Jahoski*. https://english.republika.mk/news/macedonia/dui-loses-one-seat-to-vlen-but-saves-the-seat-won-by-oil-tycoon-ismail-jahoski/.
Republika English. (2024t, June 30). *Zaev's proxy candidate Venko Filipce named SDSM leader*. https://english.republika.mk/news/macedonia/zaevs-proxy-candidate-venko-filipce-named-sdsm-leader/.
Republika English. (2024u, May 19). *Mickoski: As a small nation we will have to act wisely, but you will not see us on our knees*. https://english.republika.mk/news/macedonia/mickoski-as-a-small-nation-we-will-have-to-act-wisely-but-you-will-not-see-us-on-our-knees/.
Republika English. (2024v, June 5). *Mickoski prepares to receive Government mandate, says he will only refer to the country as – Macedonia*. https://english.republika.mk/news/macedonia/mickoski-prepares-to-receive-government-mandate-says-he-will-only-refer-to-the-country-as-macedonia/.
Sajn, Z. (2024, May 30). *The Thorny Path of North Macedonia Towards Achieving European Goals*. Kosovo Online. https://www.kosovo-online.com/en/news/kontext/thorny-path-north-macedonia-towards-achieving-european-goals-30-5-2024.

State Election Commission. (2024a). *Presidential elections 2024 - 24.04.2024*. https://rezultati-prv.sec.mk/en/pres/r.
State Election Commission. (2024b). *Presidential elections 2024 - 08.05.2024* https://rezultati-prv.sec.mk/en/pres/r.
State Election Commission. (2024c). *Parliamentary elections 2024 -08.05.2024*. https://rezultati-prv.sec.mk/en/parl/r.
Treneska, J., Smilevski, T., Hadzi Janev, G. & Sofeska, A. (2024). *Handbook on 2024 Parliamentary Elections in the Republic of North Macedonia*. Konrad Adenauer Foundation, Institute for Democracy "Societas Civilis" Skopje.
Vangelov, O. (2024). *Nations in Transit 2024 - North Macedonia*. Freedom House. https://freedomhouse.org/country/north-macedonia/nations-transit/2024 .
Vasilev, G. H., Treneska, J. & Smilevski T. (2024). *Handbook on 2024 Presidential Elections in the Republic of North Macedonia*. Konrad Adenauer Foundation, Institute for Democracy "Societas Civilis" Skopje.
Veljanovska-Najdeska, E. (2024, June 23). *Izbrana novata Vlada čij pretsedatel e Hristijan Mickoski (DPL)*. Mediumska Informativna Agencija. https://mia.mk/story/избрана-новата-влада-чиј-претседател-е-христијан-мицкоски-дпл.
Waters, A. (2020, July 15). *Of 'Bombs' and Hybrid Regimes: How the Macedonian Colourful Revolution went full circle*. Institute for a Greater Europe. https://institutegreatereurope.com/publications/research-pieces/of-bombs-and-hybrid-regimes-how-the-macedonian-colourful-revolution-went-full-circle/.
Waters, A. (2024, April 20).*"We Need to Fight Against This Senseless March Towards a Major Military Escalation" – Interview with Biljana Vankovska, the left-wing option for the Macedonian presidency*. LeftEast. https://lefteast.org/interview-with-biljana-vankovska/.

UDK: 94:32(470+571):[355.45(4-12)(091)
UDK: 327.5(470+571:477)(091)
UDK: 327.5(470+571:478)(091)
DOI: 10.20544/ICP.9.2.24.P13

HISTORY AND POLICY IN THE RUSSIAN TERRITORIAL CLAIMS IN MOLDOVA AND UKRAINE

Emil Krumov
Department of International Law and International Relations, Sofia University "St. Kliment Ohridski"
Email: EKrumov@uni-sofia.bg

Abstract

Since the annexation of Crimea in 2014, most notably in addresses and articles of her president Vladimir Putin, Russia has been developing the narrative of the historical unity, first of Russia and Crimea, then of Russia and Ukraine, and eventually of the Russian world, which is the Soviet Union at its utmost. This narrative, combined with the Russian activities in Ukraine and Moldova and while not a direct territorial claim, can only be understood as a justification for future territorial annexations of parts of these countries. The intention of the current research is to conduct a historical and political analysis of the Russian narratives and relate them to the security situation in Southeast Europe. While such narratives might be historically plausible, the annexation of foreign territories represents a highly controversial issue. The conclusion is that the narrative is directed at the Russian people with the aim of raising the nationalistic feelings that facilitate the conduct of the war in Ukraine and help the president stay in office.

Keywords: Russia, Ukraine, Moldova, history, annexation

On 29 August 2008, the then Russian Prime Minister Vladimir Putin was interviewed by the German ARD TV channel about the ongoing Russian occupation of Georgia. During the interview, the Prime Minister declared that "Crimea is not a disputed territory", "Russia has long recognized the borders of today's Ukraine", and the developments there were "Ukraine's domestic political problem" (Putin, 2008; see also Radio Svoboda, 2015). At that time, Russia was exercising an effective control over the Georgian regions of South Ossetia and Abkhazia (Georgia v. Russia (IV), no. 39618/18, § 174, ECHR, 9 April 2024) and had just recognized their independence as sovereign states. After the Georgian War, the Russian Federation did not annex any of the controlled territories, rather, it consolidated its control there up to a degree of *de facto* annexation nevertheless (Jones, 2024).

The Russian Prime Minister's words were not just a political claim: at that time there were at least four multilateral and bilateral agreements between Russia and Ukraine regarding their mutual recognition and respect for State sovereignty and equality and for the existing borders of Ukraine, as follows: the 1991 Alma Ata Declaration; the 1994 Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons; the 1997 Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, and the 2003 Treaty between Ukraine and the Russian Federation on the Ukrainian-Russian State border (with annex and maps), the last one signed by President Putin.

Despite the Russian Prime Minister's declaration and the existing treaties, in the early hours of 27 February 2014, Russian militaries established control over the Supreme Council and the Council of Ministers of Crimea, resulting in the transfer of power to the new local authorities, which subsequently organised the "referendum", declared the independence of Crimea, and took active steps towards its integration into the Russian Federation (Ukraine v. Russia (Re Crimea), Nos. 20958/14, and 38334/18, §§ 328-335, ECHR, 16 December 2020). In an address delivered on 18 March 2014, Russian President Putin justified the annexation of Crimea, first and foremost, by its shared history with Russia and the fact that the peninsula had always been part of Russia (Putin, 2014).

Actually, the peninsula was annexed to the Russian Empire by the Empress Catherine the Great on 8 April 1783, and the same year the base of the Russian Black Sea fleet was established in today's Sevastopol (Fisher, 1970). On the other hand, Crimea had never been part of Ukraine before 1954, when it was "gifted" by the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Socialist Republic, mainly for economic reasons: Crimea was much closer to Ukraine and the latter would take the responsibility for the economic restoration of the peninsula after the deportation of the Crimean Tatars and the damages caused by the World War II. What is more important, Russian leaders took this decision assuming the irreversibility of the everlasting union of the Ukrainians with the Russians (Subtelny, 2009).

The claim of President Putin about the Russian history of Crimea is true enough, but what matters more in our present is the fact that the Russian Federation officially recognized Crimea as part of Ukraine in a series of international agreements, which presumably have prevalence over the historical disputes. Consequently, the Russian attack deteriorated seriously the entire multilateral system of interstate relations based on the primacy of international law established after the World War II (Feltman, 2023). In the same address, President Putin also commented on the NATO expansion to the east, the announced Ukraine's joining to the NATO, and the threat this posed to Russia (Putin, 2014), and here we should seek the real reason for the annexation of Crimea.

In April 2008, a NATO summit was held in Bucharest where the Allies announced their agreement that Georgia and Ukraine would become members of the Alliance (NATO, 2008). The following Russian intervention in Georgia the same year and the war in Ukraine six years later were the response of Russia's perceived direct threat to its security posed by the two countries' possible membership of the Alliance (Mearsheimer, 2014; Charap, S., Geist, E., Frederick, B., Drennan, J., Chandler, N. & Kavanagh, J, 2021). During the active military actions in Georgia in August 2008, some European leaders already expected that Crimea and Sevastopol would be Russia's next target, despite the Prime Minister's vehement negation (Putin, 2008).

The Georgian War of 2008 marks a clear turning point in Russia's foreign policy towards its adherence to the established borders (Trenin, 2009) and the frozen conflicts created and maintained by the Russian State in the post-Soviet space. The Russian leader made clear declarations about Russia's lack of imperialist ambitions and confirmed its official dislike about encroaching on the sovereignty of the republics of the former USSR (DW Staff, 2008), but at the same time, Russia maintained military presence in Georgia, Moldova and Ukraine, and used its forces as a foreign policy instrument for imposing veto on the policies of these countries (Farkas, 2016), mainly regarding the necessity of settlement of internal jurisdictional disputes as a determinant of joining the Alliance (NATO, 1995).

Up to 2008, Russia had not recognized the independence of any of the separatist regions within the other former USSR republics, nor had it participated in their formally internal conflicts as an ostensibly peacekeeping force (Charap, S., Geist, E., Frederick, B., Drennan, J., Chandler, N. & Kavanagh, J, 2021). On 26 August 2008, President Medvedev signed decrees recognising the independence of Abkhazia and South Ossetia, which were used as a proving ground for Russia's future state building initiatives in Ukraine and possibly in other states.

The shift to use of military force openly directed against a sovereign state coincided with the steady economic growth under the presidency of Vladimir Putin, expressed in almost twelvefold increase of the GDP between 1999 and 2008 (The World Bank, 2024), which undoubtedly gave the President the impression of the restoration of Russia as a Great Power and nurtured his ambitions of implementing the relevant foreign politics. At the same time, the Russian military expenditure was also steadily growing, both as a share of the GDP and as a total cost, with visible peaks in 2008 and 2013 (Mills, 2017) – the years of the Georgian War and the Maidan Uprising in Kiev which affected the Russian interests in Ukraine and eventually led to the annexation of Crimea. Three months after the 2008 NATO Summit, the Russian Government announced a military modernization speeded plan (Mills, 2017), which is another indication that Russia's new foreign politics was inextricably intertwined with the strengthening of its military power.

The Georgian War and the Crimea annexation marked the peaks of another interesting statistic: the public approval for Vladimir Putin in Russia. Between January and August 2008, he lost almost 10% of the public support, and after the recognition of Abkhazia and South Ossetia, his popularity reached one of its absolute peaks at 88%, which continuously dropped afterwards until reaching one of its lowest points at 61% in November 2013 – the moment of the Maidan Uprising. The President's popularity grew rapidly up to 80% in March 2014, when the annexation of Crimea was finalized, and reached its highest point at 89% in June 2015 (Statista, 2024).

It became pretty clear that military victories and territorial gains helped Putin build the image of a strong leader and raised his popularity, which in political terms meant keeping his power and staying in office. In a 2015 documentary named *Krym. Put na Rodinu*, President Putin declared that, on the night of 22 to 23 February 2014, he personally – another trait of the strong and victorious leader – announced to his supposedly high ranking officials that they needed to begin work on returning Crimea to Russia (Embassy of Russia in Indonesia, 2015, 2:10). Later in the same video, at 1:05:46 onwards, the President claimed that they had never thought of seizing Crimea from Ukraine, but acted out of necessity and were led by the supposed will of the population living on the peninsula to join Russia. Putin also admitted that Russia used her military force legally deployed there, including special tactical units, to establish military control over Crimea before the referendum that supposedly legalized its annexation to Russia.

Putin's orders came right after the peak of the Maidan Uprising in Kiev and the following flight from Ukraine of her pro-Russian President Viktor Yanukovych resulting in a significant loss of Russian influence in Ukraine. In other words, the President confessed that the annexation of Crimea had nothing to do with the peninsula history, rather, with its strategic importance to Russia, and confirmed his country's readiness to use its military forces legally or illegally deployed in other countries for territorial acquisition operations. Nevertheless, in a 2021 article, President Putin again emphasized the common history of Russia and Ukraine and its importance for the better understanding of the future. Putin also referred to the common history of Lithuania and Russia, affirmed that the

internal USSR borders were never seen as state borders or, that is to say, the USSR was actually a single country and not a union of independent states, as it was put in the soviet legislation and particularly in articles 72 and 76 of its 1977 Constitution.

The 2021 Putin's article contains historical facts, but their interpretation focuses on the Russian primacy and downplays the events related to the Ukrainian independence, and uses the opportunity to present Russia as a victim of territorial robbery. The paper might also be seen as a result of a 2012 initiative of creating a state elaborated concept of history furthered by a multitude of apparent nongovernmental organizations coordinated by the Russian State in a massive operation in the field of history politics (Weiss-Wendt, 2022). Eventually, this controlled process led to the use of historical argument to justify significant political decisions and the pre-eminence of the ethics of virtues over the ethics of principles, including the legal ones (Pakhalyuk, 2018).

On 21 February 2022, just three days before the Russian invasion in Ukraine, President Putin delivered another address, which apparently was laying the groundworks for the imminent military attack. Putin again was reasoning about the historical injustice regarding the creation and the very existence of Ukraine, and concluded that she was a Bolsheviks' artificial creation on historical Russian lands and on Hungarian, Polish and Romanian territories "incorporated" by Stalin and transferred by him to Ukraine (Putin, 2022a). In some sense, this narrative has its historical foundations, but Putin again downplays the independence movements, which resulted in the creation of the independent Ukrainian State in 1917 approximately on the territory of the present-day Ukraine, where the Bolsheviks could establish effective control only in 1921 by the use of brute force (Yekelchik, 2010).

In another address on 24 February, announcing his decision "to carry out a special military operation" in Ukraine, President Putin (2022b) elaborated the image of Russia as a victim of another injustice committed by the West, NATO and, in particular, the United States – the Alliance's eastward expansion. Putin reiterated his preferred motif of the West's broken promise from the early 1990's not to expand one inch to the east and indeed such promises were made, but when it came to the Treaty on the Final Settlement with Respect to Germany, signed on 12 September 1990 in Moscow, the Russian side failed to materialize these promises and formally accepted the NATO expansion to the east (Sarotte, 2021).

This address was actually a declaration of war to Ukraine, which Russia was apparently obliged to start out of necessity because of the threat posed by the West, and therefore Russia had no choice but to defend itself by military means (Putin, 2022b). At the start of the invasion, few doubted that Kiev would fall within days (Sciutto, J. & Williams, K., 2022) and if it was true for the Russian adversaries, it was surely even truer for the Russian leaders themselves. We can easily presume that Putin was expecting to prevail quickly over Ukraine, especially after the quick victory in the 2008 Georgian War and the swift and successful operation of the Crimea annexation.

A new military victory and a possible territorial acquisition would undoubtedly raise the public approval for Putin in Russia, where, in May 2020, his popularity reached its lowest level since his first inauguration in 1999, and was remaining relatively low until the beginning of 2022 (Statista, 2024). As in the previous cases, a military victory would raise the President´s popularity, which eventually translates in his staying in office for another term. These expectations were combined with the narrative that constantly depicted Russia as a victim of historical injustice, of the West, and even of Ukraine itself. Accordingly, Russian actions were presented as defensive and not aggressive, a rightful

search for justice. Such sense of victimhood represents a powerful political weapon, whose attraction for the people is so strong that some even readily become surrogate victims and readily join their cause (Humphreys, 2016), and is another means of furthering the increase of Putin's popular support in this particular case. Another advantage of this rhetoric is that the supposed victims often feel that ordinary restraints or rules do not apply to them, also in the international politics.

The start of the war indeed coincided with a significant rise of the index of Putin's popularity in Russia – between December 2021 and March 2022, the public approval grew by 20% and stayed relatively high, and even reached a historical peak at 87% in March 2024 (Statista, 2024), the month of the Presidential elections in Russia, despite the monstrous human and material losses in Ukraine. It remains obvious that, in a situation of a very unfortunate military campaign, severe international restrictions and isolation, it takes a lot of efforts for the state leader to maintain his popularity and to stay in office. In such circumstances, the bet on the victimhood nationalism is always a winning political strategy, which mobilizes the population and legitimizes the leaders' staying in power and furthering their politics (Lerner, 2019).

On 28 November 2023, President Putin delivered a speech on historical topics to the Plenary session of the World Russian People's Council, promoting the concept of the Russian World, which included the Ancient Rus, the Tsardom of Muscovy, the Russian Empire, and the Soviet Union, and the obligation of anyone affiliated with the Russianness to protect the Motherland (Putin, 2023). On the same occasion, the Patriarch of Moscow and All Russia Kiril additionally developed the concept of the Russian world comparing it with the Pax Romana and confirming that some cultures naturally tend to go beyond their national borders and exert influence over other peoples, often by the use of military-political methods (Kiril, 2023).

These theoretical statements later developed into an official State Policy as, on 14 February 2024, the Russian Government issued a Decree (Pravitelstvo Rosiyskoy Federatsiy, 2024) facilitating the obtainment of a Russian passport by any heir of a citizen or a resident of the USSR and the Russian Empire and recognizing as a Russian citizen practically anyone who might prove any relation to the two enormous polities on whose territories currently exist many independent states. In particular, Russia has uncontrolledly provided passports to more than three million people from the occupied Ukrainian territory and to the majority of the Transnistrian population, which eventually furnished Russia with important leverage for interference in these countries' domestic affairs, including by military means (Khoshnood, K., Nathaniel A., Caitlin N. et al., 2023).

A week after the abovementioned Decree, the Supreme Council of the Pridnestrovian Moldavian Republic (2024a) suddenly announced the sharp deterioration of the situation in Transnistria and summoned the VII Congress of Deputies of all levels of Pridnestrovie. The wording of the announcement almost literally repeats the beginning of the Address by the President of the Russian Federation of 21 February 2022, when he declared that the "situation in Donbass has reached a critical, acute stage" and recognised the independence and sovereignty of the Donetsk People's Republic and the Lugansk People's Republic.

On 28 February 2024, the VII Congress of Deputies of all levels of Pridnestrovie adopted a Resolution and a Declaration, the first one confirming the "unprecedented challenges and threats of an economic, social, humanitarian, military-political nature", and the second one appealing to the Russian Parliament for the provision of "protection for the Pridnestrovie" (Supreme Council of the Pridnestrovian Moldavian Republic, 2024b).

Moreover, 18 years earlier, in 2006, a referendum was held in Transnistria which resulted in 97% of support for independence and unification with Russia (Tsentralnaya izbiratelnaya komisiya Pridnestrovskoy Moldavskoy Respubliki, 2006).

In general, the situation in Transnistria very much resembled the circumstances immediately before the annexation of Crimea, and these before the start of the Russian military operations in Ukraine, which, combined with the fact that 200,000 of its 470,000 population had Russian passports, led to the logical conclusion that the Supreme Council might ask for annexation to Russia (Barros, G., Kagan, F., Harward, C. & Evans, A., 2024). Anyway, for the time being, Transnistria has not reiterated its claim for unification and the Russian officials have not commented the call for protection. There was another important similarity with Georgia and Ukraine that existed in Transnistria: the presence of about 800 troops in Transnistria (Hill, 2018), ostensibly peacekeeping forces, legally deployed there in the past.

The official Russian position is that of no recognition of the Transnistria independence and, as in the case with Ukraine, Russia participates in a series of agreements with Moldova regarding the situation in Transnistria (Ilaşcu and Others v. Moldova and Russia, no. 48787/99, §§ 140-141, ECHR, 8 July 2004), all of them reassuring the interim character of the Russian military presence in Transnistria established there after the 1991 civil war; the imminent withdrawal of the Russian Federation Military Units/Formations and the Russian position of no recognition of the region's independence. Despite the agreements, Russia is still exercising effective control over the region (Ilaşcu and Others v. Moldova and Russia, no. 48787/99, § 384, 2004) and, consistent with Russian actions in Georgia in 2008 and in Ukraine in 2014 and 2022, it seems logical that Russia will grab the first opportunity to instigate an independence movement in Transnistria and possibly annex it.

An unchanging feature of the Russian destabilizing actions in Ukraine and Moldova since 2014 is the historical narrative used by President Putin to justify his aggressive politics. If his address released after the annexation of Crimea in 2014 had a reconciling, even apologetic, tone and a mild reproach to NATO, the article published in 2021 already depicted the Ukrainian independence as a theft from Russia and openly promoted irredentist policy toward Ukraine. At the time of publication of the article, a significant number of Russian military forces were amassed not far from the Ukrainian border, raising concerns about possible Russian attack, and in the meantime, Putin's home popularity was keeping low.

In his 21 February 2022 address recognizing Donetsk and Lugansk independence, the Russian President again relied heavily on the historical narratives in order to justify his actions, using the topics of the Orthodox Christianity, the unfair cession of Russian lands to Ukraine, the Great Patriotic War, and the tragedy of the dissolution of the USSR. Three days later, in his address declaring war on Ukraine the President further developed the same topics, clearly depicted an encroaching external enemy – NATO, and called the parliamentary parties and the civil society to take a patriotic position. In March 2022, the President's popularity reached 83% after a steep increase starting from 63% in November 2021, and stayed relatively high until April 2024 (Statista, 2024).

Taken together, these uses of the history mark are a gradual but stable gradation – in 2014, history was used afterwards to justify the already completed annexation of Crimea. In 2021, its use was aimed at raising the awareness of the nation and the world about the unity of Russia and Ukraine, while simultaneously significant number of troops were being amassed near the Ukrainian border. In 2022, the historical topic was used

immediately before the invasion of Ukraine. In 2023, history was used by President Putin to pronounce Russia equal to the Soviet Union and to describe his country as "reclaiming, consolidating, and augmenting its sovereignty as a global power" (Putin, 2023). Though ambiguous enough, one cannot help noticing the imperialistic connotation of that claim.

This turn to history, especially to the glorious past and the tragedy of the USSR dissolution, might be apprehended as a means in the contemporaneous Russian nation building project, a response to the chaos and the humiliation of the 1990's, arguably seeking to exploit the Soviet nostalgia regarding the reviving state power and reuniting lost territories and peoples (Blakkisrud, 2023). The creation and the use of a civic religion based on history as a "hard currency" (Humphreys, 2016) in Russia is another way of channelling the popular energy and directing it according to the current needs of the political establishment.

The deeply rooted concept of the war as necessary and inevitable means for societal change (Duong, 2020), the cult of the World War II, the related to it national sacrifice and longtime cultivated sense of vengeful victimhood common to the missionist exceptionalism, which justifies any brutality applied in chasing its goals (Humphreys, 2016), are all powerful political weapons that not just mobilize the popular support, but also help President Putin continue waging his war on Ukraine despite the monstrous human, material and economic losses. It seems reasonable that, if Russia prevails in Ukraine, her leaders will need to search another winnable exterior enemy, arguably Moldova in the first place, in order to stay in power and, in this way, among others, will keep destabilizing the region in the foreseeable future.

References

Barros, G., Kagan, F., Harward, C. & Evans, A. (2024, February 22). *WARNING: Transnistria May Organize a Referendum on Annexation to Russia to Support Russian Hybrid Operation Against Moldova*. Institute for the Study of War. https://www.understandingwar.org/backgrounder/warning-transnistria-may-organize-referendum-annexation-russia-support-russian-hybrid

Blakkisrud, H. (2023). Russkii as the New Rossiiskii? Nation-Building in Russia After 1991. *Nationalities Papers, 51*(1), 64–79.

Charap, S., Geist, E., Frederick, B., Drennan, J., Chandler, N. & Kavanagh, J. (2021). *Russia's Military Interventions: Patterns, Drivers, and Signposts*. RAND Corporation. https://www.rand.org/pubs/research_reports/RRA444-3.html

Duong, D. (2020). *Russian Military Strategy Development from 1991 to 2019*. School of Advanced Military Studies US Army Command and General Staff College Fort Leavenworth, KS.

DW staff. (2008, November 11). Putin's Stance. *DW*. https://www.dw.com/en/putin-denies-imperial-ambitions-as-russia-warns-ukraine/a-3637615

Embassy of Russia in Indonesia. (2015, April 8). *Crimea The Way Home EN Subtitles Full Documentary SD*. [Video]. Youtube. https://www.youtube.com/watch?v=4xg6f5McZtM&t=1900s

Farkas, E. (2016, January 25). What the next president must do about Putin. *Politico*. https://www.politico.eu/article/what-the-next-president-must-do-about-vladimir-putin-us-presidential-election-2016-foreign-policy/

Feltman, J. (2023, March 28). *War, peace, and the international system after Ukraine*. The Talbott Papers on Implications of Russia's Invasion of Ukraine at Brookings.

https://www.brookings.edu/articles/war-peace-and-the-international-system-after-ukraine/
Fisher, A. (1970). *The Russian Annexation of the Crimea 1772-1783*. Cambridge University Press.
Georgia v. Russia (IV), no. 39618/18, ECHR, 9 April 2024.
Hill, W. (2018, August*). More than a Frozen Conflict: Russian Foreign Policy Toward Moldova*. Atlantic Council.
Humphreys, B. (2016). Russian Exceptionalism: A Comparative Perspective. *Politics in Central Europe*, *12*(1), 9-20.
Ilaşcu and Others v. Moldova and Russia, no. 48787/99, ECHR, 8 July 2004.
Jones, P. (2024, January 15). *Russia's Tightening Abkhazian Stranglehold Threatens Western and Georgian Interests*. Harvard International Review. https://hir.harvard.edu/washington-must-not-idle-as-russia-tightens-its-abkhazian-stranglehold/
Kiril, Patriarch of Moscow and All Russia (2023, November 28). *Doklad Svyateyshego Patriarha Kirila na plenarnom zasedanii XXV Vsemirnogo ruskogo narodnogo sobora* [His Holiness Patriarch Kiril's report to the Plenary session of the XXV World Russian People's Council] [Speech transcript]. http://www.patriarchia.ru/db/text/6080946.html
Khoshnood, K., Nathaniel A., Caitlin N. et al. (2023, August 2). *Forced Passportization in Russia-Occupied areas of Ukraine*. Humanitarian Research Lab at Yale School of Public Health. https://hub.conflictobservatory.org/portal/sharing/rest/content/items/e280a7eeb7bf4dc588ed50ee655b9858/data
Lerner, A. (2019). The uses and abuses of victimhood nationalism in international politics. *European Journal of International Relations*, *26*, 62-88.
Letter dated 24 December 1991 from the Permanent Representative of Belarus to the United Nations addressed to the Secretary-General, MD-RF-UA et al., 24 December 1991, https://digitallibrary.un.org/record/139350?v=pdf
Mearsheimer, J. (2014, August 18). Why the Ukraine Crisis Is the West's Fault: The Liberal Delusions That Provoked Putin. *Foreign Affairs*, *93*(5), 77–89. https://www.foreignaffairs.com/articles/russia-fsu/2014-08-18/why-ukraine-crisis-west-s-fault
Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, UA-RF-GB-US, 5 December 1994, https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb
Mills, C. (2017, January 24). *Russia's rearmament programme*. The House of Commons Library, Number 7877. https://commonslibrary.parliament.uk/research-briefings/cbp-7877/
NATO. (1995, September 3). *Study on NATO Enlargement* (Last updated: 5 November 2008). https://www.nato.int/cps/en/natohq/official_texts_24733.htm
NATO. (2008, April 3). *NATO decisions on open-door policy*. https://www.nato.int/docu/update/2008/04-april/e0403h.html
Pakhalyuk, K. (2018). *Istoricheskoe proshloe kak osnovanie rossiiskoi politiki: Na primere vystuplenii Vladimira Putina v 2012–2018 gg*. [Historical Past as Foundation of Russia's Polity: Assessing Vladimir Putin's Speeches in 2012—2018]. Politiia. http://politeia.ru/files/salmins_premium/16_second_1.pdf

Pravitelstvo Rosiyskoy Federatsiy [The Russian Government]. (2024, February 14). *Postanovlenie ot 14 fevralya 2024 № 169* [Decree from the 14 February 2024 № 169]. http://static.government.ru/media/files/ExrAahwvEl2jkRurIfbZuYvWdRPJPWnJ.pdf

Putin, V. (2008, August 29). (T. Roth, Interviewer). http://archive.premier.gov.ru/eng/events/news/1758/

Putin, V. (2014, March 18). *Address by President of the Russian Federation*. http://en.kremlin.ru/events/president/news/20603

Putin, V. (2021, July 12). *Article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians"*. http://en.kremlin.ru/events/president/news/66181

Putin, V. (2022a, February 21). *Address by President of the Russian Federation*. http://en.kremlin.ru/events/president/news/67828

Putin, V. (2022b, February 24). *Address by President of the Russian Federation*. http://en.kremlin.ru/events/president/news/67843

Putin, V. (2023, November 28). *Plenary session of the World Russian People's Council* [Speech transcript]. http://en.kremlin.ru/events/president/news/72863

Radio Svoboda [Radio Liberty]. (2015, April 9). *Putin v 2008 godu: Krim ne yavlyaetsya spornoy teritoriey* [Putin in 2008: Crimea does not appear as a disputed territory] [Video]. Youtube. https://www.youtube.com/watch?v=1__EPqhMrFQ

Sarotte, M. (2021). *Not One Inch: America, Russia, and the Making of the Post-Cold War Stalemate*. Yale University Press.

Sciutto, J. & Williams, K. (2022, February 25). US concerned Kyiv could fall to Russia within days, sources familiar with intel say. *CNN*. https://edition.cnn.com/2022/02/25/politics/kyiv-russia-ukraine-us-intelligence/index.html

Statista. (2024, April 25). *Do you approve of the activities of Vladimir Putin as the president (prime minister) of Russia?* https://www.statista.com/statistics/896181/putin-approval-rating-russia/

Subtelny, O. (2009). *Ukraine: A History* (4th ed.). University of Toronto Press.

Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, 31 May 1997, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002803e6fae

Treaty between Ukraine and the Russian Federation on the Ukrainian-Russian State border, 28 January 2003, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002803fe18a

Trenin, D. (2009, November 1). Russia Reborn: Reimagining Moscow's Foreign Policy. *Foreign Affairs*, *88*(6), 64–78. https://www.foreignaffairs.com/articles/russia-fsu/2009-11-01/russia-reborn

Tsentralnaya izbiratelnaya komisiya Prydnestrovskoy Moldavskoy Respubliki [Central Election Commission of the Pridnestrovian Moldavian Republic]. (n.d.). *Rezultati referenduma o nezavisimosti Pridnestrovskoy Moldavskoy Respubliki 17 sentabrya 2006 goda* [Results of the referendum on the independence of the Pridnestrovian Moldavian Republic from 17 September 2006]. https://www.cikpmr.com/o-vyborakh-i-referendumakh/informatsiya-referendumakh/rezultaty-referenduma-o-nezavisimosti-pridnestrovskoj-moldavskoj-respubliki-17-sentyabrya-2006-goda.html

Ukraine v. Russia (Re Crimea), nos. 20958/14 and 38334/18, ECHR, 16 December 2020.

Verhovniy Sovet Pridnestrovskoy Moldavskoy Respubliki [Supreme Council of the Pridnestrovian Moldavian Republic]. (2024a, February 21). 28 fevralya v Tiraspole sostoitsya VII Saezd deputatov vseh urovney Pridnestrovya [The VII Congress of Deputies of all levels of Pridnestrovie will be held in Tiraspol on February 28]. https://vspmr.org/news/supreme-council/28-fevralya-v-tiraspole-sostoitsya-vii-syezd-deputatov-vseh-urovney-pridnestrovjya.html

Verhovniy Sovet Pridnestrovskoy Moldavskoy Respubliki [Supreme Council of the Pridnestrovian Moldavian Republic]. (2024b, February 28). *Pridnestrovskie deputati vseh urovnei obratilis k Federalnomu Sobranie RF i mezhdunarodnim strukturam* [Pridnestrovian deputies of all levels addressed the Federal Assembly of the Russian Federation and international structures]. https://vspmr.org/news/supreme-council/pridnestrovskie-deputati-vseh-urovney-obratilisj-k-federaljnomu-sobraniyu-rf-i-mejdunarodnim-strukturam.html

Weiss-Wendt, A. (2022). *Putin's Russia and the Falsification of History: Reasserting Control over the Past*. Bloomsbury Academic.

The World Bank. (2024). *GDP (current US$) – Russian Federation*. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=RU

Yekelchyk, S. (2010). *Istoriya Ukraini: Stanovlenie sovremenoi natsii* [History of Ukraine: Birth of a Modern Nation]. Izdatelstvo «K.I.S.». [KIS Press]

UDK: 321.7.01(100)"19"
DOI: 10.20544/ICP.9.2.24.P14

THE ROLE OF CONSENSUS IN THE POLITICAL THEORY OF DELIBERATIVE AND CONSOCIATIONAL DEMOCRACY

Nikola Ambarkov
PhD in Political Science, MA in European Studies
amvelbares@gmail.com, ambarkov_nkl@yahoo.com

Abstract

Deliberative and consociational democracy are representatives of newer models of democracy. They developed in the last few decades of the 20th century as theoretical and empirical concepts. It is no coincidence that they are claimed to be the 'New Kid on the Block' – though one that has already received a fair amount of attention. Consociational theory aimed to explain how deeply divided societies could achieve peace. Deliberative theory, on the other hand, is considered a form of political communication by which people develop and discover their respective preferences through a process of mutual reflection that aims to improve democracy precisely through deliberation that is authentic, inclusive, and consequential. A common denominator for both political theories is that in their theoretical conceptualizations, they attach great importance to consensus. Their main assumption is to reach a consensus through discussion, as a normative guide for democratic politics. The rise of deliberative democracy coincided with increasingly prominent identity politics, especially in deeply divided societies, for which the theoretical model of consociational democracy was advocated as an adequate institutional design. Deliberative democracy incorporates a profound reading of fundamental matters regarding rights, popular sovereignty, and constitutionalism. Although the theory of deliberative democracy is now the most vital area of political theory, it has gained prominence in other areas like law, international relations, comparative politics, public administration, psychology, ethics, clinical medicine, planning, policy analysis, ecological economics, sociology (especially gender and social movement studies), environmental governance, communication studies etc. As it was pointed out, what unites the two political theories is the idea of consensus, which should arise from the commitment to freedom and equality of citizens and from the desire to improve the 'reasonable quality' of democratic results. Therefore, the purpose of this paper is to consider its role in deliberative and consociational processes.

Keywords**:** *deliberative democracy, consociational democracy, consensus, models of democracy, common good*;

1 INTRODUCTION

Deliberative and consociational democracy are representatives of newer models of democracy. They developed in the last few decades of the 20th century as theoretical and empirical concepts. Not coincidentally, Kenneth Baynes (2010: 135) will notice that "among normative theories of democracy, the idea of a deliberative democracy is a relatively new kid on the block – though one that has already received a fair amount of attention". The same is largely true for consociational democracy. It is necessary to point

out that both models of democracy represent very important democratic concepts that need to be improved and concepts that need rightly to be understood (Novaković & Perović, 2021: 33), because "democracy is an idea that has been continuously constructed, contested, fought over, implemented and revised" (Saward, 2003, p. viii).

The term "consociation" (consociatio) itself "denotes living together of people with different ethnic affiliations (language, religion etc.)" (Orlović, 2015: 30). The term deliberation, on the other hand, is considered a device in which people develop and discover their proper preferences through a process of mutual deliberation (Harrison, 2005; Baynes, 1998). The purpose of consociational arrangements is to provide a perspective for building sustainable democracy in deeply divided societies, through: 1) adequate involvement of the representatives of the most relevant social segments in the government of the grand coalition (the most important consociational instrument); 2) adequate involvement in other institutions of the system; 3) equal redistribution of public funds and goods; 4) autonomy in the decision-making of the segments on matters that directly affect them. The deliberative theory aims to enhance democracy through deliberation that is authentic, inclusive, and consequential (Dryzek, 2009: 1382). Hence, Samuel Freeman (2000: 382) defines deliberative democracy as: "one in which political agents or their representatives (a) aim to collectively deliberative and vote (b) their sincere and informed judgments regarding (c) measures conducive to the common good of citizens". The common denominator of all these points of view is the idea of "a process of public reasoning about the common good" (Ibid., 336).

"Deliberative democracy theory emerged as a critique of aggregative as well as liberal and republican models of democracy" (Jarymowicz, 2017: 23). That is also the reason why "deliberative democracy has often been described as a promising alternative solution to representative democratic models" (Novaković & Perović, 2021: 34). The consociational theory (which is characterized by inclusiveness, bargaining, and compromise), is nothing but opposition to the majority model of democracy (which is exclusive, competitive, and adversarial) (Lijphart, 2012: 2). It is Lijphart who is considered the patriarch, founder, and doyen of the consociational model of democracy, although it can be linked to other authors. As for the deliberative model of democracy, there are many versions of it "but they can roughly be classified under two main schools: the first broadly influenced by John Rawls, the second by Jürgen Habermas" (Mouffe 2000: 3). The first school is brought into correlation with the Rawlsian liberal tradition and the second with the Habermasian critical theory tradition[137] (Novaković & Perović, 2021: 35). Exactly Rawls and Habermas "made the concept of deliberative democracy widely known and who, each of them in his own way, identified with the concept and characterized themselves as deliberative democrats" (Bianchi, 2008: 100), even though "the roots of a deliberative approach to democracy can be traced back to ancient Greece, later to the Enlightenment and more specifically to John Stuart Mill" (Ibid.).

As indicated above, the basic elements of consociational democracy include: the broad coalition, proportional representation, the right of veto *vs.* consensus decision-making, and territorial autonomy (Nešković, 2013: 308). Deliberative democracy, which began to develop as a theory of democratic legitimacy, and which does not see the essence of democracy in voting and representation, but in deliberation that should be a cause of collective decision-making, has its own foundational elements: mutual respect, absence of

[137] Here we mention the works of Jurgen Habermas (e.g. 1991; 1996; 2006) on discourse ethics and an ideal speech situation.

coercive power, equality, inclusion, reason-giving, consensus and common good. But the elements of publicity, accountability, and sincerity are also part of the traditional ideal of deliberative democracy (Novaković & Perović, 2021: 36, 39-46).

Hence it can be concluded that the common denominator for the consociational and deliberative model of democracy is decision-making that is based on consensus. Therefore, the purpose of this paper is to consider the role of consensus in both theories. This is important because "for contemporary democratic theorists, democracy is largely a matter of deliberation" (Dryzek, 2003). However, the rise of deliberative democracy coincided with increasingly prominent identity politics, especially in deeply divided societies, for which the theoretical model of consociational democracy was advised as an adequate institutional design.

2 CONSOCIATION AND CONSENSUS

The principle of consensus, as the basis of decision-making, according to Savo Klimovski et al. (2012: 909) "becomes very relevant in consociational democracies where cooperation and agreement between different elites is characteristic, not competition and majority decision". For a long time in political science, it was considered that political consensus can be achieved only in homogeneous societies, which will ensure the assumption of stable democratic development. For Arend Lijphart (1994: 2-3), this concept – which moderates and modifies the above claim, showed that stable and democratic governance is possible even in plural societies. Such societies were undoubtedly the Netherlands, Belgium, Switzerland. After reaching the peak of the sharp societal divisions, which were moderated by the above-mentioned consociational mechanisms, they began to abandon the consociational approach. But this did not happen as a result of its failure, rather, due to the fact that consociationalism, with its success, seemed unnecessary.

Consociational societies, as societies in whose political system political decisions are made by consensus between political leaders/elites representing the segmented parts of the state (Frčkoski, 1992: 187), lie somewhere between centripetal integrated societies characterized by consensus and cultural homogeneity and centrifugal societies marked by disagreement and cultural heterogeneity. The success of the consociational model itself, in the countries on which Lijphart theoretically built it, is due to what Leonard Binder (1964: 630) qualifies as successful national integration through the creation of a comprehensive cultural-ideological consensus.

The grand coalition government, as one of the most significant consociational institutional arrangements, is the key instance where the political consensus is embodied between the representatives of the most relevant segments in a plural society. This is primarily because broad bargaining of political representatives of all citizens in the government, as noted by Lijphart (1994: 28), "seems more democratic than simple majority rule, but on the other hand, the only real alternative to majority rule is minority rule – or at least a minority veto (...) The majority rule gives good results in practice when opinions are homogeneously spread and with relatively small deviations – when, in other words, there is a fairly pronounced consensus, and the majority and the minority are not too far apart". Therefore, as Furnival notes (2014: 489-90, 503, 546), political development, including in the countries of consociational democracy, is unthinkable without the creation of national consensus, which is a prerequisite and the first task that must be fulfilled for society to have prospects for democratic development.

In terms of dealing with the deep differences that exist between identities in divided societies, according to Dryzek (2003: 3), as a representative of the so-called

second generation of deliberative theorists, there are two approaches. One extreme is the agonistic, which insists on a strong exchange between identities. The other is precisely consociational, which requires the suppression of exchange through an agreement between well-meaning elites. This is so because:

> In consociational democracy, elections have little meaning, as the same set of leaders will govern irrespective of the result. Moreover, contentious deliberation occurs only between the leaders of different blocs, and even then mostly in secret (for fear of inflaming the various publics), ruling out much of a role for parliamentary debate. The political communication of ordinary people is shepherded into within-bloc channels where it can do little damage to social harmony. This channelling blocks any kind of deliberative still less agonistic interaction across different blocs below the elite level, because "segmental autonomy" is one of Lijphart's defining features of consociationalism (Ibid., 7).

Therefore, consociational democracy is also subject to certain criticism, because not everywhere where it was applied (Cyprus 1960-63; Nigeria 1957-66), it achieved an efficient, stable, effective, and successful government. As Kaufman (2001) points out, ethnic intolerances and animosities, in this type of heterogeneous societies, happen around certain symbolisms in politics. In such a constellation, they are learned, multiplied, persisted, and cannot be transformed, because negative stereotyping is tenacious – it can be maintained for decades. In this way, there may be a deepening of societal cleavages in society. Consociational arrangements, rather than moderating them, can conserve them. That creates the kind of conflict it is designed to solve (Reynolds, 2000: 169-70).

In addition, the constant insistence on consensus-based decisions in a grand coalition government often means slow decision-making. Each segment has a veto power at its disposal, with which it can block the adoption of a certain decision if there is no broader consensual agreement for it. But, "since other segments have the same right, compromise remains the only way for the system to function" (Vankovska, 2014: 123). Also, too common "consensus decision-making means the absence of strategy and endless concessions, which can be unprincipled and irrational (ethnic demands often contain a dose of irrationality)" (Ibid., 131).

3 DELIBERATION AND CONSENSUS

According to Dryzek (2003: 1) democracy is seen today as "a near-universal validating principle for political systems". He also rightly observed that "according to contemporary democratic theorists, at least since the early 1990s, democracy is largely, though not exclusively, a matter of deliberation" (Ibid.). That is why deliberative democracy is considered an important theory of democratic legitimacy because it starts from the premise that the essence of democratic politics does not lie in voting and representation, but in the thinking that should be the reason for collective decision-making (Novaković & Perović, 2021: 36). Regardless of the fact that there are different versions of deliberative democracy, which differ in scope and degree of institutionalization, however, their main assumption is to reach consensus through discussion, as a normative guide for democratic politics (Kohn, 2000: 408).

Exactly the so-called first generation of theorists of deliberative democracy, led primarily by Habermas and Cohen,[138] attached particular importance to consensus. This is especially true for Habermas (1996: 304) who underlined that the idea of consensus "follows from a commitment to the freedom and equality of citizens and from a desire to improve the 'reasonable quality' of democratic outcomes". Joshua Cohen (1989: 19) also wrote earlier that "ideal deliberation aims to arrive at a rationally motivated consensus". Madison further emphasized that the search for consensus as the mild "voice of reason" can find expression within the political process (quoted in Baynes, 2010: 146). In other words "the goal of achieving consensus during deliberation increases the chances of a deliberative conception responding to intransitive social orders of preference" (Janković, 2012: 36-7).

Hence, some authors like Samuelsson (2018: 6) raise the question of "how to formulate a notion of consensus that takes pluralism, dissensus, and disagreement seriously". The author himself, however, emphasizes that consensus is "a multifaceted concept that, on its own, will not eliminate all possibilities for disagreement" (Ibid.,7). Exactly because of that "deliberative democracy tries to create two realms because it is aware that there are some issues which consensus cannot be gained upon, that will remain pluralistic" (Marden, 2008-2009: 205).

In front of deliberative democracy, moreover, the dilemma arises whether it is necessary to insist on achieving consensus at all costs or whether it should remain pluralistic. This dilemma signals a potential conflict. On the one hand, consensual thinking seeks to find an overarching common good that applies to all. On the other hand, the goal of the pluralist platform is not the consensual good, but the possibilities of harmonizing different ideas of "the good" (Bianchi, 2008: 103-4). In such a constellation we actually have a situation of moving away from the principle of full consensus as a benchmark for legitimacy. The concept of plurality in this context would imply that there are other legitimate points of view that should be accepted during the deliberation itself (Niemeyer & Dryzek, 2007: 502).

Among some deliberative thinkers, there are also authors who emphasize that "consensus is not essential nor it is central to the theory of deliberative democracy" (Novaković & Perović, 2021: 45). Here, Dryzek comes to the fore, who, as indicated above, believes that during the deliberation itself, other legitimate points of view may arise that should be considered. Therefore, in his later works, he discusses for "free and reasoned meta-consensus which a deliberative system can generate" (Ibid.). In short, meta-consensus is "agreement on the acceptable range of contested discourses" (Dryzek 2010, 108). *Meta-consensus* is only one of the types of consensus advocated in deliberative theory, in addition to Habermas's *rational consensus* and Rawls's *overlapping consensus*, which will be discussed in separate chapters.

[138] Rawls also belongs to this generation, who like Habermas (who is considered one of the most prominent representatives of the continental political philosophy), is the most influential Anglo-American thinker of the late 20th century. For him, the public mind and deliberative practice are necessary to maintain a politically free state whose social stability can be ensured through a moral consensus on the basic political principles of justice. (Janković, 2012: 37-8).

3.1 Types of consensus in the theory of deliberative democracy

3.1.1 Rational consensus

The concept of *rational consensus* in the theory of deliberative democracy is linked to Jurgen Habermas. Elster (1986) defined the ideal of rational consensus as "a rational discussion would tend to produce unanimous preferences". The rational consensus is "an implicit goal of any deliberative process in which individuals seek to convince each other by the force of the better argument" (Janković, 2012: 39). The essence of Habermas's Universal Pragmatics, according to Kohn (2000: 409) "is that the premises of communication itself contain the possibility of rational consensus. Consensus is possible because understanding is the *telos* inherent in human speech. Normative validity is not the result of the individual's monological reason but the intersubjective process of dialogue". Habermas's ethics of discourse is nothing but "the establishment of a fair deliberative procedure that allows reaching a mutual agreement, based on rational reasoning" (Janković, 2012: 37). Fair deliberative procedure aims to "specifies the formal properties of argumentation in order for an attained consensus to be normatively differentiated from manipulation or coercion" (Jarymowicz, 2017: 25). Therefore, between the participants in the deliberative process, according to Habermas (1979), there must be agreement on the following four important validity claims: 1) the truth of the propositional content; 2) comprehensibility of utterances; 3) the truthfulness or authenticity of the speaking subject and 4) appropriateness given the existing context.

In addition, his concept of an ideal speech situation is also characterized by four components:

1. each participant must have an equal chance to initiate and to continue communication;
2. each must have an equal chance to make assertions, recommendations, and explanations, and to challenge justifications;
3. each must have equal chances as an actor to express their wishes, feelings, and intentions;
4. the speaker must act as if in the context of action there is an equal distribution of chances (Jarymowicz, 2017: 25-6).

From all this it can be concluded that Habermas's vision of deliberative democracy is "micro-level oriented, focused on deliberative procedures and participants in deliberative debate" (Janković, 2012: 37). Therefore, the epistemic idea of reasonableness, which he insists on, according to Jarimowicz (2017: 7-8) must anticipate the following dimensions: inclusivity of the process, mutual learning between citizens and limits the content of reasons that can be used as justification for final decisions. "As such, the term 'reasonable' is both processual and epistemic" (Ibid., 8). Fuerstein (2014: 1) states not by chance "that democratic consensus is an essential byproduct of epistemically warranted beliefs about political action and organization, at least in those cases where the issues under dispute are epistemic in nature".

But authors such as Niemeyer and Dryzek (2007: 499), rightly note that "the most commonly cited outcome is also the most controversial: Habermas's ideal of complete and rational consensus". That is why Habermas in his later works "explicitly grants that any actual consensus is fallible and open to future revision" (Kohn, 2010: 410). According to Bohman (1998: 403) the problem with the concept of rational consensus and epistemic pluralism is that they favour exogenous political ideals that do not derive their legitimacy from procedural norms, which is in complete contrast to the very idea of deliberative democracy. In this way, a clash of procedural and epistemic legitimacy occurs. As a result

of this, good processes and good outcomes cannot be guaranteed. He is on the same line of thinking as Cohen (1989: 23) who claims that "even under ideal conditions there is no promise that consensual reason will be forthcoming".

Habermas, however, believes that his above-elaborated concept of an ideal speech situation and the system based on "universal and necessary" validity claims is a sufficient regulative ideal and formal condition for genuine interaction that can lead to the formation of consensus (Kohn, 2010: 409). Habermas's insistence (1971) on the ideal speech situation, as a tool for moderating competing norms, one might expect that "the individual informal constraints of the better argument will prevail". Advocates of discursive ethics believe that the normative component of deliberative debate of the Habermasian type forces individuals to appeal to reasonable standards and generalized arguments, thereby creating the presumption that through public debate a rational consensus can be reached (Kohn, 2010: 417). Hence, "the consensus seems to be that democratic procedure has an epistemic value only if it follows as closely as possible the ideal procedure with its principles of generality and reciprocity" (Jarymowicz, 2017: 59).

3.1.2 Overlapping consensus

The ideal of rational consensus, in Habermas's theory of discourse ethics, provides legitimacy to any political authority through a deliberative procedure (Janković, 2012: 39). However, the idea of consensus plays an important role not only in Habermas's but also in other concepts of deliberative democracy. For the other doyen of deliberative thought, John Bordley Rawls, in his liberal political theory, the consensus of all members on the fundamental political principles of justice can ensure not only legitimacy but also social stability (Ibid., 37). Some other theorists of "political liberalism" such as Moon note the risk in the theory of consent for "excluding certain voices, and so a generating false consensus" (quoted in Baynes, 2010: 147). Iris Young (1997) also believes that seeking consensus can exclude the views of others and promote cultural bias. Hence, logically arises the question "how can stability be preserved in a society in which there are many different opinions and doctrines" (Janković, 2012: 37).

Rawls, for whom the preservation of stability and democracy in society is imperative, seeks the alternative in *the overlapping consensus* – "a political consensus that can emerge despite a plurality of reasonable comprehensive doctrines" (Baynes, 2010:148-9). "Believing that people are capable of tolerance and mutual respect, Rawls believed that this ability leads not just to simple pluralism, but to what he calls 'reasoned pluralism'" (Janković, 2012: 37). In his work *Political Liberalism* (1993) he argued: that our constitutional essentials (the 'basic structure') should be justifiable exclusively by appeal to reasons that are acceptable from all 'reasonable' points of view" (Fuerstein, 2014: 14). In other words, reasoned pluralism implies that "each of the possible doctrines that some individuals or groups espouse is reasonable because it can be defended in the sense that others could also accept it" (Janković, 2012: 37). Hence, it can be sublimated that Rawls's vision of deliberative democracy aims at: 1. consensual agreements of citizens and their representatives who are encouraged to seek solutions across different belief systems (*overlapping consensus*) (Rawls, 1987); 2. to use arguments that other reasonable citizens can accept (*reciprocity*) and 3. to use arguments accessible and applicable to all affected by the decision (Gutmann & Thompson, 2004). But it should be emphasized that here, by Rawls, "the notion of reciprocity is more moral rather than epistemic" (Fuerstein, 2014: 15), because we must "set aside reasons that are not acceptable to (reasonable) others, and

we are to do so specifically because we respect them and care about their autonomy" (Ibid.).

Regarding the dilemma of whether deliberative democracy as a concept should be procedural or substantive, "Jurgen Habermas and John Rawls implicitly agree that substance should be subject to deliberation" (Bianchi, 2008: 103). However, "Habermas is said to favour consensus achieved through deliberation over individual rights, and Rawls, rights over deliberation" (Ibid.). But the substantive principles, which should be accepted to the greatest extent, are placed at the macro-level by Rawls, and at the micro-level by Habermas, as indicated above (Janković, 2012: 37). Belgian political theorist, Chantal Mouffe (2000: 4) notes that additional "point of convergence between the two versions of deliberative democracy is their common insistence on the possibility of grounding authority and legitimacy on some forms of public reasoning and their shared belief in a form of rationality which is not merely instrumental but that has a normative dimension". In this sense Rawls, insists on the "reasonable", while Habermas favours the concept of "communicative rationality". Here, in some way, a discrepancy arises between "mere agreement" and "rational consensus", and the corresponding field of politics is identified with the exchange of arguments between reasonable persons guided by the principle of impartiality (see: Ibid.).

3.1.3 Meta-consensus

Over time, consensus in the theory of deliberative democracy was modified as a regulative idea. This was partly due to the criticism that came from the adherents of radical pluralism, including the above-mentioned Mouffe, Dryzek, Niemeyer etc. Radical pluralists emphasize the confrontational nature of democracy. From their perspective, the consensus is problematic in two respects – it conceals informal oppression and excludes any possibility of dissent (Samuelsson, 2018: 2). There is a fear among them that the deliberative consensus is often complementary to the interests of those in power, and the views and interests of marginalized people are excluded from the democratic discourse (Dryzek & Niemeyer, 2010). If consensus is constantly insisted upon, then society is deprived of the other essential and fundamental aspects of democracy – disagreement and confrontation. Hence, instead of being synonymous with democracy, consensus becomes a symptom of a dysfunctional society (Samuelsson, 2018: 2-3).

In an attempt to give an adequate response to such criticism of the consensus, certain more nuanced formulations appeared. Here, in the first place, we mean the theory of Dryzek and Niemeyer (2010) about meta-level consensus, which implies the recognition of the legitimacy of the different positions that are considered reasonable, reliable, and valid by the participants in the deliberative process (Samuelsson, 2018: 2, 6). In this way, there is a departure from the principle of full consensus as a benchmark for political legitimacy, because plurality insisted upon in the context of a broader agreement that anticipates that there are other legitimate points of view that should be taken into account in the debate (Niemeyer & Dryzek, 2007: 502). The same authors, starting from three criteria - values, beliefs, and preferences, consider that there are also three types of consensus: normative, epistemic, and preferential (Ibid.). "*Normative consensus* refers to agreement on the values driving the decision process. *Epistemic consensus* refers to agreement on how particular actions relate to different values in terms of cause and effect, while *preference consensus* refers to agreement on the actual decision of 'what to do'"(Samuelsson, 2018: 6).

In order to achieve a good deliberative outcome, each of these three types of consensus has its own 'meta' version:

- *Normative meta-consensus* can be defined as shared recognition of the legitimacy of a set of values, while not requiring agreement on the ranking these values;
- *Epistemic meta-consensus* is tied to beliefs and their relevance to the question under deliberation, and is engaged with perspectives that are productive, which is why it is preferred by pluralists;
- *Preferential meta-consensus* refers to the character of choices between options and creates a prospect of agreement on the range of acceptable alternatives, but it is useful if it is the product of deliberation rather than some prior specification of rules, thus helping us to determine which way the choice between alternatives is structured (Niemeyer & Dryzek, 2007: 503-5).

Hence, with such a more nuanced conception of meta-consensus, the criticism of pluralistic deliberative democrats who forward it to the consensualist approach is dampened. This is significant, because the consensualists themselves, as indicated above, are characterized by their obsession with the fixation on achieving consensus at any cost, while neglecting the moral importance of political disagreements.

4 CONCLUSION

From the analysis offered above, it can be concluded that the two political theories of consociational and deliberative democracy in their theoretical conceptualizations add an important meaning to the consensus. Steiner and Jaramillo (2019: 3-4) correctly noted that deliberative democratic theory is a valuable complement to consociational theory and supports its practical emanation. Lijphart's ideal of the "spirit of accommodation", which is at the very core of the consociational model, is similar to the concept of deliberation. A culture of deliberation and power-sharing institutions in the consociational model are necessary ingredients for achieving political stability in plural societies (Lijphart, 2019: 1). Therefore, the deliberation should communicate with the consociation, because the deliberation generates both legitimacy and practical rationality (Benhabib, 1996: 71-2). Additionally, "deliberation can play an important role in the reconstitution of a new consensus, but it will only have progressive effects when combined with other elements of democratic politics such as resistance, mobilization, and structural change" (Chamber, 1996 quoted in Kohn, 2000: 418). The idea of consensus, in both theories, should arise from the commitment to freedom and equality of citizens and from the desire to improve the 'reasonable quality' of democratic results (Baynes, 2010: 146). But another group of authors thinks that we "should not explicitly aim for consensus or agreement, but just limit themselves to welcoming it as an essential byproduct when it occurs" (Fuerstein, quoted in Martí, 2017). This is because not all social conflicts or disagreements can be resolved by consensus—not even, as Johnson and Knight suggest, "at least ideally" (1994: 282). In this sense, Kasper Hansen (2014: 3) warns that consensus "can elude some arguments from the discussion as some participants might be reluctant to voice views that are in conflict with the emerging consensus". Although the deliberative and consociational models often strive for consensus, they nevertheless, in certain situations, recognize the inevitability of conflict and anticipate diversity.

5 REFERENCES:

Baynes, K. (**1998).** 'Habermas, Jürgen (1929-)', *Routledge Encyclopedia of Philosophy*, https:// www.rep.routledge.com/articles/biographical/habermas-jurgen-1929/v-1.

Baynes, K. (2010). Deliberative Democracy and Public Reason. *Veritas*, Porto Alegre v. 55 n. 1 jan./abr., 135-163.

Benhabib, S. (1996). Toward a Deliberative Model of Democratic Legitimacy. From the book *Democracy and Difference*. Princeton: Princeton University Press.

Bianchi, G. (2008). Introducing Deliberative Democracy: a Goal, a Tool, or just a Context? *Human Affairs 18*, 100–106.

Binder, L. (1964). National integration and Political Development. *American Political Science Review 58*, No.3.

Bohman, J. (1994). Complexity, Pluralism, and the Constitutional State: On Habermas's Faktizität und Geltung. *Law and Society Review, 28*(4), 897–930.

Bohman, J. (1998). The Coming of Age of Deliberative Democracy. *Journal of Political Philosophy, 6* (4), 399–423.

Chambers, S. (1996). *Reasonable Democracy. Jürgen Habermas and the Politics of Discourse*. Ithaca: Cornel University Press.

Cohen, J. (1989). Deliberation and Democratic Legitimacy. In A, Hamlin & P, Pettit (Eds.). *The Good Polity: Normative Analysis of the State* (pp. 17-34). Oxford: Blackwell.

Dryzek, J. S. (2002). *Deliberative Democracy and Beyond: Liberals, Critics, Contestation*. Oxford: Oxford Univ. Press.

Dryzek, J. S. (2003). Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia. *Social and Political Theory Program*, Canberra: Research School of Social Sciences Australian National University.

Dryzek, J. S. (2009). Democratization as Deliberative Capacity Building. *Comparative Political Studies, 42*(11), 1379–1402.

Dryzek, J. S. (2010). *Foundations and frontiers of deliberative governance*. Oxford: Oxford University Press.

Elster, J. (1986). The Market and the Forum. In J, Elster & A, Hylland (Eds.). *Foundations of Social Choice Theory* (pp. 103-22). Cambridge, Mass.: Cambridge University Press.

Freeman, S. (2000). Deliberative Democracy: A Sympathetic Comment. *Philosophy and Public Affairs, 29*, 371-418.

Furnivall, J. S. (2014). Colonial Policy and Practice. Part of Cambridge Library Collection – *East and South-East Asian History*.

Фрчкоски, Љ. (1992). *Теории за демократијата*. Скопје.

Gusy, Ch. (1989). Princip konsenzusa ili demokracija. *Naše teme*, br. 4, Zagreb.

Gutmann, A., & Thompson, D. (2004). *Why deliberative democracy*. Princeton, NJ: Princeton University Press.

Habermas, J. (1971). *Knowledge and Human Interests*. Jeremy Shapiro (Trans.). Boston: Beacon.

Habermas, J. (1985). Questions and Counterquestions. In R, Bernstein (Ed.). *Habermas and Modernity*. Cambridge MA: MIT Press.

Habermas, J. (1991). *The Structural Transformation of the Public Sphere An Inquiry into a Category of Bourgeois Society*. Thomas Burger (Trans.). Cambridge Mass: The MIT Press.

Habermas, J. (1996). *Between Facts and Norms*. William Rehg (Trans.). Oxford: Polity.

Habermas, J. (2006). Religion in the Public Sphere. *European Journal of Philosophy*, *14*(1), 1–25.
Harrison, R. (2005). 'Democracy', *Routledge Encyclopedia of Philosophy*, https:// www.rep.routledge.com/articles/thematic/democracy/v-2.
Janković, I. (2012). Deliberativna demokratija–Istorija jedne ideje. *THEORIA 2* BIBLID 0351–2274: *55*, 21–52.
Jarymowicz, T. (2017). *Democratic Deliberation in the Context of Deep Pluralism and Mass Democracy. A Case for an Epistemic Idea of Public Reason*. A dissertation for the degree of Philosophiae Doctor, The Arctic University of Norway, Faculty of Humanities, Social Sciences and Education Department of Philosophy.
Kaufman, S. J. (2001). *Modern Hatreds: The Symbolic Politics of Ethnic War*. Ithaca: Cornell University Press.
Knight, J., & Johnson, J. (1994). Aggregation and Deliberation: On the Possibility of Democratic Legitimacy. *Political Theory*, *22*, 277-296.
Kohn, M. (2010). Language, Power and Persuasion: Toward a Critique of Deliberative Democracy. *Constellations*, Volume 7, No. 3., Oxford: Blackwell Publisher Ltd. 108 Cowley Road.
Климовски, С., Каракамишева, Т., и Дескоска, Р. (2012). *Уставно право и Политички систем*, Скопје: Просветно дело.
Lijphart, A. (2012). *Patterns of Democracy.* (Second edition). New Haven/London: Yale University Press.
Lijphart, A. (2019). How to Arrive at Peace in Deeply Divided Societies? Using Deliberation to Refine Consociational Theory. *Journal of Public Deliberation*.
Липхарт, А. (1994). *Демократија во плуралните општества*. Скопје: СТЕП.
Marden, C. (2008-2009). A Critique of Consensus Politics. *Leading Undergraduate Work in English Studies*, Volume 1, 204-210.
Martí, J. L. (2017). Pluralism and consensus in deliberative democracy. *Critical Review of International Social and Political Philosophy*, Volume 20, - Issue 5: Democracy and Diversity.
Mouffe, Ch. (2000). Deliberative Democracy or Agonistic Pluralism. *Reihe Politikwissenschaft, 72*, Wien: Institut für Höhere Studien (IHS).
Nešković, R. (2013). *Nedovršena država. Politički system Bosne i Hercegovine*. Sarajevo: Friedrich-Ebert-Stiftung.
Niemeyer, S., & Dryzek, J. S. (2007). The Ends of Deliberation: Meta-consensus and Inter-subjective Rationality as Ideal Outcomes. *Swiss Political Science Review*, *13*(4), 497–526.
Novaković, M., & Perović, B. (2021). Understanding Deliberative Democracy and its Constructive Criticism. *Serbian Political Thought*, No. 4, Year XXVIII, Vol. 74, 33-58.
O'Flynn, I. (2002). *The Philosophical Basis of Deliberative Democracy*. A thesis submitted to the Queen's University of Belfast for the Degree of Doctor of Philosophy in the Faculty of Legal, Social and Educational Sciences.
Orlović, S. (2015). Consociational experiments in the Western Balkans: Bosnia and Herzegovina and Macedonia. *New Balkan Politics*, No.17, 29-50.
Rawls, J. (1987). The idea of an overlapping consensus. *Oxford Journal of Legal Studies*, *7*(1), 1–25.
Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.

Reynolds, A. (2000). Majoritarian or Power-Sharing Government. In M. M. L, Crepaz, T. A, Koelble, & D, Wilsford, (Eds.). *Democracy and Institutions: The Life Work of Arend Lijphart*. Ann Arbor: University of Michigan Press.
Samuelsson, M. (2018). Education for deliberative democracy and the aim of consensus. *Democracy & Education, 26* (1), Article 2. Retrieved from https:// democracyeducationjournal .org/ cgi/ viewcontent .cgi ?article = 1321 & context = home
Saward, M. (2003). *Democracy*, Cambridge: Polity in association with Blackwell.
Steiner, J., & Jaramillo, M. C. (2019). How to Arrive at Peace in Deeply Divided Societies? Using
Deliberation to Refine Consociational Theory. *Journal of Public Deliberation*, Volume 15, Issue 3 Article 9.
Young, I. (1997). Communication and the Other: Beyond Deliberative Democracy. In *Intersecting Voices*. Princeton: Princeton University Press.
Ванковска, Б. (2014). *Политички систем на Република Македонија*. Скопје: Универзитет „Св. Кирил и Методиј“ – Скопје.

UDK: 355.02:[327:911.3(100)
DOI: 10.20544/ICP.9.2.24.P15

FACTORS THAT INFLUENCE THE GEOPOLITICAL STRUGGLE FOR MULTIPOLARITY IN THE WORLD

Židas Daskalovski, PhD
zidas.daskalovski@uklo.edu.mk

Abstract

The war in Ukraine and the tensions with China over Taiwan are clear indicators that there is an ongoing struggle between the global powers that want unipolar or multipolar international system. On the one side is the American rules-based order, while on the other is the Chinese, Russian and other powers' struggle for multipolarity. The conflict stretches across at least four dimensions: institutional, ideology and values, technology and military, and economy and finance. In principle, both sides build spheres of influences in different parts of the world. The article discusses current trends and prospects for the future, from Belt and Road Initiative to the expansion of NATO eastwards.

Introduction

The concept of liberal international order was born after World War II and concerns a set of norms, institutions and mechanisms that have guided the international system (or at least a large part of it) since. Many of these norms and institutions, such as the United Nations, the General Agreement on Tariffs and Trade (GATT) – now the World Trade Organization (WTO) – the IMF and the World Bank, the UNCLOS, or the ICC, embody the "order", whose highest exponent would be the UN Nations Security Council. The "liberal" order is based on an idea of economic liberalism, individual rights and political liberalism and the liberalism of the theory of international relations – in contrast to realist policies and multilateralism – in diplomatic affairs.

However, many countries of what is called the Global South, argue that this "Order" mainly benefits the West and that, the US, are quite selective with regard to subjection to these norms and institutions when their interests are at stake. They point to an obvious hypocrisy where US has not ratified the UNCLOS but appealed to it in maritime border disputes in the South China Sea; that it is not a signatory to the Rome Statute – and has even harshly criticized it – but now supports the issuance of an arrest warrant against President Putin by the ICC. US are WTO signatories, but infringe its most elementary rules and norms, when their interests are at stake (Helms Burton Act, among others); they invade countries under false pretences (Iraq) or intervene without UN approval (Kosovo). Discrepancies between principles of the international law, such as "non-interference in internal affairs", "humanitarian intervention", "territorial integrity", and "national self-determination", and the actual American practices become a problem of "double standards."

Struggles for great power status and world hegemony

For more than a century, an extreme concentration of economic power allowed the West, despite representing a small minority of the world's population, to initiate,

legitimize, and successfully advocate policy in the economic or security realm (Stuenkel 2016). Yet, nowadays, the American-led international order is not the only game in town. The West is slowly losing the capacity to set the agenda on a global scale. According to the US CIA Director William Burns:

"Great power rivalry is back: China is systematically modernizing its military and is poised to overtake the US as the world's biggest economy, slowly extending its reach in Asia and across the Eurasian supercontinent; Russia is providing graphic evidence that declining powers can be at least as disruptive as rising ones, increasingly convinced that the pathway to revival of its great power status runs through the erosion of an American-led order… Meanwhile, a quarter century of convergence toward a Western model is giving way to a new form of globalization, featuring a new diversity of actors and the fragmentation of global power, capital, and concepts of governance" (2019, 7).

China, Russia and other emerging powers "do not accept the dual structure of the liberal international order in which the United States enforces the rules but is not bound by them" (Diesen 2021, 209). Moscow and Beijing claim that the USA deliberately ignore the principles of the UN Charter, seeking to replace the international law with a "rules-based order" that they themselves define.

The opponents of US hegemony insist on the creation of an alternative model and a multipolar world. China and Russia resist the spread of the liberal order for realist reasons, as it would allow Washington D.C. to dominate the international system economically, militarily, and politically. It is not surprising that China seeks to oust the US military from the Western Pacific and that Russia has long been deeply opposed to EU and NATO expansion into Eastern Europe. According to Mearsheimer, moving these institutions closer to Russia eventually led to the Ukrainian crisis in 2014. Thus, nationalist and realist reasons forced the two major powers to challenge the efforts of the US to create a robust liberal international order.

Beijing and Moscow challenge the permanent struggle against "autocrats of the world", and the supposed superiority of the liberal democratic model and the Western values embodied in the concept of the "rules-based international order". Premised on the willingness of US "to ignore, evade or rewrite the rules whenever they seem inconvenient, the rules-based order is seen to be broad, open to political manipulation and double standards" (Dugard 2023, 226). China and Russia disapprove of the imposition of a rules-based international order where international law is interpreted by the US to accord with its national interests.

Russia is against the Western backed rules-based order which makes difference between liberal democracies and "authoritarian powers", between 'good' and 'evil' force in international politics. For Moscow, the promotion of the "selective combination of rules, unilaterally employed, is with the aim to circumvent multilateral, collective decision-making and international legal instruments and processes based on the UN Charter as a core of the post-war order". (Ibid., 16). However, times are changing fast. While in the past, "globally significant decisions were made by a small group of states with the voice of the Western community predominating, for obvious reasons today, new players from the Global South and East have come to the forefront of world politics" (Lavrov 2023). Russia supports their focus on strengthening their sovereignty in resolving topical issues, putting their national interests at the forefront.

The preferred Russian alternative is a "multipolar world", in which the unilateral power and hegemonic impulses of the United States are constrained by a coalition of major powers, including Russia, China, and India (Rumer and Sokolsky 2019, 16). For Moscow,

the emerging international architecture should be inclusive, cooperative, and not antagonistic where all issues in international affairs are resolved through a culture of dialogue, based on a balance of interests and consensus. Russian foreign policy is focused on expanding mutually beneficial international cooperation. Moscow is striving towards the establishment of an "equitable and sustainable world order". The principle of sovereign equality of states, respect for their right to choose models of development, and social, political and economic order is acceptable for many countries among the Global South who are pushing for changes in the current Western-dominated multilateral global order.

The Global South views the rules-based order and Western insistence that states not violate international law as rank hypocrisy. Most of these countries "retain deep-rooted resentment towards the West inherited from the imperialist and colonialist era" (de Santayana 2023). In their view, not only do "Western powers make most of the rules, but they are also perfectly willing to violate these rules whenever it suits them" (Walt 2023). US's invasion of Iraq in 2003 and NATO's bombardment of Yugoslavia in 1999 come to mind when international norms and the UN were not consulted. Non-Western nations see double standards in the policies of US and its allies. Increasingly, the idea that it is the US and its allies who are the source of global disruption and instability, and that Putin is simply standing up to the West holds sway (Frankopan 2023). Indeed, according to Chatham House, America's recent violations of international law have "cast a long shadow over America's claim to be the principal defender of a rules-based international system" (2015). Global South sees the Ukrainian war as a European issue and "reject the Western interpretation that it is an attack on the UN legal order and, thus, a global existential threat" (Brender 2023).

Globalization within a multipolar order will increasingly favour regional autonomy and a struggle to define a new balance of power. In southeast Asia, with the exception of Japan, South Korea, and Singapore, all countries in this vast region have the ability to conduct a foreign policy based primarily on their own selfish interests or ideas of justice or injustice within the existing international order. ASEAN countries successfully hosted their own as well as the G20 Summit, and the APEC Meeting in late 2022, keeping equidistance from China and the US, and working on regional solidarity and economic prosperity. In South America, the victory of the left-wing leader Lula in Brazil has rounded up the trend of left-wing governments coming to power in Mexico, Argentina, Peru, Chile, Honduras, Bolivia and Colombia. These countries account for more than 80% of the population of Latin America and advocate both keeping their distance from the US and promoting the process of Latin American independence and integration.

Cooperation among non-Western powerhouses is rising. This year will mark the start of BRICS+ expansion, with candidates ranging from Algeria, Iran and Argentina to Turkey, Saudi Arabia and the UAE. Bilateral trade between China and Russia in 2022 rose 34.3% to a record high of 1.28 trillion yuan ($189,5 billion). Chinese and Russian leaders have jointly set a goal of bilateral trade volume to rise to $200 billion by 2024 (Harper 2023). With Russia's help, China's BRI can now extend through Arctic shipping lanes. The Russian Northern Sea Route is being incorporated into China's concept of a Polar Silk Road, which offers faster and cheaper transportation between Asia and Europe, which is outside of US control. In 2022, the first summit between China and the Gulf Cooperation Council took place deepening China's ties with Opec+. Saudi Arabia has been coordinating the oil market with Russia and improving relations with China. During President Xi Jinping's visit to Riyadh in 2022, the two countries agreed to boost coordination on energy policy and exploration. In November 2023, the People's Bank of

China and the Saudi Central Bank signed a local currency swap agreement worth 50 billion yuan ($6.93 billion) or 26 billion Saudi riyals.

Galvanized World

Overall, the response to the Russian aggression has galvanized the world: western countries have been unanimous in their support for Ukraine, though elsewhere countries have chosen to remain neutral or support Russia. Much of the world is wary of taking sides. The sustainability of the anti-Russian consensus is far from certain as practically all the states of Africa, Asia and Eurasia have ended up in that Global Majority — the totality of countries that make up 85%of the world's population — which are not allies of the West in its struggle against Russia. North Africa has even helped Russia offset the economic effect of western sanctions as Morocco, Tunisia, Algeria, and Egypt have all, in 2022, imported Russian diesel and other refined oils, as well as chemicals. On the other hand, in March 2023, Russia wrote off debts of African states in the amount of over $20 billion (Eruygur 2023). The second Russia–Africa Summit was held in July 2023, and was attended by 49 delegations. Moscow promised no-cost grain shipments to 6 African countries.

The Global South has taken an ambivalent position towards the conflict. In the initial stage of the war, a total of 131 states voted for the 2 March 2022 UN General Assembly (UNGA) resolution that condemned Russia's invasion of Ukraine and demanded a full withdrawal of Russian forces, with only 5 voting against, and 35 abstaining. Yet, while majority of countries from the Global South supported the UN General Assembly resolution rejecting Russia's annexation of the Donetsk, Kherson, Luhansk, and Zaporizhzhia regions of Ukraine and demanding that it immediately withdraw its forces from Ukraine's territory, fewer than 40 of the 193 UN member states have imposed sanctions on Russia, and fewer than 30 have pledged military assistance for Ukraine.

Conclusion

These global reactions to the Ukrainian war depict a multiplex, if not multipolar world. Multipolarity implies the relative equidistance of the independent global centres of power from each other, as well as the comparability of their military, economic, technological etc. potentials. On the other hand, a multiplex world is not a singular global order, liberal or otherwise, but a complex of crosscutting, if not competing, international orders and globalisms. Acharya defines the modern world as a "multiplex world" in which "elements of the liberal order survive, but are subsumed in a complex of multiple, crosscutting international orders. We are talking about a multiplex, rather than a multipolar, world, more complicated than it was during the American-led liberal hegemonic order (Acharya 2014, 224). He notes that this "is a world of multiple modernities, where Western liberal modernity (and its preferred pathways to economic development and governance) is only a part of what is on offer. In the face of economic, technological and ecological disruption, multilateral governance will increasingly be shaped by competing interests.

One could also speak of the possibility of the emergence of polycentric governance in the world. As a general definition, "polycentric" governing occurs when "many centres" address a given policy concern. While the diffuse "decision points can be scattered across multiple scales (local, national, regional, and global) and various sectors (public, private, and hybrid), the participating organizations in a polycentric arrangement often have overlapping mandates, ambiguous hierarchies of authority, and no ultimate arbiter. Continual creation and reconstruction of institutions and relationships among them also

tend to make polycentric governing processes quite fluid" (Koinova et al., 2008). Polycentrism persisted even during the Cold War as Third World countries sought to shape global norms surrounding national independence and non-alignment.

Lee Kuan Yew, the founding prime minister of Singapore from 1959 to 1990, argued "against the idea of universal values, asserting that Asian or "Confucian" values emphasized family and community more than individual rights and were just as valid" (Erlanger 2023). Joseph Stiglitz, the Nobel laureate professor of economics at Columbia University, commented recently that the economic theories espoused by Western democracies "that are the basis of globalization and underlie the World Trade Organization have been totally discredited" and led to enormous inequalities (Erlanger 2023). If there is regime change in Russia and the country joins the western camp, China will come under great pressure. As China much favours a multipolar world, it prefers Russia, as well as India, to be separate poles in the global system. In October 2023, Beijing welcomed Putin with open arms despite the Russian president being accused by the International Criminal Court of committing war crimes in Ukraine. Trade between the two countries surged in 2023 in comparison to the year before.

Brazil has not joined Western nations in imposing sanctions on Russia and has refused requests to supply ammunition to Ukraine. Non-Western leaders are concerned about the effects of Western sanctions against Russia on the global economy. Freezing the money of the Russian central bank and the arbitrary seizure of assets from Russian individuals without due process do not speak well for the implementation of the rule of law or of the rules-based world order. Trust in the West's administration of the global economy is subsequently collapsing around the world (Diesen 2023). "Non-alignment" offers governments avenues to boost their autonomy in foreign and energy policy.

The Russian invasion of Ukraine is just a very clear and public manifestation of the struggle where the US, supported by its junior Western partners strives to remain the only, or the main, hegemonic power in the world, while Moscow, Beijing, and other regional players seek a more balanced state of affairs. Although discussions over the justness of the international system and the potentials for development of a polycentric world have intensified since last February, the conflict between the unipolar and multipolar forces, has been going on for some time. Russia, China and other actors aim to end the supremacy of the Western world based on five pillars: institutional and financial, military, technological innovation, cultural, and ideological. On the other hand, US and its allies have been, for some time, trying to hamper Moscow's and Beijing's initiatives, diplomacy, and economic and technological development. US and Europe are defenders of the so-called "rules-based liberal world order" and the two others are seen as contesting it.

Much of the world is wary of taking sides. Practically all the states of Africa, Asia and Eurasia have ended up in that Global Majority, the totality of countries that make up 85% of the world's population has not allied with the West in its struggle against Russia. Fewer than 40 of the 193 UN member states have imposed sanctions on Russia, while fewer than 30 have pledged military assistance for Ukraine. "Non-alignment" offers governments avenues to boost their autonomy in foreign and energy policy. One can argue that, following the Russian invasion of Ukraine, the world was divided into Western liberal world and the conservative forces. In the first group we find US, EU, the UK and their allies. Russia, Iran, Central Asia, China, Africa, and the Arab Middle East with various political institutions and ideologies – from Islamism to secular communism and state capitalism are united in their rejection of western modernity, and its associated political and social alternative. Countries of South America, Asia-Pacific, or Southeastern Europe,

including Turkey, do not have strict affiliation with either of the blocks, balancing their interests. The world is not driven by values, but by states pursuing their interests.

At the moment it is difficult to imagine a decisive victory of either of the two camps. What would the consequences of the end of the US-led postwar order for the future of world politics be? Europe and the United States would need to adapt to the new realities of global politics, which will combine liberal functions with other features. The future of the world will be more consistent with the diversity and pluralism in its norms, means of communication and leadership. Different value systems will be co-existing in the world, divergence on issues such as understanding of gender, sexuality, individualism vs communitarianism, drugs, gun control, the death sentence, abortion, not to mention larger ideological constructs like the balance or the role of the state and the various religious teaching[s]. A victory of the US-led West in Ukraine could mean democratization of Russia and further pressure on other non-democratic countries to follow that path. The defeat of Moscow could also lead to rise of more nationalistic leader in Russia and further antagonism, it could also lead to nuclear Armageddon. In any case, the times are very exciting, and the world is on a cusp of serious changes.

References

Acharya A. The end of American World Order. Cambridge: Polity Press. 2014.

Brender, Reinhold. "Strengthening multilateralism in a multipolar world". Egmont Policy Brief 311. July 2023.

Burns, William J. (2019), The Back Channel: A Memoir of American Diplomacy and the Case for Its Renewal (New York: Random House).

Chatham House, The London Conference, 'Challenges to the Rules-Based International Order', Chatham House: The Royal Institute of International Affairs, 2015, www.chathamhouse.org/sites/default/files/London%20Conference%202015%20-%20Background%20Papers.pdf.

de Santayana José Pardo, "One-sixth of the world cannot determine the international order on its own," Instituto Español de Estudios Estratégicos, Analysis Paper 63/2023.

Diesen, G., 2021. Great Power Competition in the Fourth Industrial Revolution: The Geoeconomics of Technological Sovereignty, Bloomsbury, London.

Diesen Glenn, "Globalisation Under a Eurasian Westphalian World Order," Valdai Expert Opinion, 16.03.2023.

Dugard SC John, "The choice before us: International law or a 'rules-based international order'?" Erlanger Stephen, "Are Universal Values Really Universal?" The New York Times, September 26, 2023.

Eruygur Burc, "Moscow wrote off more than $20B in debts from African states, Russian president says," Anadolu Agency, 20 March, 2023.

Frankopan Peter, "Is Putin winning? The world order is changing in his favour," The Spectator, 04 March 2023.

Harper Jo, "How China's yuan props up Putin's anemic budget," Deutche Welle, January 30, 2023.

Koinova Maria, Maryam Zarnegar Deloffre, Frank Gadinger, Zeynep Sahin Mencutek, Jan Aart Scholte, Jens Steffek, "It's Ordered Chaos: What Really Makes Polycentrism Work," International Studies Review, Volume 23, Issue 4, December 2021, Pages 1988–2018.

Lavrov Sergei, "Address delivered at the Primakov Readings event," Russian Ministry of Foreign Affairs, 27 November, 2023, https://mid.ru/ru/foreign_policy/news/1917821/

Mearsheimer John J. “Bound to Fail. The Rise and Fall of the Liberal International Order,” International Security, Vol. 43, No. 4 (Spring 2019), pp. 7–50.
Mearsheimer John, “John Mearsheimer on why the West is principally responsible for the Ukrainian crisis,” Invited Commentary, The Economist, 11 March 2022.
Rumer Eugene and Richard Sokolsky, Carnegie Endowment for International Peace Report: Post–Cold War U.S.-Russian Relations—What Went Wrong? Carnegie Endowment for International Peace, 2019.
Stuenkel, Oliver. Post-Western World: how emerging powers are remaking global order. Malden: Polity Press, 2016.
Walt Stephen M., “The Conversation About Ukraine Is Cracking Apart,” Foreign Policy, 28th February, 2023.

UDK: 355.02:[324:343.415(497.7)
DOI: 10.20544/ICP.9.2.24.P16

ENGAGEMENT OF TRAINERS FROM THE FIELD OF SECURITY IN THE STATE ELECTION COMMISSION IN ORDER TO DEAL MORE SUCCESSFULLY WITH SECURITY CHALLENGES DURING THE ELECTION PROCESS

Pulumb Abdulan, MSc (Author)
Third Cycle Student (Doctoral Studies) at the Faculty of Security – Skopje, University "St. Kliment Ohridski" – Bitola
pabdulai@live.com
Davor Arsić, MSc (Co-Author)
Third Cycle Student (Doctoral Studies) at the Faculty of Security – Skopje, University "St. Kliment Ohridski" Bitola
davorarsikjku@yahoo.com

Abstract

Voting is a democratic act of expressing the will of the citizen in a democratic society, where every citizen can use his legally guaranteed right to vote and vote for the option that he considers to be the best of his free will and conviction.

During the voting, there are situations in which the electoral process is disrupted by voters, members of the election board, but also by officials, due to the fact that the members of the election board are not trained to act in situations related to security breaches and instead of trying to calm down the situation, they further escalate it, which leads to disruption of the electoral process and in certain situations, its interruption. For those reasons, additional training, even if short, for the election board related to the security aspect by professional staff would contribute to additional professionalization from the security aspect of the members of the election board, on how to act in situations related to a security breach during the electoral process (voting) and contribute to its development in a more peaceful and democratic atmosphere.

The Ministry of Internal Affairs, as well as many other state institutions, are involved in the election process on the day of the voting, but the election board are the ones who are first in contact with the voters, where there may be disturbances during the voting, therefore the need for additional security training for the members of the election board is imposed.

Keywords: voting, elections, electoral process, state election commission, election board

INTRODUCTION

The election result is a decisive factor that determines who will lead the future government, i.e. who will be the mandate holder and who will lead the country in the next four years, who will have the honour of being the president of the country as the highest state office, i.e. who will represent the citizens at the local level and will be the mayor of a

certain municipality or a member of the council of the municipality. For that reason, certain party members, activists or sympathizers of a certain political entity wish to influence the election result by directly interfering in the election process and harming a certain polling place.

There are frequent cases when particular person(s) who have come to exercise their right to vote in the polling station behave aggressively towards members of the Electoral Board who are part of the election administration[139] and thus put the voting in that polling station in a disadvantageous position whether to continue or in case the situation gets out of control and the voting in that polling station is suspended.

The question arises as to how the members of the election administration who are not part of the security authorities, for example the Ministry of Internal Affairs, and who do not have even the slightest elementary training in the field of security, would be prepared to act accordingly and have certain powers to maintain order and peace in the polling place. Hence, the idea for this paper arises, which in the following text we will try to process, and finally offer recommendations for safe elections with appropriate professional security training for the members of the election administration, as well as most importantly for the members of the election boards as persons who are in first contact with the voter. Electoral boards are directly responsible for conducting elections, that is, voting at the polling station, including maintaining order and peace in the polling station.

Only elections that have credibility and respect the principles of good governance contribute to the democratic development of society.

I. PROCEDURE FOR CONDUCTING THE ELECTIONS

The right to vote is a guaranteed right of every citizen. This right, which derives from the Constitution of the Republic of North Macedonia as the highest legal act, is protected by the Electoral Code and international law. If someone tries to violate the secrecy of your or anyone else's vote, a prison sentence is also provided for that person or persons, which means that it is a serious crime that is punished most severely. According to the Constitution of the Republic of North Macedonia, the right to vote is equal for all citizens and is exercised by secret ballot. The secrecy of the vote means that no one can in any way find out who you voted for. Such secrecy is achieved by voting behind a screen and by folding your ballot properly to preserve this secrecy. In fact, a prison sentence is provided for violating the secrecy of the vote, which means that this is a punishable crime. The members of the Electoral Board who are part of the election administration are also responsible for the secrecy of the voting.

The State Election Commission takes care of legality in the preparation and implementation of the elections and supervises the work of the election authorities. In its operation, the State Election Commission is governed solely by the constitution and laws of the Republic of North Macedonia, as well as by-laws, instructions and the electoral code. In its work, the State Election Commission applies international conventions and good election practices.[140]

The main mission of the State Election Commission is to guarantee equal, general and immediate suffrage, which is exercised in free elections with secret ballot and provides

[139] The election administration consists of: the employees of the professional service of the State Election Commission, the members of the election bodies, the secretaries of the municipal election commissions, their deputies and other persons temporarily engaged for the election process in the auxiliary bodies of the State Election Commission.

[140] Retrieved from: https://www.sec.mk/misija-drzavna-izborna-komisija/; [Accessed 13/12/2023].

equal conditions for all participants in the electoral process. Through the successful implementation of the elections, the State Election Commission lays the foundations of democracy and contributes to increased confidence in the electoral process and democratization of the institutions of the Republic of North Macedonia.[141]

In order to achieve all this, the basic prerequisite is the security of voters and polling stations, which the State Election Commission provides in cooperation with the Ministry of Internal Affairs. This mutual cooperation can be improved with additional training by professional staff in the field of security hired by the State Electoral Commission to train the members of the election administration and especially the members of the Electoral Boards who are in direct contact with the voters. One of the main activities of the Electoral Boards in coordination with the Ministry of Internal Affairs during the implementation of the elections is to create safe conditions and, accordingly, they should assess the security threats on the day of voting in accordance with the Electoral and Criminal Code.

In keeping with world trends, the State Electoral Commission introduces new technologies to improve the electoral process. Through the efficient and effective implementation of the electoral process, the State Electoral Commission ensures that all actors in the electoral process have equal access to exercising their electoral rights and emphasizes the aspect of security during the voting that should be carried out by the members of the electoral administration. For this purpose, the State Electoral Commission establishes bodies for the implementation of the electoral process.

According to the Electoral Code, the structure of the electoral bodies responsible for conducting elections is set at four levels, that is, these bodies are:

- State Election Commission (SEC),
- Municipal Election Commission (MEC),
- Electoral Boards (EB) and
- Electoral boards for voting in DCP of RSM, that is consular offices.[142]

The security of the electoral process is carried out by the police in cooperation with the electoral authorities such as the Municipal Election Commission and the Electoral Boards. Members of the police ensure the reception of the material, the polling place, the Election Board and all persons present at the reception of the election material. However, all members of the election administration lack professional training from a security perspective, which would further contribute to a more professional realization of the goal of the State Election Commission and the creation of a safe atmosphere on the day of voting in the polling stations.

The cooperation of the police with the electoral bodies takes place in this way:

- The electoral board takes care of maintaining order and peace at the polling station. He can request help from the police to establish order at the polling station.
- The police ensure order in the polling station, in the building where the polling station is located, and ensure the approach to the polling station (the room where voting takes place).
- The police secure the polling station continuously from 6:00 a.m. to 7:00 p.m., that is, until the end of voting. After the end of the voting, the Police ensures the transportation of the election material to the Municipal Election Commission.[143]

[141] Ibid.

[142] Consolidated text of the Electoral Code, Chapter III, Bodies for conducting elections, Point 1, Types of electoral bodies, Article 17.

In case of any disturbance at the polling station, the Electoral Board may request the help of the police. As prescribed, the Election Board takes care of the order and peace of the polling place. If they fail to do so and the Election Board needs assistance, the police officer should take immediate action to resolve the problem, maintain order and prevent further escalation.

Members of the electoral administration who are in contact with voters should be properly prepared and have absolute control over their integrity and professionalism, but the other security aspects of their professional role are not in their hands without adequate security training. The safety procedures that they should follow in certain situations are not even defined exactly. That is why there is a need for security training, which in the future will have a certain contribution to a more professional organization of the execution of the assigned tasks of the election administration by the State Election Commission.

The Electoral Board may call the police to intervene in the room where the vote is taken due to:

- disturbed order and peace in the polling station - until its re-establishment,
- removal of unauthorized persons present in the building and the voting room,
- as an exception, remove the president, the deputy president or a member of the election board who disturb the order and peace in the polling station, if this is necessary for its establishment, remove the unauthorized persons present in the building and the voting room,
- Removal of all unauthorized persons from the polling station and from the facility where the polling station is located after the polling station has closed, to ensure smooth counting and summarization of the results.[144]

In all of the above situations, the members of the Electoral Boards lack basic training on how to deal with such situations and how to act so that the voting in a certain polling station is not interrupted.

I.1.Security challenges related to voting

The mere presence of the police officer in the polling station for the person who came to exercise his right to vote creates a perception that something is wrong and there is a need for the police to intervene, and all this can influence the voter's decision whether to exercise his legal right. the right to vote or to leave the polling station fearing for his safety and the safety of his loved ones. According to Abraham Maslow, human needs, which he presents as a pyramid, where the base of that pyramid consists of the basic needs for survival, and after these basic needs are satisfied, the person strives to realize the needs of the second level: the need for safety and security. So, the very security in the polling station would directly influence the voter to exercise his legally guaranteed right to vote.

On the day of voting, it may happen that voting is interrupted in a certain polling station, where the reason may be a human factor.

The Electoral Board may suspend the voting in the following cases:

1. If the order is disturbed at the polling station, until it is established,
2. In case of weather disasters and other emergency circumstances,
3. If the approach to the polling place is not secured by the police, and there was a need for it,
4. If the police were called and did not respond to the call,

[143] State Election Commission, Manual for Education of Electoral Boards, Republic of North Macedonia, Elections 2024.

[144] Ibid.

5. In case of a technical problem or non-functioning of the technical equipment for biometric identification of voters (in this case, the municipal election commission is immediately contacted) and
6. In any case, if there was an interruption of the voting, the reasons for it are recorded in the Minutes (Forms number 16), in the corresponding column.[145]

The electoral board is formed separately for each polling station and is composed of 10 members: president, deputy, and four members and their deputies. According to this election, taking into account that employees of the security authorities cannot by law be members of the Electoral Board, it is evident that almost none of them have experience in acting in situations where the voter has an aggressive inappropriate attitude towards members of the Electoral Board and vice versa.

As can be seen in points 1 and 4, the decisive factor on which the suspension of voting depends is the appropriate and professional behaviour of the members of the Electoral Boards, especially the president, how to safely assess and react in such situations, and in this case if they have previous appropriate safety training would benefit them.

The contact with the police officer is made by the president of the Electoral Board or in his absence the deputy president of the electoral board or in case both are absent a member of the electoral board, who decides on his own free will when it is necessary to call the police officer to react in the polling place. Communication may be done orally, in writing, by telephone, or by any other suitable means. The police enter the polling station only in the cases when they are called by the Electoral Board and when they notice a serious disturbance of order and peace.[146]

After being called, the police officer is obliged to prevent the disturbance of order and peace or the commission of crimes provided for in the Criminal Code from Article 158-165 at the polling station or in its immediate vicinity, and if a criminal offense has already been committed, he is obliged to secure the place at the event and to collect all the relevant facts for elucidating the committed crime.
When order and peace are restored, he makes sure that the police leave the polling station.[147]

Therefore, with the current way of training the members of the Electoral Board, the president and deputy president of the Electoral Board do not have any prior security training or general knowledge of security procedures and it often happens that the police officer is called to the polling station without any need or vice versa even though there was a need to respond to a police officer and consequently to make a report, or a situation where the police officer is not called while a certain offense is resolved at the free will of the president or the members of the Electoral Board.

It should be borne in mind that any irregularity related to the election process is a criminal offense in the Republic of North Macedonia and should be sanctioned accordingly. Only in such a way can fair and democratic conditions be ensured for every citizen to freely express his will and in a safe atmosphere to cast his vote for the option he considers to be the most acceptable for him.

---

[145] State Electoral Commission, Manual for the education of the members of the electoral boards, Elections for mayor and council members of the municipalities and the city of Skopje 2021, Republic of North Macedonia, Skopje 2021.

[146] State Election Commission, Manual for Education of Electoral Boards, Republic of North Macedonia, Elections 2024.

[147] State Electoral Commission, Manual for the education of the members of the electoral boards, Elections for mayor and council members of the municipalities and the city of Skopje 2021, Republic of North Macedonia, Skopje 2021.

The next situation for which we believe it is necessary to hire security trainers for security training of the members of the election administration and the most affected members of the Electoral Boards is in the case of an attempt at family voting where the Electoral Board has an obligation:

1. To prevent the attempt
2. Log each attempt in the Event Log register
3. If they fail to prevent the attempt, and the order and peace in the polling station is disturbed, they should call the police.[148]

In point 1 it can be noted that the members of the Electoral Board are required to act directly and prevent the attempt of family voting. Without adequate security training, any member of the Election Board in such a situation would do more harm to the whole situation than to positively influence and as pointed out prevent the attempt of family voting. This situation in itself can be a challenge for the members of the Ministry of Internal Affairs themselves. The actions of a police officer, if seen as excessive or unfair, can cause a small incident to escalate into a major one. The way the police officer handles the situation is seen from many perspectives.

Every person who is present at the polling place and who sees the reaction of the police officer to the given situation is forming an opinion about the police officer and the service as well as about the members of the Election Board. There are also persons who seek the opportunity to use any situation of exaggeration to the detriment of the State Election Commission and the Election Board to cause inconvenience and situations in order to make the elections fail.

In point 3, it is emphasized that in case the attempt is not prevented, and the order and peace in the polling station is disturbed, the police should be called, which is a bit illogical. Namely, here we will allow ourselves to comment, which means are available to the members of the Electoral Board to influence in order to prevent the attempt. In this part, it is evident the need to introduce additional security trainings or that this part is strictly under the authority of police officers, without including the members of the Electoral Boards.

Next, if any authorized representative, observer or journalist obstructs the work of the Election Board, the Election Board has the right to ask that person to leave the polling station. If the person does not do so voluntarily, the Electoral Board should call the police. Every removal of a person from the polling station is recorded by the Electoral Board in the Event Log register.[149]

Next, the Electoral Board will stop the voting if the approach to the polling station is not provided by the police, and there was a need for it, or if the police were called and did not respond to the call.

It should be borne in mind that any calling of a police officer to the polling station by the Electoral Board creates an obligation to fill out a form regarding the need to call the police from the Electoral Board and police action at the polling station on the day of voting.

The electoral board, immediately after establishing order in the polling station, by recording the exact time when it happened, fills in and signs the form, whereby one copy

[148] State Election Commission, Manual for Education of Electoral Boards, Republic of North Macedonia, Elections 2024.

[149] State Electoral Commission, Manual for the education of the members of the electoral boards, Elections for mayor and council members of the municipalities and the city of Skopje 2021, Republic of North Macedonia, Skopje 202.

remains with them, and one copy of the form is handed over to the authorized person of the police. [150]

The police officer has no right to interrupt the voting. Here the Electoral Board is put in an unfavourable situation, that is, the main factor that decides on the suspension of voting in the polling station is the free judgment and will of the president of the Electoral Board. The police enters the polling station only in cases when they are called by the electoral board and when they notice a serious disturbance of order and peace.

But how would the Election Board react in the time interval while contact was established and the police officer was called and came to the polling station. Only the president of the Election Board has contact with the police officer, who give each other a contact phone number at their own request. From this one can clearly be seen the need to hire security trainers in the State Election Commission for security training of the members of the election boards for adequate and professional security training.

If the police did not respond to the request for intervention by the Electoral Board, and there was a need for it and it affected the implementation of the voting at the polling station, the State Election Commission ex officio or after a complaint was submitted, will annul the voting at the polling station with a decision. [151] In this section, proper security preparation is inevitable and, in our opinion, should be carried out by well-trained professionals.

I.2. Security training for the members of the election board

One of the many tasks of the State Election Commission is to provide training for the members of the election administration, that is, the members of the Municipal Election Commission and Election Boards before the day of holding the elections with the help of certified trainers hired by the State Election Commission. Certified trainers have the task of conducting trainings/sessions for the education of the municipal election commissions and the election boards according to the established needs and the program adopted by the State Election Commission, according to the Regulations for the implementation of the election actions.

The certified trainers have an enviable theoretical and practical knowledge of the electoral process, but they do not have adequate knowledge in the field of security, that is, they cannot adequately meet, train and prepare the members of the municipal election commission, and especially the members of the election boards who are in direct contact with the citizens who come at the polling station to express their right to vote, how to appropriately act and react when there are cases, for example, of aggressive, drunk or unauthorized persons from the polling station who refuse to move away at the request of the electoral board, during the voting.

During the election period, most state institutions are at the service of the State Election Commission, which help in the professional implementation of the election process. From here, the inclusion of professionals from the Ministry of Internal Affairs, and why not professors from the Faculty of Security in Skopje, who, as a suitable institution that has been producing staff for years and who are the backbone of the security of the Republic of North Macedonia, are the most adequate for this security training, where

[150] Ibid.

[151] Election Code, purified text, (unofficial version prepared by the Professional Service of the State Election Commission), ("Official Gazette of the Republic of Macedonia", no. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16, 136/ 16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18 and 27/19).

there is specialized staff related to security, and it would be the most suitable and most favourable solution for a short professional security training of the members of the election administration, especially the members of the Electoral Boards, to complete the professional preparation of the persons who are in first contact with the voter.

The police officers who are assigned to secure a specific facility in which a polling station is located, in securing the election process, cooperate with the Electoral Board, which is responsible for conducting elections and voting in the same facility, that is, a polling station. Election day for the police means a number of potential risks and security challenges to deal with, but if there is prior adequate security preparation of the members of the Electoral Boards, mutual cooperation will be much more coherent and to some extent will represent an additional ease of the burden of the members of the Ministry of Internal Affairs with the members of the election boards, but the main responsibility will of course be borne by the police as the competent authority for handling and appropriate handling of such situations.

I.3. Recommendations for safe elections

The electoral process includes the entire state apparatus in the service of the State Election Commission, i.e. the Assembly of the Republic of North Macedonia, the Ministry of Justice, the Ministry of Internal Affairs, the State Statistics Office and the Service for General and Common Affairs of the Government and their regional units, as well as the municipalities. and the city of Skopje, which are obliged to the authorities for the implementation of the elections to provide them with technical, spatial and other conditions for work and the successful and safe realization of the electoral process, but also other state institutions that can be additionally engaged as needed.

Through the application of an interactive methodology by professional security trainers, in front of the members of the electoral administration and especially the members of the Electoral Boards, professional trainers would simulate situations that might occur on the day of the elections, how to properly react and act in a certain task a situation that falls within the field of security studies, police science and the Ministry of Internal Affairs.

The possibilities that are made available to the State Election Commission are great and the greatest benefit during security training can be obtained from the Ministry of Internal Affairs, as an institution that is directly involved in the electoral process and that has the most appropriately professionally prepared and trained staff from the area of security. The experience and knowledge of the members of the Ministry of Internal Affairs, especially the persons in higher positions, would contribute significantly during the training. Of course, the expectations from the members of the election administration are not to become top professionals in the security aspect, but people who, with short flash trainings, would have basic knowledge of how to act and deal with situations with aggressive, drunk or unauthorized persons from the polling station who refuse to vote. stay away at the request of the Electoral Board as well as impulsive and impatient voters, or persons who have come to harm the electoral process or want to somehow degrade the members of the Electoral Boards. They will also be required to exercise good judgment when it would be necessary to call a police officer to the polling station.

Before the presidential elections on April 24 and the presidential and parliamentary elections on May 8, 2024, the Ministry of Internal Affairs worked intensively on training for police officers, and with the support of the OSCE and ODIHR, a manual for the conduct of police officers was developed. This was imposed due to the risk of possible pressures, abuses, violence, intimidation that may affect the course of the

elections. The training was designed to detect such possible risks and to sanction attempts to threaten the free expression of civil will. Following these trainings by a part of the election administration within their competences would mean their professional preparation for possible security challenges. Of course, for the election administration, the training would be a general brief familiarization with part of the tasks and obligations that would be entrusted to it and which would be of benefit to the members of the election administration.

In addition, the State Election Commission has the support of the International Foundation for Electoral Systems IFES.[152] In support of the ongoing democratic development of the Republic of North Macedonia, IFES provides targeted assistance to election management bodies from the State Election Commission to regional and local commissions for the professionalization of election administration and thus building trust among voters.[153]

The security training for the election administration should be strictly defined by the State Election Commission for a specific purpose such as the security of and during voting in the polling station, without additional burdens on the listeners considering the scope of the topic of security, and the lecture should be short and concise.

CONCLUSION

No electoral process can be credible and democratic if basic levels of security for voters are not present.

Elections are a contest for legitimate power that can be described as a non-violent contest, conducted within political parties. In this context, it is important to recognize that elections do not avoid confrontation, but rather focus on party interests. In practice, ensuring security during the electoral process is essential to maintaining voter confidence and security. Consequently, peaceful and safe elections are both an integral part of the purpose of the elections and an inseparable part of the electoral process. The most responsible for this situation are those who are directly involved in holding elections, that is, the State Election Commission and the election administration. Without prior security training, it is not possible to achieve mutual cooperation of the members of the Municipal Electoral Commission and the Electoral Boards with the police officers to more successfully deal with the security challenges during the voting process.

Scandinavian or decent European elections, with minimal exceptions, would be the best recommendation and the strongest proof of the European affiliation and the state's aspiration to culturally, civilizationally and politically rival the non-member countries of the European Union. A key factor for this to be realized is the appropriate security preparation of those who are directly placed at the ballot boxes, to realize the voting, that is, the members of the electoral boards. The first contact with the voter is made by the members of the election boards, who during the day meet with different characters, so even the smallest security preparation before the conduct of the elections would be an additional professional preparation for each member of the election administration to have a basic knowledge of the security aspect which would contribute to the voting taking place in a safer and more peaceful atmosphere.

The first contact and impression with the voter should reflect a positive feeling, professional and cultural relationship that is expected to have every member of the election

[152] IFES, The International Foundation for Electoral Systems.

[153] Retrieved from: https://www.ifes.org/north-macedonia; [Accessed 06/20/2024].

administration as well as the election boards. This should be reflected as feedback from the citizen who came to the polling station to exercise his legal right to vote.

REFERENCES

1. State Election Commission, Manual for Education of Electoral Boards - Notes for Trainers, Republic of North Macedonia, Elections 2024, Skopje May 8, 2024;
2. State Electoral Commission, Manual for Education of Electoral Board Members, Elections for Mayor and Council Members of Municipalities and the City of Skopje 2021, Republic of North Macedonia, Skopje 2021;
3. Electoral Code, Editorially refined text, ("Official Gazette of RSM" no. 58/24);
4. Election Code, purified text, (unofficial version prepared by the Professional Service of the State Election Commission), ("Official Gazette of the Republic of Macedonia", no. 40/06, 136/08, 148/08, 155/08, 163/ 08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16, 136/16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18 and 27/19);
5. Rulebook on the manner of conduct of the police during the conduct of the elections, Skopje, August 2021;
6. Proposed consolidated text of the Electoral Code, April 2021;
7. Proposed consolidated text of the Electoral Code, September 2021;
8. Ministry of Internal Affairs, Training Center, Manual for police officers, The role of the police during elections for the president of the Republic of North Macedonia, Skopje, February 2019;
9. https://www.sec.mk/;
10. https://www.ifes.org/;

UDK: 327.36:355.43(4-672ЕУ)
UDK: 355.02:355.43(4-672ЕУ)
DOI: 10.20544/ICP.9.2.24.P17

EU'S STRATEGIC COMPASS AND NATO'S STRATEGIC CONCEPT: DUALITY OR COMPLEMENTARITY?

Sašo Damjanovski
Faculty of Security – Skopje
damjanovskisasho@gmail.com

Abstract

The unprecedented geopolitical shifts on regional, as well as on global level triggered the European Union's leaders to take political solutions in order to strengthen its security and defence. This article will explain the concrete benefits from adopting the Strategic Compass for promotion of European Union as a geopolitical actor on global scene, considering different strategic security and defence views of individual member-states of the European Union. Also, this paper analyses the main pillars of Strategic Compass in correlation with ongoing security threats in the immediate neighbourhood of the European Union. In that context, this paper will compare the EU's Strategic Compass and NATO's Strategic Concept adopted in Madrid in 2022 and whether they represent added value in the field of security and defence between European Union and NATO. Taking into account the strong intentions of the Republic of China and Russian Federation to make strategical change of geostrategic dynamics in current global order, this paper aims to respond whether sharing the roles between European Union and NATO will contribute to achieving comprehensive security and defensive framework in mid-term in the Euro-Atlantic area, or security umbrella on European continent will be under the authority of the NATO alliance.

This paper will use qualitative methodology of research, relying on strategic documents and doctrines of the European Union and NATO, as well as academic literature, relevant security and defence papers, suitable for this kind of research.

Keywords*: Strategic Compass, European Union, NATO*

1. INTRODUCTION

The lack of security-defensive role of the European Union on international scene and not using geopolitical language in increased turbulent geopolitical order was recognized from the Member States of the European Union. In order to achieve qualitative step up in security area, the second pillar related to security and defence as part of three-pillar structure of Maastricht Treaty, was introduced. To realize the projected goals with contribution in security and defence area, the European Union started debates on how to strengthen the second pillar of Maastricht Treaty considering the nature of consensual making-decision in this sphere. In that regard, EU' Common Security and Defence Policy of the European Union (CSDP) based on Franco-British St. Malo Declaration from 1998 was adopted, and this Policy became integral part of the EU' Common Foreign and Security Policy, thus avoiding any duplication of obligations in security-defence sector. Although European Union promoted some influential defence projects such as Permanent Structured Cooperation (PESCO), Coordinated Annual Review on Defence (CARD) and

launching 24 ongoing EU CSDP civilian and military missions (aiming to obtain peaceful environment as well as appropriate response to increased external threats to regional and global level), European Union has not succeeded to respond effectively as autonomous security - defence actor in the new geopolitical environment, speaking with a language of geopolitical power. From other side, NATO as the world biggest defensive security alliance has offered security arrangements to each democratic European state that contributes to peace and security in North Atlantic area in accordance with NATO's Open Door Policy based upon Article 10 of the Washington Treaty. In order to achieve satisfactory security level and necessary civilian and military resilience as response of conventional and non-conventional threats from third countries, as well as the fact that the then and now current strategic-defensive documents cannot entirely response to an unpredictable geopolitical reality, European Union and NATO' authorities in 2022 decided to launch two new security-defensive initiatives: EU*' Strategic Compass and NATO' Strategic Concept*.

2. EU'S STRATEGIC COMPASS FOR SECURITY AND DEFENCE: ADDED VALUE OF EU'S COMMON FOREIGN AND SECURITY POLICY?

In order to eliminate mentioned lack of effective response to increased external events on international fora, and to create uniformed common strategic culture, on 16 June 2020, the EU Defence ministers agreed to develop a Strategic Compass for Security and Defence, that should evolve from two-year process. Based on common threat analysis, the member-states decided to concretize the EU's level of ambition as security provider, considering that the aim of the whole process is to contribute to a common security and defence culture, as well as addressing some of key weaknesses of the EU's Security and Defence policy (Koenig, 2020). Therefore, Strategic Compass emerged from a two-phase process:

Phase one- The Threat Analysis (second half of 2020): On 16 June 2020, the Defence ministers tasked the HR/VP Joseph Fontellas Borell to develop a comprehensive, 360 degrees analysis of the full range of threats and challenges by the end of 2020 (Council, 2020). This analysis was drawn up by the civilian and military intelligence units (Single Intelligence Analysis Capacity-SIAC) within European External Action Service (EEAS), and in close cooperation with and building on input from Member-states. The main purpose of making the first phase relating to threat analyses is to point the divergence about threat perceptions among member-states that represents central weaknesses of EU's Common Security and Defence Policy (CSDP), considering the fact that some countries worried about Russian aggression on East, while others have been more concerned about the consequences of state fragility in the South, as well as concerns from others regarding climate change, cyber-attacks, and disinformation. Considering that differences between member states about how the threat perception shapes the national preferences regarding policies, capabilities and alliances, the question whether six months period would be satisfactory period to foster more common understanding between member-states was raised and the greater common understanding of threats would be first important step towards the Strategic Compass (Koenig, 2020).

Phase two-Strategic Compass (2021-2022)-The second phase was built on the threat analysis emphasized in the first phase; the member-states developed the Strategic Compass that translated the political level of ambition defined by EU Global Strategy into concrete political orientation. The Strategic Compass delineated three political priorities: a) responding to external conflicts and crises; b) building the capacities of partners; c)

protecting the Union and its citizens. Through Strategic Compass, the member-states of the European Union defined more specific objectives for security and defence, based on four baskets: *crisis management, capability development, resilience and partnerships* (Council, 2020). Crisis management should respond to very important issues related to scale of operations that involved European Union, what kind of functional and regional priorities should be essential priority for European Union in the mid-term, what future for unused EU Battlegroups, as well as prioritizing the Civilian Compact into European Union. The capability development should define the meaning of EU Strategic Autonomy in this basket, how can PESCO (Permanent Structured Cooperation) and EDF (European Defence Fund) better address pressing capability gaps, as well as how to link EU capability and defence planning processes to NATO. The third basket (pillar), resilience aims to reduce negative impacts of events of international scene contribution of European Union to territorial defence, what articulation of mutual assistance, Article 42(7), TEU (Treaty of the European Union) and solidarity clauses, Articles 222, TFEU (Treaty of functioning of the European Union) in light of NATO's Article 5, how to sharpen EU tools to address hybrid threats, as well as what division of synergies between EU and NATO should be placed in responding to hybrid and cyber threats, and finally, what kind of partnership will give comprehensive response related to deepening EU-NATO cooperation despite political obstacles and how does a more strategic approach to third country partnerships in CSDP effectively will be put in practice (Koenig, 2020).

Considering that EU' Strategic Compass was adopted in March 2022, just one month after starting of Russian aggression on Ukraine and recognizing increased tectonic changes on global level, European Union implemented many of the goals in this strategic initiative, taken into consideration that Russia's aggression against Ukraine has instilled further urgency into EU' efforts to make the EU a stronger and more credible security and defence actor. In that sense, the EU's response to Russia' military aggression has been unprecedented from the start by rapidly putting the Strategic Compass for security and defence into motion and mobilizing tools foreseen across its four pillars, that included the provision of lethal and non-lethal equipment, as well as training of more than 40,000 Ukrainian military and capacity building of Ukrainian armed forces.

Considering that European Union has faced with chronical lack of promotion of the language of power on global scene, EU Strategic Compass has created a comprehensive framework that outlines the Union's security and defence priorities, serving as guiding road map towards a more integrated Europe for defence, that provides the Member States with principles to enhance their cooperation in various areas. In other words, it addresses a wide range of challenges including hybrid and cyber threats, terrorism, and resilience of critical infrastructure. In that context, EU Compass strives to strengthen the Union's role as a credible and reliable security provider, enhance its strategic and operational autonomy, and contribute to a safer and more secure global environment (EUROMIL, 2024). In that sense, the Strategic Compass adopted in March 2022, one month after the start of Russian aggression against Ukraine represents a landmark document designed to provide the EU with a common vision and direction addressing current and future challenges.

3. NATO'S STRATEGIC CONCEPT AS RESPONSE TO NEW GLOBAL ENVIRONMENT?

3.1. Reflection Group's Report NATO 2030: the way to new Euro-Atlantic security agenda?

The unprecedented events on international globe related to Russian incursion in Georgia in 2008, the first Russian-Ukrainian War in 2014, illegal annexation of Crimea by Russian Federation, increased coercive international role of China, as well as dramatic wakeup call by French President Emmanuel Macron about NATO 'brain drain' (The Economist, 2019) and Agreement related to initial reduction of USA forces to complete withdrawal from Afghanistan by May 1st 2021, has represented inception of period to newest adoption stage of North Atlantic Alliance to most complex geopolitical dynamics from ending of the Cold War and dissolution of the Warsaw Pact. In order to response to newest geopolitical environment, at the North Atlantic Treaty Organization (NATO) meeting of Heads of State and Government in London in December 2019, Alliance leaders asked the NATO General Secretary Jens Stoltenberg to undertake a Forward-Looking Reflection Process to assess ways to strengthen the political dimensions of the NATO Alliance (Reflection Group, 2020). In that sense, in 2020 General Secretary appointed an independent Reflection Group, with task to provide recommendations in three areas:1) Reinforcing Allied unity, solidarity and cohesion, including to cement the centrality of transatlantic bond; 2) Increasing political intensity and coordination between Allies in NATO and 3) Strengthening NATO's political role and inclusion of relevant instruments to address current and future trends and challenges to Alliance security emanating from all strategic directions.

In its main findings the Reflection Group's report offered 138 recommendations, of which the following are some of the main takeaways:1) The starting point must be to update the 2010 Strategic Concept, that represents opportunity to strengthen the cohesion by confronting new security realities and to seek to preserve its three main tasks: *Deterrence and Defence, Crisis Prevention and Management and Cooperative Security*; 2) NATO should continue the dual-track approach of deterrence and dialogue with Russian Federation, to respond to Russian threats and hostile actions in a politically united and determined way. At same time, NATO should remain open to discussing peaceful co-existence (this recommendation by the Reflection Group was given before starting of Russian invasion to Ukraine in 2022); 3) NATO must devote much more time, political resources, and action to the security challenges posed by China; 4) Emerging and disruptive technologies are challenges, but also an opportunity for NATO and NATO should serve as a crucial coordinating institution for information sharing; 5) Terrorism has represented one of the most immediate asymmetric threats to Allied nations and citizens, that obliged NATO to integrate more explicitly the fight against terrorism into its core tasks, that should be given a place with NATO structures supported by necessaries resources, commensurate with the threat it poses; 6) The climate change's issue will continue to shape NATO's security environment, and NATO should have a role to play in increasing situational awareness, early warning and information sharing, including by considering the establishment of Centre of Excellence on Climate and Security; and finally NATO and European Union (EU) should seek to invigorate trust and understanding at the highest levels, considering that Madrid Summit in 2022 (author of this paper think that this practice should get strategic context because of the current changed geopolitical dynamics) and also in next such gathering, it would be useful for NATO and EU Heads of State and Government to meet in a special format session to review the current state of the relationship and examine areas of greater cooperation (Reflection Group, 2020).

3.2. NATO's Strategic Concept: A response to new geopolitical reality?

Considering the intensification of external events on the global scene, mixing conventional and non-conventional threats from third countries with negative implications on Euro-Atlantic community with prospect of worsening, at the Madrid Summit held on 28-30 June 2022, NATO Allies adopted a new Strategic Concept, the highest-level political document that the Alliance has produced besides its constitutional treaty. This Concept is the fourth of its kind in the post-Cold War era (the eighth since 1949), following previous Concepts adopted in 1991,1999 and 2010. The 2020 Concept de facto replaced the one agreed to in Lisbon in 2010 (NATO, Strategic Concept 2010). The new document is composed of 49 paragraphs and divided into four sections: Purposes and Principles; Strategic Environment; NATO's core tasks and Ensuring the Alliance's continues successes (Tardy et al., 2022). The exercise of writing the new Strategic Concept officially began at the June 2021 NATO Summit. There, Allies mandated NATO Secretary General to lead the process to develop the next Strategic Concept. The Concept drafting was informed by two parallel tracks. One track was internal and involved the Alliance's International Secretariat and the member states; the other track was external, with consultations with partner countries, organizations and civil societies. A first draft was presented to Allies in mid-May 2022, followed by the six weeks negotiating process that produced ten subsequent drafts in the lead up to the Madrid Summit in June. The Concept language was negotiated until the very last moment and was adopted on 29 June in Madrid (Tardy et al., 2022), based on six issues that will be the main characteristics in the next mid-term period:

A deteriorated security environment: The new Strategic Concept offers a novel characterization of the current security environment, where the second section (Strategic Environment) of the document depicts how Allies interpret the environment they face. The new Strategic Concept underlines that Euro-Atlantic Area is not at peace-comes in stark contrast with 2010 Strategic Concept, which stated that, Euro-Atlantic area is at peace and the threat of conventional attack against NATO territory is low" (Szenes 2023). The new Concept identifies Russian Federation as having violated norms and principles that previously contributed to a stable European security order while acknowledging that, an attack against Allies' sovereignty and territorial integrity "cannot be discounted (NATO 2022 Strategic Concept, para 6). Also, it describes strategic contributors" testing the Alliance's resilience, interfering in the democratic processes and challenging interests, values, and democratic way of life of Euro-Atlantic community.

Threats: The Strategic Concept clearly identifies threats against Alliance, an important step that influences how NATO must respond, and two threats are explicitly identified in the new Strategic Concept: Russian Federation and Terrorism. In that regard, Russia is pictured as the most significant and immediate threat to Allies' security and to peace and stability in the Euro-Atlantic Area (para8), considering that Russia is described as seeking to" establish spheres of influence and direct control through coercion, subversion, aggression and annexation"; using conventional, cyber and hybrid means against Allies and their partners"; and undermining "the rules-based international order". The Concept reaffirms NATO's intent to" keep open channels of communications with Moscow to manage and mitigate risks, prevent escalation and increase transparency", but the pre-24 February2022 "dual-track approach", where NATO pursued both defence and dialogue with Russia, is not long preferred path, after unprecedented Russia's violation on basic principles and norms on international law of UN Charter. Regarding terrorism, the Strategic Concept from 2022 underlines that terrorism in all forms and manifestations is

the most direct asymmetric threat to the security of the Euro-Atlantic Area and to international peace and prosperity (NATO 2022 Strategic Concept, para 10).

The Core Task: Considering that the Strategic Concept from 2010 defined three core tasks for Alliance: deterrence and defence, crisis prevention and management and cooperative security, the new Strategic Concept 2022 from Madrid maintains these three core tasks, albeit with slight name changes: "deterrence and defence" has replaced collective defence and "crisis prevention and management" replaces crisis management, while cooperative security remained unchanged. If anything, the 2022 Strategic Concept is deterrence and defence-centric and moves NATO away from its past crisis management focus. Most importantly, it subordinates the three core tasks into collective defence, affirming that three core tasks are complementary to ensure the collective defence and security of all Allies (para4). In practice, the Alliance's new deterrence and defence-centric approach has been already materialized via NATO's reset of its policy on the Eastern flank, with a series of decision taken since February 2022 to reinforce existing forces (such as Enhanced Forward Presence), deploying new forces at the periphery of the Alliance, and review NATO's force model and level of preparedness (Atlantic Council, 2022; NATO, 2023).

The new challenge: One of the most notable innovations contained in the NATO 2022 Strategic Concept is its reference to China as a state whose ambitions and policies "challenge" (NATO's) interests, security and values of Euro Atlantic community (para13). In that context, it is worth mentioning that 2010 Strategic Concept did not mention China, considering that the first occurrence of China in a NATO official statement came with the 2019 Leaders' Meeting Communique, (London Declaration, 2019) in which Allies "recognized that China' growing influence and international policies present both opportunities and challenges that Allies need to address together as an Alliance. Although there is difference in terminology related to Russia (which is characterized as a threat to North-Atlantic Community), China is not explicitly mention as threat, but as challenge to NATO. In that regard, the Alliance took stock of China's increasing and often disruptive role on international scene, identifying number of Chinese activities that are problematic to Alliance. The document underlines the power ambition of China and its coercive politics, as well as China seeking to control key technological and industrial sectors, critical infrastructure and strategic material and supply chains (NATO 2022 Strategic Concept, para 13). In that direction, China is also mentioned in relation to its strategic partnership with Russia, which comes as an aggravating factor, primarily after Russian invasion in Ukraine in 2022, that China has rejected to blame Russian Federation for flagrant violation on principles and norms of international law, and by signing Strategic Partnership with Russian Federation. In other words, Alliance can no longer ignore China as a potential adversary, although the Strategic Concept reveals uneasiness as to what explicit identification of the issue could bring.

Essential Partner: Just three months after the European Union (EU) released the Strategic Compass, in which NATO was given a prominent place, NATO reciprocated identifying the EU as its unique and essential partner (para 43), echoing the 2010 Strategic Concept. The ways in each organization features the other in their respective documents and is always contentious. Each is torn between their aspiration to maximize cooperation on the one hand and their will to assert their own identity on the other. National preferences may also hamper inter-institutional cooperation (Tardy, 2022). NATO's new Strategic Concept follows this legacy to a large extent reflected to than political context marked by tensions between EU and key Allies-Turkey and UK in particular. On the US side, European defensive initiatives are generally welcomed, but the concern persists that

those efforts could divert resources away from the Alliance. In this context, the new Concept uses language that is relatively positive towards the EU, where Concept dedicates a full paragraph (para 43; the longest of the entire document) to the EU, although this was already the case in 2010 Strategic Concept (NATO 2022 Strategic Concept, para 13; NATO 2022 Strategic Concept, para 43).

The rest: Finally, the new Strategic Concept from 2022 reviews issues that have either occupied a role in NATO's Agenda over the last decade or are steadily becoming important today. For example, in addition to the above-mentioned threats, Strategic Environment" section of the Concept identifies five evolutions of the international system with significance of the contemporary security landscape: pervasive instability" (para12), cyberspace(para15), technological evolutions (paras 16-17), arms control (para 18), and climate change (para 19). Those are not threats per se, rather, they are domains, evolutions, or regimes that present opportunities or risks, depending on how NATO Allies act.

Therefore, NATO 2022 Strategic Concept was decisive response to increased fluid security environment, ongoing war on NATO's eastern borders, the terrorism as the biggest non-conventional threat to survival of EURO-Atlantic Area, as well as the challenges related to malign conventional and non-conventional influences by Russia and China on international scene intending to overturn the current liberal international order. In that regard, facing the new security reality, NATO Allies agreed on a new Strategic Concept, that in a quiet and elegant way, recalls the foundations of interests and values underlying the Alliance while taking into account the political, economic and technological changes since Allies last agreed on a Concept in 2010.(Sloan, 2022) Despite all changes, the new Concept carries forward an emphasis on NATO as political-military Alliance of values with three tasks: deterrence and defence, crisis prevention and management, and cooperative security. The 2010 Concept's effective conflation of Article 5 (dealing with attacks) and Article 4 (consulting on threats) is a critical part of the new Concept's foundation. It identifies the threats posed by its two primary antagonists-the Russian Federation and People's Republic of China-and challenges from other quarters setting the stage for the individual member state and collective response (Sloan, 2022). Also, the document emphasizes that as NATO defends the whole Euro-Atlantic Area, (Szenes, 2023) all countries are obliged to take part in defence efforts. In that sense, NATO recognizes the value of a stronger and more capable European defence that contribute positively to transatlantic and global security, considering that the Alliance welcomes initiatives to increase defence spending and develop coherent, mutually reinforcing capabilities, whilst avoiding unnecessary duplication, considering that combined defence expenditure of NATO members was $1,189,88 billion, or 3,76% of GDP, in 2022, $246,66 billion more than 2014 during the first Ukrainian crisis (Statista.com, June 2022).

4. CONCLUSION

The unprecedented events on the global scene have created serious implications to Euro-Atlantic security architecture that triggered European Union and NATO to take concrete steps in order to create decisive response for disruptive intentions of third countries on the current liberal global order from conventional and unconventional threats. Although the two strategic-political documents, EU Strategic Compass and NATO Strategic Concept were adopted in very short distance in 2022, they represent comprehensive security-military strategical tools to both European Union and NATO to act in security-defence synergy, considering the new security reality that creates picture of unpredictable geopolitical dynamics in the current international liberal order. Although

some differences between them related to certain obligations should be agreed and resolved unanimously, it should be underlined that both the EU's Strategic Compass and NATO's Strategic Concept are broadly convergent in their outlooks, because both organizations share same geography, members, interest and values. But some questions remain on how EU-NATO cooperation and coordination will evolve in future; how certain headline goals from spending to troop commitments will be jointly implemented; as well as how relations with third key countries such as China will develop given the diverse approaches to Beijing on both sides of Atlantic (De Castro and Lobo, 2022).

In that regard, the substantial level of overlay among both documents suggests that the EU and NATO should coordinate and find a division of labour that avoids duplication and identify roles that each institution may perform better: e.g., the EU focusing more on civilian and (military) crisis management and NATO on deterrence and territorial defence, as well as how cooperation and coordination between EU and NATO will increase efforts in defence spending and making sure that levels of troop commitments and readiness are not mutually detriment. In that sense, higher precondition should be required to meet the targets set by both organizations, so that EU's Strategic Compass and NATO's Strategic Concept represent added value and that they are complementary in practical defence cooperation between European Union and NATO, as credible geopolitical response to current unpredictable global environment (De Castro and Lobo, 2022).

5. REFERENCES

1. Koenig, N. (2020), The EU's Strategic Compass for Security and Defence: Just another paper?''
2. Council of the European Union, "Conclusions on Security and Defence", Brussels, June 2020.
3. EUROMIL, 2024 (assessed at: https://euromil.org/reflecting-on-the-eu-strategic-compass-a-two-year-assessment/)
4. The Economist, November 7, 2019: 'Emmanuel Macron warns Europe: NATO is becoming brain-dead'. (Accessed at: https://www.economist.com/europe/2019/11/07/emmanuel-macron-warns-europe-nato-is-becoming-brain-dead
5. NATO 2030: United for a New Era. Analysis and Recommendations of the Reflection Group Appointed by the NATO Secretary General. November 25, 2022. (accessed at: https://www.nato.int/nato_static_fl2014/assets/pdf/2020/12/pdf/201201-Reflection-Group-Final-Report-Uni.pdf)
6. NATO: "Active Engagement, Modern Defence", Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization adopted by Heads of State and Government in Lisbon 2010, (accessed at: http://www.nato.int/cps/en/natohq/topics_82705.htm)
7. Keller P., Sloan S., Tertrais B., Webber M., Zaborowski M. and Tardy T. NATO's New Strategic Concept. NDS Research Paper No.25.September 2022, NATO Defence College, Rome. (accessed at: https://www.ndc.nato.int/news/news.php?icode=1737)
8. Szenes, Z. (2023). Reinforcing deterrence: assessing NATO's 2022 Strategic Concept. Defence & Security Analysis, 39(4), 539–560. https://doi.org/10.1080/14751798.2023.2270230

9. NATO 2022 Strategic Concept Adopted by Heads of State and Government at the NATO Summit in Madrid, June 29, 2022. (accessed at: https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf)
10. Atlantic Council, Issue Brief. "Defending every inch of NATO territory: Force posture options for strengthening deterrence in Europe", Washington, DC, March 2022. (Accessed at: https://www.atlanticcouncil.org/wp-content/uploads/2022/03/Force-Posture-Options-Issue-Brief.pdf)
11. NATO (2023). "Deterrence and defence". Accessed at: http://www.nato.int/cps/en/natohq/topics_133127.htm
12. London Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in London 3-4 December 2019, www.nato.int/cps/en/natohq/official_texts_171584.
13. NATO 2022 Strategic Concept (para 13), Adopted by Heads of State and Government at the NATO Summit in Madrid, June 29, 2022. (Accessed at: https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf)
14. NATO 2022 Strategic Concept (para 43), Adopted by Heads of State and Government at the NATO Summit in Madrid, June 29, 2022. (Accessed at: https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf)
15. Sloan, S. 2022, NATO in evolving world disorder, NATO's New Strategic Concept, NATO Defence College. NDS Research Paper No. 25. September 2022 (Rome: NATO Defence College)
16. Statista. "Combined defence expenditure of NATO countries from 2014-2022 in billion US dollars". Release date June2022. (Accessed at: https://www.statista.com/statistics/1293301/combined-defence-expenditures-nato/#:~:text=Combined%20defence%20expenditure%20of%20NATO%20countries%202014-2022%20Published,spent%20on%20defence%20during%20the%20provided%20time%20period.
17. De Castro RB and Lobo RB. "A Compass and A Concept: A Guide to The EU and NATO Strategic Outlooks" European Policy Centre, June 2022). Accessed at: https://www.epc.eu/content/PDF/2022/a-compass-and-a-concept-a-guide-to-the-eu-and-nato-strategic-outlooks.pdf

CRIMINOLOGY

UDK: 343.811-053.6:[316.614.6:316.356.2(497.7)
UDK: 343.811-053.6:[316.356.2:37.018.1(497.7)
DOI: 10.20544/ICP.9.2.24.P18

FAMILY ENGAGEMENT IN THE RESOCIALIZATION PROCESS OF CHILDREN PLACED IN EDUCATIONAL INSTITUTIONS

Natasha Peovska
Faculty of Security – Skopje
natasa.peovska@uklo.edu.mk

Abstract

The resocialization of children with social and behavioural problems placed in educational facilities (or small-scale facilities) is a very difficult process accompanied by numerous challenges. The success of the resocialization process of the children placed in such facilities largely depends on the involvement and engagement of the family before, during and in the time after the child leaves the facility.

In that sense, the subject of this paper is the role of the family in the process of resocialization of children placed in educational facilities and the forms of their inclusion and engagement in this process. The family as child's primary social group is one of the key actors in the resocialization process. The involvement of the family takes place through maintaining communication with the child in any form, as well as through cooperation with social services for the preparation of an individual plan and the realization of certain activities. This mean, active involvement and cooperation of the family members with the authorities from the social services in order to be determined their capacities and opportunities, to be developed a plan for family active involvement, which means strengthening and creating favourable conditions (through the use of certain rights and social services in the system) or finding other adults who would be included in the support network, with an aim of successful **resocialization and reintegration of the child after leaving the educational facility.**

Introduction

Increasing family engagement in the juvenile justice system is an increasing focus for many researchers and practitioners. Historically, families have mainly been researched solely as a risk factor for juvenile delinquency (Hoeve et al., 2009; Norman et al., 2012; Pennell, Shapiro, and Spigner 2011) cited in (Development Services Group, 2018), but children's families as much as can have a negative effect on behaviour of the child can also have a positive impact through greater engagement and involvement in any aspect when children are in risk or in conflict with the law.

Family engagement would mean establishing cooperation in which families will be partners both in the treatment of their children and in developing policies, programmes and practices in the juvenile justice system. Children need their family's involvement in their experience with the system in order to promote positive outcomes in their development.

In situations where children are placed in educational institutions, family engagement has a significant role in the process of resocialization and reintegration. Research shows that family involving and engaging before, during and after leaving a certain institution, affects the overall well-being of the child (UNICEF, 2020) and on more successful process of reintegration. The process itself and its success can be affected by

many factors. Platt (2012) states that parents/family involvement in the process of reintegration depends on many factors, including a range of external factors (e.g. parents' circumstances and resources, skills of the professional staff/social worker/carer) and a range of internal factors among parents (e.g. cognition, affect, motivation) and these will essentially determine the engagement of parents in relation to the reintegration of children and on the children results (Melz, 2021). Although family engagement can be met by many obstacles, it is necessary to develop strategies for effective family involvement as a partner in the resocialization process even in the most complicated situations. Hence the question arises "Which forms of family engagement can have positive effects on the child during the stay but also after leaving the educational institution?"

1. Forms of family engagement in the process of resocialization of the children placed in educational institutions

Much conducted research show the positive aspects of family engagement **in the process of resocialization of children placed in educational institutions.** Based on Whittaker et al., international review of therapeutic residential settings for children, family involvement was found to be associated with positive outcomes for children, particularly when it involved working with families before, after, and during placement (UNICEF, 2020). It is considered that the reconnection with the family upon entering the institution is a significant step for resocialization and better reintegration after leaving it (Development Services Group, 2018)**.**

There range of modalities through which the involvement of the family in these processes can be reflected: **1. communication with and visits to the child while he is placed in the educational institution** , **2. cooperation of the family with the social services and their involvement in the preparation and realization of activities foreseen in the plan for resocialization and reintegration** and 3. **Cooperation with social services in relation to family use of certain social protection rights and social services**. This would mean active engagement and cooperation of family members with the authorities from social services , in order to determine their capacities and opportunities, to develop a plan for their active involvement, which means strengthening and creating favourable conditions in the family (through the use of certain rights and social services in the system) or finding other adults who would be included in the support network, with the aim of successful reintegration of the child.

The first form through which the effective involvement of the family can be recognized is the maintenance of contact with the child even upon entering the institution. **The contacts that the family should maintain with the child,** either informal (through visits, phone calls, letters) or formal (meetings with the authorities regarding the progress of the child's behaviour, parents meetings with the authorities etc.) during the first few months after placement are crucial both for the child's mental health during placement in the institution, and for his progress and behaviour after leaving it (Monahan, Goldweber, & Cauffman, 2011).

Personal contacts and other methods of social support, such as phone calls and letter writing, can play a significant role in minimizing the stress and isolation that occurs as a result of involvement in the system. According to Cohen & Willis (1985) family visits and support appear as a way of reducing the harmful effects of negative or stressful events (Shanahan & diZerega., 2016), so young people who receive more frequent visits from their parents while they are placed in the institution show a greater reduction in depressive symptoms (Shanahan & diZerega., 2016), get higher grades when they are involved in the

educational process and have fewer violent incidents while they are placed in the facility (Monahan, Goldweber, & Cauffman, 2011)institutions (Villalobos Agudelo, 2013). The effects were mostly cumulative: the greater the number of family visits, the greater the reduction in depressive symptoms (Development Services Group, 2018). Additionally, a study with children placed in penal institutions in Ohio found a positive relationship between weekly visits from family members and maintaining good behaviour and improving school performance in the institution (Agudelo, 2013) cited in (Development Services Group, 2018). In Israel, Attar-Schwartz found that the better quality and more intensive parents visits are associated with better psychological outcomes in children after leaving the institution (UNICEF, 2020), and especially in terms of reducing recidivism in children (Osgood, Foster, Flanagan, & Ruth, 2005) Positive effects on children from the visits are identified regardless of quality of the relationship that existed between the parent and the child (Monahan, Goldweber, & Cauffman, 2011). The analysis that was carried out on the process of resocialization and reintegration of children with educational problems or with disordered behaviour placed in small group homes in R.S. Macedonia, [154]showed absence of family engagement in the process of resocialization of children in any aspect. Regarding the visits and communication, based on the conducted interviews with the children, it is generally observed that a small number of the children receive visits from their family while staying in small group homes. Problematic regarding the parents' visits is the impossibility the visits to be in the small group homes, even though the idea of these small group homes is precisely in the development of socialization and re-education in conditions that are similar to family living. Although the impossibility of home visits is often justified by the need to protect other children placed in the small group home, this policy means limiting parents from getting to know the place and conditions where their child lives. In that sense, policies should be changed and more frequent visits to the family should be recommended and encouraged, (Villalobos Agudelo, 2013) which would take place in a specific room in the small group home (except when there is some other reason or limitation for possible contact of the child with the family), which would mean a simultaneous reduction of the costs that would exist if the child had to meet the parents in some other place outside the group home.

If the question is what the reasons for children are not receiving family visits while they are placed in the small group home, from the children files and from the statements of the interviewed persons, it can be determined that the obstacles are more numerous. Although the data indicate that the family is often not interested in communication, the absence of visits is also due to the fact that a large number of the children have been placed in institutions/institutions for many years, have interrupted or disrupted communication with the biological family, come from dysfunctional families, have parents who do not have the capacity and skills to take care of children, some of them have certain mental problems, disabilities or the presence of addiction, and in some, the parents or one of the parents is deceased. What are the most common reasons why the family is not involved and activated to establish communication with children, how much social services are trying to establish communication between parents and children and what approaches they use to achieve it, are questions that require additional in-depth analysis. The absence of parents or other relatives' visits is, among other things, since often families live in the

[154]The analysis of the resocialization process of children with educational problems and with disordered behavior placed in small group homes was carried out by a project team prof. Dr. Vesna Stefanovska, Prof., Dr. Oliver Bachanović, Prof. Dr. Dragana Batic and Prof. Dr. Natasha Peovska from the Faculty of Security-Skopje in cooperation with the Institute for Social Activities-Skopje in the period June-December 2023.

interior of the country and the visit itself imposes certain transportation costs. In such a situation, families often cannot provide means of transportation, due to the difficult material situation in which they find themselves. Hence, it is problematic to talk about family visits from another city, if they do not have means of transportation, and the social services in Macedonia does not have funds that can be used to improve the contacts **between the family members and the child placed in the small group home**.

Maintaining contact with parents can also be achieved **by using a certain type of leave by the children** (weekend, annual vacation) in the family. According to the analysis data, parents often do not have the conditions to take care of their children, they do not accept them, or their parents are deceased, and the extended family is not interested in maintaining contact with them. Also, as a problem that appears are the financial means needed for transportation to the city where the primary family lives, which it cannot provide due to the material situation. In the absence of material resources, often the children save from their weekly pocket money in order to collect money and go on a weekend leave. Such data indicates that social services need to find ways to motivate and help parents or other family members or adults whom children trust to make contacts with family, and even financially to support the process of communication and visits.

In case when the children did not have parents, who could be involved in the process of resocialization and reintegration, the competent social services should use **the approach of finding a family.** Family tracing is a set of methods and strategies for locating and involving some from broader family. This would mean that caregivers or social workers identify suitable relatives in order to determine whether these individuals can potentially participate in planning services, serve as a resource for placement of the child, host sibling visits, or serve as mentors for children placed in educational or correctional institutions (Melz et al., 2019). Relatives do not always have to be seen as a resource for placing a child, but relationships that are built, nurtured and maintained over time can help form a support network of adults that children can trust when they are not receive supervision, guidance, services and support from employees in educational institutions or from the competent official in the social service (Shanahan & diZerega., 2016). The family or relative may be located through review of child reports, interviews with family, friends, teachers, or other means (Melz, 2021).

The family engagement also refers to **their participation in the preparation and realization of certain activities foreseen in the plan for resocialization and reintegration.** Research conducted with over 1,000 family members of youth who have been in conflict with the law, shows that 86% of them showed an interest in being more involved in the treatment of their children (Justice for Families 2012; Vera Institute of Justice 2014) cited in (Development Services Group, 2018). But at the same time it is pointed out that often the family role in these processes is minimized, the procedures do not provide enough space for their participation and many families felt excluded from the system that is in charge of taking care of their children (Osher and Hunt 2002 cited in (Development Services Group, 2018), and thereby preventing them from getting involved in changing their child's behaviour (Shaw & Angus-Kleinman). It is therefore important that the competent services use different approaches to establish and maintain the relationships of children with families and incorporate their voice, perspectives and priorities for the well-being of children. In terms of case-level involvement, family members must be involved as meaningful partners in developing plans and decisions for their children's welfare (Melz, 2021).

The data from the analysis that was carried out on the process of resocialization and reintegration of children with educational problems or with disordered behaviour placed in small group homes in Macedonia, indicate that families do not get involved, partly due to reasons originating from the families, due to lack of staff in Social Work Centres, lack of interest and lack of motivation among certain staff etc. In terms of encouraging family involvement in certain activities, competent workers from the social service and employees from the small group can play a significant role. They could occasionally organize educational, or group workshops intended for parents or support persons for the child, with the aim of simultaneously improving the situation and capacities of both parties.

The cooperation and family engagement in the process of resocialization and reintegration can be improved and developed when **the competent social services determine the needs of the family and facilitate their access to use certain rights and social services,** in order to improve the family situation in relation to all aspects of its functioning (among members, in relation to financial, mental, health functionality, creation of appropriate housing conditions and improvement of parenting skills and capacities). Preparing and establishing appropriate conditions in the family facilitates the process of reintegration of the child. Given that there are high rates of behavioural problems, mental health problems, and other risky activities associated with youth involved in the legal system, (Weisz & Kazdin 2003) cited the (Development Services Group, 2018) a specific family-based therapeutic interventions that focus on addressing these particular problems are needed (Rowe & Liddle 2003) cited in (Development Services Group, 2018). These programmes are implemented for families who have children diagnosed with emotional and behavioural problems such as conduct problems, depression, or social or school problems. (Kumpfer & Alvarado 2003) cited in (Development Services Group, 2018). There are a variety of family therapy programmes (e.g. functional family therapy, family strengthening programmes, social skills training) that can affect family dysfunction and child problem behaviour, including delinquency (Henggeler and Borduin 1990; Sexton). and Alexander 2000; Waldron and Turner 2008) cited in (Development Services Group, 2018). Such therapeutic practices are based on the idea that improving functioning of dysfunctional families should in turn reduce the behavioural problems of children and adolescents (Kumpfer and Alvarado 2003). (Development Services Group, 2018).

If family factors are the key in assessing the risk of recidivism among young people (Andrews & Bonta, 2010) cited in (Trotter, Evans, & Baidawi, Collaborative Family Work in Youth Justice, 2019), then working with the families of children who are placed in certain educational institutions can be effective in reducing recidivism (Trotter, Evans, & Baidawi, Collaborative Family Work in Youth Justice, 2019). A detailed review by Lipsey and Cullen (2007) that looked at four different meta-analyses of the effectiveness of family interventions for children found a reduction in child recidivism of 20% to 52% compared to control groups that were not treated with this type of intervention. Petrosino et al. (2009), in reviewing available research, found that family-based interventions have a significant impact on recidivism, that is, children involved in family-based interventions have 16% to 28% lower rates of recidivism compared to control groups (Trotter, Collaborative Family Work in Youth Justice, 2021).

When it comes to the situation in Macedonia, the Law on Social Protection of 2019 year, provides a series of social rights and social services that can be used in order to improve the family conditions in many aspects of its functioning. Officials from the Social Work Centres should guide and help families in that process. However, the state system is

indirectly amnestied from the possibility that all legally provided services can be used by the persons who need them, indicating that a certain service can be used if the service is developed and available (LSP, art. 105). The role of Social Work Centres in terms of strengthening families for children to return to their biological families is emphasized in article 127 of **the National Strategy for Deinstitutionalization in the Republic of Macedonia 2018-2027 "Timjanik"**: **"**For children, the primary goal should be to return to their families (and prepare the adolescents for independent living), for which it is necessary to strengthen the financial and professional support of biological families". According to article 131 of **the National Strategy for Deinstitutionalization in the Republic of Macedonia 2018-2027 "Timjanik",** it is also stated that "... Social Work Centres should play a major role in organizing and participating in cooperation processes because they are part of the services at the community level and have a good knowledge of the community and its resources". This would mean that the guardians/professionals who must draw up an individual plan for reintegration, must exhaust all possibilities for involvement and preparation of the family for the return of the child in their home.

Maintaining communication and support from the family or with other support persons should be a field in which social services should operate even after the young people leave the institutions. Especially after leaving the institution, they can face with numerous challenges that hardly any of the young people would be able to cope with if they did not have a support network (Стефановска, Бачановиќ, & Пеовска, 2023).

In principle, for improving the situation of the primary family, but also increase and intensify the support network for the children in the process of resocialization and reintegration in N. Macedonia, the recommendations from the Report on the Functioning and Proposals for the Transformation of the Public Institution for Taking Care of Children with Educational and Social Problems and Deviant Behaviour – Skopje, prepared by the Institute of Social Activities in 2018, should be updated again, which states the need for: **Educational centres for group work with parents** at the local level and within the small group homes. Analyses have shown that this type of support for parents gives positive results, especially for children in conflict with the law and their families. In the framework of this form, educational workshops can be foreseen which would be implemented within the framework of the small group homes, in order to improve parenting skills and to receive certain advice on the further care of the child after leaving the small group homes. In this way, several goals in terms of communication and cooperation will be achieved at the same time: increased contacts between family and children, family and the professional staff and more intense engagement of parents in the process of resocialization of the child during his stay in the small group homes.[155] Particularly significant is **the mentoring programme** - (the programme for mentoring children in conflict with the law) which was implemented in 2012 by the Social Work Centre of the City of Skopje and it showed positive effects among children (visible through the reduction of recidivism). For these reasons, this form of treatment and protection is good to be introduce as a regular measure of help and protection for children at risk and children in conflict with the law.

[155] Сунчица Димитриевска „Менторска програма за малолетници во конфликт со законот"

Conclusion

Family engagement in the process of resocialization and reintegration of children placed in educational institutions is a significant mechanism for achieving positive effects in children (Graves & Shelton, 2007), both in terms of behaviour and progress during the stay in the institution and after leaving it. The main goals of the efforts for family engagement of the children who have entered the juvenile justice system are: to help children to be responsible for their behaviour and to help them fulfil the obligations set for them by the competent institutions (National Research Council 2013; Pennell, Shapiro, and Spigner 2011); to provide a source of supervision, protection, guidance, and emotional support (Justice for Families 2012; National Research Council 2013), and to promote children's connection to their kinship ties (Pennell, Shapiro, and Spigner 2011) cited in (Development Services Group, 2018).

But the process of family engagement is not a simple process. There are many challenges and obstacles that can hinder the same, from conceptual, systemic, reasons that come from the family or from the children themselves, from the capacities and motivation of the competent personnel who should encourage the involvement of the family, the attitudes of the community etc. All these obstacles should be subject to additional and in-depth analysis in the interest of a more successful process of resocialization of the child. Challenges should not be an obstacle in the efforts in the juvenile justice system to build strategies and approaches that will emphasize and enhance family involvement. Approaches would mean: intensifying the contacts of families with children placed in educational institutions, building partnership relations of competent services with families during the creation and implementation of programmes for resocialization and simultaneously strengthening family capacities and opportunities (Maschi , Schwalbe , & Ristow, 2013), to achieve the ultimate goal - successful reintegration of the child in the primary family and in the community.

REFERENCES

1. Development Services Group. (2018). *Family Engagement in Juvenile Justice. Literature review.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Retrieved June 15, 2024 from https://ojjdp.ojp.gov/model-programmes-guide/literature-reviews/family_engagement_in_juvenile_justice.pdf
2. Graves, NK, & Shelton, LT (2007). Family empowerment as a mediator between family-centered systems of care and changes in child functioning: Identifying an important mechanism of change. *Journal of Child and Family Studies* (16), 556–566.
3. Maschi, T., Schwalbe, C., & Ristow, J. (2013). In Pursuit of the Ideal Parent in Juvenile Justice: A Qualitative Investigation of Probation Officers' Experiences with Parents of Juvenile Offenders. *Journal of Offender Rehabilitation, 52* (7), 470-492. doi:10.1080/10509674.2013.829898
4. Melz, H. (2021). *Evaluating family engagement in child welfare: A primer for evaluators on key issues in definition, measurement, and outcomes.* Children's Bureau. US Department of Health.
5. Monahan, K., Goldweber, A., & Cauffman, E. (2011). The Effects of Visitation on Incarcerated Juvenile Offenders: How Contact with the Outside Impacts Adjustment on the Inside. *Law and human behavior* (35), p. 143-151.

6. Osgood, WD, Foster, M. E., Flanagan, C., & Ruth, RG (2005). Introduction: Why focus on the transition to adulthood for vulnerable populations. In WD Osgood, M. E. Foster, C. Flanagan, & RG Ruth (Eds.), *On your own without a net: The transition to adulthood for vulnerable populations* (pp. 1-26). Chicago: University of Chicago Press.
7. Osher, TW, & Hunt, P. (2002). *Involving Families of Youth Who Are in Contact with the Juvenile Justice System.* New York: National Center for Mental Health and Juvenile Justice.
8. Shanahan , R., & diZerega., M. (2016). *Identifying, engaging, and empowering families: A charge for juvenile justice agencies.* McCourt School of Public Policy, Center for Juvenile Justice Reform. Georgetown University.
9. Shaw, S., & Angus-Kleinman, J. (n.d.). *Family Engagement in Juvenile Justice Systems: Building a Strategy and Shifting the Culture.* CSG Justice Center. Retrieved July 10, 2024 from https://csgjusticecenter.org/publications/family-engagement-in-juvenile-justice-systems/
10. Trotter, C. (2021). *Collaborative Family Work in Youth Justice.* HM Inspectorate of Probation. Her Majesty's Inspectorate of Probation. Retrieved July 20, 2024 from https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/02/Collaborative-Family-Work-in-Youth-Justice-KM2.pdf
11. Trotter, C., Evans, P., & Baidawi, S. (2019). Collaborative Family Work in Youth Justice. *Australian Social Work* . doi:10.1080/0312407X.2019.1618886
12. UNICEF. (2020). *The role of small-scale residential care for children in the transition from institutional to community-based care and in the continuum of care in the Europe and Central Asia Region.* UNICEF ECARO Office.
13. Villalobos Agudelo, S. (2013). *The impact of family visitation on incarcerated youth's behavior and school performance.* Vera Institute of Justice. Retrieved July 10, 2024 from https://www.vera.org/downloads/publications/impact-of-family-visitation-on-incarcerated-youth-brief.pdf
14. Stefanovska, V., Bacanovic, O., & Peovska, N. (2023). *Trajectories of the homeless: before and during homelessness.* Skopje: Faculty of Security-Skopje.
15. Report on the functioning and proposals for the transformation of the JU for taking care of children with educational and social problems and disturbed behavior-Skopje, prepared by the Social Activities Office in 2018, https://zsd.gov.mk/wp-content/uploads /2021/03/Izvestaj-za-funcjoniranje-i-predlozi-za-transformacija-na-JU-ZDVSPNP-2018.pdf
16. The National Strategy for Deinstitutionalization in the Republic of Macedonia 2018-2027 "Thyme", https://www.mtsp.gov.mk/content/pdf/2019pravilnici/23.4_%D0%9D%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B0%20%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%20%D0%B8%20%D0%B0%D0%BA%D1%86%D0%B8%D1%81%D0%BA%D0%B8%20%D0%BF%D0%BB%D0%B0%D0%BD.pdf
17. The Law on Social Protection, Official Gazette of RSM, no. 104 of 23.5.2019

UDK: 364:364.63-053.2
DOI: 10.20544/ICP.9.2.24.P19

CAUSES AND CONSEQUENCES OF THE VIOLENCE AGAINST THE CHILDREN[156]

Jasmina Igrački
Research associate at the Institute for Criminological and Sociological Research, Belgrade
jasminaigracki@yahoo.com
ORCID 0000-0002-0533-9033

Abstract:

Violence against children is a historical phenomenon present in every society, which is not conditioned by the level of development. Factors and determinants that affect the violence against the children occur at different social levels. Economic underdevelopment of society, poverty, inadequate legislation, social conflicts, ineffective protection of the social protection system, collapsed education system, poor health care are some of the many factors that increase the risk of violence.

Violence against children is completely criminalized, but the development of technologies, techniques, and society in general, open opportunities for new forms of violence. Children are the most vulnerable and sensitive members of society, and violence has an extremely destructive effect on their health, psychological and social well-being. The family, as the basic cell of society, is marginalized. Therefore, its influence on education and the creation of tolerant and empathetic children is questionable. There are also factors that increase the risk of violence, such as economic resources, inadequate social environment, social pathology, verbal and physical conflicts in the family, lack of family cohesion, as well as various forms of family dysfunction.

Research shows that parents abuse children in 95% of cases, and that in around 80-90% of cases, abusers are mature and responsible individuals. Also, studies show that growing up in a violent environment creates a predisposition for violent behaviour in the future. Having looked at the causes and consequences, we believe that states and societies must ensure the equality of children's rights with other members of the community and the protection of children from violence, and that it is necessary to raise social awareness of the seriousness of the problem.

Key words: children, violence, ethology, phenomenology, prevention

1. INTRODUCTION

The basic cell of society is the family, and as such, its greatest role is to be present in the child's life in all its aspects. The family influences the child's development, his upbringing, his actions in the future, but also the understanding of social circumstances and interpersonal relationships. Today, parents are very worried about whether they will be able to protect their children from the influence of the social environment and all its challenges. Due to difficult economic conditions, many households are on the brink of

[156] This paper was developed as a result of research engagement according to the Plan and Work Programme of the Institute for Criminological and Sociological Research for the year 2024, number 451-03-66/2024-03/200039, which was approved by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

existence. Understanding the dynamics of poverty is essential for understanding the position of children, because it represents one of the key structural causes of the denial of children's rights. Aware of the state in which modern civilization finds itself in terms of maladjusted behaviour and violence, all social structures are in a serious dilemma how to prevent violence against the children, adolescents, and young people.

The awakening of awareness of childhood as a concept date back to the 17th century when the child began to be treated as a particularly sensitive being. Thanks to psychologists, the basic characteristics of a child's personality have been recognized, which instruct us to appreciate, respect, shape them normatively, and create an environment in which the rights of the child are recognized and realized.

Violence against children includes all forms of violence against persons under the age of 18, whether committed by parents or other guardians, peers, partners, or strangers. Violence can manifest itself in different forms: physical violence, emotional violence, sexual violence, economic violence-exploitation of a child, neglect, the presence of social pathology, frequent verbal and physical conflicts in the family, social isolation inadequate environment.

Violence against boys and girls[157] is almost identical in all types of violence, except for sexual violence where the dominant share is girls, who in 2020 make up 80.8% of victims of this type of violence. Internet space represents a new dangerous terrain for all kinds of violence. Data shows that one in three students has had a disturbing experience online in recent years. Digital peer violence was experienced by 16% of students, while 15% experienced violence in live interaction. Bullying (including violent punishment) includes physical, sexual, and psychological/emotional violence; neglect of infants, children and adolescents by parents, guardians, and other competent persons, most often in the home, but also in environments such as schools and orphanages. Bullying (including cyberbullying) is unwanted aggressive behaviour by another child or group of children who are neither siblings nor in a romantic relationship with the victim. It involves repeated physical, psychological, or social harm and often occurs in schools and other settings where children gather, as well as online. Violence among children is concentrated among children and young adults between the ages of 10 and 29 most often occurs in an environment between acquaintances and strangers, includes bullying and physical assault with or without weapons (such as guns and knives), and may include violence gangs.

Intimate partner violence (or domestic violence) includes physical, sexual, and emotional violence by an intimate partner or ex-partner. Although men can also be victims, intimate partner violence disproportionately affects women. It usually occurs in girls in child marriages and early/forced marriages.

Emotional or psychological violence includes restricting a child's movement, belittling, ridiculing, threats and intimidation, discrimination, rejection, and other non-physical forms of hostile treatment. When directed against girls or boys because of their biological sex or gender identity, any of these types of violence can also constitute gender-based violence.

Experiencing violence in childhood affects lifelong health and well-being. Also, practice has shown that children who have experienced some form of violence accept violence as a pattern of behaviour, and in later years, apply that pattern of behaviour. The recognition of domestic violence as a constantly present problem in relations between

[157] Republic Institute for Social Protection, Children in the Social Protection System in 2020, RZSZ, Belgrade, 2021.

partners, marriage, or cohabitation, has led to the understanding that in addition to violence that is directly directed between partners, at the same time the consequences and effects of domestic violence also affect children who witness violence. The World Health Organization points out that children who witness parental violence are at a much higher risk of emotional and behavioural problems, including high risk of anxiety, depression, poor academic performance, low self-esteem, disobedience, insomnia and nightmares, and low physical strength.[158] The seriousness of the consequences suffered by children who are "merely" silent observers of violence are just as serious as the consequences experienced by children who themselves are victims of abuse in the family. Studies conducted in the USA have shown that children who witness violence between parents often exhibit the same behaviours and psychological disorders as children who have been abused themselves.[159] From the point of view of the risk of victimization, domestic violence between spouses, fathers and mothers, not only seriously affects women, who are most often the direct victims of violence, but indirectly, it also affects all family members who witness the violence. In the narrower sense, domestic violence is violence that occurs in the home (Igrački, Brašovan, Delić, 2022). Based on available data, little is known about the number of children who witness domestic violence. According to research conducted in America in the 1990s, it was estimated that between 25% and 30% of American women experienced physical injury in an intimate partner relationship at least once (Ofosky, 1995). How much of that number of domestic violence takes place in the presence of children is not known, which is why it is considered that children are invisible victims of violence (Ofosky, 1995). Denying that very young children cannot suffer domestic violence, because they are not capable of understanding and perceiving the importance and severity of violence between parents, is not correct. Namely, numerous studies have shown that even very young children can experience emotional stress, retardation in developmental behaviour, psychosomatic complaints, regression, or setbacks in language development or defecation (Ofosky, 1995). Children of school age, who understand situations of violence between their parents, generally try to prevent violence, so they can experience all forms of post-traumatic stress syndrome, as well as the victim of violence (Ofosky, 1995). Although there are cases where adolescent children who witness violence in the family can overcome it with adequate help, there is no doubt that such relationships that take place within families leave a mark on the child's emotional development. Therefore, a certain percentage of children inherit aggressiveness in their behaviour (Ofosky, 1995).

It is crucially important that all participants in the child protection process have a common understanding and a unique attitude in relation to the occurrence of violence against children. The most important condition for a successful process of child protection is consent, in relation to the determination and definition of the concept of child abuse and neglect (Igrački, 2012: 260). The scope and method of protecting children from abuse and the way individual systems and services operate, differ in terms of the level and content of protection. Thus, the roles of the education and health systems are greatest in the field of primary prevention, the role of the social protection system is predominantly in the area of special or secondary prevention, while the legal system assumes a key role in the application of protective interventions in specific cases of abuse (Igrački, Brašovan Delić, 2023). Legal protection includes the application of repressive measures in relation to parents or other persons who abuse a child. Centres for social work are services that play a

[158] World Health Organization: "World report on violence and health", 2002, 103.
[159] Ibid.

key role in protecting children from abuse. That role is based on their important functions (Igrački, 2012: 261).

The Convention on the Rights of the Child[160] proclaims that a child, with the aim of complete and harmonious personality development, should grow up in a family environment, in an atmosphere of happiness, love and understanding. The EU strategy on children's rights, adopted in 2021, covers 6 thematic areas: children's participation in political and democratic society; socio-economic inclusion, health care and education; preventing violence against children and ensuring the protection of children; justice tailored to the child; digital and information society and global dimension.[161] The strategy is fully aligned with the UN Convention on the Rights of the Child, the EU Charter of Fundamental Rights, as well as the UN Sustainable Development Goals (SDG Agenda 2030).[162] The Agenda for Sustainable Development 2030 proclaims in part 16.2 that "to end abuse, exploitation, human trafficking and all forms of violence against children and torture against children". Children's rights are today recognized by international law and regulated normatively. Every child in Europe and around the world should enjoy the same rights and live without discrimination and intimidation of any kind. In the European Union Strategy on the Rights of the Child, the Commission addresses ongoing and new challenges and proposes concrete actions to protect, promote and fulfil the rights of the child in today's ever-changing world.

2. MANIFESTATIONAL FORMS OF VIOLENCE AGAINST CHILDREN AND THE CONSEQUENCES

It is estimated that up to 1 billion children between the ages of 2 and 17 have experienced physical, sexual, or emotional abuse or neglect in the 2016, globally (Hillis, Mercy, Amobi & Kress, 2016).

Children as victims of violence and neglect are those children who are at risk of becoming victims or if they are victims of abuse, neglect, violence, and exploitation, or if their physical, psychological or emotional well-being and development are threatened by the actions or omissions of parents, guardians or others the person who takes care of them directly. Domestic violence is behaviour that endangers one family member physical integrity, mental health or tranquillity of another family member.[163]

Domestic violence and other forms of gender-based violence remain widespread, including an alarming rate of homicides of women (at least 26 cases in 2017 and 30 in 2018).[164] The Law on the Prevention of Domestic Violence in Serbia, which entered into force on June 1, 2017, brought changes to existing institutional response practices to

[160] Law on Ratification of the United Nations Convention on the Rights of the Child "Official Gazette of the SFRY" - International Treaties, No. 15/90 and "Official Gazette of the FRY" - International Treaties, No. 4/96 and 2/97. UNICEF, Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflict, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

[161] European Commission, EU Strategy on the Rights of the Child, Brussels, 2021., https://ec.europa.eu/info/sites/default/files/childrights_annex1_2021_4_digital_0.pdf

[162] European Commission, Annex to the EU Strategy on the Rights of the Child, EU and International Frameworks, https://ec.europa.eu/info/sites/default/files/ds0821040enn_002.pdf

[163] The Law on Social Protection and in accordance with the General Protocol on the Protection of Children from Abuse and Neglect.

[164] Women Against Violence Network, "Femicide-Murders of women in Serbia, January 1 - December 31, 2018", page visited on 5/18/2024.

violence and provided immediate protection and support to victims of domestic violence. However, not all aspects of the Istanbul Convention have been incorporated into the law. According to the data of the Ministry of the Interior, the number of women killed in domestic and partner violence is 31 in 2017, 34 in 2018, 27 women in 2019, 26 in 2020, 20 in 2021, in 2022. 26, during 2023, 28 women were killed, and by May 2024, 13 women were killed, most often by their partners or close relatives.

In the period from June 1, 2017, to October 15, 2019, a total of 61,164 emergency measures were issued, while the courts extended 35,340 emergency measures. This domestic violence against children manifests itself in different forms: physical violence (implies the use of body parts or weapons to threaten, punish, control or hurt another person), emotional violence (includes intimidation, constant criticism, belittling, various accusations, emotional blackmail, creating insecurities of the victim, verbal abuse, harassment, bullying etc.), sexual violence (implies any violation of sexual freedom and morality, any form of degradation and humiliation on sexual grounds, any form of coercion into sexual intercourse and rape), economic violence/exploitation of a child (implies confiscation of money and valuables, control of earnings, prohibition to get a job and earn one's own income, imposition of obligation to constantly submit detailed reports on spending money), neglect (implies neglect of the child's basic physical and psychological needs, which can cause serious damage to health and development, parental failures or guardian to provide adequate food, shelter and clothing, failure to protect the child from physical harm or danger, as well as failure to provide appropriate medical care or treatment and abandonment of the child.[165]

In older and younger children who suffer abuse, there may be a change in behaviour, and some of the signs are:[166]

• The child does not want to be alone with certain people or is afraid to be away from the guardian, parents, especially if this is a new behaviour (younger age)
• Regressive behaviour or continuation of out-of-date behaviour, such as thumb-sucking or bed-wetting (younger children)
• Becomes withdrawn (younger child)
• Sudden outbursts of anger can be a symptom (younger children, but it is common in older people as well)
• Changes in diet (in younger children)
• They may not make eye contact with adults
• Aversion to physical contact
• They may spend unusually long periods of time alone (typical of school-age children).
• Younger children may have night terrors, fear of the dark and going to bed, fear of separation, uncontrolled urination (developmental problems of the child should be ruled out here),
• Expressed fears of adults or of certain persons
• Avoiding any physical contact with other people
• Children of school age may run away from home, may have altered behaviour at school.

According to the latest reports, the number of children in the social protection system is continuously growing. During 2020, there were a total of 187,635 children on the records of centres for social work (CSR), which is 25.8% of the total number of children in the Republic of Serbia. In the past ten years, the number of children in the social protection

[165] Republic Institute for Social Protection, Children in the Social Protection System in 2020, RZSZ, Belgrade, 2021.
[166] Ibid.

system has increased by 15.8%. [167] The trend of high representation of children in the social protection system indicates that children are the most vulnerable category of the population of the Republic of Serbia.

In 2020, the Centre for Social Work registered 8,365 reports of violence against children in the family environment. Of these, 40% are dominated by reports of emotional violence against children, 2,685 reports of child neglect, 2,121 reports of physical violence, 193 reports of sexual violence and 23 reports of economic violence.[168]The share of girls and boys for whom violence was reported in all types of violence is almost equal, except for sexual violence, where the dominant share is girls, who in 2020 make up 80.8% of victims of this type of violence. In 2020, 129 children were registered in shelters for victims of domestic violence.[169] The largest share of 56.6% was pre-school age children. In 2020, a total of 409 street children used the services of the shelter,[170] of which 95.1% were of primary school age. The SOS telephone service for women with experience of gender-based violence was used by 34 girls aged up to 17 years. Share of girls in the total number of SOS phone users in 2020 was 1.7%.[171]

When talking about the digital space, it becomes an increasingly important context in which children are exposed to violence. According to the Strategy for the Prevention and Protection of Children from Violence in Serbia for the period 2020-2023, 65% of the youngest respondents from the sample aged 9 and 10, participants (98%) and all from the oldest age group groups (15–17 years old), access the Internet daily from a mobile/smartphone. Children begin to use the Internet at an ever-younger age, in a personalized way without the proper insight of their parents/guardians into their activities, which has important implications in practice. Every third student has had a disturbing experience on the Internet in the last year. Digital peer violence was experienced by 16% of students, while 15% experienced violence in live interaction. A third of the surveyed students suffered and perpetrated digital violence at the same time.[172] Research shows that exposure to violence at an early age can lead to brain development disorders and damage other parts of the nervous system, as well as the endocrine, circulatory, musculoskeletal, reproductive, respiratory, and immune systems, with lifelong consequences. Violence against children can also negatively affect cognitive development and result in underachievement in education and occupation.

The consequences of exposure to violence are reflected in inappropriate behaviour for the child's age. Children are more likely to smoke, abuse alcohol and drugs, and engage in high-risk sexual behaviour. They also have higher rates of anxiety, depression, other mental health problems, and suicide and death because of exposure to violence. Also, there are unwanted pregnancies, induced abortions, gynaecological problems, and sexually transmitted infections, including HIV.

Continuous physical violence can lead to long-term consequences for the victim, such as mental retardation, blindness and cerebral palsy, as well as various neurological

[167] Ibidem.
[168] Republic Institute for Social Protection, Children in the Social Protection System in 2020, RZSZ, Belgrade, in 2021
[169] In the Republic of Serbia, there are 6 licensed providers of this service in the following cities: Belgrade, Kragujevac, Pančevo, Niš, Leskovac, Vranje
[170] In the Republic of Serbia, there are only three licensed providers in the territory of Belgrade.
[171] Republic Institute for Social Protection, Children in the Social Protection System in 2020, RZSZ, Belgrade, in 2021.
[172] National strategy for the prevention and protection of children from violence for the period from 2020 to 2023, Official Gazette of the RS, No. 80/2020.

disorders such as tics, stuttering, depression, sleep disorders, tendency to self-harm etc. (Račić, 2016: 276). Victims of sexual violence often have visible injuries as physical indicators of the violence they suffered, but emotional and social indicators are also noticeable, such as anger, fear of going to bed, depression, confusion, withdrawal, insomnia, highly controlled behaviour or hyperactivity etc.[173]

The most difficult form of abuse to identify and prove is emotional abuse, but it is also the most widespread and usually occurs together with other forms of abuse. Especially emotional abuse is difficult to identify because children develop emotional intelligence by learning from models and are unable to recognize emotional and psychological abuse, and society's attitude towards this form of violence is often such that it is not recognized or condemned (Milašinović & Andrić, 2021: 63). A form of violence that includes the neglect of the child's basic physical and psychological needs, which can lead to serious consequences for the child's health and development. Neglect occurs due to the failure of parents or guardians to provide adequate living conditions, such as food, shelter and clothing, failure to protect the child from physical harm or danger, as well as failure to provide necessary medical care. Neglect includes abandoning a child. [174]

Children who are exposed to various forms of violence are more likely to be violent themselves in the future. Also, their behaviour is maladaptive, they are at risk of dropping out of school, they have difficulty finding and keeping a job, and they are at increased risk for later victimization. Every child who has been victimized has a sense of shame that comes with an experience of this kind. However, the consequences do not end only with embarrassment. Research that has been done indicates that the effects of childhood bullying persist for decades, with long-term changes that can expose us to a greater risk of mental and physical illnesses. Many risk factors occur, such as: attention deficit, hyperactivity, behaviour disorder or other behavioural disorders, alcohol, drug and tobacco consumption, low intelligence and educational achievements, low commitment to school and school failure, unemployment, exposure to family violence. They also have higher rates of anxiety, depression, other mental health problems and suicide, unwanted pregnancies, induced abortions, gynaecological problems, and sexually transmitted infections, including HIV.

Negative experiences in childhood (ACE)[175] show that the negative effects of such experiences are long-term and affect physical and mental health, personality traits, and educational outcomes.

The study shows that, out of every 100 adults in Serbia, about 70 of them repeatedly experienced at least one form of ACE during childhood, and about 20 of them experienced four or more. It was found that negative experiences in childhood are more

[173] National platform for the prevention of violence involving children. Sexual violence [The National Platform for Prevention of Violence Involving Children. Sexual Violence], https:// cuvamte.gov.rs/sta-je-nasilje/seksualno-nasilje/

[174] Republic Institute for Social Protection (2017). Children in the social protection system in 2016. [Children in the social security system 2016]. https://childhub.org/sites/default/files/library/attachments/ps_deca_u_sistemu_socijalne_zastite_2016_0.pdf, p.23.

[175] An adverse childhood experience (ACE — Adverse Childhood Experience) is a traumatic life experience that occurs before the age of 18, and which a person remembers when he grows up. These are examples of negative experiences in childhood: physical abuse, emotional abuse, sexual abuse, alcoholism in the family, drug abuse in the family, depression or another mental illness in the family, suicide in the family, a family member in prison, abuse of the mother by a partner, abuse of the father by the partner, separated parents, psychological neglect, physical neglect, violent behaviour, participation in a fight, violence in the community, collective violence.

common among people living in urban areas, people who are not in a partner relationship, people of the male sex, younger people (18-29 years), people with a lower level of education and people who left school. [176]

In addition to the internal disorders that a person feels, there are risk factors in relationships with family, friends, intimate partners and peers. Also, there is an inconsistent process of control and discipline between parents and children, a low level of attachment between parents and children, lack of parental interest in children's activities, parental substance abuse or crime, parental depression, low family income, unemployment in the family, socializing with delinquent peers and/or gang membership, leading to frequent fights and assaults, resulting in serious injury and death. Homicides, which often involve weapons such as knives and firearms, are among the top four causes of adolescent death, where boys make up over 80% of victims and perpetrators.

3. PROGRAMMES FOR PREVENTION OF VIOLENCE AGAINST AND AMONG CHILDREN

To achieve the goals of preventing violence against and among young people, a comprehensive approach is necessary that addresses the social determinants of violence, such as income inequality, rapid demographic and social changes, and low levels of social protection. The necessity of preventing violence against and among young people is reflected in a comprehensive approach, which recognizes the strong correlation between rates of violence among young people and economic

Social protection programmes should be designed so that workshops are organized in order to help victims of violence, which, with the professional help of psychologists, pedagogues, lawyers, and other actors of society for the prevention of violence, help victims how to manage anger, train them how to resolve conflict situations, to develop the necessary skills for solving problems, to conduct surveys in schools and present projects to parents and children, in order to learn positive parenting skills, and to introduce children to academic and social skills at an early age, to achieve better cooperation with institutions that do therapeutic treatments with people at high risk and to be involved in preventive programmes, to reduce access to alcohol and drugs, to activate the police in the community, to design a programme to reduce concentrated poverty and improve the urban environment.

The school environment, in addition to education, organized activities, provides many opportunities in terms of creating attitudes and rules for accepting violence, alcohol and drug consumption, carrying weapons on school grounds and other risks, and represents protection from violence and empowers younger people to be responsible citizens. At the beginning of 2019, the "Learn Safely" initiative was launched, which focused specifically on ending violence against children in schools. The activities promoted as part of this initiative complement the current work that countries are doing to implement a technical package based on improving access to education and providing life skills training through schools.

Many efforts are being made to realize that prevention activities against children and among children can improve a wide range of health, educational and social outcomes, leading to potentially significant economic savings. In this light, a handbook, Prevention of

[176] UNICEF, Study of negative experiences in childhood, UNICEF in Serbia, March 2019.

Violence in Schools, was adopted, which talks about schools, education and violence prevention. The handbook provides guidance to school officials and educational authorities on how schools can incorporate violence prevention into their routine activities and through the points of interaction schools provide with children, parents, and other community members.

Preventing abuse and neglect and protecting a child is a complex process, and it is necessary to establish good cooperation between experts from all areas that work with children (health, education, social protection, police, judiciary etc.). The role of coordinator of child protection activities is played by the centre for social work in Serbia which provides the following services:

• Placement services in a shelter where reception is provided for up to six months for children who are victims of domestic violence.
• The drop-in service is available to children who live or work on the street and are considered victims of neglect or abuse and who voluntarily request or agree to the service.
• SOS telephone services for women who have experienced violence is a free telephone SOS line that is operational 24 hours a day, 365 days a year, in order to provide help, consultation and support in a confidential form and with respect for the anonymity of women, i.e. girls under 18 years of age with experience of gender-based violence
• The supported housing service is available for a maximum of one year to victims of human trafficking who have reached the age of 15.

We believe that emphasis should be placed on creating positive experiences in childhood, in terms of assessment and intervention, because they have a protective effect on development and resilience. The recommendation to all professionals to assess positive experiences in children is necessary because positive experiences are ingredients of personal protection against maladaptation. It is also necessary to educate parents, future parents, as well as professionals who work with children and adolescents in the domain of recognizing the presence of protective factors. Acquainting adolescents with protective factors and providing assistance, as well as strengthening these factors, would be of great importance (e.g. raising their awareness of positive experiences in childhood, encouraging them to seek help when they lack such experiences. It is necessary to invest in violence prevention, strengthen services support for families and children facing multiple deprivations, in order to prevent the separation of the child from the family in accordance with the best interests of the child.

4. CRIMINAL REGULATION IN TERMS OF PROTECTION OF CHILDREN AS VICTIMS OF VIOLENCE

The Criminal Code defines what is considered a child, by distinguishing between younger and older minors: a child is a person who has not reached the age of fourteen, while a minor is a person who has reached the age of fourteen but not reached the age of eighteen, while a person under the age of eighteen is a minor the face.[177]

Committing criminal acts with elements of violence and violent behaviour, in the sense of criminal law, include those incriminated human behaviours that injure or endanger legally protected goods with force or serious threats (Lazarević, 2002:11-12). Therefore, the tort of violence is the unlawful use of force or threats against another, that is, against things. This limitation is necessary to exclude from the sphere of incrimination those acts

[177] Criminal Code, Article 112, Paragraphs 8-9.

of violence in which the use of force or threats appear, under certain conditions, as permissible, legally founded ways of behaviour. It should be borne in mind that violence is always illegal behaviour, except in cases where illegality is expressly excluded by law. That is why the legislator, quite justifiably, does not include illegality as their special feature in the description of the nature of crimes of violence, because such behaviours are not allowed in principle, they are therefore always illegal. This rule is deviated from in two situations: when it is determined by regulation that some persons are allowed to undertake activities that in substance mean violence and are prescribed by law as criminal acts; if there is some general basis for the exclusion of illegality that is not only applied to crimes of violence but also to other acts. In the first case, illegality is included in the description of the nature of the criminal act, while in the second case, the existence of the conditions provided for by the law in the corresponding general grounds is assessed.

Criminologists at the very mention of violence most often mean violent crime as a specific type of socially dangerous acts. Violent crime refers to those crimes where an attack or threat on the victim is used in order to achieve a certain goal. This type of criminal activity is considered in criminology as one of the basic types of crime that attracts special attention. Violent crime, that is, violent behaviour, is characterized by causing fear in the public because it is traditionally considered that such acts and behaviours cause a feeling of insecurity among citizens. increase with the occurrence of drastic cases of violence that are placed in the public and through the media. Newer forms of violent crime are specific forms of domestic violence, peer violence, violence at sports events and public gatherings, and other crimes with elements of violence. In the modern world, there is a unique opinion that the life and bodily integrity of a person represent a social value, for the preservation of which there is not only an individual, individual, but a general common interest of society (Igrački, 2015).

The provisions of the current criminal legislation regarding violence, abuse and neglect of children in the Republic of Serbia are not sufficiently specified and should be interpreted carefully. These criminal acts fail to define precisely, which leaves the possibility of applying different provisions of the criminal legislation in the execution of similar or the same criminal acts. It is also necessary to mention the provisions of this law which provide for other criminal acts, such as the criminal offense of assault on a helpless person (in the qualified case of assault on a minor),[178] the criminal offense of sexual intercourse with a child [179] criminal offense of rape (in the qualified case of rape of a minor) [180] as well as the criminal offense of blasphemy. [181]

If the act of rape was carried out using force/coercion against the victim, it must be qualified as the act of committing the criminal offense of rape, while if no coercion was used, and it was committed against a minor, depending on the age of the person, it can be rape against a child (person up to 14 years of age), or the criminal act of neglecting and abusing a minor if it was committed out of self-interest, i.e. if the act of neglect or an act equated to it with a minor blood relative in the direct line or with a minor brother or sister, can be qualified as a criminal act of desecration. Due to insufficient precision of the legislator, it is often the case that the public prosecutor determines the legal qualification

[178] Criminal Code, Article 179.
[179] Criminal Code, Article 180.
[180] Criminal Code, Article 181.
[181] Criminal Code, Article 197.

depending on the available evidence, more specifically that although there are indications that a more serious crime was committed, it qualifies as one of the milder ones because there is enough evidence for it. We emphasize that in practice it is often difficult to prove whether force was used in a certain situation, as well as what exactly this coercion must fulfil. Furthermore, the question of theoretical demarcation arises, which leads to problems in practical application, in the case of committing adultery with a minor family member, when it is necessary to distinguish whether it is abuse (sexual abuse by a family member) or desecration, or on child abuse, and for which the most severe punishment is provided in relation to the two previously mentioned criminal acts. For this reason, we are of the opinion that in such situations there is no room for imprecise determination of the nature of the criminal offense, especially if the principle of protection of the best interests of the child is accepted, i.e. in specific cases of minors.

Domestic violence is defined as the use of violence, threats to attack life or body, insolent or reckless behaviour that endangers the peace, physical integrity, or mental state of a family member.[182] In addition, a criminal sanction is provided for anyone who violates the measures of protection against domestic violence adopted by the court. [183] The criminal act of abuse of a minor can be committed by a parent, adoptive parent, guardian or other person if they perform actions that abuse a minor or force them to work excessively or work that does not correspond to the age of the minor or to beg, or out of self-interest leads them to perform other actions that are harmful to his development.[184]

The criminal act of neglecting a minor can be committed by a parent, adoptive parent, guardian or other person by grossly neglecting their duty of care and education by abandoning a minor they are required to care for.[185] The Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedom against Minors (the so-called *Marija's Law*) provides that criminal prosecution and the execution of the sentence do not become statute-barred for criminal offenses against sexual freedom against minors, specifically for the criminal offense of rape; blasphemy over a helpless person; sex with a child; abuse of position; illicit sexual acts; pimping and facilitating sexual intercourse; mediation in prostitution; displaying, obtaining and possessing pornographic material and exploiting a minor for pornography; inducing a minor to attend sexual acts; using a computer network or communication by other technical means to commit criminal acts against sexual freedom against a minor.[186]

In relation to the issue of protecting the best interests of the child in criminal proceedings, the research of the Centre for the Rights of the Child from 2015 in Serbia is significant, the results of which indicated that the court, as well as other authorities acting in criminal proceedings, very rarely refer to the principle of the best interests of the child. The research is based on data obtained through anonymous surveys completed by judges and prosecutors of Basic Courts and the High Court in Belgrade, and from the processed cases it was not possible to conclude whether the court considered the best interests of the child during the proceedings. The research showed that in a certain number of cases, other participants in the procedure (Centres for social work, experts etc.) are called upon to protect the best interests of the child in order to prevent secondary victimization and

[182] Criminal Code, Article 194, Paragraph 1.
[183] Criminal Code, Article 194, Paragraph 5.
[184] Criminal Code, Article 193, Paragraph 2.
[185] Criminal Code, Article 193, Paragraph 1.
[186] Law on special measures to prevent the commission of crimes against sexual freedom against minors ("Official Gazette of RS", no. 32/2013), articles 3 and 5.

additional traumatization of minors (and only when hearing the child or testifying in criminal proceedings), and not for the purpose of primary protection of the best interests of the child in the specific proceedings.[187]

As the Convention on the Rights of the Child was adopted by the United Nations General Assembly in 1989, from then until today, the escalation of domestic violence, the recognition that children are also victims of domestic violence, even when the violence is not directed directly at them, led to the need closer regulation of the position of the child as an indirect victim of such violence. The indicator that domestic violence most often occurs in the presence of children is a survey of data on domestic violence in the practice of courts in the Republic of Serbia, which shows that the largest number of perpetrators (46%) have two or more children, with one child being 28% of perpetrators. , and 26% of the perpetrators are without children, while 28% of the perpetrators are with one child, while the situation is similar in terms of victims, so the lowest percentage of victims is without children (11.5%), and the largest number has one child (42.6%) or two or more children (39%). The need to protect all family members from domestic violence, especially vulnerable categories, women, and children, led to the adoption of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).[188]

The Convention on the Rights of the Child[189] proclaims that a child, with the aim of complete and harmonious personality development, should grow up in a family environment, in an atmosphere of happiness, love and understanding. In this way, already in the preamble of the Convention, it proclaims that in order to achieve set goal, it is necessary to provide protection to children from any form of behaviour in the family that leads to disturbances in the family sphere, and which results in the lack of one of the mentioned elements of child development. The goal is to provide all measures to prevent and ensure the protection of the child from all forms of violence in the family, but also to institutions and the wider social environment, i.e. to protect the child from all forms of physical and mental violence, abuse and neglect, all forms of sexual exploitation and sexual abuse, abduction and trafficking of children as well as all other forms of exploitation harmful to any kind of child's well-being, inhumane and humiliating actions and punishment. The Convention comprehensively mandates that the contracting states take measures to ensure that the child does not become a direct victim of any violent and degrading and inhumane actions within and outside the family. However, the Convention does not explicitly refer to the protection of children as indirect victims of domestic violence in any provision. On the contrary, it does so implicitly, in the preamble, where it is indicated that within the set objective of the Convention, all measures that states are obliged to implement are aimed at realizing the child's comprehensive right to live in a harmonious family environment. Also, the Convention on the Rights of the Child guarantees the basic rights of children to protect them from all forms of violence, discrimination, and neglect.

---

[187] How to achieve justice tailored to the child - Protection of child victims in criminal proceedings and the state of practice in the Republic of Serbia, Centre for Children's Rights, 2015, 29-35.

[188] Council of Europe Convention on preventing and combating violence against women and domestic violence, https://www.coe. int/en/web/conventions/full-list?module=treaty-detail&treatynum=210.

[189] Law on Ratification of the United Nations Convention on the Rights of the Child "Official Gazette of the SFRY" - International Treaties, No. 15/90 and "Official Gazette of the FRY" - International Treaties, No. 4/96 and 2/97.

The National Strategy for the Improvement of the Position of Victims and Witnesses of Criminal Crimes in the Republic of Serbia for the Period from 2020 to 2025 with the Accompanying Action Plan for the Period from 2020 to 2025 is a strategic document that provides for the harmonization of legislation with the European Union Directive on the establishment of minimum standards on rights, support and protection of victims of crime (Directive 2012/29/EU) and the establishment of the National Network for assistance and support to victims and witnesses of criminal acts. The Strategy for the prevention and suppression of human trafficking, especially women and children, and the protection of victims for the period from 2017 to 2022, as well as the Strategy for the Development of Information Security in the Republic of Serbia for the period from 2017 to 2020, are also important. The strategic framework includes the Education Development Strategy in the Republic of Serbia until 2030 and the accompanying Action Plan for the period from 2021 to 2023. Then, the National Strategy for the Prevention and Protection of Children from Violence for the period from 2020 to 2023 with the Action Plan for 2020-2021. treats the issue of violence against children in a comprehensive, multisectoral manner.

National strategy for the prevention and protection of children from violence for the period from 2020 to 2023,[190] with the Action Plan for 2020-2021. Treats the issue of violence against children in a comprehensive, multisectoral manner. With this document, an important step was taken to improve the protection of children from violence in Serbia. Different types of violence are defined, and the environments in which violence takes place are also recognized. The strategy emphasizes the importance of special protection of children from sensitive groups who are often exposed to multiple forms of violence, and recognizes children in street situations, refugee children, migrant children, LGBTI children, Roma children as particularly vulnerable groups of children, among others.[191] In order to achieve the systemic improvement of education in the Republic of Serbia, the Strategy for the Development of Education and Upbringing in the Republic of Serbia until 2030 and the accompanying Action Plan for the period from 2021 to 2023 were adopted.[192] The vision of the development of education and upbringing, defined by the Strategy, is to provide quality education to achieve the full potential of every child, youth, and adult in the Republic of Serbia. The mission of education in the coming period is to provide high quality education that serves the development of the individual, and thus the entire society.

Penal policy is insufficient to reduce the commission of criminal acts, and that it is necessary to improve the system of preventive action, both general prevention and to persons who have committed a specific criminal offense in order to reduce recidivism. In this regard, many international legal documents dealing with the issue of domestic violence and violence against women recognize the need to work with perpetrators of domestic violence precisely for the reason of reducing restitution, as a necessary way to reduce the commission of this crime. The protection measures provided for by this law are also of great importance, the aim of which is to protect the physical integrity, mental health, and tranquillity of the victim, but also to prevent the repetition of violence by the abuser. They are determined against a family member who commits violence and has the purpose of temporarily prohibiting or limiting the maintenance of personal relations with the victim,

[190] National Strategy for the Prevention and Protection of Children from Violence for the Period from 2020 to 2023, Official Gazette of the RS, No. 80/2020.

[191] Centre for Children's Rights, CPD Info - Bulletin of the Center for Children's Rights, April - June 2020.

[192] Available at: https://www.mpn.gov.rs/strategija-razvoja-obrazovanja-i-vaspitanja-u-republici-srbiji-do-2030-godine/

and can be the issuance of an order for eviction from the family apartment or house, regardless of the right of ownership or lease of real estate, the issuance of an order for moving into a family apartment or a house, regardless of the right of ownership or real estate lease, prohibition of approaching a family member at a certain distance, prohibition of access to the area around the family member's place of residence or work, prohibition of further harassment of a family member.[193] The Convention on the Rights of the Child stipulates that in all activities concerning children, regardless of which institution carries them out, the best interest of the child is of primary importance, as well as that the child will be provided with such protection and care as is necessary for his well-being, taking into account the rights and the obligations of his parents and other persons who are responsible for that child.[194]

In addition to the Convention on the Rights of the Child, Serbia respects many other international documents and conventions: - Convention against Torture and Other Cruel, Inhuman or Degrading Punishments or Procedures (1984); Convention against Transnational Organized Crime (2000); Protocol for the Prevention, Suppression and Punishment of Trafficking in Human Beings, Especially Women and Children (2000); Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (2007/2010); Convention on preventing and combating violence against women and domestic violence (Istanbul Convention); ค Convention on high-tech crime (Budapest Convention) of the Council of Europe (2001); Convention of the International Labor Organization (ILO) no. 138 (1973); ILO Convention no. 182 on the worst forms of child labour (1999); - European Convention on the realization of children's rights (1996, in force since 2000); - EU strategy on children's rights; EU Guidelines for the Promotion and Protection of Children's Rights (2007); EU Agenda for Children's Rights (2011).

UNICEF proclaims that all children have the right to protection from violence, exploitation, and abuse. Children in Europe, as well as around the world, should enjoy the same rights and live without discrimination and intimidation of any kind. The EU strategy on children's rights, adopted in 2021, covers six thematic areas: children's participation in political and democratic society; socio-economic inclusion, health care and education; preventing violence against children and ensuring the protection of children; justice tailored to the child; digital and information society and global dimension.[195] The strategy is fully aligned with the UN Convention on the Rights of the Child, the EU Charter of Fundamental Rights, as well as the UN Sustainable Development Goals (SDG Agenda 2030).[196]

The Convention on the Rights of the Child stipulates the obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in care with parents, legal guardians or any other person entrusted with the care of the child.[197] The mentioned measures should include effective procedures for establishing social programmes to ensure

[193] Family Law, Article 198.

[194] Law on Ratification of the UN Convention on the Rights of the Child, Article 3, Paragraphs 1-2.

[195] European Commission, EU Strategy on the Rights of the Child, Brussels, 2021., https://ec.europa.eu/info/sites/default/files/childrights_annex1_2021_4_digital_0.pdf

[196] European Commission, Annex to the EU Strategy on the Rights of the Child, EU and International Frameworks, https://ec.europa.eu/info/sites/default/files/ds0821040enn_002.pdf

[197] Convention on the Rights of the Child, Article 19, Paragraph 1.

the support that is necessary for the child and those entrusted with the care of the child, as well as other forms of prevention, determination, reporting, forwarding, investigation, treatment and monitoring of the cases of child abuse mentioned here. And, if necessary, addressing the court. [198]

Although many documents have been adopted to prevent violence, abuse and neglect of children, the research data are worrying. Youth violence leads to significant increases in health, welfare, and criminal justice costs, reduces productivity, lowers property values in areas where it occurs, and generally undermines the fabric of society.

5. CONCLUSION

In general, children are classified as particularly vulnerable victims. Emotional immaturity, the degree of mental and intellectual development, leads to the conclusion that the consequences of domestic violence experienced by a child especially affect the child because they affect his further psychophysical development. Research shows that children who witness domestic violence can learn from it that violence is an adequate way of resolving conflicts, that violence is part of family relationships, that the abuser in an intimate partner relationship often goes unpunished and that violence is a way to control people. It is of vital importance to respond in a timely and adequate manner to every form of violence, even to those behaviours that are not domestic violence in themselves, but are of such a quality that, based on the circumstances in which they occur, it can be concluded that there is the danger of domestic violence, in any of its forms. Research has shown that exposure to family violence is the best predictor of transmission of violence through generations. Children exposed to domestic violence suffer abuse more often than children who are not in that situation; the risk of physical and sexual abuse of children increases dramatically from 30% to over 60% for those who have witnessed domestic violence. Mothers who are beaten by their partners are twice as likely to abuse their children, and fathers who often beat their wives are more likely to beat their children as well. Witnessing domestic violence has long been an unaddressed issue, although a growing body of research indicates that it affects children in various domains, including their physical or biological functioning, behaviour, emotions, cognitive development, and social adjustment.

Practice has shown that children who have experienced some form of violence accept violence as a pattern of behaviour, and in later years, apply that pattern of behaviour. Recognizing domestic violence as a constantly present problem in inter-partner relations, marriage, or extramarital union, led to the understanding that in addition to violence directed directly between partners, the consequences and effects of domestic violence also affect children who witness violence. The problem of domestic violence in judicial practice is that children, as indirect victims of domestic violence, are invisible from the point of view of criminal law protection, in situations when the violence is not directed towards them, which is most often the case. The intention of the perpetrator, usually a man, is directed towards the victim, usually a woman. There are opinions that domestic violence is a pattern, in which the abuser directs his violent behaviour towards a specific target, his intimate partner, in contrast to violent crime in general, so research shows that the majority of abusers (80%) purposefully limit their aggressive behaviour to the use of violence in within the framework of the family and towards an intimate partner.

Protecting children from violence, abuse and neglect is an extremely difficult process. For this reason, it is necessary to establish good cooperation between experts from

[198] Convention on the Rights of the Child, Article 19, Paragraph 2.

all areas that work with children (health, education, social protection, police, justice etc.). The main reason for adopting the General Protocol, which refers to all children whose well-being is at risk, brings into focus the fact that it must not exist discrimination, family status, ethnic origin and any other social or individual characteristics of the child (race, colour, gender, language, religion, nationality, mental, physical or other specific characteristics of the child and his family). Strategies to prevent violence against children should be aimed at all levels of prevention — universal (which refers to the general population), selective (which refers to at-risk populations) before violence occurs, as well as indicated prevention (which prevents continuation and consequences of violence) after negative experiences occur. The Global Status Report on Violence Prevention should be implicitly viewed, which suggests the following ways to prevent violence: developing safe, stable and nurturing relationships between children and their parents and guardians, developing life skills in children and adolescents, reducing the availability and harmful use of alcohol, reducing access to guns and knives, promoting gender equality to prevent violence against women, changing cultural and social norms that support violence, victim identification programmes and their care and support.

The Convention on the Rights of the Child, which was ratified in 1990 by Serbia, and thus assumed the obligation to apply measures to prevent violence against children, as well as to provide protection to children from all forms of violence in the family, institutions, and wider social environment. The articles of the Convention on the Rights of the Child cover the protection of children from: Physical and mental violence, exploitation and abuse, all forms of sexual exploitation and abuse, kidnapping, trafficking of children, all other forms of exploitation that harm the well-being of the child, Inhuman and degrading treatment and punishment. The Convention also states the state's obligation to provide support measures for the physical and psychological recovery of a child who is a victim of violence and for his or her reintegration into society.

Recent evidence also suggests that multiple victimization is common among youth, and that youth who are exposed to violence in one context or setting (e.g. school, neighbourhood, family) are more likely to experience exposure in other settings as well. Moreover, there is evidence that the cumulative effects of exposure to violence and victimization are more harmful to young people than experiencing a single type of violence. Namely, these findings showed that the cumulative effects of exposure to school, household, and neighbourhood violence lead to increased anxiety, depression, aggressive fantasies, delinquency, and aggression, and we believe that it is necessary in the coming period to speed up the process of adopting the planned Law on the Rights of the Child in Serbia, the adoption of which is essential for linking and further directing strategic directions in the field of protection of children's rights towards the provisions of the UN Convention on the Rights of the Child.

6. REFERENCES

1. Igrački, J., Brašovan Delić, M., (2023), "Recognition of children as victims of domestic violence and their protection in criminal proceedings", In: International scientific meeting "Challenges and perspectives of the development of legal systems in the 21st century" collection of papers Faculty of Law, University in Banja Luka, Banja Luka, pp. 179-198. ISBN 978-99976-54-19-9, DOI 10.7251/NSTT22301179I
2. Igrački, J., Brašovan Delić, M., (2022), "Protection of Victims of Psychological Abuse as a Type of the Domestic Violence in Criminal Procedure", Journal of Eastern European Criminal Law, No.2, pp.,74-90.
3. Igrački, J., (2015), Criminal law and criminological characteristics of violent crime in Serbia. In: Crime and society of Serbia: challenges of social disintegration, social regulation and environmental preservation. Institute for Criminological and Sociological Research, Belgrade, pp. 75-87. ISBN 978-86-83287-87-1
4. Igrački, J., (2012), "Police as a subject in the prevention of child abuse", Proceedings of the Institute for Criminological and Sociological Research, Belgrade, (ed. Leposava Kron), no. 1
5. Lazarević, Lj., (2002), Crimes of violence-criminal law aspect, In: Crimes of violence, criminal law and criminological aspect. Belgrade, Institute for Criminological and Sociological Research
6. Milašinović, S., Andrić, S., (2021), "Phenomenology of domestic violence as a socially deviant phenomenon in Serbia". Napredak, 2(1), pp. 57-68.
7. Račić, A., (2021), "Nasilje nad decom" [Violence against children]. *Megatrend revija, 18*(2), pp. 267-282.
8. Ofosky, J., (1995), "Children Who Witness Domestic Violence: The Invisible Victims", Social Policy Report University of Michigan Vol. 9, 3-16
9. Hillis, S., Mercy, J., Amobi, A., Kress, H., (2016), "The global prevalence of past-year violence against children: A systematic review and minimum estimates", *Pediatrics, 137*(3). DOI: 10.1542/peds.2015-4079.

- Republic Institute for Social Protection (2017). Children in the social security system 2016 [Children in the social security system 2016]. https://childhub.org/sites/default/files/library/attachments/ps_deca_u_sistemu_socijalne_zastite_2016_0.pdf
- World Health Organization, Recommendations for Routine Immunization - Summary Tables, WHO, November 2021.,

https://cdn.who.int/media/docs/default-source/immunization/immunization_schedules/immunization-routine-table2.pdf?sfvrsn=3e27ab48_9&download=true

- National platform for the prevention of violence involving children. Sexual violence [The National Platform for Prevention of Violence Involving Children. Sexual Violence]. Downloaded 2023, March 21 from https:// cuvamte.gov.rs/staje-nasilje/seksualno-nasilje/

- United Nations International Children's Emergency Fund [UNICEF]. (2017). Nasilje prema deci u Srbiji – Determinante, faktori i intervencije (Nacionalni

izveštaj) [Violence against Children in Serbia – Determinants, Factors, and Interventions (National Report)]. https://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/09/Nasilje_prema_deci_u_Srbiji_Nacionalni_izvestaj.pdf.

- Law on Ratification of the United Nations Convention on the Rights of the Child "Official Gazette of the SFRY" - International Treaties, No. 15/90 and "Official Gazette of the FRY" - International Treaties, No. 4/96 and 2/97.
- UNICEF, Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflict, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.
- European Commission, EU Strategy on the Rights of the Child, Brussels, 2021., https://ec.europa.eu/info/sites/default/files/childrights_annex1_2021_4_digital_0.pdf
- European Commission, Annex to the EU Strategy on the Rights of the Child, EU and International Frameworks, https://ec.europa.eu/info/sites/default/files/ds0821040enn_002.pdf
- UNICEF, Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflict, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, https://www.unicef.org/serbia /media/3186/file/Convention%20on%20rights%20ofthechild.pdf
- Republic Institute for Social Protection, Children in the Social Protection System in 2020, RZSZ, Belgrade, 2021.
- Family Law, Official Gazette of RS, No. 18/2005, 72/2011 - dr. law and 6/2015
- National strategy for the prevention and protection of children from violence for the period from 2020 to 2023. year, Official Gazette of the RS, number 80/2020
- National strategy for improving the position of victims and witnesses of criminal acts in the Republic of Serbia for the period from 2020 to 2025.
- Law on Social Protection, Official Gazette of the RS, No. 24/2011
- Law on Prevention of Domestic Violence, Official Gazette of RS, No. 94/2016
- Strategy for prevention and suppression of human trafficking, especially women and children, and protection of victims for the period from 2017 to 2022, Official Gazette of the RS, No. 77/2017
- Law on special measures to prevent the commission of crimes against sexual freedom against minors ("Official Gazette of RS", no. 32/2013), articles 3 and 5
- How to achieve justice tailored to the child - Protection of child victims in criminal proceedings and the state of practice in the Republic of Serbia, Centre for Children's Rights, 2015, 29-35
- Council of Europe Convention on preventing and combating violence against women and domestic violence, https://www.coe. int/en/web/conventions/full-list?module=treaty-detail&treatynum=210
- National Strategy for the Prevention and Protection of Children from Violence for the Period from 2020 to 2023, Official Gazette of the RS, No. 80/2020
- Centre for Children's Rights, CPD Info - Bulletin of the Centre for Children's Rights, April - June 2020.https://www.mpn.gov.rs/strategija-razvoja-obrazovanja-i-vaspitanja-u-republici-srbiji-do-2030-godine/

- Law on Ratification of the United Nations Convention on the Rights of the Child "Official Gazette of the SFRY" - International Treaties, No. 15/90 and "Official Gazette of the FRY" - International Treaties, No. 4/96 and 2/97.
- Women Against Violence Network, "Femicide-Murders of women in Serbia, January 1 - December 31, 2018", page visited on 5/18/2024.
- Republic Institute for Social Protection, Children in the Social Protection System in 2020, RZSZ, Belgrade, 2021.
- The Law on Social Protection and in accordance with the General Protocol on the Protection of Children from Abuse and Neglect.
- National strategy for the prevention and protection of children from violence for the period from 2020 to 2023, Official Gazette of the RS, No. 80/2022.
- National platform for the prevention of violence involving children. Sexual violence [The National Platform for Prevention of Violence Involving Children. Sexual Violence], https:// cuvamte.gov.rs/sta-je-nasilje/seksualno-nasilje/
- Republic Institute for Social Protection (2017). [Children in the social security system 2016]. https://childhub.org/sites/default/files/library/attachments/ps_deca_u_sistemu_socijalne_zastite_2016_0.pdf , p.23
- European Commission, EU Strategy on the Rights of the Child, Brussels, 2021., https://ec.europa.eu/info/sites/default/files/childrights_annex1_2021_4_digital_0.pdf
- European Commission, Annex to the EU Strategy on the Rights of the Child, EU and International Frameworks, https://ec.europa.eu/info/sites/default/files/ds0821040enn_002.pdf
- Criminal Code of the RS, Official Gazette of the RS, No. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

UDK: 364.632-055.2:343.1(497.5)"2017/2023"
DOI: 10.20544/ICP.9.2.24.P20

FEMICIDE AS A GENDER-BASED SECURITY THREAT

Nevena Aljinović,
University Department of Forensic Science, University in Split
E-mail: nevena.aljinovic@forenzika.unist.hr

Abstract:

Few syntagms have caused as much controversy and antagonism in public discourse as gender identity incorporated into the provisions of the Istanbul Convention. The primary focus of apostrophizing the gender connotation was drawing attention to the fact that certain types of violence are gender-based, especially that women (and girls) are exposed to it to a greater extent. Therefore, the prevention and fight against gender-based violence aims to achieve (substantial) equality between women and men in an (apparently) egalitarian society. Despite the above, the Istanbul Convention caused an assertive division in the public discourse in (some) Central and Eastern European countries, which did not bypass Croatian society either. Gender phobia in Croatian society surfaced during months of protests by conservative activists that preceded the ratification of the Istanbul Convention (2018), driven by fears that its adoption would undermine traditional gender roles and impose a definition of gender that is not in accordance with the Croatian Constitution and legal tradition. The next wave of polarizing attitudes and antagonistic polemics was spawned by the public debate on the introduction of femicide as a separate form of gender-based murder of women. It was followed by a judicial revolt against the incorporation of femicide into the Croatian Penal Code, based on the fear of violating the neutrality of legal provisions, but also of "potential discrimination against men", which is a clear indication of the essential misunderstanding of gender-based violence against women. The paper analyses data from the Ministry of Internal Affairs of the Republic of Croatia on the trend of murders of women by intimate partners in the period from 2017 to 2023. It also discusses the political climate that preceded the introduction of the criminal offense of gender-based murder of women, i.e. femicide.

Keywords*: gender-based murder, gender-based violence, femicide, gender-based security threat*

1. INTRODUCTION TO GENDER-BASED VIOLENCE

For many years, family violence was hidden behind a veil of secrecy, especially the perception that it is a *res privatae*, outside the focus of the state, the scientific community, and the professional public (Šprem, 2023; Dimitrijević, Janeš & Miljuš, 2016). Thanks to the efforts of activist movements, over time, the issue of domestic violence was articulated, awareness of this phenomenon was raised, and it was positioned on the pedestal of social problems that need to be eradicated. Family violence as an umbrella term also includes violence within inter-partner relationships, which can be gender-based. Gender-based violence, on the other hand, rests on the postulate that women are more exposed to certain forms of violence as a result of gender roles and status in

society, especially as the "imbalance of power between men and women is leading to serious discrimination against the female sex, both within society and within the family" (COE, 2002, p. 3). Today, gender-based violence against women is globally recognized as a "violation, impairing, and nullification of the enjoyment of human rights and fundamental freedoms" (COE, 2002, p. 3), as a health problem and suppression of economic development (Herrera et al., 2006).

Some authors believe that the terms "gender-based violence" and "violence against women" are not synonymous but are often placed under the same denominator due to the large number of women victims and men as perpetrators of gender-based violence (Konstantinovic Vilic, 2013). However, women are most often the victims of gender-based violence due to the "historically unequal distribution of power between men and women, along with female subordination and male dominance, both ideological and material" (Konstantinovic Vilic, 2013, p. 34). According to the World Health Organization (WHO, 2024), every third woman in the world (30%) has been exposed to some form of physical violence by an intimate partner during her life.

2. CONTROVERSIES OVER THE CONCEPT OF GENDER

A social phenomenon that has gained a prominent place in public opinion and political discourse in recent decades is "gender violence", especially the understanding of gender-based violence against women (Gómez, 2020). Gender-based violence "needs to be addressed in the context of the prevailing inequality between women and men, existing stereotypes, gender roles and discrimination against women" (Council of Europe, 2011, Para. 43). In other words, it is impossible to offer an adequate definition of violence against women without using the term gender (Bosak & Munivrana Vajda, 2019). However, it was the concept of gender that caused numerous controversies in public discourse.

In Western society, gender is tied to the "social categories of male versus female and is assigned at birth based on biological sex" (Russo & Pirlott, 2006, p. 180). It is defined as the "appropriateness of behavioural, psychological, and social characteristics of males and females over the life cycle, and shapes the way we construe ourselves" (Russo & Pirlott, 2006, p. 180). In the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (further: the Istanbul Convention), gender is mentioned primarily in the context of preventing and combating gender-based violence. The Convention defines "violence" as "manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men" and emphasizes "the structural nature of violence against women as gender-based violence".

Although the term "gender" is mentioned in some already existing Croatian laws, the Istanbul Convention, as an international document, defines it for the first time as "socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Art. 3c). So, it is about the expected roles of men and women, not a substitute for the terms 'woman' and 'man' used in the Convention. However, significant controversy was caused by the definition of gender, as clarified in the Explanatory Report to the Convention in § 53, which moves the understanding of the gender role "toward a more fluid understanding of the concept of gender that is also applied to minority sexual and gender identities" (Petković, 2019, p. 122).[199] The third

[199] Significant controversy was caused by the definition of gender as a social construct independent of sex, which creates the belief that a person can freely choose whether to be a man, a woman, or some other gender.

chapter on prevention, especially Art. 12-14, caused the most controversy in the public, "where the document particularly clearly leaves the framework of law in the domain of public policies" (Petković, 2019, p. 123). The Convention expands the area of non-discrimination in the context of violence against women and domestic violence, as well as expands the concept of gender to different gender identities and suggests their protection (Petković, 2019).

2.1.Political discourse in the context of the interpretation of the gender concept

The EU signed the Istanbul Convention on June 13, 2017, and ratified it six years later, on June 28, 2023 (Decisions (EU) 2023/1075 and 2023/1076), thus committing to fulfil "ambitious and comprehensive rules for preventing and combating against violence against women and domestic violence" (EUR-Lex). However, five Member States (Bulgaria, the Czech Republic, Hungary, Lithuania, and Slovakia) have not ratified the Convention and "will only be bound by the EU acquis, which implements the convention". The aforementioned states consider the concept of "gender", as mentioned in the Convention, to be controversial, especially the gender ideology that encourages the promotion of "non-stereotypical gender roles" (Hina/B.K., 2023) and "supports destructive gender ideology" (Hermann, 2021). In its decision in 2018, the Bulgarian Constitutional Court emphasized that the Istanbul Convention progressively approaches the gender concept in a way incompatible with the Bulgarian Constitution's fundamental principles (Hina/I.B., 2023). Czech conservative opponents believe that the Convention promotes an (unacceptable) progressive approach to the "traditional roles" of men and women in society (Reuters, 2024), while in Hungary, the parliament in 2020 refused to ratify it because it was seen as a means of promoting "destructive gender ideologies" and "illegal migration" (de La Baume, 2021). In autumn 2023, the Lithuanian Parliament asked the Constitutional Court to assess whether the provisions of the Istanbul Convention on gender, gender-based violence against women, and the inclusion of material on non-stereotypical gender roles in the official educational curriculum are in accordance with the Lithuanian Constitution, to which the Constitutional Court ruled a positive conclusion, especially that the relevant provisions of the Convention are not in conflict with the Lithuanian Constitution (Platūkytė, 2024). Slovak politicians, on the other hand, claim that the Convention "endangers the definition of marriage between a man and a woman" (RTVS, 2023), although same-sex union is not mentioned anywhere in the text of the Convention.

The semantic dispute generated by the definition of "gender" was certainly not the primary focus of the drafters of the Convention, but it undoubtedly contributed to conservative European leaders seeing the definition of gender as a latent tool for undermining the differences between men and women and promoting an undesirable gender ideology (de La Baume, 2021). Turkey, the first signatory to the Convention in 2012, became the first country to cease being a party to it in 2021. Poland, which ratified the Convention in 2015, is now trying to revoke it because it considers it harmful for children to learn about gender in schools.

The opponents believed that accepting this definition requires identification with certain dogmas of gender theory that have no scientific basis nor legislative foundation within the legal system of the Republic of Croatia. They expressed the fear that such a concept of gender would lead to the eradication of traditions and family values and the imposition of gender ideology on children and youth in kindergartens, schools, and the media.

In June 2018, the Croatian Parliament ratified the Istanbul Convention, albeit after several months of protests by conservative activists who feared that the adoption of the Convention would undermine traditional gender roles and "impose a definition of gender that is not in accordance with the Croatian Constitution and legal tradition" (Bosak & Munivrana Vajda, 2019, p. 78). Proponents of the preservation of family tradition and opponents of the Convention's ratification saw it as a metaphorical Trojan horse where, under the guise of fighting violence against women, gender ideology is introduced into public discourse, and the state is deprived of its sovereignty in deciding on these issues (Petković, 2019). Following the above, the Convention was ratified with an interpretative declaration that "the provisions of the Convention do not include the obligation to introduce gender ideology into the Croatian legal and educational system nor the obligation to change the constitutional definition of marriage" (Art. 4 of the Act on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence).[200] Such an interpretative declaration is all the more interesting because the concept of gender and gender identity already existed in the Croatian legal system. Namely, concepts such as gender, gender identity, and gender ideology have long existed in Croatian legislation, especially criminal legislation, and were also used in the decisions of the Supreme Court and the Constitutional Court of the Republic of Croatia. For example, the Anti-discrimination Act from 2008 (Official Gazette 85/08, 112/12) in Art. 1 para 1, in addition to several discriminatory grounds, explicitly includes gender identity. Act on International and Temporary Protection (Official Gazette 70/15, 127/17, 33/23) in Art. 15 provides adequate support to applicants concerning their personal circumstances, including sexual orientation and gender identity. The Criminal Code (Official Gazette 125/11) already in 2013, when defining hate crimes in Art. 87 para 21, *inter alia*, listed "sexual orientation or gender identity" as one of the discriminatory grounds. Amendments to the Criminal Code (Official Gazette 144/12) in Art. 325 incorporated the criminal offense "Public incitement to violence and hatred", which sanctions incitement to violence or hatred due to "sexual orientation and gender identity". Also, in the description of the broadly conceived discrimination of the criminal offense "Violation of equality" in Art. 125, the Criminal Code explicitly stated "gender identity expression" as a prohibited discriminatory basis.

3. NORMATIVE ACTIVISM IN REPUBLIC OF CROATIA AFTER THE RATIFICATION OF THE ISTANBUL CONVENTION

After the ratification of the Istanbul Convention in the Republic of Croatia, normative activism was evident through the continuous initiative of legislators aimed at changing the legislative framework and making penalties for gender-based violence more severe. However, one of the fundamental problems is that these changes were not the result of systematic monitoring and in-depth analysis of the system but most often the result of pressure exerted on politicians, i.e., the executive power, as a result of severe violence or murders of women that upset the public (2023 Report, 2024). In the context of combating gender-based and domestic violence in the Republic of Croatia, in 2023, numerous initiatives of competent authorities aimed at changes and improvement of the legislative

[200] Poland, Latvia, and Lithuania also drew up interpretive declarations of similar content, the latter two states having done so during the signing of the Convention. Given that the text of the Convention does not mention the term 'interpretative statement,' it should be understood "exclusively as a political gesture in an imaginary fight against the so-called gender ideologies" but essentially primarily oriented towards the preservation of the traditional family model (Burek, 2020, p. 292; Željko, 2021).

framework regulating this issue were recorded (2023 Report, 2024). Some of the key strategic documents were adopted, such as the National plan for gender equality for the period until 2027 and the corresponding Action Plan for the implementation of the National Plan for the period until 2024. A new Protocol for dealing with sexual violence was also adopted. At the Ministry of Justice and Administration, the Working Group for amending and improving criminal and misdemeanour legislation in gender-based and domestic violence published proposals for amending the relevant legislation and improving the system for combating gender-based violence (2023 Report, 2024). In this context, amendments to the Law on Protection from Domestic Violence, the Criminal Code, and the Criminal Procedure Act introduced stricter penalties for violent forms of behaviour and strengthened the victim protection system. Recent amendments to the Criminal Code (Official Gazette No. 36/24) introduced a new criminal offense, "aggravated murder of a female", in Art. 111.a, as gender-based murder with a prescribed maximum sentence of long-term imprisonment. The penalties for the crime of rape and a severe crime against sexual freedom have been increased. In Art. 87 of the Criminal Code a new Para. 32 was added, which defines "gender-based violence against women", analogous to the definition taken from the Istanbul Convention, which means "violence directed against a woman because she is a woman or that affects women disproportionately". Gender-based violence has become an aggravating circumstance in sentencing unless the Criminal Code prescribes explicitly a more severe punishment.

4. FEMICIDE AS A GENDER-BASED VIOLENCE AGAINST WOMEN

Femicide is a particular form of violence against women. The term itself derives from the Latin noun *femina* (eng. female) and the compound *homicidium* (eng. homicide) and is a relatively new concept in official documents and scientific literature (Corradi, 2021). The broader political context of this neologism was contributed by its use by Dianna Russell in 1976 during the proceedings at the first International Court for Crimes Against Women in Brussels (Weil, 2018; Machado, 2019; Schröttle et al., 2021). In the scientific discourse, the term femicide was introduced in the 1990s by Caputi and Russell's article, in which, for the first time, today's construction of femicide was used as the intentional killing of a woman by a man "motivated by hatred, contempt, pleasure or a sense of ownership of women" (Caputi & Russell, 1990, p. 34).

Although violence against women attracts international attention in the context of human rights violations and as a public health problem, femicide, as one of the extreme manifestations of violence against women, is still not given enough attention (Konstantinovic Vilic, 2013).

4.1. Intimate Partner Femicide

Intimate partner femicide is one of the modalities of femicide that represents the most extreme form of gender-based violence,[201] as the "final step in the process of

[201] Femicide is the gender-based killing of women and girls as a result of (1) intimate partner violence; (2) torture and misogynist slaying of women; (3) killing of women and girls in the name of "honour"; (4) targeted killing of women and girls in the context of armed conflict; (5) dowry-related killings of women; (6) killing women and girls because of their sexual orientation and gender identity; (7) killing of aboriginal and indigenous women and girls because of their gender; (8) female infanticide and gender-based sex selection feticide; (9) genital mutilation related deaths; (10) accusations of witchcraft and (11) other gender-based murders connected with gangs, organized crime, drug dealers, human trafficking and the proliferation of small arms (UNODC, 2012).

marginalisation, deprivation, isolation, starvation or abuse" (Corradi, 2021, p 11). The primary risk factor for femicide is previous (long-term) violence in intimate relationships (Moracco, Runyan & Butts, 1998; Borukgama & Hulathduwa, 2021), and the death risk for women increases up to nine times in situations of partner abandonment due to abuse (Campbell et al., 2003). Before the term "femicide" was coined, the killing of women by an intimate partner was usually described as a "crime of passion", where the emotional connection between the victim and the perpetrator implicitly suggested the victim's contribution and social acceptance (Carrigan & Dawson, 2020). Thus, in certain European countries, "crimes of passion" were an integral part of the criminal policy, sanctioned with significantly lighter sentences than was the case for "ordinary" murder. For example, in France until 1975, the provision of Art. 324 of the Criminal Code was in force, which considered the murder of a woman caught in adultery and killed by her husband as a privileged murder (Arnaud, 2021). In Italy, until 1981, Art. 587 of the Criminal Code regulated the honour killing of a woman as a privileged form of murder (Legge 5 Agosto 1981; Toledo Vasquez, 2017). An analogous provision existed in Art. 413 of the Belgian Criminal Code until 1997 (Sénat de Belgique, 1996). In Luxembourg, Art. 413 of the Criminal Code, which "absolves a spouse from responsibility for murder or beating of the other spouse and her accomplice when they are caught in the act of adultery", remained in force until 2003 (Grand Duchy of Luxembourg, 2004).

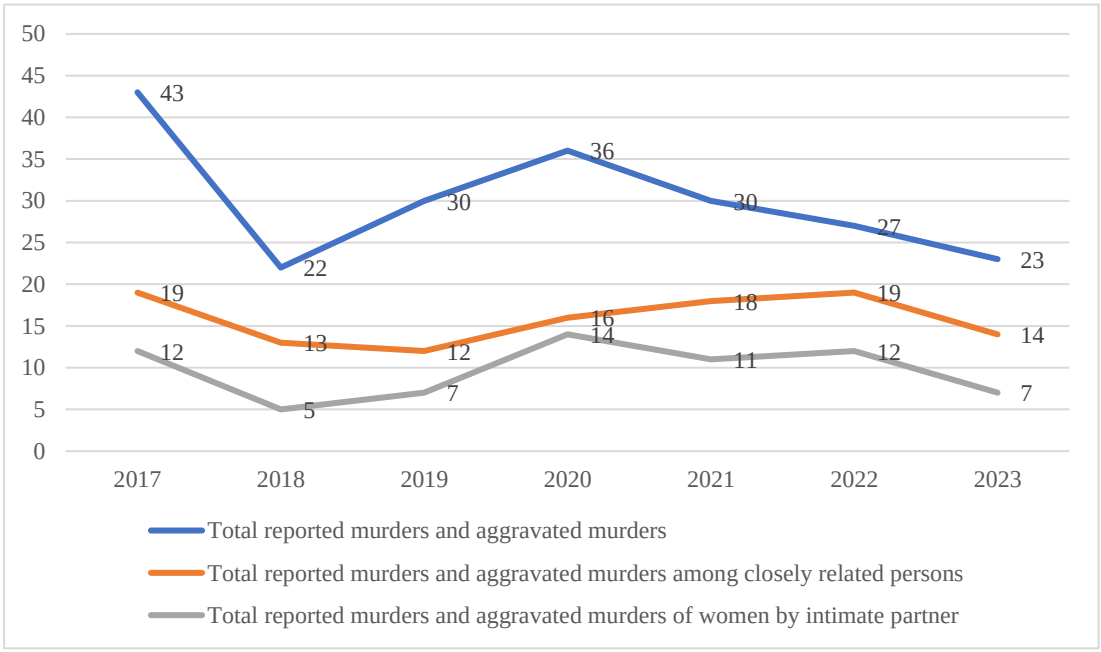
It is important to note that not every murder of a woman by an intimate partner is (intimate) femicide. An essential determinant of femicide is the gender component and the presence of violence against women as its immanent pertinence. In other words, intimate femicide is the culmination of gender-based violence against women that rests on unequal power relations and represents the ultimate act of continuum violence in its most extreme manifestation. All other cases of murders of women that are not gender-based do not represent femicide but murder or aggravated murder, depending on the modality of committing the crime.

4.2. Nomen est omen

Naming gender-based murders of women with the word femicide is the first step in understanding this problem. Awareness of femicide as the gender-based killing of women is a recent concept, and only some EU Member States recognize it in their laws. Malta is the first European country to place femicide under the umbrella of the Criminal Code on June 28, 2022. On July 7, 2022, Cyprus, on the other hand, incorporated the provision on femicide into the existing Law on the Prevention and Combating of Violence against Women and Domestic Violence and Related Matters. Four Spanish autonomous communities, Navarre, Canary Islands, Andalusia, and Castilla-La Mancha, have also included the definition of femicide in their regional Law on the Prevention and Protection of Women against Gender Violence. Belgium opted to pass a special comprehensive Act on femicide on July 13, 2023, the first of its kind in Europe. Finally, Croatia joined the circle of countries that recognize femicide as a gender-based murder of women in March 2024 by incorporating femicide under the umbrella of the Criminal Code, analogous to the Maltese approach.

5. CRIMINAL OFFENSES OF MURDER OF WOMEN BY INTIMATE PARTNER

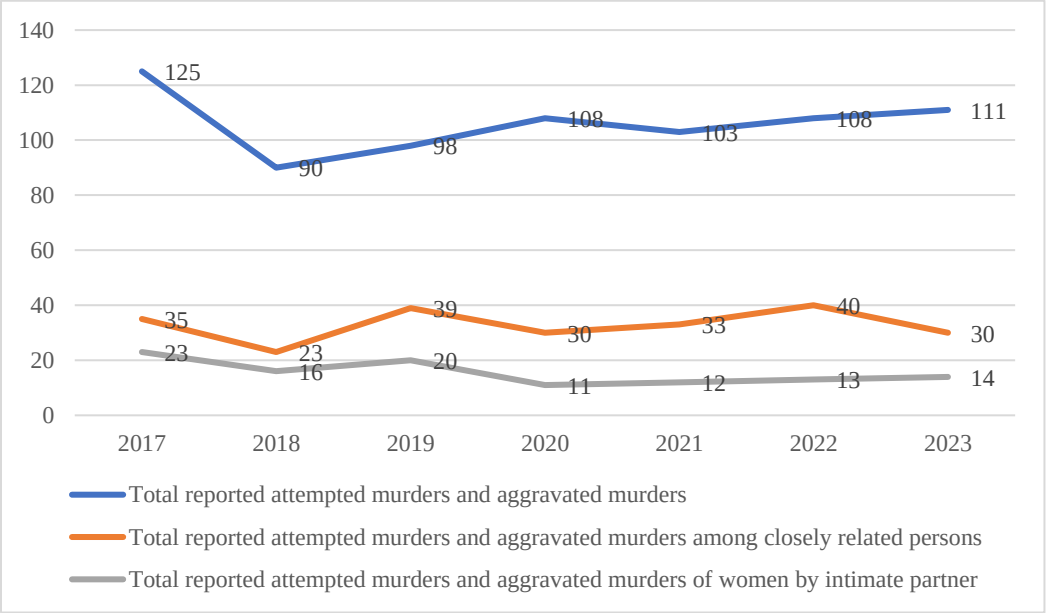
The paper used data from the Ministry of Interior of the Republic of Croatia on the number of reports of attempted and completed criminal offenses of murders (Art. 110 of the Criminal Code) and aggravated murders (Art.111 of the Criminal Code) committed among closely related persons in the period from 2017 to 2023. The year 2017 was taken



as the starting because statistical data for criminal offenses committed between closely related persons have only been kept since then. Considering that the crime of aggravated murder of a female person (Art. 111.a of the Criminal Code) was incorporated only in March 2024, there is no recent data for it, and it was not used in the relevant data analysis.

Graph 1. Number of reported murders and aggravated murders committed among closely related persons in the period 2017-2023. Source: Ministry of Internal Affairs, Statistical review of basic security indicators and work results from 2017 to 2023.

From the above graph, it is clear that the total number of reported murders (and aggravated murders) has been slightly decreasing since 2020. Despite the above, a relatively high percentage of murders, over 45%, committed among closely related persons is evident. Also, there is a noticeable trend of at least 50% of murders of women by intimate partners concerning the total number of women killed among closely related persons (except for 2018, when a slightly lower percentage was recorded) (2023 Report, 2024). The stated information is in accordance with the results of recent research, which confirms that murders are predominantly committed by a person who is well-known to the victim, especially as a result of intimate partner violence (Getoš Kalac, 2021). The year 2023 also records two cases of women murdered due to adultery, which cases could be classified under the so-called honour killings, where the closest family members knew about the men's violence, possessiveness, and jealousy but did nothing to prevent it.



Graph 2. Number of reported attempted murders and aggravated murders committed among closely related persons in the period 2017-2023. Source: Ministry of Internal y Affairs, Statistical review of basic security indicators and work results from 2017 to 2023.

Concerning the number of attempts, a slight increase was evident in the second half of the observed period. As anticipated, the number of attempted (aggravated) murders is much higher than the number of completed (aggravated) murders. Attempted murders among closely related persons average 30% of all reported cases of attempted murders. The attempted murder of women by an intimate partner concerning the total number of reported attempted murders between closely related persons is decreasing. However, there is still a high share of an average of 50% of attempted murders of women by intimate partners concerning the total number of attempted murders among closely related persons. Regarding both observed categories, both attempted and completed crimes of (aggravated) murders, it should keep in mind the dark figure of crime. Also, in the context of the presented data, it is not possible to draw conclusions about femicide since the available data do not contain a gender component.

6. INTRODUCING FEMICIDE IN THE CROATIAN CRIMINAL CODE

Given the undoubted presence of gender-based violence against women, committed mainly by an intimate partner, the desire to name, recognize, and record such criminal acts, as well as to adequately sanction their perpetrators, has become more and more expressive. Back in 2012, with the reform of the Criminal Code (Official Gazette No. 144/12), under the influence of the Istanbul Convention, a special modality of committing aggravated murder was incorporated into Art. 111, “killing of already abused closely

related persons", which, due to the connotation of previous violent behaviour, could be brought under the common denominator with femicide, but only in the context of intimate femicide. However, given the absence of a gender component as an essential determinant of femicide, such behaviour was not recognized as gender-based. For that reason, it was necessary to separate femicide into a particular category, different from other forms of murder.

Few debates have caused such antagonistic connotations in public discourse as the debate on the introduction of gender-based murder of women as a separate criminal offense in the Criminal Code. Croatia faced a "judicial rebellion" against the incorporation of femicide in the Criminal Code (Kovačević, 2023). Some judges of the Supreme Court's Criminal Law Department expressed their fear that the introduction of gender-based murder of women as a separate criminal offense would represent "potential discrimination against men" (Kovačević, 2023). The Croatian Bar Association emphasized that the punishment prescribed for femicide, as analogous to the punishment prescribed for the aggravated murder of already abused closely related persons, will not have a deterrent and preventive effect, which makes the incrimination of femicide itself questionable.

In January 2024, the Government sent the final proposal to the Parliament to amend the Criminal Code with a revised description of femicide as "gender-based murder of a female person" (Ožanić, 2024). Para. 2 of the Art. 111.a specifies the modalities of the commission, especially that "the crime was committed against a closely related persons, a person whom the perpetrator had previously abused, a vulnerable person, a person in a relationship of subordination or dependence, or the crime was committed in circumstances of sexual violence or because of a relationship that puts women in an unequal position, or there are other circumstances that indicate that it is gender-based violence".

In March 2024, the Croatian Parliament adopted amendments to the Criminal Code, which made femicide a separate, gender-based crime.[202] This is the result of social awareness of the presence of this phenomenon, i.e., the fact that gender-based violence disproportionately affects women. The only correct way to remove the veil of (apparent) neutrality of the provisions behind the gender-based murders of women was to abandon gender neutrality, in particular, making femicide visible.

7. CONCLUSION

The issue of gender-based violence directs the discourse toward breaking the vicious circle of stereotypical prejudices that contribute to inequality. Insisting on gender equality does not pretend to abolish biological differences but aims to achieve equal rights and opportunities for women and men in an (apparently) egalitarian society. The antagonism in public discourse triggered by the phrase gender identity, led by the fear of conservative activists that the imposed definition of gender undermines the traditional values, is only a reflection of the essential misunderstanding of gender-based violence against women. No scientific hermeneutics is needed to interpret the text of the Istanbul Convention, which irrefutably indicates that violence against women is a neuralgic point of modern society and unacceptable in the context of the realization of human rights. The Convention does not aim at destabilizing family values or traditional postulates of contemporary society but, on the contrary, represents a tool for suppressing the leading cause of the violation of home security and the destruction of the family, which is gender-

[202] Note: The Croatian legislator did not incorporate the term femicide under the umbrella of the Criminal Code, but the gender-based murder of women was named "Aggravated murder of a female". The author believes that, in this way, the effort to "make femicide visible" was partially achieved.

based violence. Gender equality is a crucial link that connects and brings to life the values on which the EU is based.

The Croatian legislator correctly recognized that understanding gender-based violence is a prerequisite for combating all forms of its manifestation, including femicide. The issue of gender-based killings of women is not a matter of discrimination but rather a deprivation of fundamental human rights in which men and women should be equal. Therefore, the ratification of the Istanbul Convention and its implementation through the provisions of national laws is a significant segment in achieving the declaratory goal that is striving for.

REFERENCES

1. Act on International and Temporary Protection, Official Gazette 70/15, 127/17, 33/23.
2. Act on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Official Gazette 3/2018.
3. Anti-discrimination Act, Official Gazette 85/08, 112/12.
4. Arnaud, Alice (2021). *Analyse des représentations du féminicide dans la population générale*, La Faculté de Psychologie, Logopédie et Sciences de l'Education, Université de Liége.
5. Borukgama, Nirmal & Hulathduwa, Sanjaya Ravindra (2021). Intimate Partner Violence Leading to Femicide: A Case Report, *Medico-Legal Journal of Sri Lanka*, *9*(2), 30-33.
6. Bosak, Martina & Munivrana Vajda, Maja (2019). The reality behind the Istanbul convention: Shattering conservative Delusions, *Women's Studies International Forum*, vol. 74, 77-83.
7. Burek, Wojciech (2020). Reservations and declarations under the Istanbul Convention. In Niemi, Johanna; Peroni, Loudes; Stoyanova, Vladislava (Eds.). International Law and Violence Against Women: Europe and Istanbul Convention, Routledge.
8. Campbell, Jacquelyn C.; Webster, Daniel; Koziol-McLain, Jane; Block, Carolyn; Campbell, Doris; Curry, Mary Ann; Gary, Faye; Glass, Nancy; McFarlane, Judith; Sachs, Carolyn; Sharps, Phyllis.; Ulrich, Yvonne; Wilt, Susan A.; Manganello, Jennifer; Xu, Xiao; Schollenberger, Janet; Frye, Victoria & Laughon, Kathryn (2003). Risk factors for femicide in abusive relationships: results from a multisite case control study, *American Journal of Public Health*, *93*(7), 1089–1097.
9. Caputi, Jane & Russell, Diana (1990). Femicide: Speaking the Unspeakable, *Ms.: The World of Women*, *1*(2), 34-37.
10. Carrigan, Michelle & Dawson, Myrna (2020). Problem representations of femicide/feminicide legislation in Latin America, *International Journal for Crime, Justice and Social Democracy*, *9*(2), 1-19.
11. COE 2002. Recommendation Rec 5 of the Committee of Ministers to member States on the protection of women against violence adopted on 30 April 2002 and Explanatory Memorandum.
12. Corradi, Consuelo (2021). *Femicide, its causes and recent trends: What do we know?*, European Parliament, Policy Department for External Relations.
13. Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 210, 2011.

14. Council of Europe (2011), Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 210.
15. Criminal Code, NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.
16. de La Baume, Maïa, How the Istanbul Convention became a symbol of Europe's cultural wars, Politico, April 12, 2021, at https://www.politico.eu/article/istanbul-convention-europe-violence-against-women/ (July 3, 2024).
17. Dimitrijević, Sandra; Janeš, Dunja & Miljuš, Matea (2016). Pravna regulativa obiteljskog nasilja i neosjetljivost institucija prema ženama žrtvama nasilja." Pravnik: časopis za pravna i društvena pitanja 50(100), 95-122.
18. EUR-Lex, EU accession to the Istanbul Convention, at https://eur-lex.europa.eu/EN/legal-content/summary/eu-accession-to-the-istanbul-convention.html (July 1, 2024).
19. Getoš Kalac Anna-Maria (2021). *Violence in the Balkans First findings from the Balkan Homicide Stud*y, Springer.
20. Gómez, José Luis Palacios (2020). Cuatro consideraciones socioestadísticas para revisar la etiología del feminicidio en España. *methaodos. revista de ciencias sociales*, 8(2), 176-194.
21. Grand Duchy of Luxembourg, *Implementation of the Beijing Platform for Action (1995) and the Outcome of the 23rd Special Session of the General Assembly (2000), Report of the Government of the Grand Duchy of Luxembourg*, April 2004, at https://www.un.org/womenwatch/daw/Review/responses/LUXEMBOURG-English.pdf (July 1, 2024).
22. Hermann, Katrin, The Istanbul Convention and the Rejection of European Values, *A Path for Europe*, March 8, 2021, at https://pathforeurope.eu/the-istanbul-convention-and-the-rejection-of-european-values/#:~:text=Opponents%20are%20usually%20supporters%20of,the%20moral%20foundations%20of%20nation (July 1, 2024).
23. Herrera, Veronica M., Koss, Mary P., Bailey, Jennifer, Yuan, Nicole P. & Lichter, Erika I. (2006). *Survivors of male violence: Research and training initiatives to facilitate recovery from depression and posttraumatic stress disorder*. In Worell, Judith & Goodheart, Carol D. (Eds.). Handbook of Girls' and Women's Psychological Health (pp. 455-466). New York, NY: Oxford University Press
24. Hina/B.K., Eurozastupnici odobrili pristupanje Istanbulskoj konvenciji. Neke članice EU neće je ratificirati, Nacional.hr, May 10, 2023, https://www.nacional.hr/eurozastupnici-odobrili-pristupanje-istanbulskoj-konvenciji-neke-clanice-eu-nece-je-ratificirati/ (July 3, 2024).
25. Hina/I.B. Istanbulska konvencija: Gdje je zapelo s ratifikacijom?, vijsti.hrt.hr, March 4. 2023., https://vijesti.hrt.hr/eu/istanbulska-konvencija-borba-protiv-nasilja-nad-zenama-10642965 (July 2, 2024).
26. Konstantinovic Vilic, Slobodanka. (2013). Femicide as Form of Gender-Based Violence. *Collection of Papers, Faculty of Law, 64*, 33-52.
27. Kovačević, Sanja, *Femicid za neznalice*, November 2, 2023, https://h-alter.org/ljudska-prava/femicid-za-neznalice/ (July 4, 2024).
28. Legge 5 agosto 1981, n. 442. (§ 69.3.1d), Abrogazione della rilevanza penale della causa d'onore, G.U. 10 agosto 1981, n. 218, at https://www.edizionieuropee.it/LAW/HTML/37/zn69_03_01d.html#:~:text=%2DLa%

20madre%20che%20cagiona%20la,da%20quattro%20a%20dodici%20anni. (July 2, 2024).
29. Machado, Lia Zanotta (2019). Féminicide: nommer pour exister. Brésil(s) *Sciences humaines et sociales*, *16*(1), https://doi.org/10.4000/bresils.5576
30. Ministry of Internal Affairs, *Statistical review of basic security indicators and work results* in 2017 - 2018, 2019, 2020, 2021, 2022 and 2023, Zagreb.
31. Moracco, Kathryn E.; Runyan, Carol W. & Butts, John D. (1998). Femicide in North Carolina, 1991-1993: A statewide study of patterns and precursors." *Homicide Studies*, *2*(4), 422-446.
32. National plan for gender equality for the period until 2027, Office for Gender Equality of the Government of the Republic of Croatia, Zagreb, March 2023.
33. Ožanić, Marta, *Izmjene Kaznenog zakona: Uvodi se kazneno djelo femicida*, Artkvart, 14. January 2024., https://artkvart.hr/izmjene-kaznenog-zakona-uvodi-se-kazneno-djelo-femicida/ (July 4, 2024).
34. Petković, Krešimir (2019). Analiza diskursa Istanbulske konvencije, *Anali Hrvatskog politološkog društva*, *16*(1), 119-154.
35. Platūkytė, Domantė Istanbul Convention is in line with Lithuanian constitution, court rules, lrt.It, March 14, 2024, https://www.lrt.lt/en/news-in-english/19/2222282/istanbul-convention-is-in-line-with-lithuanian-constitution-court-rules (July 2, 2024).
36. Reuters, Czech Senate fails to ratify European treaty on violence against women, Reuters, January 25, 2024, https://www.reuters.com/world/europe/czech-senate-fails-ratify-european-treaty-violence-against-women-2024-01-25/ (July 2, 2024).
37. RTVS, Istanbulský dohovor vstúpil do platnosti, Slovensko ho stále neratifikovalo, správy.rtvs.sk, October 1. 2023, https://spravy.rtvs.sk/2023/10/istanbulsky-dohovor-vstupil-do-platnosti-slovensko-ho-stale-neratifikovalo/ (July 2, 2024).
38. Russo, Nancy Felipe & Pirlott, Angela (2006). Gender-based violence: concepts, methods, and findings." *Annals of the new york academy of sciences*, *1087*(1) 178-205.
39. Schröttle, Monika; Arnis, Maria; Naudi, Marceline; Dimitrijevic, Lara; Farrugia, Martina; Galea, Emily; Shakou, Alexia; Kouta, Christiana; Rousou, Elena; Kofou, Elina; Pavlou, Susana; Iglesias, Camila; Magalhães Dias, Carolina; Pontedeira, Cátia; Magalhães, Maria José; Coimbra, Susana; Paust, Ivana; Pölzer, Lena; Marcuello Servós, Chaime; Boira Sarto, Santiago; Almaguer Kalixto, Patricia; Eito, Antonio & Olaciregui Rodríguez, Paz (2021). *Comparative report on femicide research and data in five countries (Cyprus, Germany, Malta, Portugal, Spain).* FEM-UnitED Project.
40. Sénat de Belgique, *Proposition de loi abrogeant l'article 413 du Code pénal* (Déposée par M. Coveliers), Document parlementaire n° 1-300/1, March 21. 1996., https://www.senate.be/www/?MIval=publications/viewPub.html&COLL=S&LEG=1&NR=300&VOLGNR=1&LANG=fr (July 1, 2024).
41. Šprem, Petra (2023). *Normativna i empirijska analiza obiteljskog nasilja u Hrvatskoj: kaznenopravni koncepti, kriminološki fenomeni, praktični izazovi i moguća rješenja*, Dissertation, University of Zagreb, Faculty of Law, Zagreb.
42. Toledo Vasquez, Patsili E. (2017). Criminalisation of femicide/feminicide in Latin American countries, *Rivista di Criminologia, Vittimologia e Sicurezza*, *11*(2), str. 43-60.
43. UNODC (2012). Symposium on Femicide: A Global Issue that Demands Action!, https://www.unodc.org/unodc/en/ngos/DCN5-Symposium-on-femicide-a-global-issue-that-demands-action.html (July 1, 2024).

44. Weil, Shalva (2018). *Research and prevention of femicide across Europe*, In Weil, Shalva; Corradi, Consuelo; Naudi, Marceline (Eds.), Femicide across Europe: Theory, research and prevention, Policy Press North America office, University of Bristol, 1-15.
45. WHO, Violence against women, March 25, 2024, https://www.who.int/news-room/fact-sheets/detail/violence-against-women (July 3, 2024).
46. Željko, Darija (2021). Procjena prvih deset godina konvencije vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i nasilja u obitelji, *Hrvatski ljetopis za kaznene znanosti i praksu*, 28(2), 381-404.
47. 2023 Report on the work of the Ombudsperson for Gender Equality (in Croatian), Zagreb, March 2024.

MILITARY SCIENCES

UDK: 355.358.014:[351.743:356.13.15(100)”20”
DOI: 10.20544/ICP.9.2.24.P21

ENGAGEMENT OF SPECIAL MILITARY UNITS IN HYBRID WARFARE

PhD. Goran Amidžić
Directorate for Coordination of Police Bodies of BiH
goran.amidzic@fbn.unibl.org
Duško Baškalo, M.A.
Faculty of Security Sciences, University of Banja Luka
dusko.baskalo@fbn.unibl.org
Milan Aščerić, M.A.
Military of Serbia
milan.nbg98@gmail.com

Abstract

In the history of mankind, there is no period of time without some kind of conflict (war, aggression, civil unrest, revolutions, state attacks...) somewhere in the world. What has characterized the 21st century so far is the emergence of new forms of conflict, in the form of hybrid warfare. Classical conventional symmetrical wars are rarely led today; their counterpart is the waging of a *hybrid war*, which is not yet a sufficiently defined term in theory, nor in security practice. The subject of research in this paper are precisely the key subjects of security that participate and carry out actions in hybrid wars, namely special military units, without which the conduct of a war is unimaginable and extremely uncertain. We will analyse certain conflicts on the territory of Syria, Israel, Azerbaijan, Ukraine and try to illustrate a new way of warfare and the role of special military units. Wars are no longer officially declared, but are continuously fought around the world. How modern wars are fought, with what means, with what units, what are the targets and goals, with what consequences for security, are the issues we will try to answer in this paper.

Keywords: *hybrid war, special military units, conflicts, security, war*

1. INTRODUCTION

The engagement of special military units in hybrid war is widespread, complex and ever present. There is not a single modern conflict in which special military units were not engaged as performers of the main actions. In a hybrid war, special military units change their classic purpose and perform different types of hybrid activities. The space in which they engage is not limited and can range from space, land, air, sea to all other spaces where there is a possibility of endangering national security. Special military units successfully complete all assigned tasks within the framework of the hybrid warfare (Ašćerić, 2023).

The main tasks of these units are extremely important for the state and are completely secret. Among other assigned activities, they are charged with securing the command posts and critical facilities, freeing the prisoners and the wounded. They also carry out significant operations as part of the hybrid war, such as: special tactical manoeuvres, night operations, air landings, combat in urban conditions and mountaineering actions (Bellet, 2020, p. 89-90).

In a hybrid war, these units are of vital importance due to their ability to quickly and efficiently react to the causes of threats to national security and to successfully eliminate them. The fight against terrorist groups is the focus of action during modern armed conflicts (Aleksandrić, 2018). Today, protection of national security is gaining supremacy among the security sectors, precisely because the processes of globalization and the desire for a new world order harm the vital national interests of those nations that are not global hegemonies (Mijalković, Mančević, 2018).

Special military units have both a preventive and a repressive role in protecting the national security of a state. Precision, efficiency and speed are the basic characteristics of the operations they perform. Special military units perform the role of prevention and initial suppression of violence, which leads to ending the conflict at the very beginning and preventing its further escalation and jeopardizing security (Milošević, 2018). The initial suppression of violence significantly affects the reduction of the possibility of an armed conflict because the initial activities prevent any possibility of further development of armed actions.

Coordination of activities with other military and non-military sectors is an important element in the framework of a hybrid war carried out by special military units. In this way, successful cooperation with other security forces is ensured, which leads to a more efficient and better realization of assigned missions. Successful cooperation leads to the exchange and collection of important information that can influence the further course of operations.

The wars of today have changed form, affected by the transformation of societal-social and economic-political circumstances of the 21st century, which has reflected on the state's defence systems. It is not without a reason that military strategies and tactics are reforming in a way to define a different engagement of forces (special units) in order to protect and achieve higher socio-national goals (Pejić, 2019).

Further in the text, the paper will deal with the engagement of special military units in the examples of the hybrid conflict between Hezbollah and Israel, the armed conflict in Syria, the armed conflict between Armenia and Azerbaijan, as well as the hybrid conflict between Russia and Ukraine.

2. HYBRID CONFLICT BETWEEN HEZBOLLAH AND ISRAEL IN 2006

The conflict between Israel and Hezbollah is a significant source of scholarly research in the military and security sciences. This conflict took place during 2006 on the territory of Lebanon and Israel (Saković, Terzić, 2018, p. 329). It represents the first armed conflict where activities pertaining to a hybrid warfare were used (Nikolić, 2017, p. 32). Specially trained Hezbollah units applied conventional military tactics, used rockets that hit densely populated civilian structures, but also resorted to media spinning, propaganda and misleading of the population... (Saković, Terzić, 2018, p. 329). The main objective of the Hezbollah forces was to expel Israel from southern Lebanon. The main focus of the action was achieving supremacy in the geostrategic sense as well as reducing the influence of the USA in this territory (Nsiah, 2016).

Hezbollah forces successfully used modern technology for military purposes, using mobile phones to send SMS messages to the civilian population and using social networks to spread misinformation among their own and Israeli populations (Nsiah, 2016). This conflict demonstrated a couple of specificities of the hybrid warfare and a direct change in the role of the special military units. Due to the changing of operations of the special military units within the Israeli armed forces, difficult conditions were created for

the execution of assigned tasks, which, in the midst of the direct conflicts on the battlefield, now had to fight against the spread of disinformation on social networks and the misleading of the population (Bellet, 2020, p. 95). The special military units of Israel have successfully carried out cyber-attacks by blocking the communication channels of Hezbollah forces, thereby hindering command and transmission of information. Through live broadcasts on social networks, Israeli forces monitored the activities of Hezbollah and gathered the necessary information for the further course of operations.

This method of data collection had a significant impact on decision-making and on commanding of subordinate units. Based on the received data, the special military units were able to successfully fight back against the Hezbollah forces. With this conflict, Hezbollah introduced the world to a new form of warfare. The use of modern technologies will constitute the basic model of armed struggle in the future. At any moment, Hezbollah was ready to sacrifice its population to achieve a higher goal. This information represents a moral readiness to achieve set goals without thinking about possible victims, as a feature of the modern hybrid conflict (Saković, Terzić, 2018, p. 329).

The equipment and capability of the Israeli army for unconventional conflict, in this case, can be characterized as a "weak point" that the Hezbollah forces used to their advantage in order to inflict losses on the opponent. The Israeli forces expected that the Hezbollah forces would mostly pursue a guerilla style of warfare, but on the ground, the situation was precisely the opposite. Hezbollah forces successfully applied modern technology in the fight against Israel. After this conflict, Israeli forces left southern Lebanon, while the UN took over with its units to secure the border and establish a "blue zone" between these two states. After the end of the conflict, Hezbollah developed a special strategy of carrying out operations, called "Muslim resistance". This strategy involved the use of fighters who were "civilians". Their engagement began in accordance with Hezbollah's needs (Bjerregaard, 2011, p. 52). The way Hezbollah forces attracted new fighters was mainly motivated by revenge against Israel through various forms of terrorist acts.

Forces within Hezbollah successfully carried out analytics activities that involved the collection and processing of data on the Israeli Armed Forces. The collected data were related to the number, equipment and training of the opponents. They studied the tactics of action and conclusions in previous conflicts and, based on that, made a decision on the best way to attack the opponent and on how to inflict the greatest losses on him (Johnson, 2010).

Hezbollah successfully used war cunning, in the sense that it has been caring out classic guerilla attacks for a long time and in this way deceived the military leadership of Israel, which has been preparing and training for this type of operations. At the same time, Hezbollah secretly prepared its forces for a hybrid conflict and so surprised the enemy. Among other things, Hezbollah successfully used the activities of Palestinian rebels on the territory of Israel, who continuously carried out attacks on their directive (Johnson, 2010).

Thanks to the effective deception, Hezbollah forces successfully used unconventional tactics through artillery and air strikes on enemy territory, inflicting extremely high losses and placing explosive devices along the border between Lebanon and Israel. During the land conflict, Israel's special military units encountered incredible resistance from the enemy, and at one point they were completely surrounded and unable to offer any response. These units easily entered the conflict thinking that the enemy was not capable enough to respond when, in reality, the situation was completely different. Hezbollah was the first Arab enemy that offered real resistance to the Israeli armed forces.

All the procedures and activities that Hezbollah applied at that time were new to the Israeli armed forces. They successfully used a combination of conventional and non-conventional means of warfare and fully waged a hybrid war (Bjerregaard, 2011).

One of the main reasons for the heavy losses of the Israeli armed forces was that the intelligence services did not have timely intelligence on the equipment, tactics and capabilities of the Hezbollah forces (Saković, Terzić, 2018, p. 330). The success achieved by Hezbollah would not have been possible without the prior help of Syria and Iran, who prepared Hezbollah for the fight, both materially and financially, as well as in terms of training the personnel (Bjerregaard, 2011).

What can be learned from this conflict is that non-military means of warfare play a significant role in modern armed conflicts. The morale of the units also significantly determines the winning side, as well as the intelligence operation, which collects all the necessary data about the capabilities and future actions of the opponent (Bellet, 2020, p. 95).

The conflict between Hezbollah and Israel itself is an excellent example from which conclusions can be drawn regarding hybrid warfare. In this conflict, Israeli forces suffered more losses than expected. Tank units were almost completely neglected or not used. One of the lessons learned from this conflict was that the Israeli forces switched to a zero-tolerance system of using forces and assets and did not choose objectives, targets and victims (Johnson, 2010, p. 7). The role of special military units changed significantly, because the forces had to perform different forms of operations, with an emphasis on operations that deviate from the classic activities they had performed until then. The focus of the action was supposed to be on intelligence preparation as well as on the application of modern technology for the purpose of conducting military operations.

3. HYBRID CONFLICT IN SYRIA IN 2011

The conflict in Syria is a security-interesting form of armed conflict in which the armed forces of the Russian Federation, the USA, the forces of the Syrian Army and the Islamic State were directly confronted (Saković, Terzić, 2018, p. 330). This form of conflict is an obvious reason for taking over a geostrategic position in the Middle East, with the exploitation of oil and other natural resources (Abbasi, Nasie, 2021, p. 183).

Before the beginning of the conflict, effective IT preparations were carried out. Social networks have played a significant role in raising tensions and intolerance between nations. For implementing these tasks, particular emphasis was placed on the special military units that successfully used cyber space to spread disinformation and manipulate the civilian population (Saković, Terzić, 2018, p. 330).

The Islamic State has also successfully used the social media and the other conventional media to intimidate the world public. Their aim was to achieve their goals by intimidation. Social networks served as a tool for radicalization and gathering as many fanatics as possible on the side of the Islamic State, who were ready to carry out all orders under the pretext of religion (Saković, Terzić, 2018, p. 330).

The conflict in Syria represents a direct clash between “the East” and “the West”, a conflict between the world’s largest powers. Russia primarily got involved in the conflict to represent and defend Bashar Al-Assad’s regime and intervened in the fight against terrorism, i.e. “ISIS” by locating and neutralizing terrorist operatives and their infrastructure and logistical bases. Russia used private armed forces, i.e. mercenaries, as the backbone of the forces in the conflict itself. Russian forces involved in the conflict provided training and advisory support, but also participated in the combat directly, side by

side with the Syrian forces. The Russian government planned the formation of an economic corridor in which oil and other riches of Syria would be extracted and sent to Russia and from there to Europe, so Russia would achieve significant economic supremacy in the world order (Abbasi, Nasie, 2021, p. 185). Russia mostly aspired to assume a better geostrategic position and ensure the economic development of the country through the exploitation of natural resources. Special military units strove to preserve Russian military facilities (aircraft and naval bases) as well as Russia's interests and goals in Syria.

Russia successfully continued cooperation with countries in the region such as: Turkey, Saudi Arabia, Egypt and Iran. The main tactic that Russian forces applied in this conflict was to avoid direct conflict and successfully affect the enemy's morale and ability to counterattack (Sukhankin, Mercenaries, 2019, p. 10).

The main goal of the conflict in Syria was to push the US out of the Middle East, preventing its economic power and influence from spreading. Russia also sought to weaken and eliminate NATO's power and control over the former republics of the Soviet Union and the countries of the Middle East (Nawaz, Nasir, 2021, p. 186).

It was the special military units that carried out all the operations in Syria and achieved the set goals through covert action and activities. In this conflict, Russian special military units established direct cooperation with Hezbollah and the Iranian police during their operations. Over a hundred Russian special forces were killed in direct conflict with the US forces. This event led to an increase in tensions between the opposing forces and the opening of opportunities for the development of new conflicts. US special forces have provided direct military support to Syrian rebels through training, equipment, and direct liberation of ISIS-held territory. In this conflict, the real military unit "Wagner", which was in charge of a number of activities and operations, also proved successful. Special military units successfully engaged in cyber operations in which they carried out campaigns against the USA and collected the necessary data on persons of security interest. Also, special military units carried out a series of electronic attacks on vital infrastructure facilities. This conflict saw the use of various weapons systems, military equipment, as well as modern technologies with which special military units were equipped (Abbasi, Nasie, 2021, p. 188).

On the basis of this conflict, the Russian government successfully created doctrines and strategies concerning national security, thus ensuring and preparing itself. Procedures and activities were defined during the performance of similar operations (Abbasi, Nasie, 2021, p. 189).

About 500 members of the special units from Chechnya were put in charge of combat operations of the Russian Federation. All Chechen fighters were war veterans who had 10 to 20 years of war experience. In addition to carrying out combat operations, their main task was the security of certain areas and directions, the physical securing of logistical support, as well as the special training of members of the Syrian armed forces (Sukhankin, Mercenaries, 2019).

During this conflict, a new form of war was fully revealed, as well as the possibility of using modern technology for military purposes. The Armed Forces of the Russian Federation have demonstrated their modernization of weapons and technical equipment. Cruise missiles, new fighter planes and helicopters were successfully deployed, as were, in particular, the special military units, which got involved directly on the ground and with the help of drones scouted the enemy's combat layouts and carried out target marking for the effect of artillery and aviation. Also, radio devices for interception and electronic effects were successfully applied, so the activities of the enemy and their future

moves were known in advance, so that the use of their own forces was organized around this intelligence. Russia emerged from this conflict as a new superpower that has demonstrated its capabilities and readiness to conduct a modern armed conflict (Aleksandrić, 2018, p. 10).

In the example of this hybrid conflict, the change of the ways in which wars are waged could be fully observed, as could the role of the special military units, whose purpose also shifts to mirror the changes in war fighting. Special military units should be completely capable of resolving crisis situations, as well as of conducting cyber conflicts, in order to properly respond to the endangered security in hybrid warfare (Marsh, 2019, p. 326).

The reason why Russia intervened in this armed conflict can be seen as an excellent training and rehearsal for Russian military techniques, and acquisition of experience for Russian commanders and units to engage in combat. Before this operation, Russia had practically no experience in deploying and using forces in territories it does not border. Over 90% of the units or their parts were used so that everyone could gain as much experience as possible (Marsh, 2019, p. 327). Also, the conflict was used for testing new military technologies such as drones, radar systems and anti-aircraft systems. Most of the equipment was of Russian and Turkish origin (Szénási, 2020, p. 14).

4. HYBRID CONFLICT BETWEEN ARMENIA AND AZERBAIJAN IN 2020

The conflict in Nagorno-Karabakh is a decades-old problem between Armenia and Azerbaijan. The armed conflict on this territory was fought several times, but the last one in 2020 brought the biggest changes and consequences. The territory where the conflict took place is the internationally unrecognized Nagorno-Karabakh Republic, where 99% of the population is Armenian, while the same territory officially belongs to Azerbaijan. The conflict lasted 44 days and resulted in extremely high casualties and losses on both sides.

The forces of Azerbaijan initiated the beginning of combat operations with a direct offensive on the territory of Nagorno-Karabakh. The main objective of the actions of the Azerbaijani forces was to cut the line of contact between the Republic of Armenia and the Republic of Nagorno-Karabakh. Special military units carried out the focus of operations on the occupied territory with the main aim of using: drones, artillery, cyber warfare, media spin and propaganda. This conflict saw the initial use of drones for military purposes. Before then, drones were never used to such an extent as a means of scouting, inflicting losses on the enemy, and for other significant combat actions. All resources that were applied in this conflict can be directly compared to the characteristics of a hybrid war because they display the same features. Information spread extremely quickly on social networks and in the media in the first hours of the conflict. The spinning of the reality was mostly reflected in the publication of false information about the occupation of the territory, in order to influence the decline of the enemy's moral. The special military units of Azerbaijan applied the cyber warfare techniques with overwhelming success.

Azerbaijan's forces received direct military, economic and moral support from Turkey and Syria. In the conflict itself, the techniques of primarily unmanned aerial vehicle, long-range missiles, modern armoured vehicles produced in Turkey, as well as a significant number of mercenaries from Syria who participated in combat operations on the side of Azerbaijan, were directly used. Based on the above data, the characteristics of a hybrid conflict can be directly observed, in the form of support from other parties and the engagement of a large number of mercenaries in the conflict. Special military units encounter great resistance and difficulties in fighting with mercenaries as they are not

members of the regular armed forces, rather, people who fight for money. This leads to the conclusion that mercenaries will not comply with military conventions and rules (Lazić, 2021).

While Azerbaijan's forces received direct support from Turkey and Syria, Armenia's forces expected support from Russia and the CSTO as members of the same pact. Help and support did not arrive because the territorial integrity of Armenia was not directly threatened, but an entity that is not internationally recognized and de facto belongs to the territory of Azerbaijan. The response of Russia and the CSTO was that they would intervene if Armenia's sovereignty was officially threatened. On the other hand, Russia had friendly relations with Azerbaijan and it was extremely difficult to make a decision which side to support (Szénási, 2020).

In the course of the combat operations, the forces of Azerbaijan achieved great success both because of the good training and the technical equipment of their forces. In order to possibly mitigate the successful actions of the enemy, the forces of Armenia tended to publish partially inaccurate data on the number of enemy soldiers killed as well as on destroyed or captured equipment. Such measures were intended to mitigate the consequences of the enemy's advance and achieve a positive impact on their own forces. Presenting videos on social networks and in the media had a significant impact on the course of action and on deciding the winner in the conflict. At the beginning of the combat operations, it was assumed that the forces of Armenia would provide adequate resistance to the forces of Azerbaijan due to the possibility of grouping forces on a smaller territory, while the forces of Azerbaijan were quite spread out and time was needed for their grouping and response. In this way, the forces of Armenia tried to compensate for the supremacy of Azerbaijan.

Insufficient equipment, training and technical preparation for the conflict cost the Armenian forces a lot. Before the beginning of the conflict, not enough attention was paid to equipping the units with modern technical systems and equipment necessary for the fight. Also, the lack of training and the neglect of modern tactics for special military units was one of the key reasons for losing the conflict. Operational planning as well as unit command was at a low level. Lack of combat experience, failure to implement major innovations in the military doctrine, adaptation to changes on the ground, financial constraints and the desire to repel the attacks were key factors (Amirkhanyan, 2022).

The area where combat operations were carried out is mostly mountainous and inaccessible. The ability of the armoured units to pass through was minimal due to the configuration of the terrain. The area in which these units could move was reduced or was immutable in the sense that it was not possible to change the direction of movement and that the movement routes of the units were always the same, which led to the possibility of predicting which way the opponent will move. Based on these conclusions, the special military units of Azerbaijan successfully used their technology, primarily unmanned aerial vehicle, to destroy the opponent's machinery. Armoured units went from fast and agile fighters to easy targets for destruction. All actions by drones were extremely successful and inflicted great losses on the enemy. The thinned vegetation and forest cover was also a characteristic of the area where combat operations were carried out. The process of masking units was extremely difficult and inefficient. The special military units of Azerbaijan successfully used modern technologies to detect the enemy's camouflaged targets and with the help of guided drones inflicted great losses on the enemy (Bivianis, 2022).

In the course of combat operations, there were no significant changes in activities on the ground, as in conflicts before, rather, efforts were made to apply the strategy of attrition so that the issue of the winner of the conflict was decided on the basis of the number of soldiers ready to fight, logistical support and equipment containing modern technology. The forces of Azerbaijan showed an extremely large superiority over the forces of Armenia. The lack of combat aircraft and air defence systems of the armed forces of Armenia proved to be one of the leading reasons for combat losses. The systems were slow to detect the aircraft and reacted untimely to threats to the safety of the airspace (Popescu, 2021).

The successful use of drones by Azerbaijani forces was a new tactical discovery that had not been used before. These changes directly affected the change in the strategy of the ground forces, which were threatened by the action of the drones. In response to all these changes, it is necessary to additionally train the special military units in order to prevent such activities. It is also necessary to additionally invest in modern technology and to work harder on changing the military strategy and doctrine (Amirkhanyan, 2022).

5. HYBRID CONFLICT BETWEEN RUSSIA AND UKRAINE OF 2022

The Russian-Ukrainian conflict began on 24 February 2022, which was the culmination of several years of "quiet" intolerance between the two countries, especially after the "Euromaidan" in 2013 and the "Maidan Revolution" in 2014. After the beginning of the "special military operation", as Russian President Vladimir Putin coded it, the world entered a phase of dynamic international transformation from unipolarism to multipolarism, with a tendency to bring other countries of the world into conflict. Even before the beginning of the conflict, a "bloc" division was clearly visible concerning the Russian-Ukrainian relations, especially when it came to support for one or the other side (Stefanović-Štambuk, Popović, 2023). Undoubtedly, geopolitical reasons can be discerned in this division, which have continued for several decades and concern not only Ukraine, but the entire post-Soviet area (Glishin, 2023).

Russian Federation launched a special military operation because of several reasons. The difficult position of the Russian population on the territory of Ukraine, but also the possibility of NATO forces to get closer to the Russian border, which could threaten the security of the Russian Federation in the future. The conflict on the territory of Ukraine has opened numerous issues related to regional and global security, and its implications for the international order and power relations between key political and security reasons (Tučić, 2023).

From the very beginning of the conflict, we could see on both sides the use of land, sea and air forces, the use of various missile systems, modern tanks and aircraft, but also the use of artificial intelligence, which in certain segments was reflected in the change in the ways of warfare and the tactical preparation of operations (Miljković, Marjanović, 2023). The geopolitical significance of the Russian-Ukrainian conflict transcends regional borders, which is why it is inevitable to talk about it as a conflict of a global scale. The direct and/or indirect involvement of numerous countries of the world in this conflict, especially in the form of military-technical, technological, and economic involvement, confirms the above (Ćorić, Glišin, 2023).

The conflict in Ukraine is currently an actual conflict in which information and disinformation spread in a matter of seconds and are successfully transmitted among the population of the whole world. The position of the West and NATO forces is completely clear regarding the choice of sides and support in the moral, economic and military sense.

The role of special military units in this conflict has gained importance. To their classic activities of reconnaissance, subversion, diversion, elimination of enemy generals, destruction of significant infrastructure facilities, destruction of telecommunication hubs, were added special forms of engaging the units, such as cyber, psychological warfare, use of modern technology, primarily drones, which significantly affect the course of operations (Ašćerić, 2023).

In the conflict between Russia and Ukraine so far, it was possible to see the application of "guerrilla politics", which includes the use of false information, propaganda, deception and the operation of intelligence services. The role of non-military means has exceeded the military means and has become a decisive factor in modern conflicts. The Russian Federation has fully begun to invest and reform its special military units "Spetsnaz" in order to successfully counter all challenges and risks to the country's security (McGlinchey, Karakoulaki, Oprisko, 2015, p. 156-157).

Thanks to the social networks, special military units are able to draw conclusions about the position of the public opinion regarding the support for their own forces. This information was collected on the basis of various surveys, published statuses, organized gatherings. Among other things, the Russian forces actively began to apply the use of paramilitary units and mercenaries. They successfully applied the guise of volunteers in which a large portion of the armed forces was involved. This model was used as an excuse for the reduced use of the armed forces, and they minimized the importance of combat operations, while fully completing their tasks and achieving their goals (McGlinchey, Karakoulaki, Oprisko, 2015, p. 158-159).

A characteristic thing that can be seen in this special operation is the large participation of paramilitary units led by the "Wagner" group. In this paramilitary unit, two-thirds of its members are non-Russian citizens. This information reveals how great Russia's influence is outside its borders and, based on the national affiliation of the members of this group, we can see that Russia has strategic interests in those countries. The majority of non-Russian members in this group are Serbian citizens, followed by other Eastern Slavs, and finally Muslims and other non-Russian peoples (Sukhankin, Mercenaries, 2019).

The heads of the "Wagner" organization arranged for an excellent technical protection of their members through confiscation of mobile phones and prohibition of the use of social networks as a form of preventive measures to prevent the disclosure of information. As a reaction to this activity, the Russian government has significantly tightened the sanctions for members of the Ministry of Defence who use social networks and share information about their unit's activities (Sukhankin, Mercenaries, 2019).

In order to support Ukraine, the Western powers began to impose economic sanctions on Russia. As a consequence of these sanctions, Russia is turning to eastern countries, China and India, which are now becoming primary economic partners. Also, the "West" prevented any trade in weapons and energy products, which significantly affected Russia's economic position. Once the sanctions were introduced, the "West" noticed that all countries are largely dependent on energy sources from Russia and that changing the importer of funds will cost a lot more (Aleksandrić, 2018).

In order to have a more reliable and safer look at the situation of the conflict between Russia and Ukraine, it is necessary to go back to the conflict in 2014. Even then, cyber operations had a significant place in the conduct of conflicts. Their main goal was to mobilize the population and spread propaganda. The US and the EU accused Russia of waging a hybrid war against Ukraine and labelled Russia as the main threat to the national

security of all countries. Through the successful application of cyber warfare, Russia managed to spread misinformation among the Ukrainian population and create distrust in the government, which led to the desire to separate Crimea from Ukraine and annex it to Russia. Special military units have successfully managed to influence the moral of the Ukrainian armed forces with their activities and to use social networks to show the disorganization and desertion of Ukrainian soldiers (Aleksandrić, 2018).

In this conflict, Russia relies directly on the possibilities and capabilities of hybrid warfare as a tool to achieve its goals. The hybrid war for Russia is an important instrument of security and foreign policy, with which it will achieve the following goals: rebuilding Russia and raising the state to the highest level, achieving a significant geostrategic position in Eurasia, and the third most important item is the development of the "Russian world", i.e. a harsh policy against the West and any of their initiatives (Palmer, 2015, p. 3-4).

6. CONCLUSION

Hybrid warfare represents a modern form of global security threat, which can in a short period of time threaten any, even the most stable modern state. Today it is simply impossible to draw a clear line between peace and war, looking from the aspect of hybrid warfare, which is carried out through different forms and customs. Today wars are not announced, frontal battles are rarely fought, the enemy is invisible, and the consequences can be much greater and more dangerous in comparison to a classic war.

Due to this new form of warfare, special military units assume supremacy in the defence of national security. In just a few months, this global security threat turns an orderly, stable and prosperous state into a collapsed territory, whose population is in chaos and hopelessness. These units have a primary role in hybrid warfare, performing special psychological operations, intelligence and propaganda activities, cyber-attacks, using artificial intelligence, drones and other advanced technological achievements. Military conflicts today are more creative, innovative and dynamic, and strategic goals are achieved even without contact with the enemy, using new high-tech weapons with incredible range and enormous destructive power.

The paper analyses several hybrid conflicts that have been or are still being fought, as well as the role of special military units in these conflicts. It can be clearly concluded that the achievement of war and strategic goals is not possible without special military units and the application of new ways of warfare. It can be concluded that all future wars and conflicts will be fought with the use of drones, unmanned aerial vehicles, robotic soldiers and vehicles, and adequately equipped special military units will play a key role. Without well-trained, prepared and equipped special military units, the state will not be able to ensure the necessary level of security for its citizens. Gone are the days when quantity played a decisive role in conflicts; the time has come for quality, modernization, training and use of technological achievements for waging conflicts in all fields and in various modes.

REFERENCES

1. Abbasi, N. S., Nasir, S. (2021). *Hybrid Warfare: A Reorientation of Russian Foreign Policy in Syria,* Islamabad.
2. Amirkhanyan, Z. (2022). *A Failure to Innovate: The Second Nagorno-Karabakh War*. The US Army War College.
3. Александрић, Р. (2018). *Историјско компаративна анализа настанка и експлоатације доктрине хибридног ратовања у ОС Руске Федерације.* Управа за обуку и доктрину ГШ ВС.
4. Ашћерић, М. (2023). *Улога специјалних војних јединица у хибридном ратвању.* Криминалистичко полицијски универзитет у Београду- мастер рад
5. Bellet, M. A. (2020). El impacto de la guerra híbrida sobre las operaciones militares en el nivel táctico. *Tema De Investigación Central De La Academia*, 81 - 118. Retrieved from ttps://publicacionesacague.cl/index.php/tica/article/view/145
6. Bivianis, A. (2022). Multi-dimensional assessment of the Second Nagorno-Karabakh War, *Security and Defence Quarterly.* 38 (2), 51-61.
7. Bjerregaard, T. (2011). *Hybrid warfare: a military revolution or revolution in military affairs?,swedish armed forces, B.M.S.* Swedish National Defence College Stockholm, Sweden.
8. Ћорић, М., Глишин, В. (2023). Употреба вештачке интелигенције у Руско-украјинском рату, *The Policy of National Security*, 25 (2), 59-76.
9. Глишин, В. (2023*). „Украјина као геополитички стожер у атлантистичкој визури освајања Евроазије".* У: Перспективе политичких наука у савременом друштву (пр. Андреа Матијевић и Ненад Спасојевић), *Институт за политичке студије*, Београд, 207-224.
10. Johnson, E. D. (2010). *Military Capabilities for Hybrid War Insights from the Israel Defense Forces in Lebanon and Gaza,* USA.
11. Lazić, J. A. (2021). The second armed conflict in nagorno-karabakh – causes and implications. *Convergence and Confrontation: The Balkans and the Middle East in the 21st Century*, 211-240.
12. Marsh, C. (2019). Russian risk,hybrid warfare, and the gray zone. *Risk: SOF Case Studies, Bernd Horn,* ed. Kingston, ON: Canadian Special Operations Forces Command.
13. McGlinchey, S., Karakoulaki, M., Oprisko, R. (2015). Ukraine and Russia: People, Politics,Propaganda and Perspectives, *E-international Relations,* 156-157.
14. Мијалковић, С., Манчевић, П. М. (2018). *Национална безбедност.* КПУ-Београд.
15. Милошевић, М. Д. (2018). Појмовно одређење феномена хибридног ратовања, *Војно дело,* 70 (3), 300-316.
16. Миљковић, М., Марјановић. З. (2023). „Мере стратешког одвраћања Руске Федерације: терминологија, дефиниције и неки аспекти примене у сукобу у Украјини 2022. године", *Војно дело*, 75 (1), 32-45.
17. Nsiah, K. L. (2016). *Strategic Leadership on Israel Lebanon War.*
18. Николић, Н. (2017). Стратегијска раскршћа и хибридни рат- нови феномен или ново име за старе приступе конфликтима. Министарство одбране Републике Србије- Институт за стратегијска истраживања, *Војно дело,* 69 (8), 31-38. 17.
19. Palmer, R. A. D. (2015). *Back to the future?: Russia's hybrid warfare, revolutions in military affairs, and Cold War comparisons,* NATO Defense College.

20. Popescu, C. Alba-Iulia,. (2021). *Remarks on the fifth-generation warfare and the second Nagormo-Karabah war*, Buletinal UNAP.
21. Пејић, И. (2019). Руске војне хибридне операције у Украјини: прилогађавање стратегије и тактике савременој структури рата, *Међународни проблеми,* (4), 423-446.
22. Stefanović-Štambuk, J., Popović. S. S., (2023). "'A Thousand Miles' and 'A Thousand Tasks': China's Diplomatization of Multifaceted Russia-Ukraine Conflict and Global Security", *The Policy of National Security,* 23 (2): 7-31. 23.
23. Sukhankin, S., Mercenaries, F. (2019). Irregulars and 'Volunteers': Non-Russians in Russia's Wars, 1-9.
24. Szénási, E. (2020). *The Renewal of the Armenian- Azerbaijani Military Conflict – an Initial Analysis After the First Month of the Nagorno-Karabakh War*.
25. Саковић, Р. Терзић, Р. М. (2018), Употреба друштвених мрежа у хибридном ратовању, *Војно дело*, 70 (7), 318-334. 26.
26. Тучић, Б. (2023). Сукоб у Украјини и потреба за редефинисањем Европске безбједносне архитектуре. *Зборника радова „Савремени изазови и пријетње безбједности", Факултет безбједносних наука УНИБЛ*. 13-29.