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TOWARDS A BETTER FUTURE
DEMOCRACY, EU INTEGRATION AND CRIMINAL JUSTICE

Volume I

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UNIVERSITY "ST. KLIMENT OHRIDSKI" – BITOLA,
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Editors
Prof. Dr.sc Goran Ilik
Ass. Prof. Dr.sc Angelina Stanojoska

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PREFACE

As Dean of the Faculty of Law – Kicevo, I must emphasize that it is a special honor and pleasure that came to the realization of the idea of organizing a second international scientific conference by our faculty, as an opportunity for our affirmation in the international arena, for establishing contacts with our colleagues from home and abroad, contacts with various higher education and research institutions, as well as making a serious contribution to the scientific thought both in the Republic of North Macedonia and in wider context. This is also reflected by the high interest shown both by home and foreign authors and participants, who applied for participation in our conference, as evidenced by the accepted and published articles in this book.

The choice of the main topic for our second international scientific conference was made carefully, thereby taking into account all internal and international developments in the legal and socio - political processes, by precisely locating the basic postulates for the efficient, fair and democratic constitution and functioning of the modern democratic legal and political systems. Hence, democracy, EU integration and criminal justice were the main operative postulates.

Democracy itself, today dominantly established as representative is all-entailing and layered, subsequently, its scientific legal or political treatment might refer to numerous aspects. Most commonly accepted criterion for functional democracy is the existence of real elections - the type of the elections, the realistic representation of the interests of the societal segments and interest groups. Democracy, protection and advancement of human rights, citizens' participation, peace, good governance and institution building are part of the essential values of the European Union which represent significant portion of the motive of EU member states and of the neighboring countries to belong to the context of this political and legal entity, the most advanced worldwide in terms of promoting and practicing of these axiological concepts. Still, EU and the process of European integration is complex and as every complex economic, political and legal system, it faces substantial challenges in every area, as well.

The EU challenges are also reflected in the area of security as common European motive, in compliment to new trends, migrant currents and the policies and regulative which must be in accordance with said circumstances, then, terrorism, financial and electronic criminal, trading with people etc., all the while the classic challenges are not negligible. The foreign policy is also of great importance for the EU, as means of the EU to position itself in the international community as an important factor, simultaneously affecting internal welfare and prosperity. EU foreign policy is remarkably complex and interconnected with

numerous areas, including relations with both strong partners and opponents, relations with the neighbors, creation of EU's own military force, foreign trade policy and representation in the international organizations.

From another aspect, the need of integration and improvement of national legal systems surfaces in the area of repressing criminal actions. Criminality constantly changes its form, according to the social and political circumstances in each state and specific regions, while the criminal law is generally characterized by its mitigation, turning towards alternative penal measures and by changing the focus from retributive justice and repression towards restorative justice and prevention. Yet, certain severe criminal acts, especially the ones concerning life and physical integrity of the person, simultaneously surpassing state borders and contain complexity in the forethought and organization, deserve due attention of criminology and contemporary legal systems for the purpose of securing peace, protection and security of the citizens.

The system of criminal justice represents a complex network of institutional and governmental bodies which aim is not only identification of criminals, but it is also providing adequate sanction aimed towards their re-socialization and recovery in the community as constructive individuals. The criminal justice is tightly connected to the realization of human rights and freedoms, therefore related to the concepts of rule of law and democracy, which, as mentioned, are focal axiological points of the EU. The dichotomy of security on one hand and human freedom, on the other, are centuries-old dilemma and ever spark reevaluation of the right ratio between these two notions.

Finally, I must express my deep gratitude to the most involved team members, who worked tirelessly in the direction of successful organization and realization of our second international scientific conference, to the management of University "St. Kliment Ohridski" – Bitola for their proactive support, to our academic partners for their trust, to the colleagues from our faculty who unselfishly supported this project, and all those well-wishers who understood the significance of this project both as an advantage for our faculty and as an investment in the global scientific thought.

Let this conference be the continuing of the path that we started to trace together with a single purpose –

Towards a better future!

Dean of the Faculty of Law – Kicevo
Prof. Dr.sc Goran Ilik
Bitola, 2019

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PUNISHMENT AND CRIME: RESULTS ABOUT PENAL POLICY IN GERMANY

Helmut Kury, PhD

INTRODUCTION

In the last decades' crime policy in Germany like in other countries changed, especially on the background of changes in society. While after the Second World War from the 1950s onward the political and economic situation in Germany was after the disaster of the war better and better, resulting in the so called "Economic Wonder" ("Wirtschaftswunder"), the contacts in the population were more intensive, meanwhile the economic situation is much better but the difference between very rich and poor people increased, the contacts decreased on the background of more mobility and concentration on communication with internet. People very often feel more "individualized", separated, with less contacts, alone, also with the effect of more feelings of insecurity. Pratt et al. (2005, p. XXI) emphasize the background of the new punitiveness can be seen in "the social changes that have radically reshaped the cultural, political, and economic landscapes of Western societies from the 1970s onwards". Another reason for the increasing punitiveness in the USA can be seen in the "rapid growth and expansion of the penal industrial complex and in particular the private security industries to whom the state increasingly delegates the grim business of control" (Pratt et al. 2005, p. XXIIf.). The media play a more important role like in other western countries, especially the "sensational reporting of crime by the mass media" (Pratt et al. 2005, p. XXIV; Reiner 2002). They inform the people about crime and security more or less on the background of individual economic interests to be sold or seen, so the information might not be very valid. The last years the high immigration rate of refugees and migrants in Germany, especially from Northern Africa, and the critical discussion about this topic in the society also increased feelings of insecurity.

These developments have also an effect on penal policy in the country (Schlepper 2014). Right wing parties, like the AfD ("Alternative für Deutschland") in Germany and similar political groups in other European countries have often as most important topic in their political agenda: close the border and bring the immigrants back to their home countries. On the background of the ongoing discussion about "increasing" crime rates, fear of crime or how to establish a safer country, this chapter will present data about the development of punitiveness in Germany, the fear of crime and the topic of refugees and immigrants, including results from nationwide surveys. The topic what has it to do with the development of penal policy in the country will be discussed.

THE DEVELOPMENT OF PUNITIVENESS IN GERMANY

The last years there is in criminology in Germany the discussion about the topic if punitiveness in the country is increasing and if yes, on which background (see Kury and Shea 2011; Kury and Obergfell-Fuchs 2006). An important topic in this context is how punitiveness is defined and especially measured in surveys (Singelnstein and Habermann 2019). There is a strong influence of the survey methodology, like the formulation of questions, on the results (Kury 1995; see also Kreuter 2002).

On the background of incarceration in a long run the punitiveness in Germany is decreasing. Kaiser (1996, p. 985) shows in a historical perspective of the evolution of punishment in Germany that in 1882 on the territory of the German Empire 76,8 % of all sanctions were prison sentences, all of them unconditionally enforced. By the end of the last century this rate had declined to approximately 5 %, today it is round about 6 to 7 % (Heinz 2011). This means that there has been an overall marked reduction of custodial sentences, particularly in favour of fines, with little effect on violent crime rates (see also Kury and Shea 2011, p. 10f.; Heinz 2011, p. 148).

Heinz (2011, p. 174) summarizes his analyses: "No evidence exists to show that relatively more individuals have been convicted or sanctioned. The relation of convictions per 100 police-recorded suspects remained mostly unchanged; indeed, a decrease rather than an increase was seen". But the same time he finds out (2011, p. 175): "What has however been witnessed is a shift in the severity of both monetary fines (higher daily units) and sentence lengths (more custodial sanctions of more than two years)". Based on his data the author comes to the conclusion (pp. 176f.), "that although it is popular to talk of increased punitiveness in German sanctioning practice, this myth cannot be empirically supported". Baier et al. (2017, p. 18) come on the background of their empirical research to the result that there is only few information in Germany about the development of punitiveness the last years. The research shows that individual punitive attitudes are reducing the last years, also fear of crime is reducing. The authors see the background of this development in an increasing level of education, in the reduction of violence in the education of children (it is forbidden meanwhile in Germany to beat children), in the reduction of TV-news of private companies and the reduction of reading boulevard media. They also have found that victims of crimes are not more punitive than non-victims (p. 18; see also Sessar 1992).

Several surveys show that countries with lower economic development and with another political background are more punitive than western industrialized states. So regularly countries of the former Soviet Union show higher rates of punitiveness. This is also the case in comparing West and East Germany (the former German Democratic Republic). Baier et al. (2017, p. 19) found in their survey that East Germans are more supportive for harsh punishment on the background of the image that crime is increasing. Ludwig and Kräupl (2005) point out that in East Germany the punitiveness, especially the privilege for imprisonment decreased in the period 1991 to 1996, that is the years after reunification of both parts of Germany in 1990, but increased again after 2001 on the background of the feeling of citizens not to be fully accepted by West Germans and not to have the same chances for a positive economical development. Alternatives for harsh punishment, like Victim Offender

Mediation or Restorative Justice are not well known and so not accepted by the majority. After the reunification the support for these alternatives increased but is in comparison on a lower level than in the west (see also Kury et al. 2002).
Schreiber (2019, p. 8) documents that also in West Germany the number of programs including community crime prevention reduced since 2007 by round about 40 %. Beginning in the 1990s on the background of a broad discussion about crime prevention measures in Germany many local groups were established and engaged in bringing forward crime prevention to increase safety in communities. There was that time a boom in establishing these programs (see Feltes 1995; Dölling et al. 2003). The years after 2000 the engagement declined significant.
Dessecker (2011) discusses the topic of life sentences in Germany. After the abolition of death penalty in Germany in 1949 life sentence is the sharpest punishment in the country like in other EU-countries (with the exception of Belarus) and the standard legal punishment for murder under specific aggravating circumstances, but "it has never been applied in an overwhelming majority of murder cases. There is some evidence for an increase in judicial punitiveness for the period beginning in the 1970s as there is no indication of a concurrent increase in murder cases recorded by the police. While the number of prisoners sentenced to life imprisonment has substantially grown during the last 50 years, their proportion in the German prison population is still not higher than the European average (2011, p 21). A comparison of incarceration rates (number of prisoners per 100.000 inhabitants in a country) in Western European countries shows Germany is in the middle. While Germany has a rate of 75, which decreased the last years, the northern countries, like Denmark (63) or Norway (63) and The Netherlands (61) have lower rates. On the other side England and Wales (United Kingdom) has a rate of 140, France has 104 and North Macedonia 141. The highest rate shows the USA with 655, Russia has 316.
Pratt et al. (2005) discuss on an international level in western societies a "new punitiveness". The authors point out the problematic "political background" of this development. They discuss punitiveness on the background of a more active role of the public in penal affairs. "The rise of the victims' movement and not least its contribution to growing punitiveness must also not be underestimated. In the USA, for example, victims and potential victims (i.e. the public at large) have accumulated new rights including notification of the release of ex-prisoners in their community" (2005, p. XV). Brown (2005, p. 282) also discusses the "new punitiveness": "It is, in my view, a new way of using punishment, a new form of penal power. It is marked out by sanctions of strategies that represent a radical departure from previous trends in punishment. It is characterized not by a whole range of new practices and measures but by a few enormously important reconfigurations of the state-subject relationship achieved through novel forms of punishment. The new punitiveness displaces penal subjects from the field of political citizenship" (see also Foucault 1977). For him "Western governments have moved to excise a limited number of citizens from the field of political citizenship". The "principal criterion that allows us to distinguish instances of a new punitiveness from traditional punishment practices centres on the distinction that was key to understanding colonial forms of exclusion. It can be put in the way of a question:

'Does this penalty or measure tinker with the rights of political subjects. Or does it radically transform the status of the individual, this revising their relationship with the state into one structured around obligation'? This is a single and simple criterion, but its simplicity belies its importance" (Brown 2005, p. 283). The author emphasizes (p. 284), "at least three penal innovations of recent years can usefully be understood as reflecting a colonial form of exclusion: civil commitment statues, sex offender registration and notification schemes, and mass imprisonment". These criteria are relevant especially for the United States.
Snacken (2012, p. 255) discusses the development in Europe: "At the level of the European Union, while both social and penal policy remain primarily the responsibility of the member states, the penal Europe seems to be developing much more swiftly than the social Europe". Kunz (2017, p. 72) emphasizes that needs in society for security, solidarity and welfare can on the background of missing informal social networks and neighbourhoods only satisfied by legal measures. In the developing "security-society" penal law has more and more the role of a "security agency" (Singelnstein and Stolle 2012; Prittwitz 1997). Punitive reactions are especially concentrated on disadvantaged groups in a society. "Empirical research consistently shows that punishment is divided unequally over social and ethnic lines. Prison populations in Europe are typically made up of young males coming from the lower socio-economic strata in society, and increasingly from an ethnic minority background" (Snacken 2012, p. 256; Dünkel and Snacken 2005; Alexander 2012). "Penal policies are not directly related to crime rates, but are social constructions resulting from the interaction of many factors, including decision-making by policy-makers and practitioners" (Snacken 2012, p. 256).

FEAR OF CRIME

An important topic discussed as background of an increasing punitiveness is fear of crime and feelings of insecurity which are seen meanwhile higher than decades before. Fear of crime, very often not measured in surveys very accurate and valid has to be seen on the background of intensive changes in societies the last decades. Opening of the boarders, more migration, reduction of contacts in domestic groups, more mobility and involvement in jobs including communication by internet had the effect of a reduction of personal contacts. Pratt et al. (2005, p. XVI) see like others "globalization as one explanation of increasing punitiveness, manifest in the creation of a populace that is anxious about crime trends and which lacks confidence in existing criminal justice systems to deal with them. In addition, the 'mediatization' of everyday life constantly draws attention to such problems" (see also Baker and Roberts 2005).
Birkel et al. (2019; see also Birkel et al. 2014) present the results of a new victim survey in Germany. They show an increasing fear of crime und feelings of unsecurity in the country since 2012. While 2012 17 % felt unsafe in the night in the neighbourhood, the rate increased to 22 % the following years. Especially women felt more unsafe the last years. Fears to be victimized by burglary increased substantially. Also other research results showed an increasing fear of crime the last years and are discussed on the background of the increasing immigration rate in Germany, especially the public discussion in the media of the topic. Again East

Germans show higher rates of fears than citizens living in West Germany (Dittmann 2005). The reduction in feelings of safety in the society, the higher fear of crime rates, had no effect on the attitudes to penal institutions like courts or police. The people trust in these institutions more than years before. Beside the existing fear of crime, Germany is a relatively safe country. The survey 2014 (Birkel et al. 2014) shows that nearly 90 % of citizens trust in the police, 80 % of citizens who had contacts with police were satisfied. Migrants don't trust in penal courts less than German citizens, but feel more the risk to be treated not fair. Sanctions and deterrence is seen by the citizens as important, the role of resocialisation of offenders is rated a little bit higher than years before.
In contrast to USA or Great Britain in Germany there is no regular scientific victim survey. So it is difficult to compare different crime rates or results about fear of crime over time because individual surveys regularly use different methodologies and samples. There exists since 1992 only a regular survey by a private insurance company about the "Fears of the Germans" (R+V-Infocenter 2019). This survey is done every year on a methodological high standard, asking a representative sample of the German population from 16 years onward. The results of this survey show a decrease of fear of crime since 1992. While 1992 40 % of the sample expressed fear of crime, 1993 the rate increased to the highest value (45 %), then decreased to 24 % in 2005, in 2018 the rate was 28 %. On the other side the sum of fears asked for in the survey increased over the years from 38 % in 1992 to 47 % in 2018. All over the years' women had higher rates than men and in nearly all years the East German had higher rates than the West German. The seven highest values in 2018 was fear of a dangerous world by the Trump-Politics (69 %), overwhelming problems of institutions by regulating the immigration rate (63 %), tensions caused by the immigration of foreign people (63 %), overtaxation of politicians (61 %), terrorism (59 %), high costs to pay by Germany on the background of debts in EU (58 %) and political extremism (57 %).

MORE SEVERE PUNISHMENT – LESS CRIME?

International comparisons of punishment in a country and crime rates show clearly that more severe penal reactions on criminal behaviour has not much to do with the crime rate. On the background of the complex relations of punishment with the situation in a society it is extremely difficult to predict further trends. "What is clear is that punishment is linked not just to economic upturns and downturns, but also to changes in the degree of cohesiveness and divisiveness in societies. It seems to be clear that scales of inequality and feelings of belonging to the same community are basic to the appointment of blame, the extent to which risks are seen as shared, and whether or not the principal modes of punishment and control will be inclusionary or exclusionary. Punishment and control are not merely reflections of crime rates but are also reflections of the political climate, feelings of solidarity and division, atmospheres of welcome or hostility to strangers; and that strategies for dealing with crime, disorder, and difference will reflect both technological and cultural possibilities available to those with power" (Hudson 2002, p. 258).
Most people are not very well informed about crime and development of crime rates in a country. The media inform people often not valid about crime, media have their

own interests in reporting about crime, they want to be seen (TV) or to be bought (Newspapers), so their reports will be very often "dramatic" and selective. If people are asked about crime and punishment most of them express the attitude that crime is increasing and that the best measure to reduce criminal behaviour is to sharpen the punishment – and if it does not help, increase the punishment. Winterdyk and King (2011, p. 101) emphasize on the background of experiences from Canada: "One explanation that has been used to explain this attitude is the fact that the public is naïve when it comes to understanding the complexity of sentencing and the processes that are involved in judges reaching a decision about what type of sanction best fits the crime being addressed (see Roberts and Hough 2005). In addition, the media plays a skewed role in what it covers in terms of crimes, their sentences, and the context in which a sentence has been reached" (see also Green 2009).

Empirical research shows clearly, the more valid people are informed about crime and punishment, the more lenient they are (Doob and Roberts 1983; Roberts 1992; Roberts and Stalans 1997; Roberts and Hough 2005; Sato 2014). But nevertheless Sato (2014, p. 29) emphasizes: "On a practical level, critics who question the relevance of public opinion to the death penalty also argue that, historically, public opinion has never been the driver for abolition. Rather, almost all countries that abolished the death penalty did so through judicial or political leadership – despite public support for it" (Hood and Hoyle 2008; Johnson and Zimring 2009; Hood 2009). On the other side, "this does not mean that public opinion can be completely ignored and will have no consequences. The interdependence of law and public opinion, and the need for legal systems to command popular support, have long been recognised (Robinson 2009; Robinson and Darley 1995). … When public perspectives are enshrined in institutions and reflected in the actions of authorities, this should build institutional legitimacy (Tyler 2006, p. 284). Criminologists have also argued for the importance of maintaining legitimacy, and warned against disregarding public opinion" (Sato 2014, p. 29; see also Garland 2009; Roberts and Hough 2005; Roberts et al 2012).

If there are engaged political decisions about crime policy on the background of empirical criminological research the attitudes of the public can change over time. For example, the German Government ("Parlamentarischer Rat") abolished 1949 the death penalty in Germany on the background of the terrible crimes against the Jews and special groups in the country during the war. That time this decision was clearly contra the attitude to the majority of the public: in 1948 round about 75 % of the German population supported the death penalty. After the abolition the rate decreased to round about 55 % in the 1950s, meanwhile only round about 20 to 25 % support the death penalty in Germany, the rate increases after very severe crimes, for example in the 1970s on the background of the murders of the Red Army Fraction – RAF (Kreuzer 2006). People "learned" that the death penalty is not necessary to control crime.

International empirical criminological research shows clearly that an increasing of the severity of punishment has no or only a very limited effect on crime reduction. Countries with high imprisonment rates or more severe punishment do not have automatically lower crime rates than those using imprisonment only as a last resort

(Harrendorf and Smit 2010; Walmsley 2010). The best example are the USA. They have the world highest imprisonment rate, use in 30 States the death penalty (since 2000 the number of executions is decreasing), the same time they have very high rate of violent crime. Experts see the background more in the regulation of weapons in the country and the social inequality of different groups than in the severe punishment. Winterdyk and King (2011, p. 103f.) emphasize on the background of comparing Canada with USA, their data show "that while the rate of violent crime has increased marginally between 1983 and 2000 in Canada, the rate of violent crime in the United States experienced a dramatic spike throughout the early 1990s but then dropped over the ensuring years to actually be below the 1983 rate. While in the United States violent crime rate is over doubled that found in Canada, the differences in the overall property crime rate between the two countries, Canada is negligible".

Kuhlmann (2011, p. 61) emphasizes concerning USA: "Imprisonment rates soared in the 1980s amidst stabilizing or declining crime rates and were largely due to new penal policies. The management of correctional institutions increasingly abandoned goals of rehabilitation and, instead, focused on managing the new "warehouse" population. The increasingly dehumanizing treatment of prisoners left them ill-prepared to re-enter society after completion of their sentences. The people who inhabit these prisons are predominantly poor, minorities, and increasingly women. At the same time as incarceration rates increased, changes in the socio-economic structure of the society became more wide-spread, causing anxieties in the general population. Under these circumstances a punitive ideology was promoted that held the individual person responsible for his/her poverty or criminal behaviour while ignoring the structural contests." Andrews and Bonta (2010, p. 39) emphasize on the background of the development in USA: "For over 30 years, criminal justice policy has been dominated by a 'get tough' approach to offenders. Increasing punitive measures have failed to reduce criminal recidivism and instead have led to a rapidly growing correctional system that has strained government budgets" (see also Christie 1993; Pratt 2007). The development in the USA, especially criminological research results, are discussed in Germany.

If rehabilitative measures and aftercare are neglected, and if imprisonment is primarily or exclusively used as a punitive sanction, the negative side effects increase rather than reduce the risk of recidivism. Collateral damages for the families and communities, and the high costs of keeping offenders in prison should also be taken into account (Clear 2008; Kury 2003; Kury and Kern 2003).

So much more important than "just punish" is what happened with the offender after the court decision, for example does he/she has the chance to participate in treatment programs, does the offender receive any help to integrate in the society, for example an acceptable job and support if necessary. Kunst (2011, p. 311) demonstrates the "limits of attempting to influence a person's behaviour by punishment *alone*. The 'target location' for the punishment, i.e. the respective person's psyche, is such a complex construct that its effect cannot readily be anticipated and in some cases even may turn into the opposite of what we intended … The question of *whether* punishment is in order remains an ethical one. Regarding the question of *how* to punish (if it is to be done), the relatively new field

of research of criminal psychology, has some sound answers to offer even today. Effect sizes of about r = .12 (Egg et al. 2000; Lösel 1996) indicate that socio-therapeutic interventions, for example, constitute a more psychological way to punish then regular imprisonment”. The time of imprisonment should be used for example also to train the offenders in jobs and to present the chance to work. Prisoners are paid for their work very low, on the other side the income of the state for their work is very high. So only in Bavaria/Germany in 2018 the work done by prisoners produced a profit for the state of 39,9 Million Euros (Bayerische Staatsregierung – Staatsministerium der Justiz 2019).

Dölling et al. (2011) realized a huge meta-analysis of previous studies about the effects of punishment (see also Hermann and Dölling 2016). The authors proofed 9.422 criminological, sociological and economic literature references about the results about effects of punishment. After several selection stages on the background of methodological standards of the studies 700 resulted which formed the basis of the big meta-analysis, this sample size significantly exceeded the extent of previous studies on questions dealing with deterrence problems (2011, p. 320). The authors found out that there is a correlation between the methods of investigation used in different studies and the results. “Moreover it appears that deterrent effects depend on the risk of being discovered and not on the severity of punishment and that they appear more often with minor infringements of norms. The deterring effect of criminal law must thus be looked at in a differentiating model” (2011, p. 315). The study shows clearly that the death penalty obviously has no deterrent effect on severe crimes (2011, p. 374).

FINAL DISCUSSION

Penal policy in Germany is, like in other western industrialized democratic countries, strongly influenced by the attitudes of the public. There is a complex interrelationship between the public, politics and media. The attitudes of the public about crime and punishment is moderated especially by the media and by the idea of a “just” world on the background of traditions. Crime is part of all societies in all times, the same for punishment. Also the bible informs about terrible crimes, the same about very cruel punishment (Buggle 1992; Ehrlich 2018). Punishment is also moderated by feelings of revenge. Media and politicians have their own interests, the first to find acceptance and interest in the public and so to be bought or seen, the second to be (re)elected. “Crime sells”, so the media will report about the topic, but not about all crimes, only about selected criminal acts, mostly very severe cases, especially sexual offences. So the public will be informed extremely selective about crime in a country (Hestermann 2010; 2016; 2018). Politicians know from surveys and opinion polls that the majority of the public is interested in having punished offenders, on the background of the idea this can help to reduce crime, so they support also a harsh treatment for offenders. Regularly politicians are also informed about crime and criminological research very rarely.
The last decades the situation in western societies changed to more anonymity of citizens, less personal contacts of people, more stress in jobs and supervision and a higher psychological burden. Since 2006 in Germany the rate of people with illness,

especially psychological problems, like depression (26 %) or anxieties (25 %), is increasing (Statista 2019), may be in part also on the background of better measures of diagnosis. Feelings of insecurity increased, we have a more complex world, also on the background of open boarders and the internet and the increasing transformation of responsibilities to the single citizens.
Especially since mid the 2010s the increasing wave of immigrants in Germany, especially from countries like Syria, Afghanistan or Iraq, first accepted by a broad part of the population, then the last years seen more and more critical, fuelled feelings of insecurity. Germany accepted in 2018 in comparison to other European countries many refugees. Round about 40 % of positive decisions were in Germany, round about 139.600 cases. A new survey shows (Zick et al. 2019a; 2019b) that meanwhile in Germany people are more and more critical to the immigration politics. 2014 round about 44 % criticized the immigration politics, 2016 the rate increased to 49,5 %, beginning 2019 to 54,1 %, so meanwhile more than half, refused to accept more immigrants. Especially East Germans are more critical about the immigration politics – 63 % refuse asylum seekers in Germany - than West Germans. In contrast the critics about homeless people altogether decreased since 2014. 2016 18 % expressed critics about homeless, 2019 only less than 11 %. Also homosexuals are more and more accepted.
The media report about criminal behaviour of immigrants and suggest in part that this group has a higher crime rate than German citizens. Police statistics show the last years a decreasing crime rate in Germany, in contrast to this development the crime rate of non-Germans is increasing. But it has to be seen that immigrants are mostly young men and this is the group with internationally the highest crime rates. Additionally, the living conditions of immigrants/refugees very often are very restricted, they live in many cases for years in small containers together and so very restricted, so it might not be astonishing that in nearly half of the cases the victims of these crimes are also immigrants. In most cases the immigrants are living in Germany without establishing any problems, the same results are published about the situation in Switzerland (Simmler and Schär 2017; Eisner et al. 1999).
Süssmuth (2006, p. 14) emphasized years before "migration is part of globalisation, which is increasing by worldwide information and communication systems and the chance of fast overwhelming of far distant places. Migration has not only negative aspects but also positive". So one big problem of the German industry is missing workers. There are many reports from industry that there are missing today and especially in the future more and more people working in German companies, some experts speak about a "giant loss of personal", some estimate for 2030 4,9 Million missing workers and experts (Die Welt vom 7. 5. 2018). The Institut für Arbeitsmarkt- und Berufsforschung in Germany found in a new analysis that there are in the first quarter of 2018 1,2 million open positions, especially skilled workers are missing. The loss of income by this situation for the German industry is estimated to 525 billion Euros.
On the background of the international development also in Germany there is an increasing discussion about more severe punishment for offenders and a closing of the boarders to stop immigration. Meanwhile we have a new political party, also in the parliament, the "Alternative für Deutschland – AfD" which has one special

topic, to close the boarders and to stop immigration. Snacken (2012, p. 257) emphasizes: “In a ‘constitutional democracy’, the government must foster the general interest and protect the fundamental rights of unpopular minorities such as offenders, prisoners or immigrants from the ‘tyranny of the majority’ … In line with the abolition of the death penalty, ‘Europe’ therefore should and could do more to foster moderate penal policies”.

In Germany an increasing punitivity might also be seen in changing the penal laws and introducing new laws. So, for example, on the background of a broad discussion about sex crimes in 2016 the relevant laws were sharpened which might also increase the registration of sex offences with the non-correct feedback, sex crimes are increasing. Hassemer (2009, p. 285f.) emphasizes that penal law is moving since years to more security. So the penal law is developing more punitive, the punishment is higher, but in this movement the law does not be better, it is broughter and more complicated, handling the law needs more time. This is the reaction to more feelings of insecurity in society, to more control, people want have back more control we could trust years before. Kury and Schüßler (2019) presented in an empirical research program, analysing the election programs of political parties in the German parliament the last decades, results which show, that the classical parties, like the Christian Democrats but also the Social Democrats discuss the last years less the topic of rehabilitation or treatment of prisoners, but more severe punishment and the establishment of new penal laws. More or less only the Left Party and the Greens include in their agenda also topics like rehabilitation of offenders (see also Singelnstein and Stolle 2006; Dollinger et al. 2017).

The targets of punitive reactions worldwide are mostly the “loosers” in society, like the poorest citizens, asylum seekers or refugees (Pratt et al. 2005, p. XVIII). “When we consider the populations whose activities have been subject to visceral sentences, and disproportionate and cruel punishment, then they derive almost universally from populations that typically experience the most entrenched patters of deprivation, poverty, and social exclusion. Any attempt to think through the implications of the new punitiveness must bear this point in mind. It is not a response to crime in general or indeed to the most serious crime; rather, it is a response directed at populations who in many respects are among society’s most disadvantaged. There remains a sharp ethnic dimension to the prison intake that also gears mention … In the USA it is now estimated that one in ten black adult men will at some point have been processed through its carceral system. In addition, one in nine of African-American males aged 20 – 29 is in prison at any one point and one in three is either in prison, on probation or parole” (see also Wacquant 2005). Brown (2005, p. 286) found:” In Australia, where the national rate of imprisonment stands around 150 per 100,000 of the imprisonable age population, the rate of indigenous imprisonment hovers around 1,900 per 100,000 of the imprisonable age indigenous population” (see for Canada: Winterdyk and King 2011, p. 117ff.).

Also Kunz (2017, p. 70) emphasizes that criminology found clear that more severe punishment cannot reduce crime substantially. The last years’ criminological results are less “interesting” for politicians, they are more interested what people think and want to have a better chance to be elected. To reduce crime, criminology has a lot of empirical results, who show what is best, for example about primary prevention in

families (Sherman et al. 1998), alternatives to imprisonment and the important topic of inclusion in society (Henham 2014; Kury 2017), or treatment in prisons (Lösel 1996). In contrast to the positive results of crime prevention programs and the installation of alternatives to harsh punishment, very often activities are reduced (Schreiber 2019, p. 9). May be criminology has to engage more in the public discussion about crime and punishment to inform better citizens and politicians. The "new" research results about important topics of crime prevention are in reality "classical" knowledge. Beccaria (2005; 1764) emphasized round about 250 years ago: It is better, to prevent crime than to punish the offenders (p. 107). If you want to prevent crime establish clear and simple laws (p. 108) – and especially: The clearest but also most difficult way to prevent crime is finally the perfection of education.

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REACTIONS ON TERRORISM IN THE MEDIA MIRROR

Zoran S. Pavlović, PhD
Faculty of Law, University of Business Academy
Provincial Protector of Citizens - Ombudsman
Novi Sad, Republic of Serbia
zoran.pav@hotmail.com

Abstract
In the field of anti-terrorist measures, the most important ones are criminal justice and security. Most countries in the modern world are striving to ensure that their system of defense against terrorism is primarily preventive and effective. The source and the foothold of such a system require the harmonization of laws and strategies that protect national security and prevent terrorist activity with laws that protect the rights and the freedoms of citizens. Such a system also requires appropriate support in media discourse, which has its role as one of the preventive mechanisms available to one community. With all due respect to the public's right to know, respect for the protection of human rights and freedoms and the respect for the rights of all can be limited only exceptionally, especially when threatened by terrorist acts. Media reporting therefore requires responsible journalism, regardless of where these acts are being implemented.

Key words: terrorism, respect for human rights and freedoms of citizens, international standards.

INTRODUCTORY CONSIDERATIONS

The end of the 20th and the beginning of the 21st century marked the rise of terrorism at the global level, becoming one of the most serious social problems. By evolving terrorism, there has also been an evolution of the approach of the international community towards this topic. After the terrorist attacks on *Charlie Hebdo* in Paris and the announcement made by France of the establishment of a special prison only for persons suspected of terrorism, modeled upon Guantanamo, with restrictions on human rights and freedoms, organizations and human rights activists become very concerned. There are also lawmakers who insist on respecting at least the minimum of commonly accepted social values in pre-criminal and criminal proceedings for such persons. But do citizens have the right to secure them at the global, regional and national levels: the right to peaceful and calm life, without any fears of a terrorist attack. Citizens have the right to expect protection of the right to security from new terrorist acts.
The Republic of Serbia is in organizations for regional and international cooperation aimed at opposing the financing of terrorism and money laundering. Amendments to the Criminal Code (CC) in the Republic of Serbia in 2012 in relation to terrorism, put it in a group of criminal offenses against humanity and other goods protected by

international law, and at that time acted as possibly too detailed in the relevant provisions of the CC. However, criminal law has timely, even before there was a need for a more comprehensive and precise regulation of this area, appeared in practice; reacted to new challenges. Some critical tones that emerged after the adoption of these changes pointed to the danger of basic civilization values, because in some segments of the so-called *Antiterrorism legislation* significantly affects essential human rights guaranteed by the most important international sources. In particular, it refers to those criminal offenses whose execution is in fact a preparatory action for the criminal offense of terrorism (Pavlović, 2019).

Having in mind the general objectives of criminal justice legislation and the concrete social danger posed by modern terrorism, justify the legitimate reaction of the social community located on a geographic and legal wind blowing place, that must, through a balanced approach, find adequate and effective mechanisms to counter the rising terrorism in the whole world, acting preventively and within ourselves.

Changes in cyber security and criminal procedural law in order to limit the high handedness and arbitrariness of the participants in the proceedings are expected nowadays, at the same time creating clear rules and establishing the limits of human rights violations, while taking into account the objectives of anti-terrorist legislation. But, also to define the role of the relevant state bodies, primarily those who play a leading role in criminal proceedings and are given, and not to other, administrative bodies.

At the same time, it is necessary to define the role of media and responsible journalism in reporting on the phenomenon of terrorism.

SETTING UP A PROBLEM

The focus of the realized survey was on media reporting on terrorism. Considering that at the time of the survey, the State Department's report on the topic of Serbia's fight against terrorism in 2017 was not known, we can only point out that there were no terrorist attacks in our country in 2017 and that the level of activities related to recruiting fighters for the Islamic state was low. According to the report, the biggest threats from terrorism in Serbia remain the potential movement of money and weapons through the territory of our country, the return of foreign terrorist, and the radicalization of terrorist activities[1]. Every type of terrorism is a phenomenon whose existence and species should be known to the society as a whole with the institutions that make it, and to every single individual with their own awareness of it. The media is particularly influential in building awareness and understanding of this phenomenon, especially in the 21st century. The way they report on these topics significantly contributes to the creation of an image at all levels of society, including the general and professional public (Pavlović, 2018, 324-327).

The research has hypothesized that terrorism, depending on the character of the media, is reported to some extent in an inadequate manner.

[1] Posted on rs.sputniknews.com visited on March 25th , 2019.

The sample is made up of online daily newspapers Politika, Dnevnik, Danas, Blic and Kurir, which are issued and distributed throughout the whole territory of Serbia. The analysis itself was carried out on texts published in the period from January 1st to August 31st, 2018.
We analysed texts that directly or indirectly dealt with terrorism, with a particular focus on:
-the total number of articles dealing with the research topic in a given period by determining the number of articles that dealt directly or indirectly with the topic
-the number and types of topics in the context of terrorism
-the number and types of sections in which the articles are located.
Regarding the choice itself of daily newspapers, the main role was played by the character of their reporting. Politika, Dnevnik and Danas are considered daily newspapers that in most cases respect ethical and journalistic principles. Dnevnik is especially important because it deals in detail with developments in AP of Vojvodina. Daily newspapers Blic and Kurir are considered to be newspapers that have shortcomings in reporting, often disrespecting the standards of the profession.
In accordance with this the results obtained are presented here:

Number of published articles on terrorism

Blic	Danas	Politika	Kurir	Dnevnik
267	11	92	7	10

Table 1- Number of published articles

The results of the quantitative analysis showed that in the period from January 1st to August 31st , 2018, in the daily newspapers: Politika, Dnevnik, Danas, Blic and Kurir , there were published 387 articles related to the topic of research. The data indicate that most of the texts were published in daily newspapers Blic (n = 267, 68.99%), followed by Politika (n = 92, 23.77%), Danas (n = 11, 2.84%), Dnevnik n = 10, 2.58%) and Kurir with the least convincing articles on the subject of terrorism (n = 7, 1.81%).

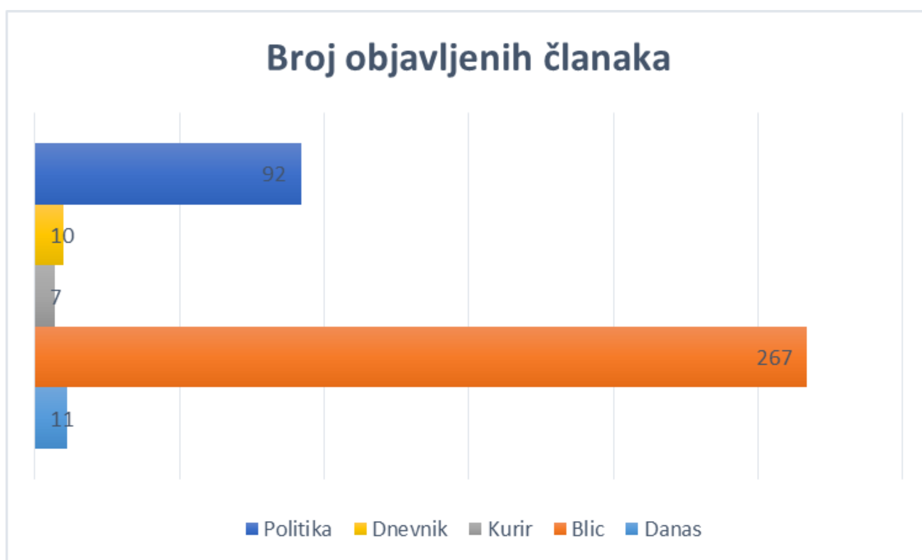

Chart 1 - number of published articles on terrorism

First of all, quantitative analysis has noted that reporting on the phenomenon of terrorism over the past eight months has not been overwhelmingly tempting for most electronic editions of selected daily newspapers. As it can be seen, only Blic daily newspapers gave more space in its electronic edition to this topic. Politika also reported and dealt with this phenomenon, much less than Blic, but on the other hand significantly more than all other daily newspapers from this analysis. Daily newspapers Dnevnik, Kurir and Danas devoted very little space to terrorism in these eight months.

The number of articles that dealt with the topic in a direct or indirect manner

	Blic	Danas	Politika	Kurir	Dnevnik	Total
Direct	60	5	58	1	7	131
Indirect	207	6	34	6	3	256

Table 2 - relationship between direct and indirect articles

The obtained results tell us that about 34% of all articles on terrorism were directly related to this topic (reporting on specific events and actors), while about 66% of articles were related indirectly (surveys and reports, prevention, etc.)

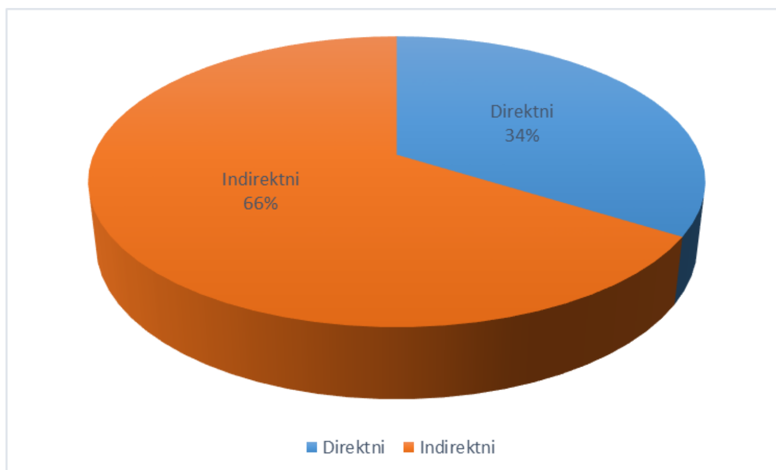

Chart 2 - relation of direct and indirect articles to terrorism

The situation in the newspapers presents us the results as follows: Dnevnik and Politika are fairly balanced by a high percentage of direct articles. Danas newspaper is being very close to Dnevnik and Politika, while Blic and Kurir are in the last place. What can be observed is that the Blic daily newspapers convincingly reported the largest number of articles on this topic, with very few articles considered to be in connection to specific events (terrorist acts), while the number of indirect articles is considerably higher. The daily newspaper Kurir had even fewer direct articles than the daily newspaper Blic, and are in the last place according to the given criterion. Such a relationship to reporting on the phenomenon of terrorism could be linked to the traditional character of reporting of given electronic editions of the mentioned daily newspapers.

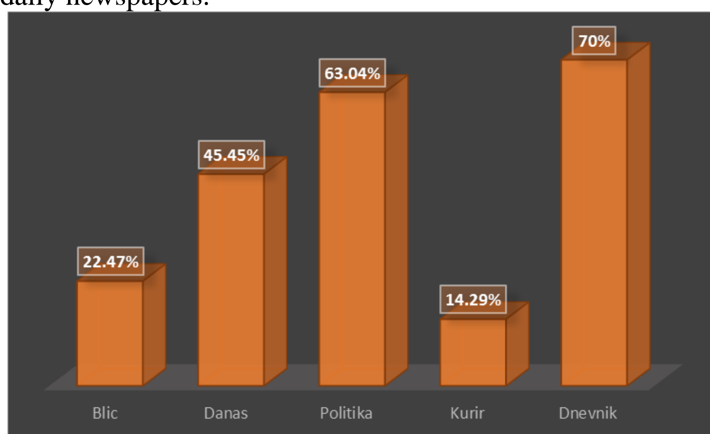

Chart 3 - number of direct articles per newspaper

Subject Topics – topics of the articles

Topics within the terrorism context	Daily newspapers									
	Blic		Politika		Kurir		Danas		Dnevnik	
	Num ber	%	Num ber	%	Numb er	%	Num ber	%	Numb er	%
About terrorist/terrorists	53	19,85	12	13,0 4	1	14,2 9	0	0	0	0
Victims of terrorism	17	6,37	4	4,35	0	0	0	0	0	0
State's reports and statistics	77	28,84	40	43,4 8	0	0	3	27,27	4	40
Terrorist attacts	21	7,87	8	8,70	4	57,1 4	0	0	2	20
Preventing and blocking terrorism	37	13,86	13	14,1 3	0	0	3	27,27	1	10
Arrests and trials of terrorists	18	6,74	4	4,35	0	0	5	45,45	0	0
Violation of human rights	10	3,75	0	0	2	28,5 7	0	0	2	20
Attacks threats	15	5,62	5	5,43	0	0	0	0	0	0
Call on terrorism	0	0	2	2,17	0	0	0	0	1	10
Attacks and explosions	0	0	4	4,35	0	0	0	0	0	0
Other	19	7,12	0	0	0	0	0	0	0	0

Table 3 - Topics of articles

The table presents numbers, as well as the percentage values of articles classified within the themes that dominate reporting on terrorism. As it can be seen, the topic that dominates in 3 out of 5 analysed daily newspapers is the topic we have called state reports and statistics. These are articles that do not relate to specific terrorist-related events, terrorist attacks, and their victims, nor are they concerned with the prevention of this phenomenon. These are articles that generally talk about terrorism as a phenomenon, sometimes in a sensational way, putting different reports and predictions into focus, while on the other hand they are articles that informatively transmit on terrorism agreements and reports, both at national, regional, and global levels, without the intention of creating panic among the population. The first way/manner of dealing with this topic could be identified in Blic daily newspapers, while important elements of the other means are recognized in daily newspapers Dnevnik and Politika. A topic that dominates only in the daily newspaper Kurir is terrorist attacks, which suggests that daily newspapers such as Kurir pay attention to the issue of terrorism only when it comes to some dramatic events. In the electronic edition of the daily Danas, the theme that took the central place is arrests and trials of terrorists. Other topics in the context of writing about terrorism are found in Table 3.

Categories/Sections that contain articles

Categories/sections	Daily newspapers									
	Blic		Politika		Kurir		Danas		Dnevnik	
	Number	%	Number	%	Number	%	Number	%	Number	%
World	202	75,66	59	64,13	0		3	27,27	10	100
Politics	32	11,99	11	11,96	3	42,86	0		0	
Chronicle	10	3,75	12	13,04	0		0		0	
Republic Srpska	17	6,37	0		0		0		0	
Society	5	1,87	5	5,43	1	14,29	6	54,55	0	
Bussines	1	0,37	0		0		0		0	
Weekend addition	0		0		0		2	18,18	0	
Region	0		4	4,35	0		0		0	
Beograd	0		1	1,09	0		0		0	
Sports	0		0		1	14,29	0		0	
Black Chronicle	0		0		2	28,57	0		0	

Table 4 - sections where articles are located

The section that dominates the daily newspapers Blic, Politika and Dnevnik when it comes to reporting on terrorism is the World. From the table it can be seen that in Dnevnik 100%, Blic about 75% and in Politika about 64% of texts are located in this section. The newspaper Danas is dominated by the Society section, with 55% of published articles, while in the Kurir the dominant column is Politics. This result is not surprising at all, given that in general, terrorism is approached only at the phenomenological level. It can be seen that only daily newspapers Kurir placed 2 articles in the section "Black Chronicle", while for the other newspapers we do not have articles in this section, which is quite surprising considering the subject of our media image analysing.

CONCLUSION

After presenting the results of the analysis it can be concluded that the electronic media in Serbia do not pay enough attention to the phenomenon of terrorism. In eight months 387 articles have been published. We saw that most of the articles were published in Blic, while the other papers reported quite a bit on this topic. The question is: Why is there little texts on this subject? The answers could vary. The

reason may be the time frame of the analysis and the smaller number of terrorist acts compared to last year. Why is the public more concerned about some terrorist attacks than others? In recent years there has been a wave of terrorist attacks carried out by similar terrorist organizations, but these attacks have triggered a variety of public reactions. Without correlation with the number of victims or existing legislation and geostrategic analysis, it is very difficult to find the answer to this question. This approach may also have resilience in the fact that the media understood that terrorists are feeding by publicity (Schmid, 1989, 553).

The global index of the attacks in 2018, according to the Jane Terrorism and Insurgency Center (JTIC) report, London, actually states that the number of terrorist attacks in 2018 declined to 15,321. That is, according to the JTIC statement, a fall by a third in relation to 2017 (22,487 attacks), where there have been less attacks since 2016 (24,202). The number of civilian casualties in the attacks by non-state armed groups is lower by a quarter, amounting to 13,483 which is the lowest in the last ten years of this index, according to the same research[2]. According to the same source, there were no massive and spectacular attacks in Europe in previous years. The vast majority of violence is still Islamic, with the rise of the violent potential of right-wing extremism. However, figures coming from Western Europe or the US are, by no means, incompatible with Islamic violence; it is specified in the report[3].

On the other hand, the reason for the reduced interest in terrorist acts can be the creation of an image in the society that these attacks have been reduced, what numbers also confirm, so it is not reported on all the events. The results of this research cannot explain the differences in public attitudes to attacks that occur in other countries. People feel a greater sense of vulnerability when attacks occur nearby, so this is one of the possible answers to the raised question.

Another reason could be that, that there is an opinion that the Republic of Serbia is not in the sphere of interest in the operation of terrorist organizations. Would this be explained by the notorious NIMBY effect (Not in My Back Yard) that occurs when people are aware that there is some danger and threat, but because of the lack of information they are scared and refuse that this can be in their backyard. The questions are many, and they are expected to start being answered. Among other things through reporting, through media that are expertized and responsible enough.

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[2] https://www.dw.com/sr/islamska-dr%C5%BEava-i-dalje-smrtonosna/a-47260494 visited on March 25th,2019.

[3] **https://news.ihsmarkit.com/press-release/aerospace-defense-security/janes-terrorism-and-insurgency-centre-jtic-shines-counter-t** visited on March 25th , 2019.

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EUROPE FIRST: THE POWER OF LEGACY OF THE EUROPEAN UNION

Goran Ilik, PhD
Law faculty, "St. Kliment Ohridski" University - Bitola, Macedonia
goran.ilik@uklo.edu.mk

Oxana Karnaukhova, PhD
Institute of History and International Relations,
Southern Federal University-Rostov-on-Don, Russia
oskarnauhova@sfedu.ru

Nikola Lj. Ilievski, PhD (s)
Law faculty – Political science,
Ss. Cyril and Methodius University - Skopje, Macedonia
nljilievski@yahoo.com

Abstract
This paper investigates the international political power of the European Union, viewed through the colonial legacy of its Member States. The main objective of this research is to reveal the EU power of legacy, stressing that the EU has a capacity to impose its value and ideational framework on the rest of the world, in a soft, normative and cooperative manner. Through the process of colonization in the past, the former colonialist European states (today EU Member States) influenced the people and cultures of colonized territories, and thus, they set the basis for their second coming, not in the role of conquerors or colonizers, but as partners. The term legacy is used to describe the capital (institutional, political, cultural, linguistic etc.) that has left the former colonialist European states in the past, which today can be used as a bridge for closer cooperation between the former colonies (today sovereign states) and the EU as a whole. At the end, we conclude that the EU Member States should make great efforts in order to mobilize their own connections with the particular states or group of states, striving to accomplish the common - European - interests, instead of their individual national interests.

Key words: EU, legacy, political power

INTRODUCTORY NOTE

This paper investigates the historical connection, upon which the EU could impose its model of functioning on the rest of the world, using the influence of its Member States over their former colonies and dependencies, in a quiet, latent, and cooperative manner. That historical connection actually encompasses the imperial, colonial past of the old European states (today EU Member States). Through the colonization of the world, these European states imposed all of their spirit and

worldviews on the occupied and colonized territories, and thus, they have unconsciously secured the necessary basis for their second coming on the global scene, but this time not in the role of conquerors or colonizers, but in the role of partners and friends, while holding proudly the flag of the new European non-imperial empire. When we speak about the imperial nature of the EU, we consider the "Emperor Barroso", and his historical statement:

> [w]e are a very special construction unique in the history of mankind (...) Sometimes I like to compare the EU as a creation to the organization of empire. We have the dimension of empire (...) We have 2[8] countries that fully decided to work together and to pool their sovereignty. I believe it is a great construction and we should be proud of it (Barroso 2007).

Analyzing this statement, one could come to the conclusion that the EU represents, with certainty and without the least of idealism, a specific, *sui generis* legal-political construction, or a construction which deeply within, harmonizes and absolves (or at least tends to do so) the differences of its Member States, and its neighborhood. For this purpose, its uniqueness is given as a *virtuous exemplar* (according to the former EC President Romano Prodi) of man's achievement on building institutions and structures, whose goal is the *interference of the interests* of the Member States, in order for peace to be retained, while securing economic progress and prosperity. Or as Mark Leonard stated: "Our experience with the EU has shown that the way to construct a new world order will not be to start with a grand constitutional design but *to create an interest in working together* on the pressing problems" (Leonard 2005, 143). When Jose Manuel Barroso speaks of the EU, in terms of the organizational structure, with that of an empire, it can be noted that the EU as such, given its normative complexity and territorial reach, definitely hints at its similarities with an empire, but a postmodern one.

THE POWER OF LEGACY OF THE EUROPEAN UNION

Ours scientific focus, qualify the EU as a "union of interfering empires", directly linked to the colonial background of its Member States. This qualification includes the EU historical connections with the rest of the world, "thanks" to its Member States, and their imperialist and colonial past. The effectuation of such an intra-interfering union with an authentic (European) global objectives, actually presupposes the existence of both formal and informal means of mobilization of the overall historical potential (legacy) of each Member State, aiming to achieve the EU interests on the global scale. We need to emphasize that the EU as such, is consisted of 28 sovereign Member States, 11 of which are former colonial and imperial powers,[4] and which during the course of history, have left deep marks on the development and evolution of humanity all around the world. Consequently, we use the term legacy (institutional, political, cultural, linguistic etc.) in order to describe the capital of EU Member States that they left behind, which today can be used as a

[4]These are the following former European colonial empires: Austrian colonial empire, Belgian colonial empire, British colonial empire, Danish colonial empire, Dutch colonial empire, French colonial empire, German colonial empire, Italian colonial empire, Portuguese colonial empire, Spanish colonial empire and Swedish colonial empire.

bridge for closer cooperation (formal or informal) between their former colonies and dependencies and the EU as a whole. The EU needs to refresh its memory by using its Member States influence in their former colonies and dependencies, today sovereign states. Consequently, we qualify the EU as a union of interfering empires, which means that, each of the aforementioned EU Member States will seek to use its (colonial) legacy in terms of achieving the common, EU interests.

For example, Great Britain, as an important Member State of the EU, represents a symbol of the largest empire ever known in the history of mankind. An empire, which stretched on all five continents ("the empire on which the sun never sets"), and has thereby, left a great spiritual, cultural, legal, political and linguistic heritage in all of these territories, later sovereign countries, which had previously been its former colonies or dependencies. The British *thalassocratic empire*, or otherwise known as the "mistress of the seas", had at first based its international engagement upon trade and economy, certainly thanks to its enormous maritime fleet, also upon its military readiness and power, as well as the wisdom of its well developed diplomatic machinery. Starting from its attributes and potential, it certainly deserves a place in history, as the biggest empire in the history of mankind. Despite the geopolitical positioning of the Great Britain, one could take France, also a big European colonial power and a key member of the EU, as a paradigmatic example. As well as Great Britain, France too had based its colonial policy upon trade and economy, as well as military power and skilled diplomacy. Apart from Britain and France, we could also single out Spain and Portugal, which with their existence and functioning have not only left significant marks on the development of civilization and the course of history, but were also the first to "discover" the attractiveness of colonies and the benefits of colonialism through creating the first global empire in the world, embodied in the Iberian Union, as a "a political unit that governed all of the Iberian Peninsula from 1580–1640 through a dynastic union between the monarchy of Portugal and the Spanish branch of the Habsburg monarchy after the War of the Portuguese Succession" (Marques 1972, 322).

The mentioned colonial empires, today EU Member States, represents basis for development of the EU concept as a union of interfering empires, united by the shared values – *raison de valeur*[5] (Figure 1). For example, through *The Commonwealth of Nations (CN)*,[6] the British colonial empire articulates its postcolonial rule and undisputed influence through its former colonies or dependencies, all of which members of it, with the exception of the United States of America (USA). As a consequence of the centuries-long colonial policy, the global

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[5]*Raison de Valeur* encompasses the values and norms stipulated in the constitutive documents of a specific global actor. See more: Ilik, G. (2012) 'EUtopia: The international political power of the EU in the process of ideeologization of the Post – American world order'. Bitola: Grafoprom.

[6]The following are The Commonwealth Member States: Africa: Botswana; Cameroon; Ghana; Kenya; Lesotho; Malawi; Mauritius; Mozambique; Namibia; Nigeria; Rwanda; Seychelles; Sierra Leone; South Africa; Swaziland; Uganda; United Republic of Tanzania; Zambia. Asia: Bangladesh; Brunei Darussalam; India; Malaysia; Maldives; Pakistan; Singapore; Sri Lanka. Caribbean and Americas: Antigua and Barbuda; Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; Saint Lucia; St Kitts and Nevis; St Vincent and The Grenadines; Trinidad and Tobago. Europe: Cyprus; Malta; Great Britain. Pacific: Australia; Fiji; Kiribati; Nauru; New Zealand; Papua New Guinea; Samoa; Solomon Islands; Tonga; Tuvalu; Vanuatu. See: *The Commonwealth, Member Countries*, http://thecommonwealth.org/member-countries [2014]

domination of the English language as well its use as a *lingua franca* worldwide can be highlighted, stemming of course from the number of Britain's former colonies or dependencies, and the undisputed success of its most successful colony – the USA. France too has been managing to sustain its influence over its former colonial territories through effectuating them, despite the fact they are already sovereign countries. The same countries are now associated through *The International Organization of the Francofonie (IOF)*,[7] regardless of whether those countries use French as an official, administrative, or cultural language (in this respect, IOF is the largest global linguistic organization). Still, the French influence, be it on a minimal (friendly) scale, can still be treated as relevant. The same goes for Portugal, only via *The Community of Portuguese Language Countries (CPLC)*[8] as well as Spain with its *Latin Union (LU)*[9] uniting around itself the peoples and countries where Spanish is spoken today.

From these paradigmatic examples, comes the operationalization of the term "interfering empires". The interference, through these examples, can be firstly seen in the reach of the colonial powers (today EU Member States) throughout the world, and their territorial (geographic) interference. Better said, when all of these colonial territories, would be put together, it could easily be ascertained that they all interfere with one another, both geographically and politically with the possibility for exploiting the old connections between the EU Member States, and their former colonies or dependencies, within the EU system. Simply speaking, the European colonial predominance covers almost the entire world. Having that in mind, the EU have the look of a global empire, with power to influence the global milieu with its own norms and values, while using the colonial legacy of its Member States, in order to affirm and achieve the common – European - interests (*raison de valeur*) on the global scale.

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[7]Here are listed only the former French colonies, protectorates or dependencies, which are now IOF Member States: Benin (former French colony); Burkina Faso (former French colony); Cambodia (former French protectorate); Cameroon (over 90% of country was a French colony); Canada (the provinces of Quebec and New Brunswick are participating governments; much of Quebec, Ontario and the Atlantic Provinces formed part of New France, the North American portion of the first French colonial empire.); Central African Republic (former French colony); Chad (former French colony); Comoros (former French colony); Republic of the Congo (former French colony); Ivory Coast (former French colony); Lebanon (Under a French mandate from 1920–1943); Saint Lucia (former French colony); Senegal (former French colony); Seychelles (former French colony); Vietnam (former French protectorate); Madagascar (former French colony); Mali (former French colony); Mauritania (former French colony); Mauritius (former French colony); Morocco (former French protectorate); Djibouti (former French colony); Dominica (former French and British colony); Gabon (former French colony); Guinea (former French colony); Haiti (former French colony); Laos (former French colony); Niger (former French colony); Togo (former French colony); Tunisia (former French colony); Vanuatu (former French and British condominium of New Hebrides).
See: *Organisation internationale de la Francophonie*, http://www.francophonie.org/ [2019]

[8] The Community of Portuguese Language Countries Member States: Portugal; Brazil; Angola; Mozambique; Cape Verde; Equatorial Guinea; Timor-Leste; São Tomé and Príncipe; Guinea-Bissau.
See: *CPLP, Estados-membros*, http://www.cplp.org/id-22.aspx [2019]

[9] The Latin Union Member States: Andorra; Angola; Bolivia; Brasil; Cabo Verde; Chile; Colombia; Côte d'Ivoire; Costa Rica; Cuba; Ecuador; El Salvador; España; Filipinas; France; Guatemala; Uruguay; Venezuela; Guiné-Bissau; Haïti; Honduras; Italia; Moçambique; Monaco; Nicaragua; Panamá; Paraguay; Perú; Portugal; República Dominicana; Republica Moldova; România; San Marino; São Tomé e Príncipe; Sénégal; Timor-Leste. This Union today is defunct "due to financial difficulties", but the influence of the Spain over its former colonies or dependencies is unquestionable. See: *Disolución de la Secretaría General de la Unión Latina*, Unión Latina, 2012-06-10. *Union Latine, États members*, http://www.unilat.org/SG/Etats_membres/fr [2019]

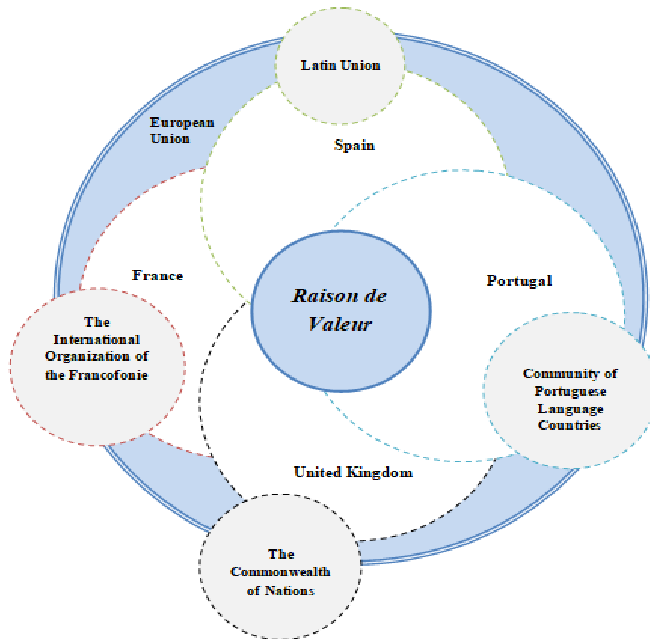

Figure 1: The EU as a union of interfering empires (Source: our depiction, referring to data collected from the analysis of EU model)

We can stress that the EU possesses attributes of specific international political power, with capacity to influence the world in a desired direction. In practice, this "would mean encouraging people in other parts of the world to embrace a political and economic system compatible for them" (Grant 2009, 2). Or as Mark Leonard optimistically stressed: "we will see the emergence of a 'New European Century'. Not because Europe will run the world as an empire, but because the European way of doing things will have become the world's" (Leonard 2005, 143).

Features of the EU international political power

As the most appropriate concept for articulation of the EU international political power on the international scene in this context, we use the concept of normative power. Namely, Professor Ian Manners, the creator of the EU normative power concept, stated that the "EU represents neither a civilian power of an intergovernmental nature utilizing economic tools, nor a military power of a supranational nature using armed force, but a normative power of an ideational nature characterized by common principles" (Manners 2002, 29). This kind of international power has its own basis (Table 1), directly derived from the EU axiological (value) system as a postmodern actor, "developed over the past fifty years through a series of declarations, treaties, policies, criteria and conditions" (Manners 2002, 33), which comprises the EU's *acquis communautaire*. In this context, it is crucial to stress that the most powerful tool for imposing the EU's

normative power is membership itself. The norms listed in the table "are not simply declaratory aims of a system of governance (...) but represent crucial constitutive features of a polity which creates its identity as being more than a state" (Manners 2002, 33). On this basis, the *procedural diffusion* of the EU's normative power appears as an extraordinary channel for the diffusion of EU values and norms to other international actors. This channel of norms and diffusion of values concerns the "*institutionalization of relationship*" (Manners 2002) between the EU and other international actors – states or international organizations. Or, as Ian Manners emphasized, procedural diffusion "involving symbolic and substantial normative power involves the institutionalization of a relationship between the EU and a third party, such as an interregional cooperation agreement, membership of an international organization or enlargement of the EU itself" (Manners 2002, 35). In that sense, the aforementioned EU Member States need to use their influence in theirs spheres of influence, in order to promote and to impose EU's interests, especially through various formal activities, using the procedural diffusion of norms and values. Namely, the general point is not all of these states to join the EU, but to enter into the EU's orbit and to begin to internalize its values and norms.

Table 1: Normative power Europe (Source: Manners 2002, 33)

Founding Principles	Tasks and Objectives	Stable Institutions	Fundamental Rights
• Liberty • Democracy • Respect for human rights and fundamental freedoms • Rule of law	• Social progress • Non-discrimination • Sustainable development	• Guarantee of democracy • Rule of law • Human rights and fundamental freedoms • Protection of minorities	• Dignity • Freedoms • Equality • Solidarity • Citizenship • Justice
Treaty Base - set out in Article 6 of the Treaty on European Union	Treaty Base - set out in Article 2 of the TEC and of the TEU, andArticles 6 and 13 of the TEC	Copenhagen Criteria - set out in the conclusions of the June 1993 European Council	Draft Charter of the Fundamental Rights of the European Union

The normative power starts from the position of norms as fundaments of the EU power. Or as theorist Charles Grant emphasized: "[t]he European power represents the capacity of the European Union and its Member States, to influence the world around them in a desired direction for them. In practice, this would mean encouraging people in other parts of the world, to embrace political and economic system compatible for them" (Grant 2009, 2). In that sense, normative power is treated as a regulatory or standardizing power. While norms are categories which become close to what is called power with all its attributes, because only great powers possess adequate power for determination and modeling of what is called

“normal”, moreover, through standardizing behavior of subjects in international relations. As normal in this context, one should see the “condition of regular, existing or usual behavior of international subjects in international relations” (Manners 2008, 46). Consequently, all international actors possess normative power seen *in strictu sensu*, thus, all of them take part in the creation, modeling and organizing of the norms (rules of conduct) in the international relations. Moreover, Prof. Ian Manners defines it as “a series of normative principles, which are generally accepted in the UN system, in order to be universally applied” (Manners 2008). He emphasized the values of the EU, such as: sustainable peace, freedom, democracy, human rights, and the rule of law, social justice and good global governance. Based on that, it can be confidently concluded that conceptualization of the EU as a normative power, is directly tied to the power of norms and values as legitimacy basis for its activities on the international scene. The EU Member States need to start to institutionalize their relationships with their former colonies or dependencies, especially with those states which have close relations and today. Hence, the use of the aforementioned international organizations (such as The Commonwealth, IOF etc., which are predominantly consisted of former colonies or dependencies) can be used as a basis for the imposition of the EU values, for the sake of the EU. Therefore, a problem that indicated can occur if the particular EU Member State (Great Britain, France, Spain or Portugal) *do not expresses a political will for using of its own national legacy for the sake of the EU*. On the contrary, each EU Member State need to use the instruments of procedural diffusion in order to push their former colonies and dependencies into the EU’s orbit, and thereby provide a basis to further the EU interests globally.

The legacy as such, appears as a basis for application of the normative power, through the procedural diffusion of norms and values, towards the former colonies and dependencies of today EU Member States. However the success of this method for utilization of the past largely depends on the political will of individual Member State and their belief for the importance of European values and interests in the world. This includes the primacy of EU interests, rather than individual and national interests of its Member States – “Europe first” approach.

The main intention is to engage the spheres of influence of every single EU Member State, in order to influence the global milieu. The EU Member States would be allowed to act in accordance to their preferences, in sense of using their historical connections with the rest of the world, and in this manner, to apply the EU’s value interests - *raison de valeur* - on a global scale, since it cannot be expected that Great Britain, for example, give up its influence in its Commonwealth, nor France its influence in its Francophone organization (and the same goes for the other countries that were once colonial powers) for the sake of the EU, and in this way to lose or erase their rich past. But on the other hand, it can be expected that their influence to be *synchronously articulated via* EU in the function of influencing the world with EU’ norms and values, and thus, to enable the EU Member States through an ambitious EU leadership, to “reoccupy” their ex-colonies or ex-dependencies. But, this time in a civilized, pacifist and normative way, while internalizing their values, through the norming of a narrow political collaboration with these states, in the name and on behalf of the EU. Or as the author Rokas

Grajauskas stated: "[The EU] acts as an umbrella, placing EU Member States under a postmodern framework. When EU countries want to act in a 'modern' way, they go on their own. In other words, in those areas where the EU is acting as a single actor, EU's action is postmodern" (Grajauskas 2011). The main idea is to "push" the EU Member States to start acting in a postmodern direction, rather in a modern way and thus, to affirm the EU interests on a global scale, while using their (colonial) legacy.

CONCLUSION

This paper tended to describe one of the many opportunities for imposing of the European Union power on the global stage, while using the memory and colonial legacy of its Member States, especially through the aspect of the Great Britain, France, Spain and Portugal. In that sense, we can stress that the European Union possesses numerous opportunities to impose itself on a global stage, but this dimension is very interesting, because takes into account the colonial legacy of its Member States. We can conclude that the aforementioned EU Member States can contribute to achieving the value interests of the EU – or as we named it before as *raison de valeur* - if they only act for the sake of the EU, rather for their own national interests. Because, the EU represents a postmodern actor, which is very dependent of the political will of its Member States. So, the main idea of this research is consisted in the notion of solidarity in the name and on behalf of the EU as a whole. Consequently, each of the EU Member States, need to mobilize its own sphere of influence, aiming to bring the states which belong to their colonial legacy (organized in various world, regional or transnational organizations, such as: The Commonwealth, IOF, CPLC, Latin Union etc.) into the EU orbit. This is likely, because and today each of these EU Member States, possesses a certain influence upon their former colonies or dependencies, considering their mutual memory (culture, religion, tradition etc.), and mutual interests. Hence, the EU through the procedural diffusion of its normative power, will be able to institutionalize its relationship with a particular state, and thus, will be able to impose its values and norms upon it. At the end, we must conclude that the aforementioned international organizations (predominantly consisted of former colonies and dependencies) are not important for this research as international organizations with its own structure, vision or mission, but they are important only as a spheres of interest, which brings together the states who in the past were colonies or dependencies of the specific EU Member States. Hence, using the colonial legacy, EU can impose itself as a global actor, armed with norms and values, which go beyond the borders and interests of its Member States, setting European interests first on the agenda.

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FEMINIST PATHWAYS PERSPECTIVE: A CASE STUDY

Assistant Professor Angelina Stanojoska, PhD
Faculty of Law, University „St. Kliment Ohridski" – Bitola,
Republic of North Macedonia
angiest22@gmail.com

Julija Jurtoska, MA
julijajurtoska@yahoo.com

Abstract
The feminist pathways perspective is very similar to the life course theories and developmental criminology perspectives. It analyzes the different life experiences and developmental trajectories, through their influence to future criminal behavior. Using gender as focal point, this perspective through its many researches has concluded that life trajectories among females are connected to abuse, poverty and drug and alcohol abuse.
In this paper through the use of feminist pathways perspective we will analyze the life trajectory of a female inmate who has committed a murder. Which life events were crucial in acting criminally? Was there any possibility in avoiding criminal behavior? How can society help women with difficult life trajectories?

Key words: case study, developmental criminology, female, feminist pathways, life trajectory.

INTRODUCTION
There is not but one feminist theory, but a number of strains in feminist theory which include the Marxist, socialist, liberal, radical and postmodern. The core of these strains is that feminist theories are used as "a woman centered description and explanation of human experience and the social world," recognizing "that gender governs every aspect of personal and social life" (Danner 1989: 51). Feminist criminologists examine criminal behavior and victimization through learned behavior that varies between gender and the gender differences in patriarchal societies.
The research about offending and victimized women and girls in contrast to the studies of these groups of man and boys, were relatively rare until the 1970s and the second wave of the feminist movement. A classic article by Kathleen Daly and Meda Chesney-Lind, "Feminism and Criminology," published in 1988, criticized most criminological research that either routinely excluded girls/women/gender, or if they did include girls (or women), simply added them to the existing theories developed to understand boys' and men's offending. More specifically, Daly & Chesney Lind (1988) referred to this practice as "add women and stir," or simply

trying to fit women/girls into theories and statistical models designed to study boys/men and crime.
The first studies about the abusive, traumatized and chaotic lives of incarcerated women prior to their incarceration at the hands of their abusive parents; guardians and intimate partners date back to 1917. But this trend did not continue and went unnoticed despite being published in reputable journals and by woman scholars with medical or degrees in philosophy. But these trends have changed from the 1980s when studies have shown the high rates of victimization among incarcerated women and girls.
Cathy Spatz Widom (1989) began her studies that included an extensive data and reconstruction of the lives of men and women offenders, including their criminal history, but also their history of abuse including physical, sexual or other types in compression to their peers who have not experienced such victimizations in their lives. In her cycle of violence study she found that these situations are a risk factor for subsequent offending. Widom's research is consistent with pathways studies and her inclusion of both men and women indicates that feminist pathways theory is appropriate in the understanding of boys and men's offending.
Recent studies of the incarcerated women in USA have confirmed the strong impact of adverse lifeevents (also called traumas) on women's and girls' offending, but also they have shown that such traumas are connected with serious mental illness (DeHart et al., 2014; Lynch et al., 2014). This group of women had significantly more adverse lifeevents and serious mental illness compared to non-incarcerated women, but also compared to incarcerated men. Only 9% of the incarcerated women from the multisite study did not meet any of the criteria for any lifetime serious mental illness, posttraumatic stress disorder (PTSD), or substance use disorder (Lynch et al., 2014). In the same study the authors have identified that the women's mental illnesses are connected with the fact that they are survivors child physical abuse, child sexual abuse, childhood caregiver incarceration, childhood caregiver alcohol/drug addiction, witnessing violence, being attacked non sexually as an adult, adult intimate partner abuse (domestic violence), and adult sexual violence (usually, rape).
The suggestion that victimization/trauma is a risk factor for offending in feminist studies later in its development has been referred to as pathways theory or feminist pathways theory. All three theories feminist pathways, life course, and cycle of violence have confirmed the significance of life trajectories and events correlated with offending. The pathways theory is a distinctively feminist criminological theory that has important implications for general strain and life course developmental theories, and also for boys' trajectories to offending.

PATHWAYS TO CRIME OF FEMALE OFFENDERS

The earliest articles that started the talk about the pathways of the incarcerated women date back to the first two decades of the 1900s (Guibord, 1917; Spaulding, 1918). They stated that there was a risk that these women are coming from chaotic homes, they have witnessed or experienced intimate partner abuse and/or experienced sexual abuse.

The research of women pathways indicate that gender matters. Steffensmeier and Allen note that the differences between the lives of women and men shape their patterns of criminal offending (Steffensmeier & Allen, 1998). Other researchers that have studied the different pathways of men and women towards crime and imprisonment are Belknap, 2007; Bloom et al., 2003; Daly, 1998; Owen, 1998; Chesney-Lind, 1997; Daly and Chesney-Lind, 1988.

Several empirical studies indicate that prior victimization, economic marginalization and substances abuse improperly affect women and have a crucial role in the shaping of female criminality (Daly, 1998; Owen, 1998; Chesney-Lind, 1997; Belknap, 1996). When it comes to prior victimization, child abuse is connected to future delinquent activities, substance abuse and criminality. A large number of female offenders have been victims of sexual or physical abuse, and the numbers of adult intimate partner abuse are even higher than those from women in the general population or incarcerated man (Chesney-Lind, 2002; O'Brien, 2001; Greenfeld and Snell, 1999). The victimization and abuse endured by women starts at an early age and lasts longer and it contributes to future offending.

Another important factor that has to be looked at is the economic marginalization of women and its role in the involvement and repeat criminal activities from women (Holtfreter et al., 2004). Women who come from poor areas and especially women who come from minority groups have difficulties in finding an employment and these circumstances push them towards the illegitimate ways of financial gain and engagement in criminal activities.

Substance abuse can be seen as one of the pathways that end in a female offending. Some researches indicate that women who have problems with drugs are more likely to commit crime (Merlo and Pollock, 1995; Arnold, 1990). Also there are indications that the substance abuse is a way of coping with the pain of abuse, but also a way to cope with the social and economic marginalization and once they enter the drug world they continue to commit crimes as a way of getting means to buy drugs.

Kathleen Daly in her book "Gender, Crime and Punishment" (1992) speaks about the several pathways the women offenders have had in their life and the data in her research were collected through interviewing of incarcerated women. Street women are women who escaped from their abusive household or were interested in the way of street life and the excitement that it brings. These women were trying to meet ends in the street, continuing with their substance abuse that is supported by prostitution, thefts, selling drugs and going in and out of prison. Harmed or harming women is a group that have different life stories but they have common experience of physical or sexual abuse, and a way to cope with these problems was alcohol consumption in their teens or drug use. Battered women are those who have been in a violent relationship or have just ended such relationship. Drug-connected women are the once that have used or sold drugs with their boyfriends or other family members. Other women - is a group of women that do not fit in the previous groups or profiles of women and their law-breaking is in the line of fulfilling their desire for money. The author has concluded that these pathway groups cannot be viewed as a static characterization of women and their lives (pp.46-49).

The researches on the pathways of female offenders have identified crucial issues regarding the origin and continuing of female criminal activities as histories of personal abuse, mental illness in relation to their early life experiences, substances abuse and addiction, economic and social marginality, homelessness and relationships.

WOMEN WHO KILL

Women commit less homicides then men, but when they do so it is more disturbing. That is because of the notion and norms of femininity (nurture, gentleness and social conformity by women) and the shattered picture about it when women commit homicide. Women who kill erase and overcome the known boundaries between masculinity and femininity, and are a group that has to be researched and analyzed by feminist scholars.

The "usual" victims of female murderers are their partners or their children. The killing of an abusive male partner is not something unthinkable if it is taken into account the psychological trauma that the women have endured in their intimate relationship (Morrissey, 2003; Carline, 2005). Women who kill their abusive male partners are the subject of research for many feminist scholars who try to characterize these actions as justifiable and as a way of defending themselves from a life threatening violence. But, women who kill their children cross the understandings about motherhood and go against their social and cultural foundations (Meyer and Oberman 2001). The everyday difficulties that motherhood presents and the pressure that goes along with it especially the socio-economic disadvantages that mothers experience have been a subject to feminist's analysis argue and criticize that the normative feminine identities have been shaped on the symbolic role of motherhood (Choi et al, 2005). Other aspects that have been identified are the ones of an oppressive role of motherhood in relation to the lived experiences and the construction of femininity in the society. These notions about motherhood have been included in the feminist researches about women who kill their children (Meyer and Oberman 2001). But there is a need for studies of other types of murder committed by women, the once "whose deeds fall between the cracks of the normative representation of women" (Frigon, 2006, p.4) so that the concept of stereotypes and restrictive gender norms is not undermined.

When it comes to the reasons why women kill, the economic motive is less represented in women then men, and they are less likely to commit murder while committing another felony (Jurik and Winn, 1990). But, when the motive is economic in nature, usually women's involvement in such crime is as an accessory. Another reason for women to commit homicide is the conflict and self-defense as a response to abuse or direct attack. The fight between partners, the arguments and abuse are mostly the primary reasons women commit homicide, or they try to defend their selves or other family members. Some of the homicides committed by women are in self-defense and others are a result of a victim precipitation that in cases of women homicide is present as an attack against her or another reason that creates fear for her life or well-being. Also present in women's cases is victims provocation, but the cases of homicides that have been committed by women with

premeditation are small in numbers, that is because their actions are not planned in advance.

CASE STUDY - MOMENTARY MURDER AND PATHWAYS TO THE CRIME

The crime

A young Macedonian woman (21 years of age) was in a 2.5 years relationship with the victim a 27 year old male who was an ethnic Albanian. The day of the murder they were together in a club celebrating and drinking, and after that they went to her apartment. They continued to drink alcohol and the woman performed a traditional sip poring on the ground in the memory of her dead mother, and that was a starting point of their verbal and physical argument. The victim verbally insulted the offender's religion and the performed ritual, after which she took the kitchen knife with a 15cm blade and aimed for the left side of his chest. The blade entered his chest with depth of 2.5cm completely cut the left ventricular vein and partly cut the left ventricular artery and he bleed to death.

In her statement she explained that she loved the victim, but the insult to her religion and the memory of her mother was too much for her and she started a verbal argument, and after that he broke the mobile phone, got up and started to hit her all over her body. She tried to defend herself and took the knife, he grabbed her hand, but she managed to stab him in the chest.

She was convicted for murder of article 125 "Momentary Murder" from the Criminal Code of the Republic of North Macedonia defined as "A person who takes the life of another momentarily, brought into a state of strong irritation without his own fault, by an attack or with heavy insult from the victim, shall be punished with imprisonment of one to five years." to 4 years of imprisonment with final court decision from Basic Court Skopje I Skopje.

Pathways to the crime

The female offender had normal childhood without any traumatic events that are part of the group of factors that can be defined as traumas. Her life changed overnight when she lost her mother at the age of 14 years that was a starting point of her troubling behavior during her adolescent years.

Trying to surpass her pain she began drinking alcoholic beverages and got addicted to them. When the drinking was not enough she started to take something stronger and began to abuse narcotic substances. The excessive alcohol and drug abuse influenced her social life in a negative way. She could not make proper connections with her peers and because of her loss she was really aggressive towards women.

After this troubling period she was committed to a mental health institution and tried to solve her problems with addiction. But, this period had no effect on her addiction; after she left the institution she stopped taking her therapy and continued

with substance abuse. Her situation led her to seek different ways of earning money and one way was illegal prostitution.

CONCLUSION

The feminist pathways perspective has evolved in the last 30 years into a set of studies that have backed the fact that girls and women start to take criminal actions through different paths then boys and men. In these studies it has been found that women who committed crimes have often experienced abuse, chaotic familial problems, and economic instability. These experiences have been the background to the antisocial behavior, excessive trauma and victimization, and increase criminal involvement.

Because of the high number of traumas incurred through gender, the criminal justice system must become gender-responsive when it comes to securing and providing prevention services, treatment, and re-entry processing.

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EVIDENCE, PROBABILITY AND ROC IN CRIME CASES

Dr. József Orbán PhD
Széchenyi István University, Győr,
Faculty of Law, Department of Criminal Sciences
jozsef.orban.mba@gmail.com

Abstract
The certainty of evidence is in the focus of the discretion during the clew up of threads of a crime. The probability projected to the fact and exclusion shall be weighted as well. The ratio of the pros and contras of a statement may act as a magnifier and providing an additional guide in the criminal procedure. Therefore the chance of fallacy can be decreased if the delinquency of the suspect is compared against the contradictions with their weighted Bayesian probability. The dependency of miscarriage justice should be examined with Bayesian probability and the likelihood applied to the forensic science. The ROC (Receiver Operating Characteristic) originated for the defence industry is widely used in the scientific drug research and in the diagnoses of diseases. Therefore, it might provide a new instrument to forensic science as well. The true positive compared against false positive may give deeper understanding of the truth behind evidence. The paper provides a sort summary on ROC application and some forensic applicability to decrease the chances of forensic errors and as well as the miscarriage of justice.

Keywords: Miscarriage of justice, Bayesian probability, likelihood, ROC

INTRODUCTION

Fenyvesi's pyramid model of the hierarchy of evidence (Fenyvesi, 2015: 233-43) provides a model for the theoretical classification of evidence. The evidentiary power of certain set of evidence can be evaluated in many ways, including various mathematical methods (Fenyvesi, 2014). Some of these are through statistics (Aitken - Taroni, 2004; Orbán, 2013: 197-214), probability (Kadane - Schum, 1996), especially Bayesian probability (Ayres - Nalebuff, 2015: 1447-503), the Bayesian network (Pearl, 1982: 133- 6; Orbán, 2017: 799-808), the likelihood ratio that evaluates probability conditions, and the method of the Receiver Operating Characteristic (ROC) curve based on decision theory. The Bayesian network model, which examines evidence in its probability correlations, presents the weighted interactions of the elementary probability actions of a crime (Prakken et al. 2013: 150-9; Orbán, 2013: 197-214). New data and facts can constantly reassess the probability of the result. The reliability and evidentiary power of the probability of the evidence are given by the correctness of inherent decisions and the applied measurement methods. The advantage of mathematical methods is that they can be replicated and easily updated with new evidence. All these together increase credibility and objectivity.

During World War II, airspace exploration was the first to define the detection quality of radar equipment by the ratio of real positive and false positive (FP) detection data.
Later, the method was also applied by pharmaceutical researches, radiology (Krupinski, 2017: 41-52), medical science and meteorology. There are very few researches on its forensic application, although the logic of airspace detection and crime detection are very similar. And even in the case of those few publications, the investigation is often limited to the identification of fingerprints and the evaluation of DNA samples. In addition to presenting the Bayesian proof, this paper will describe the ROC evaluation.

THE EVALUATION OF EVIDENCE AND DECISION BASED ON BAYESIAN PROBABILITY

A number of publications in mathematics (Robert, 2007), engineering (Fawcett, 2003) and medicines deal with the comparison of frequentist probability describing general phenomena and Bayesian probability describing individual events. Frequentist probability is usually a quotient of chance and total opportunity. It is perfectly suitable for describing general conclusions, especially mass phenomena.
In forensics, the credibility or significance of an evidence is never a general issue, but it is always related to the case in question. It was a source of many miscarriages of justice that the generalized frequentist probability was directly projected on race, social layer, and non-standard behavioural patterns.
In every social system there are groups that are already suspected in the early stages of the investigation. Suspicion is based on experience and real data, and if it coincides with one of the versions of the investigation, data and evidence collection are often limited to that direction. By contrast, the Bayesian probability evaluation considers the probability by focusing on a particular case. The probabilistic comparison of data generated by medical diagnostic imaging devices (CT, MRI, PET, etc.) and the Bayesian evaluation of medical test results (Spiegelhalter, 2004) has a broad literature (Liao et al. 2012), so the method has been tested. The source of these methods is the Bayes theorem, which describes the relationship between evidence (E), hypothesis (H) and the relevant probabilities. Generally, the form concerning the evidence is the topic of discussions, however, dealing with the probability of the hypothesis is equally important in order to avoid fallacies. Especially because, at the start of the investigation, the search for evidence often focuses on the ones that support the selected hypothesis. The following (simplified) form of the Bayesian theorem examines the probability of the hypothesis, namely, to what extent the evidence supports the hypothesis.

$$\Pr(H|E) = \frac{\Pr(E|H)\Pr(H)}{\Pr(E|H)\Pr(H)+\Pr(E|\text{not } H)\Pr(\text{not } H)}$$

The probability of the hypothesis is based on the available evidence as a quotient of the probabilities. The numerator – with the assumption of the hypothesis – is the

product of the probability of the evidence and the probability of the hypothesis. The denominator is the sum of the above-mentioned probability product and product of the negation of the hypothesis. In forensic terms, the Bayesian probability of the hypothesis of guilt is the ratio of the true positive (supporting the found evidence) and the total positive, which includes both true and false positive values. One source of the miscarriage of justice is when the found evidence that supports the hypothesis is treated as a fact. The probability of an error can be further reduced, if it is also considered how much the found evidence supports the negation of the hypothesis, the presumption of innocence. This is the simplified form of the Bayesian theorem for this process:

$$Pr(\text{ not } H|E) = \frac{Pr(E|\text{ not } H)\, Pr(\text{ not } H)}{Pr(E|\text{ not } H)\, Pr(\text{ not } H)+Pr(E|H)\, Pr(H)}$$

If the results of the two calculations are set against each other, the contrast between the guilty and the innocent decision becomes even stronger.
If this has not been done during the investigation, the defence can still find favourable arguments.
For the correctness of the investigation hypothesis, the above calculations are required for all the evidence.
The proper detection of the evidence, and the crime through it, is the result of the real positive fact-finding work. False identifications based on fallacies and false conclusions can lead to false positive results, which is the source of miscarriage of justice.

SOME QUESTIONS OF DECISION THEORY IN A NUTSHELL

Physicians, when treating patients, are literally the masters of life and death, if they do not correctly predict the disease when detecting the syndromes. That is why medical references are relevant; judges see the uncertainty of their decisions over human fates in probability evidence, and therefore they reject to use it. The one who decides may also make a mistake. But those who do not take advantage of all the conditions and tools that support decision-making may take an even greater risk.
Even if the prediction of the disease is correct, it may be fatal for the patient to have an inappropriate prediction concerning the treatment method and the medication (Nogel, 2017). The physician acknowledges the risks of probabilistic decisions, because even with the wrong decisions, the healing rate of the patients is better than in the absence of a decision. The assumed evidence – besides other methods –, cumulative perceptions, data from other sources of supportive effect and weighting of presumptions can provide evidentiary facts. Cumulative perceptions record the repetition of the suspects' similar behaviour.
The causes of decision errors include inherent inaccuracy of the methods, errors of the measurement tools, and the decision-maker's fallacy.
The development of methods and measurement tools have resulted in spectacular results like in the instance of Innocent Project: in the case of more than 364 capital

penalties in the US, they have proven that the convict was not the perpetrator of the crime by repeated advanced DNA tests. (https://www.innocenceproject.org/) Such a high-volume project is unprecedented in Europe; however, the European Union has ordained several warranty items, which aim to increase the reliability of expert methods. (Kovács et al,, 2015, Kovács – Nogel, 2017, Kovács- Pádár, 2015) One of the most important steps is the accreditation of the processes. (Pádár et al, 2015, Kovács, 2017) Of course, on an international level, it would be expected to have the states made further steps to ensure the credibility of the expertise. (Nogel, 2018)
The estimation of the risk of decision points in criminal proceedings is a further issue. The risk assessment of the legality of the procedure is also a real challenge. Berk's research group briefly notes that „rhetoric too often substitutes for careful analysis." (Berk et al., 2017)
In the binary (yes / no) decision theory (the judge's judgment is also included: guilty / not guilty), the result of the decision can be divided into four hypothetical classes (Fawcett, 2005: 861-74). The results of the decision: (1) punishes the true offender (true positive, TP); (2) relieves the innocent suspect (real negative, TN); (3) punishes the innocent suspect (Type I Error: false positive, FP); (4) relieves the actual offender (Type II Error: false negative, FN). Decisions (1) and (2) serve the truth. The case of Brandon Mayfield's arrest following the false identification of fingerprints after the terrorist attack in Madrid can be considered as a false positive decision (Czebe - Kovács, 2015: 569-74; Kovács, 2018). Decision (4) relieves the actual offender in the absence of evidence, which – even if it seems paradoxical - is a guarantee of the rule of law.
Decision (3) is the presentation of untruth as truth, which must be avoided in every decision, therefore in jurisdiction as well.
The correctness of a decision, such as the quality of judicial actions, can be characterized by the ratio of real positive and total positive decisions. Ideally, it means 100%. If the relief is based on actual evidence, not on the incomplete exploration of the evidence, the investigation is effective. It can be produced by the ratio of true negatives and total negatives, and ideally, it is also 100%. Accuracy of evidence evaluation can be calculated with the ratio between the potential correct and all possibilities:

$$\text{Accuracy} = \frac{\text{True Positive} + \text{True Negative}}{\text{All possibilities } (=TP+FP+TN+FN)}$$

RECEIVER OPERATING CHARACTERISTIC (ROC) ANALYSIS

The source of the Receiver Operating Characteristic (ROC) analysis was the definition of the radar receivers' target detection characteristics. It examined the relation of detection probability (P_{DET}) and false alarm (P_{FA}). Real detection shows radar sensitivity, false detection results in false alarm, which is also called the specificity of the radar.

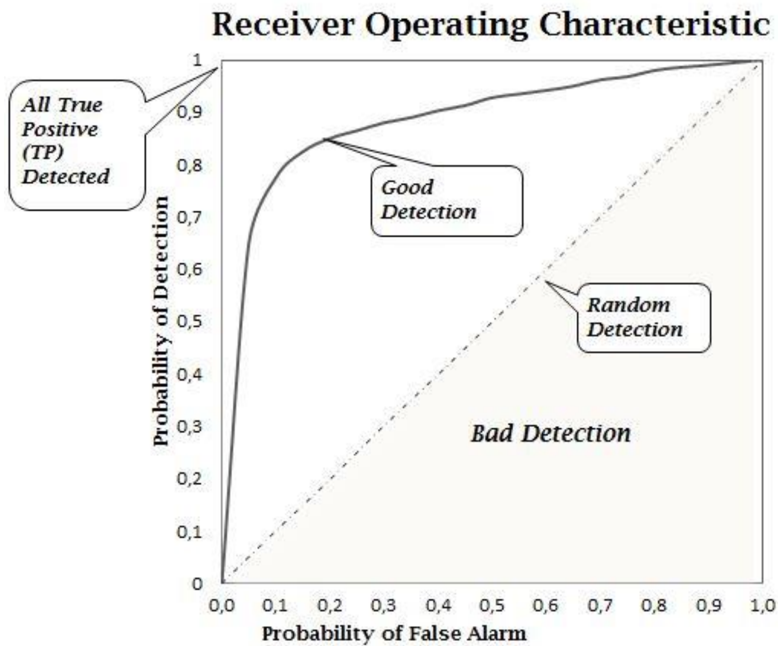

Figure 1. ROC performance of a radar receiver (Source: Author's, based on: Candy – Breitfeller, 2013)

If we imagine sensitivity and specificity as dimensions, it gives us a 1x1 square decision space. This is the ROC space. If the ratio of sensitivity and specificity is constant, the evaluation of the evidence can only be seen as good as deciding with a coin flip. The more the detection probability approaches to 1, while the value of the false alarms also stay low, the better and more effective the detection capability is. At perfect detection: $P_{DET} = 1$ and $P_{FA} = 0$.

For forensic evidence, such as the above-mentioned fingerprint identification, the ratio of correctly identified and all identified is the sensitivity of the method. The ratio of correctly excluded and all excluded evidence is the specificity of the decision. After the theoretical discussion, the fingerprint identification issue has been analysed with the ROC method, and the evidence evaluation system provides a good hit rate even for small fingerprint fragments.

With the completeness of the sample, identification becomes more and more certain. Personalised conclusions from DNA remnants of the offender are also more accurate, if the hit rate is higher.

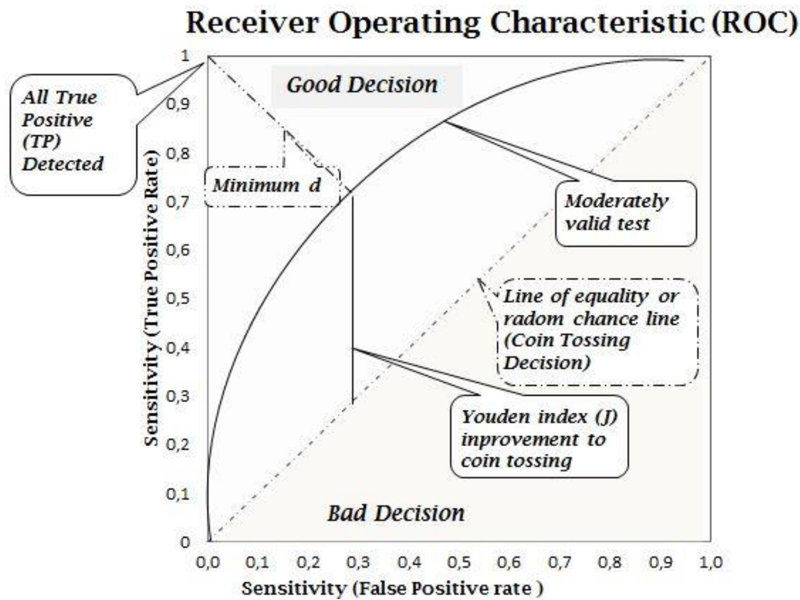

Figure 2. Receiver Operating Characteristic (Source: Author's, based on: Kumar et al. 2011)

The ROC curve shows a theoretically ideal form in figure 2.
Equal chances - equivalent to a toss-based decision - are the diagonal of the square, the Youden index (J) shows the improvement at the valuation point. The curve based on empirical observations may be significantly different from the theoretical curve, often quite crooked, as shown in the comparison of Figure 3.

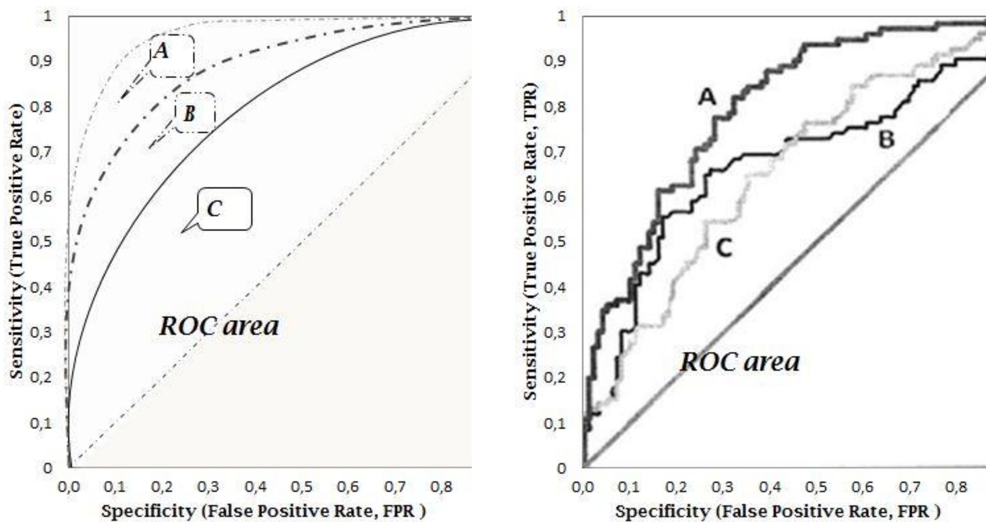

Figure 3. Theoretical and empirical ROC curves (Source: Author's, based on: Kumar et al. 2011)

Therefore, adding the Area Under Curve (AUC) provides a good characterization of the overall correctness of the decision (Bradley, 1997: 1145-59). AUC = 0.5 indicates equal chances. In all other cases, the integral of the area under the curve must be counted, and logically, the value approaching 1 means improvement.

VALIDATION OF THE ROC CURVE

The difference between the theoretical and practical ROC curves points to the need for validation, even if the correlations seem obvious. It may discredit a good method with a devastating effect if the implemented software contains hidden errors, built-in prejudice, or if one can raise criticism against it merely based on empirical data.
Angwin accused the COMPAS program, which includes AUC-ROC logic to estimate crime risk, with built-in racism (Angwin et al, 2016).
When considering the release of detainees, a lower risk of recidivism was estimated for whites when the recidivism of white and non-white offenders was classified. The bias in the accusations, or some other non-scientific motivation, may be suggested by having the same criticism repeated several times with similar texts (by combining the authors' order).
In his response, Flores analysed the available statistical data, the validity of the results, and refuted the accusations (Flores et al. 2016: 38-46).

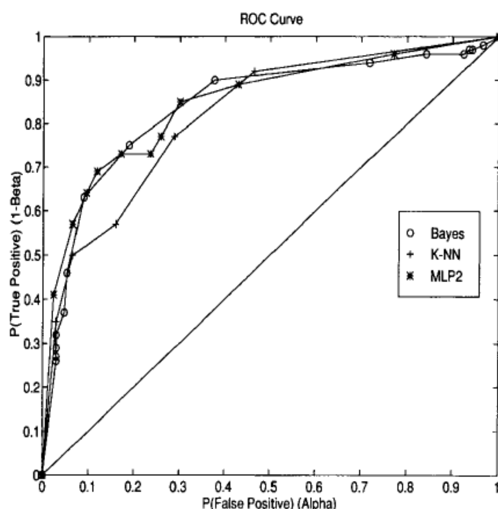

Figure 4. ROC curve for Bayes, KNN, and MLP on the Hungarian heart disease data (Bradley, 1997: 1145-59 Based on Jánosi data collection)

Bradley's publication has been included in this study as a comparison of methods. If the task is to compare different forensic methods or tools, these can be compared with the principles introduced above. In figure 4, Bradley shows the comparison of three machine learning methods. The principle of the example can give assistance when the methods provide different accuracy in different ranges. Thus, for a forensic comparison, the number of necessary and sufficient sampling points can be determined. It can serve as an excellent device for optimising fingerprint, face, etc. identification databases.

The evaluation of methods described in this paper may require en expert e.g. evidentiary (Orbán, 2018: 146-57).

SUMMARY
Forensic Bayesian methods are already applied in fingerprint and DNA analysis, but their general spread is slow. ROC curve and AUC value can give the alternative method of evidence evaluation. The method has been successfully used in several disciplines. Their application is highly recommended in the field of forensics as well.

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THE ADMINISTRATIVE "INPUT" IN THE PROCESS OF THE MACEDONIAN ACCESSION TOWARDS THE EUROPEAN UNION

Mladen Karadjoski, Associate Professor
Branko Dimeski, Associate Professor
Faculty of Law, University of "St. Kliment Ohridski" – Bitola
mladen.karadzoski@uklo.edu.mk
branko.dimeski@uklo.edu.mk

Abstract
The goal of this paper is to describe and analyze the role and the "input" of the institutions, bodies, working groups, committees and other administrative structures involved in the Macedonian accession process towards the European Union.
These administrative segments are very important "piece of the mosaic" in the preparation, negotiation and accession process towards the EU.
The main methods which will be used in this paper will be the historical method, descriptive method, content analysis method and comparative method.
The expected results will be in a direction of improvement of the "administrative features and ambient" for acceleration of the integration process towards the European Union and final achievement of the main goal - accession.

Keywords: administration, European Union, Macedonia, accession, institutions

INTRODUCTION

"The institutions are those that govern the relations between people, in fact they are the real foundations of civilization" (Grin, p.17).

Although it seems that the administrative or institutional contribution in the process of accession of the Republic of Macedonia towards the European Union is sometimes treated as a purely technical issue, it must be noted that without an engaged, motivated and well-prepared administration it is not possible to successfully fulfill all pre-accession criteria and conditions, but also the realization of the specific operational requirements of the Union. The synergy of good administrative placement and professional and competent state and public officials and servatns on the one hand and a strong political will and determination on the other hand is *condition sine qua non* for a successful accession process of the Republic of Macedonia in the European Union.

Due to all of the previously stated reasons, the focus of this paper will be to determine the key administrative and institutional bearers and protagonists of this process, as well as launching concrete suggestions for better embodying of the administrative activities and their exact implementation, in order to be a 'direction and instruction' for transferring the written on paper to a tangible result in practice

with a visible benefit for both the citizens and the institutions in the Republic of Macedonia, but also in a visible effect for the monitors from the European Union.

Of course, the administrative segments of the legislative and executive power that have a role in the process of accession of the Republic of Macedonia towards the European Union will be analyzed in details, but the structures of the judiciary will be exempted from the analysis, as its contribution will become much more visible after EU membership, especially with regard to the interpretation of the acquis communautaire.

THE LEGISLATIVE "ADMINISTRATIVE INPUT IN THE MACEDONIAN EU - ACCESSION PROCESS"

The Assembly is the highest legislative power and the highest representative body in the Republic of Macedonia. Its legitimacy to be one of the pillars for the entry of the Republic of Macedonia into the European Union stems from its constitutional competences: "to pass laws and to give them authentic interpretation, to ratify international agreements and to make decisions on entering or leaving an alliance or community with other state or international organization". (Constitution of the Republic of Macedonia, art.68).

The adoption of laws which are correlated with the *acquis communautaire* is an essential integrative element, but also a *conditio sine qua non* for the European future of the Republic of Macedonia. The ratification of international agreements, which makes them part of the domestic legislation, means intensified cooperation with many EU member states individually, but also with the EU as an international legal entity. The significance of the role of the Assembly in the Euro-integration process of the Republic of Macedonia is confirmed by the fact that this institution has the final say whether the Republic of Macedonia will become a member of the EU by bringing a Decision for joining the EU, which is adopted by a two-thirds majority of the total number of Representatives in the Assembly of the Republic of Macedonia.

In this context, it is also important to note the control role that the Assembly has, by "obliging the Government to report every three months on the progress in the Euro-integration process of the Republic of Macedonia". (Закон за Владата на РМ, член 25)

In order to animate the Assembly of the Republic of Macedonia in the process of the Euro-integration of the Republic of Macedonia and to emphasize its international dimension, but also to make a more consistent implementation of the Stabilization and Association Agreement, a Joint Parliamentary Committee for Stabilization and Association was established in which participate members of the Parliament of the Republic of Macedonia and the European Parliament. Its main tasks are supervision of the implementation of the SAA, as well as monitoring the course of the integration of the Republic of Macedonia into the European Union.

However, the competences and responsibilities of the Assembly of the Republic of Macedonia have too general character and do not give a picture of its concrete and operational engagement. For these reasons, the Committee for European Affairs, which has strictly determined competencies, was established and

functioning within the framework of the Assembly. It is consisted of president, twelve members and their deputies. The Commission considers issues relating to:

• "Monitoring the implementation of the National Strategy for Integration of the Republic of Macedonia in the European Union and regularly informing the Assembly about its implementation;

• monitoring the fulfillment of the obligations arising from the agreements between the Republic of Macedonia and the European Union and the implementation of the programs and other acts of the institutions of the European Union, including the programs for financial assistance;

• monitoring and encouraging the process of harmonization of the legislation of the Republic of Macedonia with the legislation of the European Union, as well as proposing measures for improvement of the procedures for harmonization, giving opinions and suggestions for the activities of other working bodies of the Assembly and direct their attention to issues related to the accession of the Republic of Macedonia to the EU;

• monitoring the activities of the Government and the state administration bodies in relation to the Republic of Macedonia's accession to the European Union and in relation to them, giving opinions and recommendations;

• analyzing the consequences of Macedonia's accession to the EU and preparing reports on them;

• regularly informing the Assembly of all issues related to European integration, including through the collection of information, literature and other documents related to the European Union;

• proposing and realizing activities aimed at informing the public about the processes of European integration;

• cooperation with the relevant committees of other states and

• examines other issues related to European integration and the Republic of Macedonia's accession to the European Union. (Деловник на Собранието на РМ, член 118)

Despite the competence of the Commission for European Affairs in the field of European integration, its international action is also very important. Namely, if its activities are limited within the national borders, the effectiveness of the Commission will be marginalized.

The European Union, taking into account the benefits of regional linking and joint action, generated the creation of a COSAP (Conference of Parliamentary Committees for European Integration / Issues of States covered by the Stabilization and Association Process). This Conference covers Albania, Bosnia and Herzegovina, Croatia (EU member since 2013), Macedonia, Serbia and Montenegro. It was founded on June 17-18, 2005 in Sarajevo, B & H and is a forum for regular exchange of views on the Stabilization and Association Process, the strategy for joining the European Union in the countries of the process, as well as the process of enlargement of the EU. (European Commission, pp. 39-42)

On the other hand, there is a Conference of European Affairs Committees of the national parliaments of the states that are members of the European Union – COSAC (Conference of Community and European Affairs Committees of Parliaments of the European Union), which is an important framework for

cooperation of the national parliaments with respect to EU issues. With the acquisition of the candidate status of the Republic of Macedonia, the Committee on European Affairs of the Assembly of the Republic of Macedonia has the right to participate in the work of COSAC as an observer, together with the other candidate countries. The Conference of the European Affairs Committees of the Parliaments of the Member States of the European Union - COSAC was established on 16 November 1989 in Paris, at the Conference of the Presidents of Parliaments of the Member States of the European Union. In addition to the members of the European Affairs Committees of the national parliaments of the EU Member States, representatives of the European Parliament are also present at the COSAC meetings, which are aimed at strengthening the role of the committees responsible for European affairs of the national parliaments. (Haennel and De Croo, pp. 1-2)

THE EXECUTIVE "ADMINISTRATIVE INPUT IN THE MACEDONIAN EU - ACCESSION PROCESS"

Although the President of the Republic of Macedonia does not have concrete and operational competencies in the process of integration of the Republic of Macedonia into the European Union, his advisory, logistical and unifying roles are an additional European integration stimulus for the country itself. The contacts that he realizes with statesmen from the European Union member states, as well as with the candidate countries and the countries included in the Stabilization and Association Process, means intensification of the cooperation of the Republic of Macedonia with these countries in all areas, but at the same time these contacts and meetings contribute to the direct promotion of the state in the world and lobbying the states (especially the influential ones) to accelerate the process of integration of the Republic of Macedonia into the European Union. An important area in which the President of the country gives his contribution, but indirectly, is the harmonization of the Macedonian legislation with the European one. Namely, in accordance with Article 75 of the Constitution of the Republic of Macedonia, "the President of the State signs the decree for the proclamation of each law" (together with the President of the Assembly who is obliged to sign it). It is necessary to take into consideration the fact that there is extensive European legislation which is transposed in the Macedonian legislation, so verification, i.e. "giving the green light" on his side for the so-called "European laws" (by signing a decree and not vetoing) is a significant European integration impulse that has an impact on the whole country and its accession to the European Union. Also, international agreements are another instrument through which the immediate influence of the President of the Republic of Macedonia on the European integration process is noted. Thus, according to Article 119 of the Constitution of the Republic of Macedonia, "international agreements on behalf of the Republic of Macedonia are concluded by the President of the Republic of Macedonia". This means that in the range of international agreements, there are a multitude of agreements related to the European integration of the Republic of Macedonia, in which other contracting parties are the member states of the European Union, or the Union as an entity. Considering the fact that the President constitutionally draws the obligations for

signing international agreements, his engagement in the process of European integration of the Republic of Macedonia is most noticeable in this field.

The integration of the Republic of Macedonia into the European Union is one of its most important strategic priorities of the Macedonian Government. It is be based on common European values, such as the rule of law, respect for human rights and freedoms, social justice and accountability, equal rights and opportunities for all and solidarity. The membership of the Republic of Macedonia in the European family will contribute to strengthening the stability and economic prosperity of the country. In order to achieve this goal, the Government of the Republic of Macedonia will strive for:
• "Implementation of the required reforms by the Union in order for the state to fulfill the necessary conditions for becoming a member of the EU;
• full respect of the deadlines contained in the Stabilization and Association Agreement;
• improving the competitiveness of economic entities and their ability to be competitive on European and world markets;
• raising the capacity of the judicial system and
• development of democracy and preservation of political stability through further implementation of the Ohrid Framework Agreement. (Деловник за работа на Владата на РМ, чл.31)

The government appoints a Vice-Chairperson responsible for the European integration process, who as a member of the Government gives high political weight to the overall process of European integration. The Deputy Prime Minister responsible for European Integration is the minister responsible for the management and coordination of the European integration process. As chairman of the Working Committee for European Integration, he provides enhanced coordination and direction of activities in the European integration process and their regular monitoring. At the same time, the Deputy Prime Minister is also a national coordinator of foreign assistance, which enables the EU and other bilateral and multilateral assistance to be coordinated and used in support of the European integration process.

In order to achieve effective and consistent action of the Government of the Republic of Macedonia as an institution in the process of European integration, ministries have established departments, sectors or units (depending on the policy of the specific ministry). All these entities cooperate with each other, but also with the Secretariat for European Affairs of the Government of the Republic of Macedonia, the Parliament of the Republic of Macedonia (Commission for European Affairs) and other bodies and institutions in charge of the European integration of the Republic of Macedonia. Their competencies largely coincide and complement, but in this way more consistency is achieved in the performance of the activities, so the possibilities of omissions are reduced.

The Secretariat for European Affairs specific activities are as follows:

- Coordination and conformance of the work of the state administration authorities and of other bodies and institutions relating to preparation of the Republic of Macedonia for the European Union membership;

- Monitoring of implementation of the Stabilisation and Association Agreement concluded between the Republic of Macedonia and the European Communities and their Member States and of other Agreements concluded between the Republic of Macedonia and the European Union;
- Participation and monitoring of the working bodies established within the Stabilisation and Association Agreement and other Agreements with the European Union;
- Coordination and monitoring of the realisation of the European Partnership;
- Coordination and monitoring of the realisation of the National Programme for Adoption of the Acquis Communautaire;
- Preparation of the Macedonian version of the acquis communautaire and translation of Macedonian legislation;
- Strengthening the institutional capacity for conducting the European integration process;
- Preparation for negotiations of the Republic of Macedonia for European Union membership and taking part in formulation further negotiation positions;
- Coordination of the foreign assistance provided by the European Union and its Member States and of other foreign assistance intended for the reforms complementary to the integration process of the Republic of Macedonia in the European Union;
- Public communication and information dissemination for the activities associated with the European integration process and European affairs;
- Operation conformance of the state administration authorities of the Republic of Macedonia as a European Union Member State; (http://www.sep.gov.mk/en/content/?id=2#.XJDZ18lKgdU)

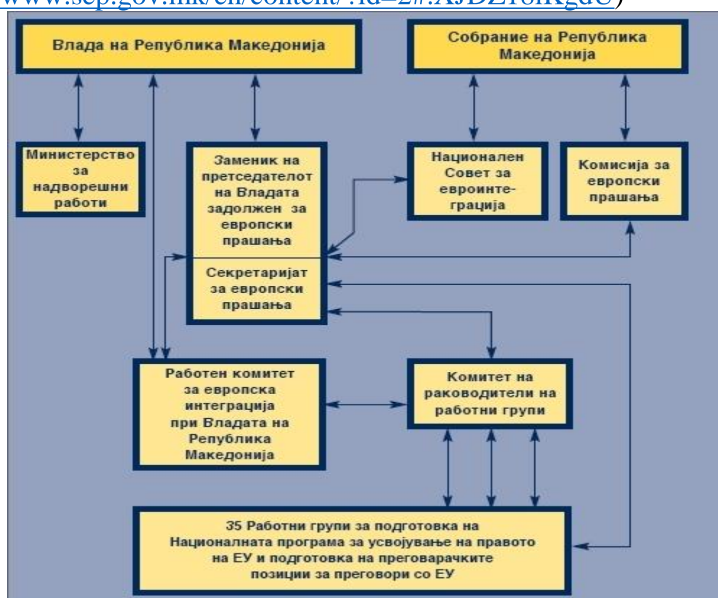

Figure 1: Institutional structure in Macedonia for integration towards the European Union

Source: http://www.sep.gov.mk/content/?id=3#.XJJcCclKjIU

SUI GENERIS ADMINISTRATIVE BODIES IN THE MACEDONIAN EU - ACCESSION PROCESS

The process of integration of the Republic of Macedonia into the European Union would not be possible without well-organized expert and administrative support, which, among other bodies, is provided by the General Secretariat and the Legislation Secretariat of the Government of the Republic of Macedonia.

The General Secretariat has a very important role in the European integration process, as an authority responsible for public administration reform. Within this framework, there are also sectors that have direct cooperation with the Secretariat for European Affairs and the Legislative Secretariat, and which operationalize the political decisions for the dynamics of the European integration process.

In the chain of important institutions - holders of the European integration process, and consequently the implementers of the National Strategy for Integration into the EU, the Secretariat for Legislation also has its place. This body performs the tasks related to "ensuring consistency of the legal system and providing expert opinions for harmonization of the proposals of the laws and other regulations with the Constitution of the Republic of Macedonia, with the legislation of the European Union and with the international agreements ratified in accordance with the Constitution of RM. One of the most important tasks of the Legislative Secretariat is to verify new legal acts in terms of their compliance with European legislation".

The Working Committee for European Integration is a body established by the Government of the Republic of Macedonia. It determines the methods and dynamics for realization of the strategic decisions, the political directions and the priorities of the Government of the Republic of Macedonia. It is an operational forum where significant issues in the field of European integration are being addressed (implementation of agreements with the European Union, monitoring of the Stabilization and Association Process, harmonization of legislation, translation of legal acts, coordination of foreign assistance) and proposals are made and suggestions, solutions for intensifying the integration process. The tasks of the Working Committee are:

• "Coordinate and synchronize the activities of the Stabilization and Association Process of the Republic of Macedonia and in the process of European integration;

• monitor the implementation of the Cooperation Agreement, the Stabilization and Association Agreement and the Interim Agreement on Trade and Trade Issues with the annexed and annexed Protocols between the Republic of Macedonia and the European Communities and their Member States;

• to monitor the realization of the overall financial cooperation of the Republic of Macedonia with the European Union (through PHARE, OBNOVA, CARDS, IPA programs, cross-border programs, bilateral assistance from EU Member States, etc.);

• monitor the work of the Subcommittee on approximation of national legislation with the EU legislation, its working groups and subgroups, as well as the work of other subcommittees established within the Working Committee;

• to monitor and give directions to the work of the network of sectors and departments for European integration in the ministries in support of the European integration process; and

• to monitor all other issues related to the European integration process of the Republic of Macedonia. (Одлука за формирање на Работен комитет за европска интеграција при Владата на Република Македонија, чл.2)

The Chairman of the Working Committee is the Deputy Prime Minister of the Government of the Republic of Macedonia in charge of European Integration, and his Deputy is the Minister of Economy. The members of the Working Committee are the state secretaries of all ministries. The Secretary of the Committee for Euro-Atlantic Integrations, the Secretary of the SAA Council between the Republic of Macedonia and the European Communities and the Secretary of the Secretariat for Legislation are also participating in the work of the Working Committee. The chairpersons of the working groups of the SAA Council, as well as other experts and experts from the respective field, can participate in the work of the Working Committee depending on the need and special cases, at the invitation of the Chairman of the Working Committee. (ibid, art.3)

The Subcommittee of the Working Committee for European Integration for approximation to the legislation of the European Union is a central coordinating body established by the Government of the Republic of Macedonia. It is composed of senior civil servants from each ministry and the Secretariat for Legislation. The Subcommittee on approximation of the legislation is comprised of the heads of the working groups for approximation to the European legislation, representatives of the Secretariat for Legislation, as well as other organizations and institutions. As a rule, they are managerial civil servants in the ministries (departments for normative-legal affairs, European integration departments or respective sectors), the Secretariat for Legislation and other state bodies. The Subcommittee on approximation of legislation initiates with the Working Committee an annual program for approximation of the national legislation to the legislation of the European Union.

CONCLUSION

As a conclusion we can note that the role of administration in the process of the accession towards the European Union is fundamental, not only for the effectiveness, but also for the efiiciency in the achievment of this strategic goal for Macedonia. The time for fufillment of the required criteria and obligations coming from the Stabilization and Association process, but also from the pre-accession partnerships and arrangments will be much shorter if the competent institutional and administrative bodies are professional, rational and efficient. This also relats for the time which is required for the accession negotiations and closure on each of the 35 chapters.

But, we can also conclude that the main benefit of the well organized, professional and competent institutions and public servants is not only for the EU accession process, but mainly for the country itself. (better communication with the general public, media, NGO’s, Universities, etc.)

At the end, we can recommend furhter qualitative improvement of all the institutions and bodies responsible for the accession process towards the European

Union, especially regarding the competences, skills, abilities (professional, technical and linguistic) of the public servants, because, at the end, they are the "life input" in this process, which should lead the country to the final destination – membership in the European Union.

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THE UNITED NATIONS SECURITY COUNCIL: THE ABUSE OF ITS VETO POWER AND ITS NECESSITY FOR REFORM

Elena Temelkovska-Anevska, Associate professor, PhD
Faculty of Law, University "St.Kliment Ohridski" - Bitola
e.temelkovska@gmail.com

Elizabeta Tosheva, Associate professor, PhD
Faculty of Law, University "St.Kliment Ohridski" - Bitola
elizabetatosheva@gmail.com

Abstract
This paper analyses the abuse of the veto in the United Nations Security Council (UNSC) and the need for reforms, particularly in the area of increasing the number of seats in the Security Council and securing permanent seats for UN member states that have no representatives in the Council.
The UNSC is one of the principal organs of this universal international organization responsible for maintaining international peace and security. In order to achieve its primary responsibility this organ acts on behalf of UN member states. The Security Council is the only body capable of issuing resolutions that are legally binding on all member states, while other UN bodies can only make recommendations to governments of the UN member states. Since its establishment in 1946 it has been faced with criticism for its small size, exclusive and closed nature, its undemocratic structure, its working methods, and its relations with the UN General Assembly. The most of the critics has been directed at the infamous power of veto: the ability of the five permanent members of the Security Council to repeal any non-procedural matter with their negative vote. Since its establishment, permanent members of the UNSC (USA, Russia, China, France and United Kingdom) have used their power of veto in accordance with their national interests. Over the years, the use of the veto rapidly distanced from the initial reason for which it was included in the UN Charter, namely preventing the UN from taking direct action against any of its principal founding member states. After the Cold War and because of the elimination of ideological divergence among the world's super-powers, the veto has been cast less often, but is still exercised for self-interest or the interests of allies. Furthermore, it is essential to explain the influence of the so-called "pocket veto", because on many occasions permanent member of the Security Council managed to keep an issue off the Council agenda or soften the language of a resolution without actually casting a veto by simple threats of using the power of veto.
The numerous proposals for reform suggested by different countries should lead to better functioning of the UNSC, but paying too much attention to the details of the procedure and opposing each other for self-interest has distracted them from focusing on practical steps towards reform. Any amendment to the UN Charter does

not seem possible especially taking into consideration the fact that all permanent members have veto power over Charter change. Perhaps in future there will be any proposals that can attract the support of the majority of the member states and that proposals can be inscribed into the UN Charter.

Keywords: Security Council, United Nations, veto, UN Charter, abuse of power

INTRODUCTION

The United Nations Security Council (further in the text: UNSC or Security Council or Council) as one of the principal organs of the United Nations (further in the text: UN) has a primary responsibility to maintain the international peace and security and it acts on behalf of the member states of the UN, which have agreed to accept the decisions of the UNSC through Article 25 of the UN Charter. Other bodies of the UN can only make recommendations to governments of the member states, but the Security Council is the only organ that is capable to issue legally binding resolutions to all member states.

The UNSC has fifteen members, among which are the five permanent members (P5) – holders of veto power (China, Russia, the United Kingdom, USA and France). The other ten members are non-permanent and they are elected on a two-year term by the General Assembly through majority vote (Okhovat 2011, 7).

The Charter of the UN makes a distinction between the voting systems for procedural and non-procedural or substantive matters. The decisions on procedural matters are made by an affirmative vote of nine out of fifteen current members. The decisions on non-procedural matters are made by affirmative votes of nine members, including the votes of the permanent members, that is the clause that gives the P5 their veto power. If seven members vote against the resolution, abstain or are absent from the UNSC at the time of voting, the resolution will fail without failure because of the exercise of veto by one or more of the permanent members (Okhovat 2011, 3)

Since the establishment of the United Nations in 1945 and the Security Council in 1946, as UN principal organ, its working methods and responsibilities have been faced with criticism. Most of the critics are focusing on its exclusive nature, undemocratic structure, small size, its relations with the General Assembly, and the infamous 'power of veto'.

From the very beginning, the power of veto was used by all permanent members of the Security Council according to their national interests and expectations. Soon, it became obvious that the use of the veto distanced from its initial purpose – preventing the UN from taking direct action against any of its founding members, for self-interest and interests of the allies.

The power of veto was used to prevent international censure for illegal acts by great powers or their allies. The Secretary-General often advised the permanent members of the Security Council to avoid using or threatening to use the veto in situations where states are failing to protect their populations, or in situations involving war crimes, genocide, ethnic cleansing and crimes against humanity (Mikulaschek 2009, 24).

The use of veto was explained as an undemocratic privilege of the permanent five members of the UNSC, which increased the need for reform. There were many different proposals, among which the most influential was the one that proposed increasing the number of seats in the Security Council. This proposal was more probable than the proposal for reforming or even removing the veto, which was identified as controversial (Okhovat 2011, 11)

At first, the term 'veto' was not mentioned in the Charter of the UN, but the initiative for its inclusion in the Charter came necessarily in order to prevent the UN to take direct actions against any of its founding members. Soon it was obvious that the use of veto differs from its primary reason and turned into an instrument for protection of national interests of permanent members or providing political cover for their allies. For instance, the veto power was responsible for the silence of the UNSC on some international conflicts including the Iraq War in 2003, the conflict in Georgia in 2008, the massacre in Tamils in Sri Lanka in 2009 and the Syrian conflict.

SHORT ANALYSIS OF THE USE OF VETO POWER BY THE FIVE PERMANENT MEMBERS OF THE SECURITY COUNCIL

The first veto was used by the Soviet Union (USSR - Union of Soviet Socialist Republics) in February 1946 and since then the P5 members of the Security Council have used it in more than 260 cases. However, since the dissolution of the Soviet Union and the end of the Cold War, the use of veto has decreased. There were periods when the veto power was not used by the permanent members, such as the period between 31st May 1990 and 11th May 1993 known as the longest period without the use of veto.

There are occasions when the veto only strengthens the impunity and encouraged the expansion of crimes against humanity and war crimes (Adams 2015, 3). However, there is an increased awareness on the side of the permanent members of the UNSC about the unpopularity of the veto power and for that reason they have a tendency to reduce its use. Contrary, the member states of the Security Council increased the use of threat of veto in order to keep a subject matter off the agenda of the UNSC and to protect their international legitimacy. They are also supposed to act in the interest of the United Nations and the international community. Even in a situation when a permanent member misuse the veto for self-interest, the veto cannot be disregarded for the reason not to allow misuse of force by others (Weiβ 2008, 66)

The analysis that follows will demonstrate the cases and subjects vetoed by each of the five permanent members of the Security Council.

The use of veto power by the Soviet Union and Russian Federation

The veto power was used by the Soviet Union in 119 cases, starting from 1946 to the time of its succession. The Russian Federation used the veto power more carefully and moderately after taking the Soviet Union's seat in the Security Council. Russia blocked six resolutions, twice jointly with China. While fourteen members of the UNSC voted in favor, Russia vetoed two resolutions on Cyprus. It also vetoed a resolution on Bosnia and Herzegovina and Russia-Georgia crisis in

2008 and blocked the resolution that intended to extend the mandate of the Observer Mission of the UN in Abkhazia and Georgia. Russia and China did not approve the condemnation of human rights abuses in Zimbabwe and Burma by the Security Council (Okhovat 2011, 12).

The use of veto power by the United States of America

The United States of America (USA) is the second most frequent user of veto power among permanent members of the UNSC. In the post Cold War period, USA became the most frequent user. USA vetoed 83 resolutions since 1946, and fourteen of them were vetoed after 1991. Thirteen vetoed resolutions were related to Israel – a strategic ally of the USA in the unstable region of the Middle East. The veto power enabled USA to provide protection and political cover for Israel. The USA prevented the Security Council from adopting resolutions than involved condemnation of Israeli actions and activities. The USA was the only permanent member of the UNSC which cast a negative vote for all of those thirteen resolutions. This demonstrates the level of political isolation of the USA considering its attitude towards Israel and Israel –Palestine conflict. It also illustrates how the veto power may enable a country to block resolutions, despite its unpopular attitude towards an existing conflict.

In the post Cold War period there was only one resolution vetoed by the USA which was not related to Israel. On 30 June 2002, the USA vetoed a resolution intended to renew the UN peacekeeping mandate in Bosnia. It was a materialization of the previous threats that the USA will veto all resolutions related to the peacekeeping mission of the UN if its request for exemption of American peacekeepers from jurisdiction of the International Criminal Court (ICC) were not met.[10] This resulted in adoption of a resolution by the UNSC members which asked the ICC not to exercise its power over the actions of the peacekeepers for a year (Okhovat 2011, 13).

The use of veto power by the People's Republic of China

After replacing the Republic of China, since 1971, the People's Republic of China has used veto in six occasions, and four of them were used after the end of the Cold War.

As mentioned above, China and Russia jointly used the veto power on two resolutions which intended to condemn the abuse of human rights in two important economic allies of China and Russia – Zimbabwe and Burma. The last one was important for China, not only economically, but also politically, because Burma's government relied on China for its level of power. Additionally, in 1997 China

[10] The USA is not a member to the ICC. The chronological order of events, regarding ICC and the Rome Statute are as follows: in 2000 the President Bill Clinton signed the Rome Statute but he did not submit it to the Senate for ratification; the next president, George W. Bush noted that the USA would not join the ICC and in May 2002 formally withdrew from its ratification and "unsigned" the Rome Statute; Barack Obama has not stated an intention to rejoin the Rome Statute or to submit the treaty to the Senate for ratification, although he has re-established a working relationship with the ICC. It was obvious that the initial support of the USA for the ICC and its later change of attitude was because it became clear that the ICC would not subordinate to the UNSC and would act independent of it and the veto power of its permanent members.

used the veto power on a resolution which intended to authorize the deployment of observers to verify the ceasefire in Guatemala and in 1999 China blocked a resolution concerning the extension of the UNPREDEP (UN Preventive Deployment Force) operation in Macedonia. The reason for both of these vetoes was the political ties of these two countries with Taiwan. The veto power was used by China as a political instrument in order to punish these countries for establishing diplomatic relations with Taiwan or recognizing Taiwan as a sovereign and independent state (Okhovat 2011, 12).

The use of veto power by United Kingdom and France

The United Kingdom and France last use of their veto power was in 1989 when they join the use of veto by the USA on the situation of Panama. Although, they have not used their veto power for more than 25 years, there are cases in which France used the threat of veto in order to prevent a matter coming to the Security Council for voting (Okhovat 2011, 13).

THE USE OF "POCKET VETO"

The so-called "pocket veto" was often used by the members of the UNSC as a threat of the use of veto. On many occasions, his kind of threat was preferred by the P5 and used in explicit or implicit way, in order to keep an issue off the agenda of the Security Council, or as a method to reach the intended result or to alleviate the language of a resolution.

There are numerous situations when the "pocket veto" was used by the permanent members of the Council.

According to the UNSC's records, France has threatened to use this kind of veto several times. During the Iraq war in 2003, France threatened to use the power of veto on any resolution that would lead to a war. This action prevented the USA, UK and Spain to present a draft resolution to the Security Council for authorization of military action (Kafala 2003).

In 2010 France threatened with veto to prevent the members of the Security Council to present a resolution about the crimes of the Moroccan military forces and their role in defeating the non-violent protest in West Sahara (Chomsky 2011).

On the other hand, China and Russia were using "pocket veto" more than other members. During the civil war in Sri Lanka in 2009 Sri Lankan army and the forces of Liberation Tigers of Tamil Eelam killed many Sri Lankan Tamils. China and Russia with their "pocket veto" kept the issue concerning the crimes of the army of Sri Lanka off the Council's agenda. The role of the Council in this case was inactive. The issue was not discussed properly in the Council and the only action taken by the Council was the press statement expressing the concern over the humanitarian crisis and the safety of civilians (Security Council Press Statement on Sri Lanka 2009).

The situation in Syria was also a matter of interest of Russia and China. With the threat of "pocket veto" they opposed the Security Council to issue a resolution for the attack of Syrian military forces on pro-democracy protestors. In April 2011 the members of the Security Council met to discuss about Syrian situation. France and Great Britain hoped that the Council would agree on a

resolution. They immediately faced with opposition from Russia with explanations that the situation in Syria was not a threat to international peace and security. The resolution was not fully supported by China and some non-permanent countries such as Brazil, India, Lebanon and South Africa. When the violence in Syria intensified in June 2011, the European countries made another try for resolution in the Security Council. Russia and China, once again did not support the engagement of the UNSC in the region, with an explanation that any kind of involvement of the Security Council will only destabilize Syria as a strategic country in the unstable Middle East region, although the draft resolution did not ask for further sanctions or military intervention in Syria. Moreover, Syria was a strategic ally of Russia on the Middle East and Russia was a long time arms supplier of Syria (Aljazeera News Website 2011).

Russia and China influenced a resolution on the Iran's nuclear program. Both countries did not managed to keep this issue off the Council's agenda, but succeeded in "softening" the language of the second resolution issued by the Security Council in December 2006 which imposed sanctions on Iran - an important trade partner of Russia and China. But, those sanctions were lighter and the language was softer compared to the original draft of the resolution.

These situations are real examples on how the use of veto has transformed from instrument for maintenance of international peace and security to a threat that can put a pressure on other members of the Security Council to obey to the demands of the members who has the power to veto.

THE NECESSITY FOR REFORM OF THE SECURITY COUNCIL

The reform of the UN Security Council is an issue that follows the Council since its foundation. After the Cold War era, the UNSC increased its engagement in peacekeeping operations and international issues, which encouraged the UN member states to try to make its structure more efficient and compatible with real world matters.

The structure of the power distribution in the Security Council is not changed since 1946 and it does not represent the real reflection on current world geopolitical situation. However, the permanent five with their power to veto still have great influence on the policies, decisions and agenda of the Security Council. All permanent members of the Security Council are nuclear countries with a capability to start a nuclear war. The veto power enables them to end measures that are not in accordance with their interests or are considered as a diplomatic threat. Thus, the veto power is a method used by the international community to avoid any discontent of these nuclear powers which can lead to international tensions or a possible nuclear war.

The fundamental weaknesses of the Security Council are one of the reasons for reform and the reform is supported by the majority of the UN member states. The power of veto has been one of the obstacles against the much needed reform of the UNSC. In the 1990s the veto was criticized by 185 member states because of its inequity, undemocratic and outdated nature and power given to a few countries to protect their interests (Weiss 2005, 30).

The permanent members of the Security Council are very supportive towards the veto for self-serving interests. However, it is questionable how much and how often the veto can be constructive. There have been situations when states interfered in a conflict without authorization of the Council. In some occasions, the Security Council gave a post-hoc authorization (such as the intervention in Sierra Leone) and in some cases, such as NATO intervention in Kosovo, the intervention was illegal, but legitimate (Weiss 2005, 30).

The Security Council and the General Assembly have tensed relationship, mostly because the Security Council acts like an exclusive club that does not take actions in accordance with the best interests of the majority of the UN members.

The only reform of the Council was in 1965. The main reason for that was the increased number of UN member states (from 51 to 114) which lead to increased number of non-permanent members in the Council. Although the UN was increasing in size after this reform, the number of seats in the Security Council hasn't changed.

Today, the UN has 193 member states and the disproportion between the number of representatives in the General Assembly and delegates in the Security Council is obvious. The number of seats in the Council does not reflect the growing membership of the organization and contradicts Article 2 of the UN Charter: "…the principle of the sovereign equality of all…members" (Charter of the United Nations 1945).

Among the critics is the issue of regional representation: there are two permanent members from Western Europe, while South America and Africa, the second continent by population, have no permanent representatives.

The lack of democracy and transparency has been strongly criticized since its establishment and the main goal of the UNSC – the maintenance of international peace and security has different approach in different regions in the world. Most of the critics go to the agenda of the UNSC because the Council is more attentive to the conflicts that happen in Europe, Middle East and Africa compared with the conflicts in other parts of the world, especially in South America and Asia.

Another weak point of the UNSC is that all five permanent members are among the biggest weapons exporters. Their position in the Security Council enables them to be in charge with creating a system of arms regulation and to have control over the arms trade. Another fact that has to be pointed out is that from 2000 to 2010 these five countries have been responsible for more than 70 % of reported arms export. This conflict of interest does not correspond with the main responsibility of the Council – to maintain world peace and security. This was very well explained by Jimmy Carter in his presidential campaign in 1976. At that time, he said that "we can't have it both ways. We can't be both the world's leading champion of peace and the world's leading supplier of arms" (Shan 2010).

Among different proposals for reform, the proposal for the enlargement of the UNSC has been the most popular among member states. Four member states (Japan, Germany, India and Brazil) formed a group called G4 with an intention to lobby together in order to get a permanent membership in the UNSC. Other countries (Argentina, Mexico, Canada, Spain, Italy, Malta, Turkey, Pakistan and South Korea) formed and opposition group "Uniting for Consensus" which

supported the idea of increasing the number of the non-permanent seats in the Council. South Korea is opposed to Japan, Pakistan to India, Argentina and Mexico to Brazil, and Italy and Spain are regional and political rivals of Germany. These countries acknowledged that they oppose the undemocratic idea for increasing the permanent seats, with an explanation that it can lead to ineffective privilege to permanent members.

The reform proposal for expansion of the membership was represented by the Ezulwini Consensus, adopted in 2005 by the African Union. It supported an allocation of two permanent seats with veto power and two non-permanent seats for African countries. In terms of extension of veto power this idea was too ambitious and unrealistic, especially because the African countries were unable to agree on the potential African representative.

One of the proposals for a three-tier body with the members of the G4 group and Indonesia (without the power of veto) came from Australia. This proposal was supported by the fact that it could give a chance to developing countries and Indonesia would be a representative of the largest Muslim country. Australia supported permanent membership for Brazil, India and Japan and was always supportive to the proposal for two permanent memberships for Africa, without the power of veto.

However, the less difficult, less sensitive and less controversial proposal for reform would be an increase in the number of non-permanent members and elimination of the clause that prohibits the non-permanent members to nominate for re-election immediately after their retirement. This can be explained as some kind of compromise for G4 members and the members of "Uniting for Consensus" because it may easily reduce their opposition and can guarantee them a non-permanent seat in the Security Council.

CONCLUSION

Being a member of the UNSC is important for the states, even if that is a two-year term, non-permanent membership without the power of veto. Countries are using veto or the threat of veto not only to keep a controversial matter off the UNSC agenda, but to protect their legitimacy internationally.

The P5 countries are aware of the important and unpopular role of the veto and for that reason they tend to minimize it. However, they lobby to prevent a controversial issue to be discussed in the UN Security Council. In such a case, they will not use their power to veto and they will not be seen as an obstacle to the maintenance of international peace and security.

During the years, there have been different proposals for reform: size, veto, working methods, categories of membership and regional representation.

Politicians are cautious about veto reform since it is considered as a very sensitive and controversial matter with very little chance of success.

Although the leading proposals for reform are the proposals about the enlargement of the Security Council with new permanent members, there are other reform proposals, such as the working methods of the Council and limiting the usage of the veto only to the issues that are vital for international peace and security. The improvements of the working methods were supported by the majority

of the member states with a strong commitment to make the Security Council more transparent about its decisions and meetings. It is a fact that the permanent members are not willing to give up their power of veto and therefore it is more likely that they may agree only on limiting the circumstances under which they can use the veto and those limitations to be in a form of norms rather than legally binding acts. Nowadays, the member states are more supportive towards the issue of equity in regional representation, although it can be interpreted as a support for expansion of the Council. However, the proposal for enlargement of the Council seems to be unimaginable, too large and ineffective, because the member states cannot agree on possible candidates and best proposals.

Therefore, it is very questionable whether the member states are able to reach a consensus on the Security Council's reform proposals and whether the proposals about the expansion of the membership and improvement of the procedure and working methods can enhance the performance and liability of the Security Council.

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REGIONAL COOPERATION IN THE PROSECUTION OF WAR CRIMES AS AN EU ACCESSION BENCHMARK

Milica Kolaković-Bojović, PhD
Research Fellow at Institute of Criminological and Sociological Research, Belgrade and
Assistant Professor Law Faculty of the PEM University, Sarajevo,
kolakius@gmail.com

Elena Tilovska Kechegi, PhD
Assistant Professor, University St. Kliment Ohridski – Bitola
Elena-Tilovska-Kechegi@hotmail.com

Abstract
While the EU Enlargement Strategy and the Strategy for a credible enlargement perspective for and enhanced EU engagement with the Western Balkans, open the door for Western Balkans countries, the same strategic documents introduce the pretty vague set of criteria for the evaluation of achievements made in order to strengthen the Rule of Law and to promote regional cooperation and stability. Considering turbulent historical background and heritage of conflicts that resulted in war crimes and other serious human rights violation, the authors analyse the scope, objectiveness and influence of reform benchmarks defined by European Commission in the field of prosecution of war crimes. Having in mind differences in EU accession progress and/or integration status of countries in the Region, authors approaching this issue from the perspective of uniformity, clarity and objectiveness of criteria applied by the European Commission when evaluates reform progress, but also preservation of achievements in the Rule of Law. In parallel, they are observing the attitudes of populism vs. real commitment to regional cooperation in prosecution of war crimes as a precondition of reconciliation.

Keywords: EU accession, EU integration, rule of law, war crimes, regional cooperation, reconciliation

EX-YUGOSLAVIA- BETWEEN ARM CONFLICTS AND RECONCILIATION

Two decades have past since last armed conflicts in the ex-Yugoslav region finished. Armed conflicts in the former Socialist Federal Republic of Yugoslavia were characterized by grave, large-scale and systematic violations of international humanitarian law. According to estimates by various organizations during the wars in Slovenia (June-July 1991), Croatia (1991-95), Bosnia and Herzegovina (1992-1995), in Kosovo and Metohija and during the bombing of the Federal Republic of Yugoslavia (1999), as well as in the Former Yugoslav Republic of Macedonia

(February-August 2001) - more than 130,000 people lost their lives, with civilians accounting for the majority of them. More than 10,755 people are still missing[11]. In addition to wilful killing of civilians in these conflicts numerous cases were registered of enforced displacement of the civilian population, unlawful imprisonment, torture, sexual violence, inhumane treatment, as well as looting and destruction of property, economic assets, cultural and religious buildings on a large scale. War crimes were committed by all parties to the armed conflicts. [12]
Having in mind that war crimes constitute *delicta contra juris gentium* and their prosecution is a concern of the international community as a whole, not just national judicial systems. Moreover, the adequate response on such a grave, large-scale and systematically committed war crimes needs to be driven on three parallel tracks:

1) Efficient prosecution of war crimes before domestic courts;
2) Continuous cooperation with United Nations Residual Mechanism for Criminal Tribunals (as successor of the International Criminal Tribunal for the Ex-Yugoslavia)
3) Regional Cooperation in order to foster prosecution before domestic courts and contribute reconciliation.

An ultimate goal of these processes is well defined in the Serbian National Strategy for the Prosecution of War Crimes as a need that all war crimes "are investigated and the perpetrators punished in accordance with international standards, regardless of national, ethnic and religious affiliation or status of the offender and the victim, and to promote policy of reconciliation, tolerance, regional cooperation and good neighbourly relations, as a prerequisite for lasting stabilization and prosperity of the entire region." [13]
From given definition, it is obvious that Serbian authorities decided to follow the core elements of the definition of transitional justice, as defined by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in 2012. Namely, the Special Rapporteur defined the transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecution, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof."[14]
As further elaborated in the *The EU's Policy Framework on support to transitional justice*[15], it incorporates the four essential elements of transitional justice, namely:

[11] According to the data of the International Committee of the Red Cross of October 2015
[12] The National Strategy for the Prosecution of War Crimes, "The Official Gazette", No. 19/2016.
[13] *Ibidem.*
[14] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 9 August 2012, A/ HRC/21/46 p.5
[15] This document forms part of the implementation of the EU Action Plan on Human Rights and Democracy –2015 - 2019, which outlines in action 22 (b) the commitment to develop and implement an EU policy on Transitional Justice. The objective is to provide a framework for EU support to transitional justice mechanisms and processes and enhance the EU's ability to play a more active and consistent role, both in our engagement with partner countries and with international and regional organisations. *The EU's Policy Framework on support to transitional justice*, available at:

• criminal justice;
• truth;
• reparations;
• guarantees of non-recurrence/institutional reform.

"A transitional justice process which combats impunity, provides recognition to victims, establishes the rule of law and fosters trust also aims to contribute to a process of reconciliation. Reconciliation seeks to redesign the relationship between individuals and enable society to move from a divided past to a shared future. Legal and institutional measures alone will not be sufficient. Initiatives that target the more personal dimension of a transition may also be required, such as official apologies, memorials and the reform. However, reconciliation must not be conceived as an alternative to justice, or a goal that can be achieved independently of the comprehensive implementation of the four elements of transitional justice discussed in detail below. Furthermore, while transitional justice is a core part of the reconciliation process, other components, such as security and development, are equally important."[16]

It's needs to be emphasized that the three earlier mentioned tracks can show in their full capacity only if their synergy exists. Without an efficient regional cooperation, investigation and prosecution before national courts is almost impossible, having in mind the need to ensure access to witnesses and material evidences placed in neighboring countries. In parallel, the ICTY archives are an important source of data for national prosecutors' offices. Finally, due to the end of the ICTY mandate, efficient work of the national judicial systems in this field becomes even a more important.

In addition to what already been said, the countries in the Region need to find additional ways to foster transitional justice mechanisms.

As visible from abovementioned definition, there are numerous steps that need to be made between grave and massive crimes committed during 1990s in ex-Yugoslavia and reconciliation as final goal. Moreover, if we consider reconciliation as process, not as a final goal, it is obvious that it should be continuous and long term based, future oriented process, expected to result in "peaceful and just relations".[17] Theorists of reconciliation generally recognize that reconciliation is a "scalar" concept, which allows for minimal and maximal versions of improved relationships (Crocker 1999, Griswold 2007). Each of the categories along which relationships might improve (behaviour, beliefs, attitudes or emotions) admits of degree. (Radzik & Murphy: 2015) These improvements could be considered differently from the angle of different sides that trying to reconcile.

In this sense, there is an open issue of objectiveness in assessment of progress made in this regard from all sides, but also cumulatively. Which authority and based on

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http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf, last accessed on March 9th 2019

[16] *Ibidem.*

[17] See more in: Radzik, Linda and Murphy, Colleen, "Reconciliation", *The Stanford Encyclopedia of Philosophy* (Summer 2015 Edition), Edward N. Zalta (ed.), available at: https://plato.stanford.edu/archives/sum2015/entries/reconciliation/ , last accessed on March 9th 2019.

what criteria should assess both- one side, but also bilateral and multilateral steps and measures taken in order to punish perpetrators, support the truth, apologizes and memorials to past conflicts?

THE ROLE OF THE REGIONAL COOPERATION IN EU ACCESSION PROCESSES

In parallel with prosecution of dozens of war crimes cases before national authorities in the Region, ICTY and the United Nations Residual Mechanism for Criminal Tribunals, the ex-Yugoslav republics have started (and some of them already finished) their EU accession process. As the accession negotiations with EU imply continuous and comprehensive reforms, assessed among others, through the lens of the Rule of Law as a horizontal principle and closely monitored by European Commission (hereinafter: EC), there are several questions that could be opened in this regard:

- Is the EC this authority that should assess progress made within the regional cooperation and reconciliation processes in general?
- If answer is positive, there is a further question that tackles criteria and mechanisms to do it so.
- Finally, there is an issue of uniformity in approaching evaluation of achievements made by the candidate countries and the Member States.

In attempt to answer these questions, we should start from the core principles on which EU was established, including the Rule of Law principle. Furthermore, we should focus on standards, criteria and procedures established to assess their fulfilment, both- during the accession negotiations, but also later on.

Having this in mind, it could be said that there are three levels of influence of the regional cooperation in the field of prosecution war crimes on the EU accession processes:

1) Through the general obligation of strengthening the Rule of Law as a core horizontal principle of modern democracies;
2) Measuring the progress made by the candidate countries in the field of transitional justice, access to justice and judicial efficiency;
3) Monitoring the preservation of achieved standards in the Member States.

As the first and the last one goes for both- Member States and candidate countries, the second is reserved for candidate countries. Having in mind that ex-Yugoslav territory affected by arm conflicts or relevant in sense of collecting evidences is now in the scope of Serbia, Montenegro, Croatia, North Macedonia and Bosnia and Herzegovina, based on their status/progress in the accession processes, they can be selected in three different groups:

1) Member States, where only Croatia belongs to, so far;
2) Candidate countries- Serbia, North Macedonia and Montenegro;
3) Potential candidates -Bosnia and Herzegovina.

It is also important to mention that issue of prosecution of war crimes and cooperation in this regard is, due to affection by armed conflicts and/or participation of national armies, of the particular interest for EU accession processes and /or EU Membership status of Bosnia and Herzegovina, Croatia and Serbia, three regional countries with in different accession statuses.

An obligation to achieve and uphold certain level of the Rule of Law in EU

The Rule of Law became the main horizontal principle, shaping justice reform processes. Moreover, the principle of the Rule of Law has progressively became a predominant organisational model of modern constitutional law and international organisations (including the United Nations and the Council of Europe) to regulate the exercise of public powers. It makes sure that all public powers act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.[18] However, this trend has contributed also to uniform understanding of the Rule of Law concept through defining its core elements, common to various different concepts of this principle all around a World.[19]

Despite what Kochenov stated, that the 'Rule of Law', the meaning of it is probably much less articulated than one might presuppose at first glance, because the popularity and functionality of legal concepts do not go hand in hand (Kochenov, 2012: 9), some progress in defining the core elements of the Rule of Law has been made. [20] In this sense, the Venice Commission plays an important role, having in mind its efforts to analyse the definitions proposed by various authors coming from different systems of law and State organisation, as well as diverse legal cultures. The Commission considered that the notion of the Rule of Law requires a system of certain and foreseeable law, where everyone has the right to be treated by all decision-makers with dignity, equality and rationality and in accordance with the laws, and to have the opportunity to challenge decisions before independent and impartial courts through fair procedures. [21]

According to the EC,[22] the Rule of Law is the backbone of any modern constitutional democracy and one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and, as such, one of the main values upon which the Union is based. This statement of the EC is the logical consequence of the fact that the Article 2 of the Treaty on European Union (TEU), as well as by the Preambles to the Treaty and to the Charter of

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[18] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, A new EU Framework to strengthen the Rule of Law, Strasbourg, 11.3.2014, p. 3.

[19] See more about evolution and unification of the Rule of Law principle in: Kolaković-Bojović, M. (2018) The Rule of Law Principle: The EU Concept vs. National Legal Identity, *Universally and particularity at law*, Vol. I, Faculty of Law-University of Priština, pp. 137-160.

[20] The definition of the rule of law given in the Report of the UN Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, for instance, incorporates both human rights and democracy as necessary elements of the rule of law. For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*, UN SC, UN Doc. S/2004/616 at 4)

[21] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A new EU Framework to strengthen the Rule of Law, Strasbourg, 11.3.2014, par. 15-16.

[22] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, A new EU Framework to strengthen the Rule of Law, Strasbourg, 11.3.2014, COM(2014) 158 final, 2.

Fundamental Rights of the EU, recognize the Rule of Law as the of one the pillars. This is also why, under the Article 49 TEU, respect of the Rule of Law is a precondition for EU membership. Additionally, the Commission is the guardian of the Treaties and has the responsibility of ensuring the respect of the values on which the EU is founded and of protecting the general interest of the Union. It must therefore play an active role in this respect.[23]

In order to ensure monitoring of reform processes in candidate countries but also to prevent and react upon regressive actions in the field of Rule of Law in the Member States (e.g. cases of Hungary and Poland and their reforms in the field of judiciary and media laws)[24], the EU but also the CoE bodies[25] trying to identify the core common standards, values, elements and principles of the Rule of Law. Attempt to formulate uniform definition of the Rule of Law is based on the fundamental premise that each Member State shares with all the other Member States, and recognizes that they share with it, a set of common values on which the EU is founded' (EU:C:2014:2054: §§ 167-168).

In order to establish and uphold certain level of the Rule of Law in the Member states, the EU has made numerous steps: In 1997, Amsterdam Treaty was signed, bringing the Article 7 sanctioning mechanism for violation of rule of law, fundamental rights and other basic principles is established. In 2000, bilateral sanctions against Austria were imposed in response to the arrival in government of the Freedom Party (FPÖ). In the period 2010-2012, a several Member States were under scrutiny for possible rule of law violations (France, Romania, Hungary). In March 2013, the Commission presented the EU Justice Scoreboard, including statistics on the justice systems in the Member States and data on the relationship between compliance with the rule of law and the functioning of the internal market. In March 2013, the Letter from the Foreign Affairs Ministers of Denmark, Finland, Germany and the Netherlands to the Commission President, was sent calling for a new mechanism to safeguard fundamental values in the EU. In March 2014, the Commission adopts a Communication on a Rule of Law Framework as an earlier phase, complementary to the Article 7 TEU mechanisms. In December 2014, the Council decides to hold an annual 'dialogue' in the General Affairs Council on the 'rule of law' in Member States. In January 2016, the European Commission launches structured dialogue with Poland and open the new era of monitoring regressive process in the field of Rule of Law in the Member States, that is still ongoing.[26]

However, intensity and wide spreading of the regressive processes throughout of EU show the lack of an effective mechanisms developed in order to continuously

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[23] See more in: Kolaković-Bojović, M. (2018) The Rule of Law Principle: The EU Concept vs. National Legal Identity, *Universally and particularity at law*, Vol. I, Faculty of Law-University of Priština, pp. 137-160.

[24] See more in: Kochenov, D., Magen, A. & Pech, L. *Introduction: The Great Rule of Law Debate in the EU*, Journal of Common Market Studies, Vol. 54, 5/2016, pp. 1045-1049 available on: https://www.academia.edu/29810031/Introduction_The_Great_Rule_of_Law_Debate_in_the_EU, last accessed on January 10th 2018.

[25] The case law of the Court of Justice of the European Union ("the Court of Justice") and of the European Court of Human Rights (ECtHR), as well as documents drawn up by the Council of Europe, especially by the Venice Commission.

[26] See more on: https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/rule-law-framework_en, last accessed on January, 14th 2018.

monitor situation in the Member States, at least compared to comprehensive mechanisms established for monitoring of candidate countries. Reasons for that could be found in basically wrong preposition that upholding achieved level of the Rule of Law is more or less question of routine, once that level is achieved. This wrong hypothesis has its repercussions not only from the point of evaluation of the Rule of Law in individual Member States, but also considering comparation of the situation and efforts made by the Member States and the candidate countries on the same issues. This goes also for the field of regional cooperation in prosecution of war crimes.

Measuring progress in regional cooperation in prosecution of war crimes for (potential) candidates

The negative experiences of the European Commission with some recently joined Member States resulted in publishing of the revised Enlargement Strategy[27]. The main idea was to make the reform processes that precede accession more substantial rather than formal. That has reflected also on Serbian accession negotiations through the introduction of pretty vague final criteria for the membership in the EU, formulated as "once it fulfills the necessary conditions". However, assessment of fulfillment of a "necessary conditions" is not completely free of criteria. For that purpose, the EC introduced opening, interim and closing benchmarks. The starting point when assessing a progress is state of play of legislation, administrative and institutional capacities on the bilateral screening day. Beside these novelties related to accession procedure, the significant change was introduced in the last years in relation with strengthening influence of reforms relevant for the Rule of Law that became some kind of criteria for assessing an overall reform context in candidate countries. On the practical level, that means an early opening and late closing negotiations for chapters 23 and 24 dealing with justice reform.

Additionally, through the Country reports mechanism (former progress reports), the EC closely monitors progress made by candidate countries and potential candidates. On the practical level, it means that:

- Achievements and progress/regress of the Member States are monitored only through the general, above described mechanisms, that results in lack of concrete reports and data in particular fields, including regional cooperation in prosecution of war crimes and related issues;
- Achievements and progress of candidate countries that opened accession negotiations are monitored through:
    - reporting on progress made in order to fulfil interim and/or closing benchmarks (mostly through the implementation of the action plans for chapter 23);
    - country reports that cover all negotiation chapters as defined in Stabilization and Association Agreements.

[27] Enlargement Strategy and Main Challenges 2006 – 2007, available on: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2006/nov/com_649_strategy_paper_en.pdf, last accessed on January 5, 2018.

- Achievements and progress of candidate countries not opened accession negotiations and potential candidates are monitored through the country reports.

Consequently, among three abovementioned countries the most affected with war crimes issue, only two (BiH and Serbia) are effectively monitored in the field of regional cooperation.

Country reports

Having in mind standardized methodology and structure of the country reports, we decided to compare the same, relevant parts of the country reports for BiH and Serbia in the period 2015-2018.[28]

Table 1: Comparative preview of country reports in part dealing with regional cooperation in prosecution of war crimes and reconciliation

Year	Serbia	BiH
2015	„In the area of domestic processing of **war crimes**, cooperation between the special prosecutors of Serbia and Bosnia and Herzegovina continued on an upward course. The first joint investigative team worked successfully in December, leading to the indictment of five suspected perpetrators of war crimes. Cooperation and exchange of information with Croatia and EULEX continued but needs to be stepped up. It is important that these regional cooperation efforts continue to be strengthened.“… „Serbia, Bosnia and Herzegovina, Croatia and Montenegro have continued to closely cooperate under the **Sarajevo Declaration Process**, which aims to find sustainable solutions for some 74.000 persons who became refugees and displaced persons as a result of the armed conflicts in the former Yugoslavia during the 1990s. All countries need to further step up efforts to deliver on the implementation of the agreed housing solutions. In Serbia from the	“Bosnia and Herzegovina, Serbia, Croatia and Montenegro have continued to closely cooperate under the **Sarajevo Declaration Process**, which aims to find sustainable solutions for 74.000 28 people who became refugees and displaced persons as a result of the armed conflicts in the former Yugoslavia during the 1990s. All countries need to further step up efforts to deliver on the implementation of the agreed housing solutions. Bosnia and Herzegovina made some progress on implementing the regional housing programme with the delivery of 19 housing solutions out of the 1,868 approved so far. Efforts are needed to further ensure a quality beneficiary selection process conducive to a speedy implementation of the housing projects.” “It continued to actively support the RECOM (Coalition for Reconciliation Commission) and Igman initiatives on regional reconciliation.” “On regional

[28] It is important to mention that, due to changes in the EC methodolical approach and reporting schedule, there were no 2017 reports.

	4,153 housing solutions approved thus far worth EUR 71.5 million, the first 123 were delivered. The issue of refugees' pensions between Croatia and Serbia is still unresolved."…" **Regional cooperation and good neighbourly relations** form an essential part of Serbia's process of moving towards the EU. Serbia has shown a constructive commitment to good neighbourly relations."…" It continued to actively support the Coalition for Reconciliation Commission (RECOM) and Igman initiatives on regional reconciliation."[29]	judicial cooperation, the fight against impunity in the area of war crimes resulted in its first arrests and issuing of indictments in line with the Protocol of the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Similar Protocols signed with the Croatian and Montenegrin Prosecutor's Offices are yet to produce concrete results." [30]
2016	„Serbia's commitment to working towards regional cooperation and reconciliation should include preparedness to face its recent past and to do all it can to establish an atmosphere conducive to deal with all war crimes." "In line with the bilateral agreements between the prosecutors' offices, the War Crime Prosecutor's Office has continued its cooperation with other countries in the region as showed by the steady increase of items of evidence and information exchanged. The most significant developments concern the number of cases referred to prosecution services in Bosnia and Herzegovina (16 cases) and Croatia (44 cases). The Office did not however participate in the Brijuni regional conference of war crime prosecutors held in September 2016. A liaison officer programme is	"Bosnia and Herzegovina, Serbia, Croatia and Montenegro continued to closely cooperate under the **Sarajevo Declaration Process**, which aims to find sustainable solutions for 74 000 people who became refugees and displaced persons as a result of the armed conflicts in the former Yugoslavia during the 1990s. All countries need to further step up efforts to deliver on the implementation of the agreed housing solutions. Some progress was made on implementing the regional housing programme in Bosnia and Herzegovina, with a number of housing solutions provided. Efforts are needed to further ensure a quality beneficiary selection process conducive to a speedy implementation of the housing projects."

[29] *Serbia 2015 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 2015 Communication on EU Enlargement Policy, p.19.

[30] *Bosnia and Herzegovina 2015 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 2015 Communication on EU Enlargement Policy, pp. 27-28.

	operational with Bosnia and Herzegovina, but remains pending with Croatia. A more precise database needs to be established to improve the timely exchange of information. It is important that these regional cooperation efforts continue to be strengthened." [31]	"In April, Bosnia and Herzegovina ratified the Protocol on cooperation with Serbia in the search for the missing persons." "On **regional judicial cooperation**, the Protocol signed between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of Serbia on cooperation in prosecution of perpetrators of war crimes, crimes against humanity and genocide continued to provide results, with two additional indictments for war crimes filed and further confirmed during the reporting period in Bosnia and Herzegovina, one indictment confirmed and a guilty plea agreement reached in Serbia and one case transferred to Serbia from Bosnia and Herzegovina. The two protocols signed with the Croatian and Montenegrin Prosecutor's Offices are yet to produce concrete results. *"*[32]
2018	„Serbia continues to co-operate on war crimes cases at the regional level. Stronger efforts are required by all parties to ensure that regional co-operation effectively supports the fight against impunity. In 2017, some positive steps were taken to improve regional institutional cooperation in search for the missing persons, accounting for 10 332. A prosecution liaison officer programme is operational with	No data on regional cooperation in handling war crimes cases.

[31] *Serbia 2016 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 2016 Communication on EU Enlargement Policy, p.57.

[32] *Bosnia and Herzegovina 2016 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 2015 Communication on EU Enlargement Policy, pp. 28-29.

	Bosnia and Herzegovina, but remains pending with Croatia.“[33]	

From selected parts of the country reports it is clear that the EC is focused on several main aspects of regional cooperation:

- Regional judicial cooperation in line with protocols on cooperation, within the scope of domestic prosecution of war crimes;
- Cooperation in searching for missing persons;
- Cooperation in housing of refugees and internally displaced persons;
- Cooperation in resolving various status and financial issues related to refugees and internally displaced persons;
- Participation in regional reconciliation and cooperation initiatives (eg. RECOM, Brijuni process).

Methodology and language used to assess current situation is more or less unison. However, it is interesting that some issues related to negative trends in cooperation of both countries with Croatia are addressed in these reports, without any explanation of reasons and/or obstacles that prevents from improvements, including explanation of who is responsible for such situation.

In parallel, developments or absence of them in establishing the Regional Commission (RECOM) are selectively in focus.

A special curiosity is fact that the last country report for BIH does not contain any assessment of facts relevant for regional cooperation in prosecution of war crimes and reconciliation.

Fulfilment of accession benchmarks

As it has been said earlier, since Serbia opened accession negotiations, its progress is monitored also through fulfilment of interim benchmarks. Moreover, adoption of the National Strategy for Prosecution of War Crimes (2016-2020) was one of opening benchmarks together with adoption of the Action Plan for Chapter 23[34].

However, contrary to recommendations from the Screening Report for Chapter 23[35] addressed in the Action Plan for the same negotiation chapter, the interim benchmarks given in the Common Negotiation Position[36] are more concrete, tackling the regional cooperation in prosecution of war crimes in two ways- directly and indirectly.

[33] *Serbia 2018 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 2018 Communication on EU Enlargement Policy, pp. 18-19.

[34] Action Plan for Chapter 23, available on: http://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf, last accessed on October 30th 2016.

[35] Screening Report for Chapter 23, available on: http://seio.gov.rs/upload/documents/eu_dokumenta/Skrining/Screening%20Report%2023_SR.pdf, last accessed on July 26th 2016.

[36] Common Negotiation Position for Chapter 23, available at: https://www.mpravde.gov.rs/tekst/13244/pregovaracka-pozicija-.php, last accessed on April 4th 2109.

Table 2: List of Interim benchmarks in Chapter 23 relevant for regional cooperation in prosecution of war crimes and reconciliation

No	Interim Benchmarks	Type of relevance for the regional cooperation
16	Serbia implements effectively the measures in its National strategy in support of investigation, prosecution and adjudication of war crimes. Serbia monitors its implementation, assesses its impact and revises the strategy in parallel.	Direct National Strategy contains the whole chapter with numerous measures in the field of regional cooperation.
17	Serbia adopts and implements effectively a Prosecutorial strategy for the investigation and prosecution of war crimes; Serbia monitors its implementation and assesses its impact, as necessary and appropriate.	Indirect Efficient domestic war crimes proceedings depend on regional cooperation among Prosecutors' offices in the Region.
18	Serbia strengthens its investigative, prosecutorial and judicial bodies including ensuring a more proactive approach and the confidentiality of investigations, providing for training for new and current staff members, improving its witness protection and victim support system and ensuring victims' rights and access to justice without discrimination.	Indirect Efficient Witness protection system includes regional cooperation of WPUs. Exchange of experiences nad good practices in the Region is of the key importance for competence.
19	Serbia effectively demonstrates adequate investigations of allegations and equal treatment of suspects avoiding giving the impression that anyone is above the law, regardless of their nationality or ethnicity or that of the victims; Serbia provides an initial track record of investigation, prosecution and adjudication of a higher number of cases including against high level suspects as well as of cases transferred from ICTY to Serbia. Serbia ensures proportionality of sentences and a sentencing policy in line with international criminal law standards.	Indirect Non selectiveness in prosecution is precondition of reconciliation.
20	Serbia cooperates constructively with neighbouring states in tracing and identifying/ascertaining the fate of missing persons or their remains, including through swift exchange of	Direct The IBM covers the most of key elements of efficient regional cooperation.

	information. Serbia engages in meaningful regional cooperation and good neighbourly relations in handling of war crimes by avoiding conflicts of jurisdictions and ensuring that war crimes are prosecuted without any discrimination. All outstanding issues in this regard must be fully resolved.	
21	Serbia fully co-operates with the International Criminal Tribunal for the former Yugoslavia (including by fully accepting and implementing its rulings and decisions), and with the Mechanism for International Criminal Tribunals.	Indirect Denial of war crimes is obstacle to reconciliation.

When it comes to EC monitoring mechanisms established in order to measure level of fulfilment of the benchmarks, it is important to mention that there are two parallel tracks:

- Reporting on implementation of the Action plan for Chapter 23 and the National Strategy for the Prosecution of War Crimes;
- Submitting track record tables.

Both mechanisms ensure detailed data – quantitative, but also qualitative.

POPULISM VS. REAL COMMITTMENT TO REGIONAL COOPERATION

Aware of EU expectations, the governments in the Region traying to keep up with recommendations and benchmarks. However, it is not unusual to see (sometimes obvious) discrepancy between commitments clearly stated in the policy documents dealing with prosecution of war crimes[37] or at the meetings with the EU officials, on one side, and populist speeches, especially during election campaigns, on other side. Also, political dissonance among members of political coalitions (majority and/or from opposition) in (non)supporting prosecution of war crimes, became standard part of the Regional political scene. These dissonances are sometimes visible even among ministries in the same government and go from clear judgment of all acts that are subject of war crime proceedings, to the complete denial of crimes and direct support to convicted perpetrators. Consequently, the second option has significantly negative impact on the regional cooperation and reconciliation processes, especially when it comes from ruling majority.

While different approaches to prosecution of war crimes and treatment of convicted perpetrators of local politicians could be found in all states in the Region, it is important to notice that reaction of the EU bodies and EU officials on these public statements opposite to official state commitments are not unison, too. That is clear from relevant country reports, too: "*When it comes to assessment of Serbian commitment to Regional cooperation and prosecution of war crimes, the EC clearly*

[37] Even more, the National Strategy for the Prosecution of War Crimes (Serbia), includes, obligation of the highest officials (prime minister and minister of justice) to publicly support adoption and implementation of the Strategy.

stated that "such comments are not helpful for the broader respect of the rule of law, for Serbia's international obligations or for creating an environment in which war crimes cases can be processed calmly and effectively"…"Overall, Serbia needs to demonstrate firmer commitment at all levels in this area, fostering mutual trust and reconciliation, to establish an atmosphere conducive to meaningful regional cooperation and to effectively address all war-crimes related issues. Statements made by, in particular, high-level officials and the actions of state bodies have a significant impact on the creation of such an atmosphere."[38]

Or, in case of BiH, *"Bilateral relations with Serbia remained relatively stable, despite internal tensions triggered by the initiative, in early 2017, by a member of the Presidency and SDA leader to appeal the 2007 International Court of Justice genocide case against Serbia."*

As earlier explained, since Croatia is already Member State, the same populist language in this country could be frequently heard, but it is not followed by appropriate reaction of the EU officials and not recorded in reports as it case with (potential) candidate countries.

However, the detailed assessments of this kind of speech in relation with deviation from official dedication could be found in some other reports in the field submitted by bodies out of EU institutional scope.[39] Comparation of these reports with the EC reports (and lack of them form the Member States) provides for a clear picture about the seriousness of existing gaps in EU monitoring mechanisms in the field of Rule of Law, including aspects of regional cooperation and reconciliation.

ESTABLISHMENT OF *RECOM* AND PERSPECTIVES OF REGIONAL COOPERATION

As mentioned earlier, the acronym RECOM stands for the Regional Commission which establishment is initiated in order to tasked it with establishing the facts about all victims of war crimes and other serious human rights violations committed on the territory of the Former Yugoslavia from 1 January 1991 to 31 December 2001. The main idea of RECOM was to establish an official, intergovernmental commission to be jointly established by the successors of the former SFRY. In its legal nature, the RECOM is predicted to be an extra-judicial body, allowed:

- to establish the facts about all the war crimes and other serious war-related human rights violations;

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[38] *Serbia 2018 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 2018 Communication on EU Enlargement Policy, pp. 18-19. Similarly, in 2015 Serbia Country Report, the EC emphasized that *„The provisional release of ICTY detainee Vojislav Šešelj and his subsequent public statements prompted sharp reactions in Zagreb. Serbia declared 5th August, commemorating the "operation Storm" in Croatia, a day of mourning and protested for hate speech and display of fascist symbols during Croatian commemorations. The decision of Vukovar's local authorities to remove bilingual signboards prompted acute reactions in Belgrade. Tensions following temporary restrictions of border crossings in September have been overcome",* p. 21.

[39] Visible discrepancies between official commitments and individual populist statements are more visible in reports of the US Department of State. See: Serbia 2016 Human Rights Report pp. 2-3 available at: https://rs.usembassy.gov/wp-content/uploads/sites/235/2017/07/Serbia-2016-human-rights-report.pdf, last accessed on March 16th 2019; Serbia 2017 Human Rights Report, page 21, https://www.state.gov/documents/organization/277459.pdf, last accessed on March 17th 2019.

- to list all war-related victims, and to determine the circumstances of their death;
- to collect data on places of detention, on persons who were unlawfully detained, subjected to torture and inhuman treatment, and to draw up their comprehensive inventory;
- to collect data on the fate of the missing, as well as to organize public hearings of victims' testimonies and the testimonies of other persons concerning war-related atrocities. [40]

From above listed tasks of the RECOM, it is obvious that the scope of RECOM process is more directed not only to regional cooperation, but also to reconciliation mechanisms in general.

The RECOM Process began in May 2006 with a comprehensive debate[41] in the Region and resulted in draft RECOM Statute, adopted on 26 March 2011 by the Assembly of the Coalition for RECOM. Adoption of the Statute served as a starting point for the next stage of the Process– the institutionalization of the RECOM Initiative through the transfer of the RECOM Initiative from the level of civil society to the political level – the domain of institutions. [42] This resulted in the decision of the Presidents and the Presidency of BiH to appoint Personal Envoys for RECOM. The Personal Envoys were assigned to analyse the RECOM Statute proposed by the Coalition for RECOM, and to examine the constitutional and legal possibilities for the establishment of RECOM in each individual country. In October 2014, the Personal Envoys for RECOM submitted the Amendments to the RECOM Statute- consolidated document which should present the legal framework for the establishment of RECOM. After elections in BIH and Croatia in 2014 RECOM lost support in these countries[43], so continuation of consultative process in April 2019, started without participation of these countries.

Having in mind limited progress made so far, but also absence of support from BIH and Croatia, there are still a few opened issues:

- Does the RECOM have a capacity to streamline regional cooperation processes and contribute to monitor them in more systematic manner?
- If answer on the first question is positive, it is obvious that in absence of two countries, institutionalization of RECOM is impossible and its abovementioned capacity is wasted.
- In parallel, there is a still issue of the EC role in RECOM process. A decision to support the process and participate in the meetings of Personal Envoys shows undoubted recognition of the capacity that RECOM Process

[40] See more: http://recom.link/about-recom/what-is-recom/, last accessed on March 27th 2019.

[41] In the period between May 2006 and 26 March 2011, the Coalition for RECOM organized a comprehensive social debate **(consultative process) on the RECOM mandate**. The process saw the participation of 6,700 representatives of civil society, including human rights organizations, victims, families of victims and the missing, refugees, veterans/defenders, former detainees, lawyers, artists, writers, journalists, and other distinguished individuals. A total of 128 local and regional summits and eight international forums on transitional justice were held. According to: http://recom.link/about-recom/what-is-recom-process/, last accessed on April 8th 2019.

[42] To obtain public support for the establishment of RECOM, the Coalition organized a petition for the establishment of RECOM in May and June 2011 which was signed by **555,000 citizens** from all post-Yugoslav countries. A Public Advocacy Team was formed and the RECOM for the Future action launched. According to: http://recom.link/about-recom/what-is-recom-process/, last accessed on April 8th 2019.

[43] Except Bosniak member of the Presidency.

has in the field of regional cooperation. However, it remains unclear how decision of individual country from the Region to take part in process or to decline that is going to be evaluate in the context of EU accession processes. While it can appear in country reports and/or among accession benchmarks for candidate countries, it is still not clear how it can influence position of Croatia as a Member State, in the absence of an efficient monitoring mechanism aim at preservation of the Rule of Law.

Considering all of this, it is pretty clear that the only acceptable approach of the EC to this issue is uniform approach, regardless of the EU accession status of every single country in the region. The nature of reconciliation process requires efficient and continuous bilateral, but also multilateral actions of the all states in the region. This goes for cooperation in prosecution of war crimes, but also in other segments of reconciliation. The role of the EC in this regard should not be limited only on support and declarative statements. It should include concrete and uniform reaction in all cases where obvious discrepancy among country engagements exists. In contrary, regional cooperation should not be considered as a part of the EU accession/membership benchmarks.

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BLOODSTAIN PATTERN ANALYSIS: A STRONG EVIDENCE OR THE CAUSE OF THE MISCARRIAGE OF JUSTICE[44]

Tanja Kesić, PhD, Associate Professor, *University of Criminal Investigation and Police Studies, Belgrade, Serbia, tkesic8@gmail.com*
Ivana Bjelovuk, PhD, Assistant Professor, *University of Criminal Investigation and Police Studie,s Belgrade, Serbia, ivana.bjelovuk@kpu.edu.rs*
Aleksandar Bošković, PhD, Associate Professor, *University of Criminal Investigation and Police Studie, Belgrade, Serbia, aleksandar.boskovic@kpu.edu.rs*

Abstract
Blood pattern analysis (BPA) is the examination and interpretation of bloodstains in an attempt to establish the potential mechanisms that caused such staining. The examination of blood pattern is based upon visual observation and measurement of bloodstains, analysing their shape and relative positions. In order to introduce such evidence at the trial, they must be presented by competent expert witness. When it comes to BPA, usually it is carried out by police officers rather than scientists called in from a forensic science laboratory. Over the past few years, improper BPA was the main reason for exoneration of wrongfully convicted defendants in the USA. In this article we will present general rules of admissibility that apply to scientific evidence, define and explain BPA, point out major mistakes that occur in this analysis and examine most important verdicts in the USA in order to show what conditions must be met to avoid the miscarriage of justice.
Key words: bloodstain pattern analysis; expert witness; miscarriage of justice.

INTRODUCTION

Bloodstains are biological traces and when considered based on the process of classifying evidence according to the source from which they originate, or the type of evidence from which they can be obtained, they are classified as physical evidence. Most often they can be spotted at the crime scene within the cases of violent and sexual crimes, but they can also be found in other crimes. Bloodstains at the crime scene may belong to the perpetrator of the crime or the victim and can be found on their body, clothes, shoes, objects used for committing a crime, other various objects, etc.

If the investigation is conducted properly, the inspection body can spot and provide bloodstains which can be used for reconstruction of the crime and they can also provide the necessary evidence for determining if the perpetrator of the crime is guilty or innocent. Different information can be obtained from the bloodstain

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analysis, such as: the nature of the stain found (whether it is blood); whether the blood comes from a man; gender of a person; blood type; Rh factor; DNA profile; the cause of bleeding; determining from which part of the body the bloodstain has come; whether blood comes from a vein or an artery; age of blood, etc. The shape and size of the bloodstains can show how far and how fast the blood travelled before it hit the surface where it was located and the intensity of the force used and the way in which the force was used (Brandl 2004, 164). Forensic analysis of characteristics of blood which is inside the body can be done by biologists, chemists or medical examiners, but when it is about the blood outside the body it is better to be done by the mechanical engineers or physicists because they have knowledge in the field of fluid mechanics and mathematics. When the blood moves through the air it behaves like a bullet. BPA means reconstruction of creation of blood as physical evidences and it includes measurements and calculations according to the laws of fluid mechanics (Žarković, et.al. 2012, 150). The way and condition bloodstain are found at the crime scene may indicate the following: the position of the body in the event of injury and eventual changes in the position of the body; the nature of the injury; the means by which the injuries are inflicted; the severity of the injury. A bloodstain as a blood drops can be of different shapes depending on the angle of the substrate and direction of travel and impact angle, the surface of the substrate and its porosity. Due to the cleaning of the crime scene, blood stains can be found in the wipe pattern. Based on the blood prints on the hands, objects or traces of blood on the shoes it is possible to identify the perpetrator of the crime (Simonović 2004, 354).

Considering the evidentiary nature of bloodstains as scientific evidence, it is important to pay attention to securing blood traces even before the start of the crime scene investigation, identifying, and documenting, collecting, packing and preserving bloodstains as a blood evidence. Proper documenting of the precise location where the blood was found and the shape of the bloodstain at the crime scene is of great importance (Sutton, Trueman 2009, 177). It is equally important to perform a proper analysis of bloodstains in the laboratory and provide that the expertise is carried out by an expert witness who will be questioned in the criminal proceedings on the circumstances of the expert testimony. The matter of the competence of a person who examines bloodstain patterns is of particular importance, considering the fact that an erroneous and insufficiently scientifically based bloodstain pattern analysis can be the reason for a miscarriage of justice and defendants can get wrongfully convicted.

Taking into account the subject of the work, in the first chapter we will present general rules on the admissibility of the scientific evidence in criminal proceedings, relying mainly on the Anglo-Saxon legal theory and practice, since the greatest achievements in the field of scientific evidence are made within its area. In the next chapter, we will analyse the most common mistakes in the examination of bloodstain samples through the presentation of the most important judgments in the United States, where a large number of cases which resulted in wrongfully convicted defendants due to the mistakes in bloodstain pattern analysis (BPA).

GENERAL RULES ON THE ADMISSIBILITY OF SCIENTIFIC EVIDENCE IN CRIMINAL PROCEEDINGS

Scientific evidence, also called expert evidence (Munday 2007, 347), or forensic evidence (Brandl, 2004, 149) have an important role in criminal proceedings, to be precise, in establishing legally relevant facts important for proving a particular criminal offence. Scientific evidence can be defined as a special sort of evidence that makes scientific and technical knowledge available to the court in the process of establishing legally relevant facts. This sort of evidence is provided by competent persons or experts witness in Anglo-Saxon law and they give an opinion on the scientific methods used and on their importance for establishing the fact which is the subject of the evidence in their expert testimony. The role of expert witnesses in court proceedings is indispensable, since they have specific knowledge which neither court nor jury have.

Scientific evidence have been used in criminal proceedings for a very long time. In English law, the use of scientific evidence, that is, the consulting of experts in scientific and technical matters which are beyond the knowledge of judges, jury and lawyers, dates back to the 16th century. One of the oldest precedents is the *Buckley v. Rice Thomas* (1554), in which the practice of already established expert testimony was explained: “If matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns. Which is an honourable and commendable thing in our law. For thereby it appears that we do not despise all other sciences but our own, but we approve of them and encourage them as things worthy of commendation. “ (McConville, Wilson 2002, 253).

By introducing scientific evidence into criminal proceedings, an exception was made, and in English law it is called "opinion rule," which is one of the main rules for excluding evidence. The point of having this rule can be seen in the following: the opinion of the witness is not relevant, and by being admissible, the witness would have the opportunity to unjustifiably influence and even takes the role of a jury or a court. An exception to the opinion rule is used in cases which are beyond the common knowledge of the court and these opinions can be obtained from witnesses who are experts in certain fields. As Lawton L.J. commented in *Turner* (1975) QB 834: “An expert’s opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If one the proven facts a judge or jury can form their own conclusion without help, then the opinion of an expert is unnecessary“(Munday 2007, 351).

In English law, in order for expert evidence to qualify as an admissible one, three conditions must be met. Firstly, it must be proved that the knowledge or experience of an expert witness provides authority to his opinion, which cannot be said for the opinion of a person who is not qualified. Secondly, the witness must be qualified in a way that he or she can express that opinion. Thirdly, evidence must be reliable because the methods which are used are properly explained and can be tested in cross-examination and therefore may be verifiable (Munday 2007, 353-354).

In the USA the Federal Rules of Evidence, particularly Rules 702-706, are the principal determinants of admissibility for expert evidence. They focus upon whether expert opinions will provide assistance to the trier of fact. Rule 702 requires not only that evidence be based on sufficient facts or data but also explicitly invokes notions of reliability, requiring that evidence be the product of reliable principles and methods and that the expert has reliably applied the principles and methods to the facts of the case. An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect (Federal Rules of Evidence 2019, Rule 703). In addition, Rule 403 permits exclusion of an expert (and other) evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence (Freckelton QC, Goodman-Delahunty, et al. 2016, 23).

In the assessment of the admissibility of scientific evidence in the United States, the Supreme Court also played a significant role by naming the basic rules on the admissibility of expert evidence in federal courts in criminal and civil matters. Considering the fact that in US criminal proceedings evidence is introduced by testimony, the special focus is on the expert testimony. One of the first cases in which the rules on the admissibility of expert testimony are defined is Frye v. United States (1923). In this judgment, the court found that scientific techniques can only be accepted in court only if they are generally admissible as reliable and relevant in the scientific community.

In another case, *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), the Supreme Court adopted a new standard for using expert testimony with applying the Federal Rules of Evidence. Namely, in the assessment of the admissibility of expert evidence, the court must first make the assessment and decide whether the reasoning or methodology, which is the basis of the testimony, is scientifically valid and if it can be adequately applied to the facts to be established. This enabled the use of new knowledge at the trial, even though they are not universally accepted in the scientific community. In such cases, the Court will make an assessment and decide whether such knowledge makes it possible to obtain relevant information, and after hearing the prosecution and defence experts, it will decide on the admissibility of expert evidence (Hail 2009, 126-127). In *Daubert*, the Supreme Court spelled out a new two-pronged test for the admissibility of scientific evidence, geared to ensuring that testimony "is not only relevant, but reliable." In order to be reliable the expert's proffered opinion must be the product of scientific reasoning and methodology. The judge must determine whether the expert reached his or her conclusions by a scientific method. Also mentioned by the Court as indicators of "good science" were peer review or publication, the existence of known or potential error rates and of standards controlling the technique's operation. General acceptance of the

methodology within the scientific community, although no longer dispositive, still remained a factor to be considered. Second, the Court explained that by relevancy it meant that the expert's theory must "fit" the facts of the case. Perhaps the most significant part of *Daubert* is the Court's anointment of the trial judge as the "gatekeeper" who must screen proffered expertise to determine whether the relevancy and reliability prongs are met. In *Daubert* the Court stressed that the trial court has an obligation to act as gatekeeper even though some courts would rather have left this task to the jury, especially when the screening entailed complex scientific issues (Daubert v. Merrell Dow Pharmaceuticals (92-102), 509 U.S. 579 (1993), www.law.cornell.edu).

In addition to the general conditions on the admissibility of scientific evidence and expert testimony, it is important to say that scientific evidence must satisfy another requirement, which can be seen in respecting the procedures necessary for establishing the chain of custody (also called chain of possession of continuity of possession). This is the way in which the law tries to ensure the integrity of evidence. A proper chain of evidence requires three types of testimony. Firstly, testimony that a piece of evidence is what it purports to be. Secondly, testimony of continuous possession by each individual who has had possession of the evidence from the time it is seized until the time it is presented at the trial. Thirdly, testimony by each person who has had possession of the evidence that the particular piece of evidence remained in substantially the same condition from the moment one person took possession until the moment that person released the evidence into the custody of another.

Proving the chain of custody is necessary to lay foundation for the evidence in question, by showing the absence of alteration, substitution, or change of condition. Whether the requisite foundation has been laid to establish the chain of custody is a matter of discretion on the part of the trial judge (Milošević, Bjelovuk, Kesić 2009, 4).

BPA POTENTIAL TO CAUSE MISCARRIAGE OF JUSTICE

Although bloodstain pattern analysis has been used for a long time in criminal investigations and as evidence in criminal proceedings, in a significant number of court cases it has been confirmed that the results of this analysis are unreliable. A report compiled by the National Academy of Sciences in 2009 pointed to the key deficiencies of the BPA, concluding that the unreliability of the BPA is enormous and that the opinions of the experts are more subjective than scientific. Besides that, in the case law, the problem of the legitimacy of expert testimony is particularly emphasized, because police officers appear as experts in great number of cases. Also, a number of scientists condemn the validity of BPA expert training. Applied scientific methodology and statistical data processing are increasingly being questioned. In a certain number of judgments, it has been found that judges are more likely to rely on their own or expert judgment when examining the reliability and accuracy of the BPA, rather than objective evidence. Due to the unreliability of BPA in the United States, a large number of defendants experienced miscarriage of justice and they were wrongfully convicted, which among other

things was the reason for questioning the scientific justification of this forensic discipline.

In the case of *People v. Carter* (1957), the California Supreme Court ruled BPA is a proper area for expert testimony. Dr Kirk testified for the police that, based on his analysis, the murderer was two-and-a-half feet from the victim. He said to the jury that he learned about this analysis by experimentation, including beating a device made of wood, sponge rubber and a sheet of plastic to learn how different sizes and shapes of blood spots were created. California Supreme Court Justice, Jesse W. Carter dissented in part from the majority decision, stating: "I feel, however, that error also was committed in the admission of Dr. Kirk's testimony concerning his experiments with the pattern made by blood spattering from an object made of wood, sponge rubber and a thin plastic sheet. The admission of such testimony invaded the province of the jury as it was based on conditions far removed from those actually existing at the time the crime was committed. Such testimony from a person as noted in criminology as Dr. Kirk could have had no other effect than to impress and prejudice the jury. This court held in *People v. Woon Tuck Wo*, that unless such experiments are shown to have been made under essentially the same conditions that existed in the case on trial, the tendency is to confuse and mislead rather than enlighten the jury. It most certainly cannot be said that an object made of wood, sponge rubber and a plastic sheet constituted the same thing as a human head". Defendant's story was that the spots on his clothing were due to blood spraying on him as he handled the deceased's body when he discovered it after the beating. Dr. Kirk's testimony was to the effect that the blood could not have gotten on defendant in that manner but could have gotten there only if he had administered the beating. It was the jury's prerogative to draw its own conclusion from the evidence without expert testimony based on totally dissimilar facts" (*People v. Carter*).

In another case, *Bryan v. State* (1985), the defendant was sentenced to life imprisonment and $10,000 fine for murdering his wife. In this case, one of the key evidence was the blood found on the flashlight in the trunk of the defendant's car. Despite the man's claims that he was asleep in a hotel room 120 miles away from the murder scene, a police detective analysed the bloodstain patterns on the flashlight and concluded that the flashlight was being held at the time of the murder. The detective, who had undergone about 40 hours of BPA training at the Northwestern University, claimed that bloodstains were consistent with back spatter from a close-range shooting. Since the trial took place in 1985, DNA testing was not available to confirm that the blood belonged to the murder victim,[45] but it was determined to be the right blood type, but type O could be a match for about half of the U.S. population. Afterwards, a different blood spatter expert presented a review of the initial analyst's work. This new expert determined that detective's results were not supported by any real science. She disputed a number of the detective's

[45] The beginning of the development of the DNA profiling method, or the identification of a person based on DNA profiling, relates to the discovery of new technology by Professor Alec Jeffreys and his colleagues at the University of Leicester, England. The first investigative case of DNA profiling method was in Northamptonshire (England) in 1986 during an investigation of the rape and murder of fifteen-year-old Dawn Ashworth - *Pitchfork case.* More about this case and DNA profiling method in England see: Bošković, 2017, p. 391-405.

claims, as well as his methodology. Perhaps the most important point was her conclusion that the blood on the flashlight was not consistent with back spatter from a close-range shooting. The next step for the convicted man is an evidentiary hearing where a three-judge panel will determine if there is enough evidence to warrant a new trial. In meantime, the Texas Forensic Science Commission has recommended that law enforcement officers with minimal training should not be allowed to testify regarding BPA. If such evidence is to be presented, it must be done by an organization that is accredited and recognized as scientifically sound (*Bryan v. State*).

The justification of using the BPA was also doubtful in the *People v. Wheeler (No. 3-98-0998, Appellate Court of Illinois, Third District, 2001),* in which the defendant was convicted of the murder. As one of the reasons for the appeal, the defendant claimed that the court erroneously accepted the evidence which led to the analysis of latent blood stains using the Leuco-Malachite Green (LMG) test, which the police performed on his car. LMG is a chemical mixture used to detect latent blood on a surface. The defendant's attorney argued that the test results were highly prejudicial and lacked probative value. He called upon a Frye test and asked to be checked if the LMG is generally accepted by the scientific community for the purposes of which it's being used. The expert witness, Smith, an evidence technician who performed an LMG test on the defendant's car, took the stand and testified that he had been a police evidence technician for approximately nine years. He had received evidence training at the Northwestern University, including instruction on the use of LMG as a blood-enhancement technique. He explained that the LMG test involves spraying a chemical mixture on a surface and watching for a color change to "dark blue green", and it`ll give a presumption to say that this is blood. He acknowledged that possibly as many as 50 other substances, including fresh potato juice and certain metals, would cause the same reaction. He concluded that it's presumed to be blood. After hearing the evidence, the jury found the defendant guilty of first degree murder. Defendant filed a motion for a new trial claiming, *inter alia*, that the judge erred in admitting Smith's testimony about the LMG test without conducting a Frye hearing. The motion was denied, and the defendant was sentenced to 48 years in prison.

When determining whether an expert witness can give an opinion based on a scientific theory, Illinois courts follow the test set forth in *Frye v. United States*. The Frye court explained the test as follows: "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs". The Court stated that the degree to which LMG testing is accepted in the scientific community is unclear. "We realize that the LMG testing procedure is taught at Northwestern University. However, we are not willing to assume that the Frye standard is satisfied based solely on that fact. Furthermore, the issue in the instant case involves more than just the testing procedure. In light of Smith's

testimony, the relevant inquiry is whether LMG testing is generally accepted in the scientific community as a means of raising a presumption (rather than just a possibility) that blood is present. That inquiry should be addressed at the Frye hearing on remand. Unless it is determined that Smith's testimony qualifies for admission under the Frye standard, the defendant should receive a new trial, because we do not believe the resulting error would be harmless".

At the hearing on remand, two forensic scientists testified, Dr. Gaensslen for the State and Taylor for the defense. Dr. Gaensslen testified that LMG testing is generally accepted in the scientific community as a "presumptive" or "preliminary" test that produces a positive reaction to substances containing a sufficient amount of peroxidase enzyme. He explained that approximately 50 different substances, including, for example, copper and blood contain peroxidase enzyme and give a positive reaction to LMG. On cross-examination, however, Gaensslen said that if a suspected substance, such as blood was not visible to the naked eye, a positive LMG test indicated a possibility of its presence, but a confirmatory test would have to be performed to determine whether the substance was blood. Defendant's expert, Taylor, agreed with Dr. Gaensslen that a positive LMG reaction on an invisible stain raised only a possibility, but not a presumption, that blood was present. He said a stain was presumed to be blood when it was visible and looked like blood and then produced a positive reaction to LMG.

The Frye hearing established that a positive LMG reaction indicates a broad range of possible substances present on the material tested, but it does not, without more, permit the tester to presume the presence of any particular substance within the category of matter containing peroxidase enzymes. The experts agreed that if a suspected substance is not visible, LMG testing alone could only indicate the possible presence of blood. In other words, although LMG is generally accepted in the scientific community as a preliminary test for the presence of blood, it is not an accepted method for presuming the presence of blood. The Court concluded that, at least in the absence of visible evidence of blood, LMG testing is not generally accepted in the scientific community as means of raising a presumption (rather than just a possibility) that blood is present (*People v. Wheeler*).

In other court cases, it has been seen that the experts do not inform and present to the jury all the details of the analysis and do not pay attention to the limiting aspects of the applied methodology (for example, when the bloodstains of the defendant and the victims are mixed but belong to the same blood group). It seems that particular difficulties arise in the cases when the criminal proceedings end by a plea agreement, since scientific evidence, even the BPA, cannot be disputed, and it is precisely the "threat" of the existence of scientific evidence that is often used as the basis for leading one to plead guilty. All the cases which have been presented indicate the need for careful approach in accepting BPA as evidence in criminal proceedings, because it may be a source of miscarriage of justice.

CONCLUSION

The evidence obtained by the BPA can be presented and used in criminal proceedings under the general conditions on the admissibility of scientific evidence. This means that they must satisfy two basic requirements which demand relevance

and reliability and which are based on scientific reasoning and methodology. In the judgments, it is very often emphasized that expert analyses must be the result of the so-called “good” science and that the methodology used must be generally admissible in the scientific community.

Despite the numerous rules and judicial precedents on the admissibility of scientific evidence, the use of the BPA is quite controversial in establishing the facts in the criminal proceedings. In a great number of court cases in the United States, this forensic discipline is marked as unreliable, and that has led to the miscarriage of justice – a large number of people were wrongfully convicted, then acquitted and eventually exercised the right to compensation. This milestone came mainly due to new trials and at these trials expert analyses and testimonies were challenged because of the use of inadequate scientific methodology, incompetence or inadequate training of experts.

For these above mentioned reasons, the US National Academy of Sciences listed the seven minimal requirements in the aforementioned report, which the BPA expert/analyst must fulfil in order to interpret bloodstains. They are: adequate scientific education; knowledge of the used terminology (e.g. angle of impact, arterial spurting, back spatter, castoff pattern); understanding the limitations of measuring instruments in BPA; an understanding of applied mathematics and the use of significant figures; understanding of the physics of fluid transfer; understanding of the pathology of wounds and understanding of the general patterns of blood makes after leaving the human body. By respecting these rules, the use of scientific knowledge and expertise in criminal proceedings will improve the reaching justice and thereby ensure respecting the fundamental rights of the defendant.

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EU SUPPORT FOR PUBLIC ADMINISTRATION REFORMS AND SOME KEY TRENDS OF PUBLIC ADMINISTRATION IN MACEDONIA

Branko Dimeski, PhD
Associate Professor
St. Kliment Ohridski University- Bitola, Faculty of Law
E-mail:branko.dimeski@uklo.edu.mk

Mladen Karadzoski, PhD
Associate Professor
St. Kliment Ohridski University- Bitola, Faculty of Law
E-mail:mladen.karadzoski@uklo.edu.mk

Abstract
The EU support for public administration reforms in the member countries but also in EU candidate countries is enormous and very consistent during the years. One of the main criteria for EU membership besides the economic development, human rights, judiciary and the rule of law is the successful implementation of the public administration reforms by the candidate countries. Thus, the main goal of the research in the paper is the EU support for public administration with an accent on some crucial public administration trends and indicators in Macedonia on national, regional level and local level. The research methodology includes research methods such as historical method, observations, content analysis, data analysis and comparisons. The results are somewhat different and point to different conclusions. However, the general conclusion is that Macedonia still needs to put greater efforts in order to fully satisfy the EU public administration criteria for a full membership.

Key words: EU, public administration, reforms, trends, Macedonia

INTRODUCTION

Through the years (especially in the last two decades) the EU support for Macedonian integration in the EU is of great significance. By adopting the EU universal principles of public administration and enacting the European administrative space, the EU provided basic principles and directions to every country that has aspirations to join the European Union. The principles are a common source for forming the legal base that give further directions for the values that must exist in professional management of public administration. However, the EU support gives different results of public administration reforms for different candidate country and all that depends on country's support to accept these principles and the political will to implement the needed reforms according the EU guidelines outlined in the annual EU country reports.

The goal of this paper is to analyze the EU support of public administration reform efforts in the candidate countries by analyzing the principles of administration officially adopted by the EU as well as the common adopted characteristics of the European administrative space. The principles of administration form the content or the legal base for adopting the common law of practice or the administrative law practices as well as they serve as a main guidance for the ways or criteria for public sector organizational behavior during the process of public management with the public sector resources.

At the last section of the paper, will be given an analysis of the process of Macedonia accession to the EU by analyzing the EU annual reports on country achievements. More precisely, in the area of public sector reforms by adopting the EU principles of administrative behavior. Lastly, will be presented some current key data on public administration characteristics and trends in Macedonia in recent years with the relevant conclusions about the EU expectations on one hand and the real public administration reform trends on other hand.

EUROPEAN PRINCIPLES OF PUBLIC ADMINISTRATION

The principles of administration & administrative law

Although the explanations and concepts of administrative law are different from one to another national system, can be given a common definition of administrative law, as a set of principles and rules that are referring to the organization and management of public administration and the relations between administration and citizens. These administrative principles are not just ideas based on good will, but they are embedded in institutions and administrative procedures at all levels. Workers in the public sector are obliged by law to abide by these legal principles, which must to be supported by independent control bodies, court systems and regulations, control by Parliament with the possibility of hearing individuals and legal entities and their indemnification. Particularly important principles, presented in the judiciary of the European Court of Justice, which all Member States have to apply it at home when applying the law of the European Union, among others, are: the legislative principle of administration, principles of proportionality, legal certainty, protection of legitimate expectations, non-discrimination, right to hearing and decision-making in an administrative procedure, temporary measures, fair conditions for access of the individual to the administrative courts and non-contractual liability of the public administration (Sigma 2010, 36-42).

If an attempt is made to systematize the main principles of the administrative law, which is common among the European countries, the following can be defined groups: 1) reliability and predictability (legal certainty); 2) openness and transparency; 3) accountability; and 4) efficiency and effectiveness. It is sometimes difficult to define the principles of administrative law and public administration. They often, in certain situations, seem contradictory to each other. For example, it seems that efficiency does not agree with the expected process; professional loyalty to the government seems to be confronted with professional integrity and political neutrality; discretionary decisions may seem to be against the law and so on (Sigma 2010, 36-42).

Many principles and mechanisms of administrative law work in the interests of security and predictability that are also characterized as legal or judicial security in the functioning of the public administration and its decisions. All these principles are trying to root out arbitrariness in the conduct of public affairs. The rule of law is a multi-dimensional mechanism of security and predictability. This is the principle of "law-enforcement". In fact, the rule of law means that the public administration should execute its own duties in accordance with the law.

Another principle that goes in favor of reliability and predictability is the public principle of proportionality. This means that the administrative procedure should be proportional to the legal solution, without endangering the citizen more than it is necessary to reach the solution. The notion proportionality has been developed in particular by the European Court of Justice, following the provisions that already existed in the German law, and this has entered most of the European systems administrative law through the law of the European Community.

One of the principles that support the "administration through law" is the principle of fairness of the procedure. This includes procedures that protect accuracy and impartiality in the application of the law, paying attention to social values, such as respect for the person and protection of his/her dignity.

The good governance of the public administration is strongly supported by the principles of predictability and security. The delay in public administration in the making decisions and taking action can cause frustration, unfairness or serious damage to both public and private interests.

Professionalism and professional integrity in the state administration make it clear that they promote reliability and predictability of the public administration. The professional integrity of the state administration relies on the concepts of impartiality and professional independence. Impartiality refers to the absence of prejudice in the decision-making process.

The openness implies that the administration is available for external examination, while transparency means that the public administration is prepared to give needed information in the case of control and supervision. Openness and transparency in the public administration have two specific objectives. From one side, they protect the public interest, because it reduces the likelihood of bad management and corruption, and on the other hand, they are necessary for the protection of the rights of the individual because they provide reasons for making administrative decisions (Sigma 2010, 36-42).

Generally, responsibility means that one person or authorities must explain or justify their actions before others. In administrative law it means that each administrative body should be responsible for its actions in front of another administrative, legislative or judicial power. Responsibility is required to provide other values, such as: efficiency, effectiveness, reliability and predictability of the public administration. Finally, as the state becomes a public service provider, the notion of productivity also appears in the public domain administration. Efficiency performance is a characteristic of the management value that consists of the ability to maintain a good relationship between resources and the results achieved. On other hand, effectiveness basically consists of ensuring successful implementation of the public administration for achieving the goals and solving public problems,

determined by laws and government. The European Union Law also requires efficient administration, especially in the section of the application of the Union's directives and rules (Sigma 2010, 36-42).

The European administrative space

Although public administrations in European countries have an old structure, they are constantly adapting to modern conditions, including membership in the European Union, which itself develops. Permanent contact of civil servants of Member States with the Commission, requests and efforts to develop and apply the *acquis communautaire* according to equivalent standards of security throughout the European Union, the emergence of administrative justice across Europe and the common core values and principles of the public administration led to the mutual approximation of national administrations. The European administrative space is all the above mentioned (Sigma Papers 1998).

The legal systems of the member states of the European Union are constantly subjected to the process of convergence in many different areas under the influence of Union law, i.e. through the legislative activities of the institutions, as well as through the usual practice of European Court of Justice. The provisions and directives have a direct impact on the administrative systems of Member States and may lead to significant changes in the legal principles applicable to the public administration. The common law of the European Court of Justice can establish more principles of general character, which are applicable in more than one field of law. This allows for the introduction of the term Europeanization of administrative law, such as an important element of recent legal changes. It all points to the emergence of the European Administrative Space, which mainly refers to basic institutional arrangements, processes, common administrative standards and values of the public administration. The countries that have membership aspirations will have to develop their own administration to the extent of making secure the European Administrative Space and an acceptable threshold for the adopted principles, procedures and administrative structural agreements. It is also necessary to consider the fact that the integration of the European Union is evolutionary process. The aspiration country must be able to fill the gap between the current degree of quality of its public administration and its future degree recommended by EU, if it wants to successfully join the Union (Schwarze 1996).

Common administrative space, simply said, is possible when the package of administrative principles, rules and provisions are applied equally to a separate one territory that is legally covered by a national constitution. The question about common administrative law for all sovereign states integrated into the European Union, it is still debatable, of varying intensity, ever since the founding of the European community, so there is still no common agreement. The important principles of administrative law are outlined in the Treaty of Rome. The absence of a formal legal body, which would regulate the public administration, its procedural rules and institutional arrangements do not mean that the European one supranational right is insignificant or unknown to the Member States of the European Union. There is a single *acquis* made up of the principles of administrative law, which can be characterized as an “informal *acquis communautaire*” in the sense that it does not exists formal convention. National

public administrations of member states must work for successful implementation of the freedom of movement of products, services, people and capital that is clearly stated in the Rome agreement. The result is that, although each member state has full freedom to decide on the ways and means for achieving the results provided by the agreements and the additional legislation of the European Union, however, it accepts the funds and principles developed within the Union. This situation is particularly noticeable in the area of principles of public administration. However, it is less visible in the area of administrative and organizational arrangements and structures. The legal activity of European institutions is a major source of the common European administrative law governed by the Member States of the European Union, their public administrations, courts and citizens. Another source of administrative approximation is the constant interaction between representatives of Member States and between those representatives and the European Commission. However, the European Court of Justice is the one who plays the leading role in the creation of the only principles of administrative law in the European Union. Finally, the phenomenon of penetration of the European Union law into the national legal provisions of candidate countries is one of the key bases for the implementation of the European Administrative Space. This contributes to the important role that the European Court has in the development of common principles, giving a framework for interpretation, which is necessary to follow the national courts. Hence it can be said that today there is a common *acquis* on the legal administrative principles that were developed by the European Court of Justice. The civil service is one of the main elements of the public administration, in addition to the rest, such as, for example, the respective independent and procedural legally principles. The functioning of the civil service has been established according to the model of the principles of administrative law, as guiding and binding principles. At the same time, all these elements, legal agreements and the behavior of the participants in the public sphere of European societies create a common European administrative and political space. This informal administrative *acquis communautaire* strongly influences the strengthening of the European administrative area and the Europeanization of the national public administrations, and hence the administrative law of the Member States of the European Union (Schwarze 1996); (Marcou 1995).

MACEDONIA’S ACCESSION TO THE EU

EU support and public administration reforms in Macedonia

During the last 15 years, different governments in Macedonia undertook different activities with the purpose of entering Macedonia in the EU (European Council-Council of the EU 2019). The timeline of EU support activities is presented in Table 1 below.

Table 1. Timeline of EU support for Macedonian integration to the EU

Key dates	Main activities (EU- support for the Macedonian accession)
June 2003	Thessaloniki Summit: EU perspective for the Western Balkans is confirmed.
March 2004	The country applies for EU membership.
April 2004	The Stabilization and Association Agreement enters into force.
December 2005	The status of candidate country is granted.
October 2009	The Commission recommends for the first time the opening of accession

	negotiations.
December 2009	Visa-free travel to the Schengen area for citizens of the former Yugoslav Republic of Macedonia.
March 2012	High Level Accession Dialogue with the Commission launched.
November 2015	The Commission makes its recommendation conditional on the continued implementation of the Pržino agreement and substantial progress in the implementation of the "Urgent Reform Priorities".
November 2016	The Commission states that it is prepared to extend its recommendation to open accession negotiations with the country, conditional on progress with the implementation of the Pržino agreement, notably the holding of credible parliamentary elections, and substantial progress in the implementation of the "Urgent Reform Priorities".
February 2018	The European Commission adopts its strategy for "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans".
April 2018	The European Commission recommends that the Council decides that accession negotiations be opened with the former Yugoslav Republic of Macedonia in light of the progress achieved and in view of the sustained reform momentum, maintaining and deepening the current reform momentum.

Source: European Commission. 2018. "Key findings of the 2018 Report on the Former Yugoslav Republic of Macedonia", Accessed 12 March, 2019, http://europa.eu/rapid/press-release_MEMO-18-3405_en.htm

The last EU country report- 2018 on public administration reforms in Macedonia it says:

> The country is moderately prepared with the reform of its public administration. Good progress has been made with the adoption of the public administration reform strategy and the public financial management reform programme. Concrete efforts have been made towards increasing transparency and accountability and involving external stakeholders in policy-making. The capacity of the Ministry of Information Society and Administration to drive and coordinate public administration reform needs to be improved. Strong political commitment to guarantee the professionalism of the public administration, especially on senior management appointments, and the respect for the principles of transparency, merit and equitable representation in line with the spirit and the letter of the law, remains essential. (EU- The former Yugoslav Republic of Macedonia Report 2018, 14).

Instrument for Pre-Accession Assistance (IPA II) (2014-2020)

The most recent EU support for the public administration reform in the country and statistics is for 2014-2020 period and defined by IPA II document under Action title: EU support to Public Administration Reform and Statistics and Action ID- IPA 2017/040-200/01.03/MK/PARS. The total cost for implementing of the activities equals to EUR 11,457,000 with EU contribution equals to EUR 11,200,000. The main implementation of the activities is under the supervision of the EU Delegation to the Former Yugoslav Republic of Macedonia (EU Support to Public Administration Reform & Statistics 2014).

The main objectives, results and activities of the Instrument for Pre-Accession Assistance (IPA II) (2014-2020) are presented in Table 2 below.

Table 2. Objectives, results and activities of the Instrument for Pre-Accession Assistance (IPA II) (2014-2020)

OBJECTIVES	RESULTS	ACTIONS
OBJECTIVE 1: To optimize overall institutional framework, enhance public service delivery and strengthen ethics, integrity, transparency and accountability of public administration.	Result 1.1 – Streamlined and optimized institutional framework; Result 1.2 - Strengthened systems ensuring transparency, integrity and ethics in the public institutions; Result 1.3 – Improved delivery, quality, number and scope of public services to citizens and to business (e-Government).	Activity 1.1 – Strengthening of the institutional framework; Activity 1.2 - Strengthening key systems, functions and institutes linked to the transparency, integrity and ethics in the public institutions; Activity 1.3 – Improving the delivery, quality, number and scope of public services to citizens and to business (e-Government).

Source: EU Support to Public Administration Reform & Statistics. 2014. Accessed 8 March, 2019, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/ipa_2017_040200.3_mk_european_support_to_the_public_administration_reform_statistics.pdf

KEY DATA ON PUBLIC ADMINISTRATION TRENDS

Besides theoretical assumptions, the real situation with the public administration in the country is still far from the needed level in order to fully satisfy the European public administration principles as key criteria for a country’s full integration in the European Union. In recent years, there were many international projects financially and technically supported by the foreign institutions in order to measure or to search for some of the key public administration trends in the country. One of the most important and fully relevant international projects titled “Following the Administrative Justice” financed by the British Embassy in Skopje was implemented by the Association for Development called Centre for change management located in Skopje, Macedonia. Recently, the Centre performed a number of research initiatives in order to gain an access to the knowledge about some public administration trends in the country from the general public. The research was done between 01.08.2016 - 31.03.2018. On the question “What are the thoughts of the citizens about the employments in state and public administration?”, more than two thirds of the respondents or 68% answered that employment in public sector is most desirable by them, followed by 22.8% that answered the private sector and of just 3% of the respondents answered NGO sector. On other hand, a very high number of 66.9% of the respondents answered that past or current practice of employment in state and public administration was not according the justice, 20,7% of the citizens answered they partially believe that the employments are according the legal system and just 6.2% responded that the employment procedures are fair and completely legal. Of those that responded to the research 42.6% believe that employment procedures are unfair because of the party politics involved while 9.4% answered that employment are unfair because of clientelism or indirect friendship with the key people in the organization. A very high percent of 79.3% responded that they do not support the present practice of political party

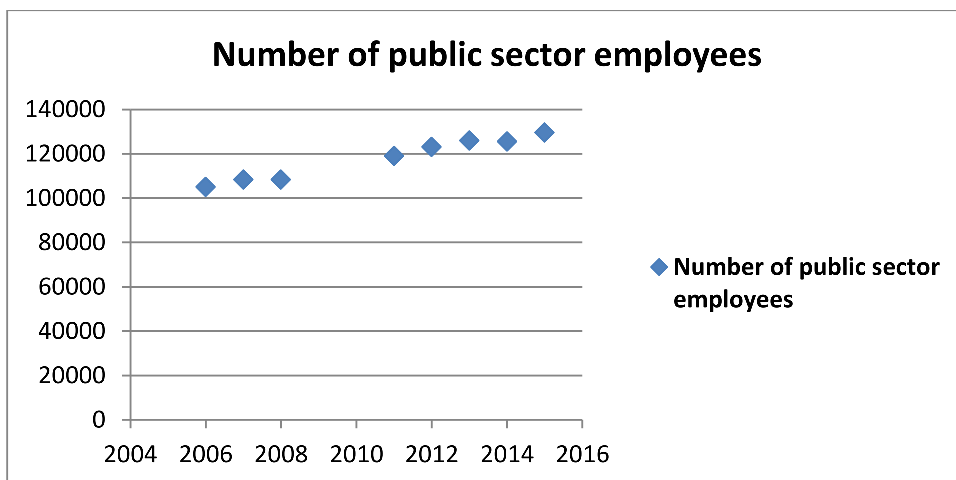
employments while 14.6% support this way of employment. In addition, a very high percent or 43.1% responded that political party employments erode the institutions because of unqualified employees for the working place, 34.2% think that these employees do not perform well as they should on their workplace and 8.6% think that the biggest problem with these types of employments is that the employees just support the political interests within the institution of the political party or parties that employed them in that institution. Finally, a very high percent or 88.3% of the respondents think that there must be any positive changes implemented in public administration by the authorities (Centre for Change Management 2018).

Within the same research, another set of research questions were sent to the respondents about the size and characteristics of public administration and public institutions. A total of 32.3% of the respondents answered that the total number of approximately 128000 public sector employees in the country is too big and it burdens the real economy. Of the total respondents 28% think that the current number of public sector employees should decrease or there should be public sector downsizing. The citizens, also, assessed the work qualifications and performances of the public sector employees. On the question "How do you evaluate the competence and professionalism of the public sector employees?", 35.3% answered that they are neutral, 21.5% responded in positive manner while 25.5% think that the employees are not enough competent and professional on a workplace. Next, on the question "How do you assess the kindness of public sector employees?", around one-third responded as neutral, 22% think that the public sector employees are kind and 25.9% responded that they believe or think that public sector employees are not kind on their workplace. On the question "What are the reasons for thinking that public sector employees are not on the needed level of their duties?", 31.5% responded that as the main reasons regarding this question are incompetence and non-professionalism while 21.9% responded that the public sector employees do not perform the job duties that they are paid and supposed to do. Next, on the research question "What are your thoughts about your confidence in public sector institutions, competence and professionalism and corruption?", 29.3% answered that they fully believe the public sector institutions, 31.2% answered that the public sector employees are competent and professional and 35.6% think that the corruption is one of the biggest problems in public sector institutions. Finally, 26.4% responded that they believe that their money through taxes and fees are not enough valued by the public institutions or not equally justified by the quality of provided services, 16% think that public institutions spent their money on proper way supported by those respondents who answered that their money given by taxes and fees are spent according the needs in the society (Centre for Change Management 2018).

Table 3. Number of public sector employees in Macedonia (2006-2015)

Year	Number of public sector employees
2006	105 000
2007	108 400
2008	108 400
2011	119 000
2012	123 000
2013	126 000
2014	125 500
2015	129 600

Source: Centre for Change Management. 2018. "Project- Monitoring the Administrative Justice". Accessed 12 March, 2019, https://cup.org.mk/projectspage.php?id=20



Grafic 1. Public sector size in Macedonia in terms of the total number of public sector employees for 2006-2015

According the available data, Macedonia does not have a big public sector compared to other more developed countries in terms of share of public sector employees in the total number of employees in the country expressed in relative numbers (%).

Table 4. Share of public sector employees in the total number of employees in the country expressed in relative numbers (%) (Selective countries members of OECD)

Country	Public sector employment in total employment (%)
Japan	8
Chile	10
Mexico	10
Macedonia	18.59
Serbia	24.18
Slovenia	20.51
Norway	30
Sweden	29.11
EU-28	23.47

Source: Centre for Change Management. 2018. "Project- Monitoring the Administrative Justice". Accessed 6 March, 2019, https://cup.org.mk/projectspage.php?id=20
https://cup.org.mk/projectspage.php?id=20

Table 5. What cost is the public sector from all government expenditures as % of GDP?

Country	Public sector expenditure from total GDP (%)
Macedonia	33
Romania	34.3
Bulgaria	38.7
Slovenia	44.1
Serbia	44.7
Bosnia	46.8
Croatia	47.5
Denmark	53
France	56.8
Finland	58.4

Source: Centre for Change Management. 2018. "Project- Monitoring the Administrative Justice". Accessed 2 March, 2019, https://cup.org.mk/projectspage.php?id=20

However, in the country the increasing trend in public sector employment in the last ten years does not go in line with the overall development of the national economy or the private sector.
The citizens in 2005, 2010 and 2015 assessed the overall performance of the public sector institutions in the Balkans region. According the results, the greatest improvement in those assessments were registered in Albania, Serbia and Macedonia. Of the countries in the region, the greatest reputation in the "eyes" of the citizens has the public sector in Slovenia, Greece and Croatia. On other hand, at the bottom is still Bosnia and Herzegovina (Centre for Change Management 2018).

Table 6. Calculating public sector average employment rate (per 1000 local residents) of the planning (statistical) regions in the Republic of Macedonia

	Average employment rate (per 1000 residents)
Skopje	18.02
Vardar	23.36
Polog	16.23 (lowest)
Pelagonia	25.82 (highest)
South-Western	25.6
Eastern	24
North-Eastern	21.6
South-Eastern	21.23
TOTAL: 8	TOTAL (Average): 21.98

Source: Dimeski, Branko and Mladen Karadzoski. 2018. "Public Administration and Some Key Socio-Economic Characteristics of the Regional Polycentric Development in the Republic of Macedonia". Paper presented at the International Scientific Conference "Towards a Better Future: The Rule of Law, Democracy and Polycentric Development". Conference Proceedings, Vol. I, pp. 204-214, May 11-12, Bitola. Organized by the St. Kliment Ohridski University- Bitola, Faculty of Law, Bitola, Macedonia. Accessed 22 December, 2018, http://pfk.uklo.edu.mk/portal/upload/fajlovi/conference_proceedings_vol1.pdf

CONCLUSION

For the last 15 years (2003-2018), Macedonia intensively "fights" to implement the needed reforms including the public administration reforms in order to fully satisfy the EU requirements for a membership in the European Union. However, there were hard political times in the country that somehow inhibited or slowed down the process of European integration. European principles of public administration are at the same time the principles of administrative law and form the basis of the so-called common European administrative space. Without those principles we cannot speak about successful public administration reforms in the country that has full and open aspiration to join the European Union. As a result, the country must fully accept and implement the European administrative principles.

In the recent decade and a half, the country received different measures and privileges from the European Union according the annual EU country reports. The EU permanently encourages the Macedonian authorities to undertake the needed actions toward public administration reforms. Hence, the current Instrument for Pre-Accession Assistance (IPA II) (2014-2020) forms the basis or the overall EU support for the reforms. It clearly defines objectives, results and further actions that are primarily implemented by the EU Delegation in the country.

Finally, the public opinion in Macedonia about the public administration reforms in country is divided. Some aspects of the reform are positively rated while other aspects are negatively rated. The public opinion always serves as an instrument for improvement and is very important barometer for the degree of implementation of the reforms. In the future, undoubtedly, the country will continue to receive EU support and at the same time is very important the scientific research on public opinion and overall public administration trends in the country in order to set goals, policy, results and actions for the future success.

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RULE OF LAW CULTURE IN WESTERN BALKANS COUNTRIES

Nikola Tuntevski, PhD
Assoc.Prof. Dr.sc.
Faculty of Law Kicevo
University "St. Clement Ohridski "Bitola
niktun@t.mk

Abstract
Civic culture, as a system of values and norms of behavior, shared by people in mutual relations, is at the heart of every society. Its inseparable part is the legal culture, as a precondition for the protection and balancing of human freedoms and rights and for the promotion of the standards of righteousness.
That is the basic intention of this paper - to discover the essence of the legal culture as a social phenomenon and, in particular, its specificities in the Western Balkan countries (WBC). Even more, how to trace its proper development, while simultaneously neutralizing the negative effects of the long-lasting transition, and how to achieve a decent level of correspondence between human and legal values as a basic precondition for a truly righteous society.

Key words: legal culture, rule of law, countries of the Western Balkans

INTRODUCTION

The law is not only a part of culture, but has a central "cultural significance"
(Weber) Gephart 2010, 4

Transplantation of legal norms is not a mechanical process that can be introduced in every society. It must fit into the mosaic of human interactions in a particular society, respecting the specificities of the domicile value system. Every imposed legal implant will irritate the organism (society), causing social turmoil, until it is rejected as a foreign body or in the worst case - it will lead to disintegration and destruction of that organism.
The cultural and value code of people in a certain social environment is a necessary condition for successful creation of legal standards that will be acceptable for the majority of citizens. By decoding, legal norms can lead to the integration of society. In that sense, the terms “rule of law” and “legal culture” could be sublimed in a common term - a “culture of rule of law”, or even more precisely – “culture of respect the law”, which will promote a mutually beneficial interaction between law and the people.
On the other hand, the growing cooperation between the states imposed the need for greater international unification of the law and raised the question - is a global legal culture reached? Or it creates a new myth that seeks to legitimize the power of

global political and economic power centers, despite the interests of states and their citizens.
These dilemmas are still more relevant for countries in transition, such as Northern Macedonia (NMK) and most WBCs. In conditions of devalued ideals and moral values, these societies are upright in front the necessities for a thorough review of the rule of law. The deformations of the moral and legal culture have progressed to the extent that it is no longer known where is the boundary between law and unlaw, and between the legal culture and the legal subculture. It is a fertile ground for corruption, nepotism and arbitrariness among all entities in society.
Therefore this paper seeks to answer the question of how to profile the rule of law in the WBCs as a culture of living, through which legal norms will not be perceived as coercion, but as a need of common relations. Or how to create a legal system in which citizens will believe that governance is being carried out, not only to the law, but also to justice.

THE RULE OF LAW CULTURE AS A INSEPARABLE PART OF THE CIVIL CULTURE

"The rule of the law, it is argued, is preferable to that of any individual". Aristotle, 77

The interaction between legal and cultural norms is noted by Montesquieu, which pointed to the need for the positive law to adapt to the cultural characteristics of people in each country (Montesque 1748, 22). And the German Historical School in the 19th century perceives law as a product of people belonging to a particular cultural environment. According to Savigny, law is not a product of state legislation, but of spontaneous processes and practices that occur in the everyday lives of people and derived from their customs and traditions (Mautner 2011,843).
In the 20th century, contrary claims emerged, according to which the laws have the power to influence the shaping of the culture of people's behavior. Such perceptions served as the basis for the legal culture in totalitarian societies, where the laws with the support of state propaganda created the minds of people. This has left deep traces in many post-titarian countries and their relationship to the law.
Modern views of legal culture leave their previous attitudes and emphasize social and civic character of law as a mutually beneficial instrument of regulating mutual relations, which simultaneously respects human freedoms and rights. In that direction are contemporary qualifications of legal culture as a legal mentality (P. Legrand), legal ideology (R. Cotterell) or legal tradition (H. P. Glenn, R. Zimmermann). Van Hoecke & Warrington say that legal culture shows the level of legitimization of the law (Michaels 2011, 1).
According to Friedman, legal culture is a complex of social elements related to the legal system. It is a set of expectations and attitudes of the public towards law and legal institutions, which establishes a balance between society and the legal system (Nelken 1997, 8). Most often it is perceived as a specific way of interpreting the laws by the legal entities. Friedman argues that each group and individual have their own specific legal culture. It is an integral part of the general civic culture and as

such creates a relatively stable model of legally oriented social behavior and attitudes. Legal culture means a way of thinking and acting of the citizens, by which they show their relation to the legal acts, but also to what is righteous and what is not, and as such it is synonymous with "Living Law" (Ehrlich E.) or "Law in Action" (Roscoe P.), which is constantly being developed and promoted (Michaels 2011, 1).

In that direction, instead of a legal culture, it is more acceptable to speak of a culture of rule of law. It is a rule in which all entities, including the state itself, are responsible for adopting and implementing laws that need to be consistent with international human rights norms and standards. Actions are also needed to ensure equality and responsibility to the law, fairness in its application, participation in decision-making, legal security, avoidance of arbitrariness and transparency (UNSC 2004, 4). In order to achieve this, citizens should not only to know the laws, but also to submit initiatives that will express their needs and to participate in their adoption. To believe in the law, people must believe that it have been created and implemented by them and to their extent. In this way, the rule of law, rather than power over others, will mean a participatory relationship with the citizens. If people think they can not take part in decisions that affect their lives, they begin to suspect that someone is trying to reduce their rights. This will also depend on the extent of their acceptance as a value orientation of the whole civic culture and for the creation of the legal awareness (i.e. responsibility) in people.

Furthermore, during the implementation of the laws, legal culture must be impregnated as an inseparable part of the civic culture, as a culture of respect for the laws, not because of the threat of punishment, but as a need. A "legally aware person" or "a person with a decent level of legal culture" sees the right as a mechanism for respect, not only of the norm, but also of other members of society, starting with the simplest actions (for example, to exclude our mobile phone in theater or at a meeting), to the most complicated relations with the institutions. Freedom in legal culture does not mean that people can act without taking care of the rights of others. No matter who we are and, on what position we are in the society, we must have a high awareness of our responsibility, but also about the responsibility to others. Like civic culture, legal culture is not just a model for what we are, but also about how we treat laws, institutions and especially for other people.

The true culture of rule of law means belief in the correctness of laws and commitment in their implementation, that is, people accept the right as an inseparable part of their life. How much this belief is dominant among citizens, so the rule of law will be more permanent. Conversely, disbelief in the validity of legal norms makes them ineffective and subject to constant change.

RULE OF LAW (SUB-) CULTURE IN WESTERN BALKANS COUNTRIES

"To forget the purpose is the commonest form of stupidity." Nietzsche F. 1879, 206

The legal orders in WBCs are formed under the influence of European legal tradition and culture. At the same time, these countries are striving to become

members of the common European home, which is why their legislation must comply with that of the European Union (EU). Although Copenhagen criteria set the rule of law as one of the conditions for gaining membership (EC 1993, 13); chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security) were not previously included in politics for enlargement of the EU. Romania and Bulgaria were admitted to EU members without applying these criteria. After their admission, when the shortcomings in their societies were perceived and the impact they could have on common European values; they were obliged to adopt certain post-accession standards for the rule of law, as defined in the Co-operation and Verification Mechanism. The rule of law as a criterion for all subsequent enlargement negotiations was introduced by the EU Council in 2004 because it "... enhances the ability to fight organized crime and corruption, and thus directly contributes to progress in the application of human rights, democratic standards and freedoms "(Joint Article 2013). At the same time, this leads to the transformation of candidate countries by incorporating new values in everyday life and in the culture of behavior of their citizens. This was confirmed in the Final Declaration of Paris and at the Berlin Summit, which "... more than ever, the rule of law lies at the heart of the enlargement process, including fundamental judicial reform, combat with organized crime and corruption, and full respect for fundamental rights "(European Parliament Briefing 2016, 5-6).

All WBCs are perceived as semi-consolidated democracies or hybrid regimes, with serious obstacles in the rule of law processes (Freedom House 2018, 22). They have all the institutions of liberal democracy, but with a lack of fundamental rights and freedoms and by practicing an authoritarian style of governance from the centers of power. Instead of implementing the values of the EU and bringing it closer to its standards of rule of law, the WBCs is still in the process of a slow transition, with political polarization of citizens, a dominant influence of informal power centers and a high level of corruption. Despite the numerous reforms they have made, the rule of law in them is inert and insufficient. Even when it exists, it is more formal, rather than essential dealing with key issues. The overproduction of laws (quantity) is in inverse proportional relation to their quality and their practical application. For example, Pribe Report on NMK says that "the country has a comprehensive set of rules that, if fully respected, will ensure the functioning of the judicial system at the highest standards" (Priebe Report 2015, 9).

The problem in these countries is not in the legal framework, but in its implementation. The more laws are adopted with "European" provenance, their effectiveness is less visible on the advancement of life, freedoms and rights of citizens. NMK from a number of international factors was called a "captive state". In the last decade, according to EU reports, and in particular the Priebe Report, the government in NMK has exercised control of state and public institutions such as the judiciary, the public administration, the media and the elections (Priebe Report 2017, 4-5). Public distrust in the reforms in all WBCs is reflected in several public opinion polls. On average, more than 79% of them do not agree that the law applies equally to all, 71% disagree that the judicial system is independent of political influence, and 70% disagree that the law is implemented effectively (Balkan Opinion Barometar 2018, 116-120). (See Figure 1)

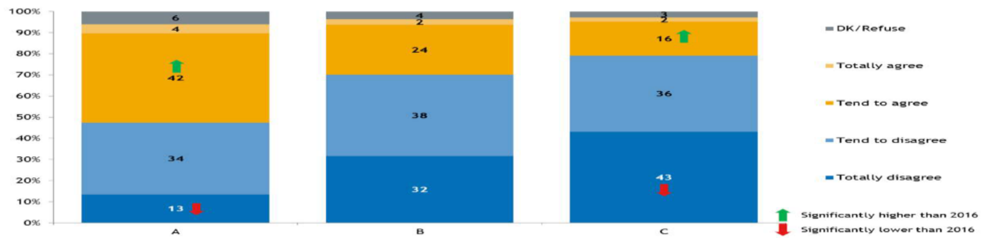

Figure 1: Do you agree that: A - the administrative procedures in public institutions are efficient; B - the law is applied and enforced effectively; C - the law is applied to everyone equally

On the other hand, the speed of settling backlogs cases, results with inefficient trials. Or even worse - the increased number of processes, that should be an indicator of anti-corruption combat in the eyes of the EU, can be misused by political parties to fight political opponents. It can pervert the efficiency of the judiciary, at the expense of the distortion of its independence. In that sense, a reasonable impression is given that the reforms are merely mimicry for the still present connection between the state and the party (parties) in power. What is the reason for these effects? Are these traditions in the WBCs that through history have created a separate input in a culture of respect for the law? Does the legal system not work well, because people express distrust in the institutions; or they express mistrust in the institutions because the legal system does not work well?
In order to be able to explain the legal culture in the WBCs, one must bear in mind the fact that there is a bipolar legal order in it - one official, deriving from the constitution and laws; and an alternative, which is governed by informal “rules of the game”. They often do not deviate from the laws, but they deviate from the interests of society and citizens, creating the so-called a legal subculture, which is deeply rooted in the legal order. It springs from the historical heritage and mentality that left the previous order, in which responsibility was largely collective, not individual, and created by coercion, not as self-responsibility. Political elites in these countries failed, or more precisely, did not want to undertake substantial reforms, because they could be detrimental to their interests, their positions of power and their political destiny. That's why they seemingly want them, but they essentially strive for prolonging, or distorting key reforms. The EBRD survey on life in transition countries shows that more than a third of people in the WBCs, see connectivity with ruling parties as the key to success in life and that is more important than any labor, intelligence or skills (EBRD 2018, 25). In circumstances when laws are used to protect the partial interests of individuals and groups, in spite of the general interests of all citizens, the law cannot have a progressive and cohesive role in society. Faced with the disfunction of the system in which lawlessness, impunity, corruption, and nepotism are fundamental rules in society, people adapt to such rules and realize that in these circumstances it can only be prospered by bypassing the laws, that is, the legal order does not function as a tool for protecting and securing their needs, but for the benefit of the centers of power. Such a legal subculture favors the powerful, resourceful, and people without

integrity, and demoralizes the conscientious, capable and those who obey the laws. Social exclusion, disparities in the distribution of privileges and power, social inequality, along with the injustice created by these conditions - makes people in these countries feel marginalized and discriminated, which is a potential factor for instability and conflict. When people do not believe in a formal legal system to solve their problems and disputes, they will seek out rules outside that system. In such circumstances, there is no place for an inclusive society. On the contrary, social "cohesion" is based on clientelism and dependence. Healthy social tissue is becoming increasingly infected and marginalized in favor of political and financial criminal unions and their interests. Therefore, it is impossible to reform the legal system without changing the legal culture, those who enforce the law, and the citizens.

According to most research, the most widely used domains in the WBCs, through which the (sub-) culture of rule of law is expressed are: judicial institutions, corruption, the media, the non-governmental sector and human rights.

The independence of the *judicial institutions* and the impartiality of their perpetrators (judges, prosecutors, ombudsmen), as well as the efficiency and quality of their work, are essential for securing justice in the WBCs and one of the key reform priorities in the EU accession processes. But most reports from relevant international institutions report on the further strong politicization of the judiciary in these countries and on the impacts and dependencies of various power centers, which create clientelist relationships and determine their work. According to Transparency International, the judiciary in these countries is still in "political and corrupt slavery" (Transparency International 2016, 5). This was to be overcome through the promotion of independent bodies (court councils, public prosecutors' councils, academies for training judges and prosecutors, special court budget), which were supposed to enable the functioning of judicial institutions not to depend on party and political influence. Instead, there are still political interventions in the appointment of staff and in the distribution of cases to "eligible" judges and prosecutors (which bypasses the system for automatic distribution of cases), that resulting in the further survival of an independent judiciary. This confirmed the wiretape affair, which appeared in NMK at the end of 2015, which revealed that the executive (or more precisely, party) government has control over judicial institutions, both in the appointment and promotion of personnel, and on the abuse of criminal proceedings for intimidation and persecution of political opponents (Priebe report 2015, 5). In addition, although special prosecution offices have been established in NMK and Montenegro, which, although showing some degree of independence, are constantly faced with political pressures and obstructions from other institutions. On the other hand, the judiciary refers to its discretionary powers to interpret the laws and to freely evaluation of the evidence. But that is precisely the paradox. Rather than allowing freedom of decision-making, discretion has become a paradigm for enforcing decisions of power centers and for selective (ineffective) justice. This shows that excessive autonomy of the judiciary, in the absence of liability criteria, can be useful, but also harmful. In addition, there is still a high level of inefficiency in all WBCs, which is reflected by the large number of unresolved cases, especially when high-profile power is examined. A great

disadvantage in these countries is the difficult access to justice, high costs, delays of scheduled procedures and lack of an free legal aid system (EC 2018, Press Statement).
The disadvantages of judicial institutions are also reflected in other *state bodies*. Newly created anti-corruption agencies and other specialized accountability bodies do not have enough capacity, independence and professionalism and are captured by political and other influences, which are themselves subject to self-corruption. In addition, in these countries, there is a lack of institutional cooperation and coordination between the judicial institutions themselves, as well as between them and other bodies.
In the direct connection with the lack of independence and effectiveness of institutions, the emergence of systemic *corruption* in all WBCs. Corruption undermines the independent functioning of the judiciary, and it does not allow to be resolved serious corruption cases involving high-ranking officials, that closing one of the degrading cycles in society. Despite the strengthening of the relevant legal frameworks and the establishment of anti-corruption institutions, none of these countries have managed to fully cope with this problem, primarily because of the influence of the party-economic power centers and the deficit of inter-institutional cooperation. Corruption is a source of unfair distribution of profits and power on the basis of customer relationship, in which the business sector receives public procurement, and citizens receive employment in the public administration. The Transparency International places the WBCs, high in the ranking list of a total of 180 countries (see table 1).

Country	**Score**	**Rank**
Montenegro	45	67
Serbia	39	87
Bosnia & Herzeg.	38	89
Kosovo	37	93
North Macedonia	37	93
Albania	36	99

Table 1. Source: The Transparency International corruption perceptions scores 2018, 2-3

The Balkan Barometer confirms that citizens in the WBCs view corruption as a widespread phenomenon. After unemployment and the economic situation, 29% of the citizens consider that it is a third main problem in the society (Balkan Opinion Barometar 2018, 41). As the most corrupt institution, 85% of respondents pointed to the judiciary, followed by political parties (80%), customs (75%) and healthcare (74%), which according to the respondents also affects democratic stability, the rule of law and economic development (Ibid., 123-124). According to Transparency International, 12% of respondents in NMK said that they had to pay bribes to obtain public services, even they had a legal right on it (US DOS 2018g, 23). The majority of citizens (70%) think that their governments have failed to take sufficient action to prevent corruption and expect to do much more (Balkan Opinion Barometer 2018, 126). Even when examining cases, they generally suffer from inadequate investigations, lengthy delays and acquittals or easy verdict, which contributes to public distrust in anti-corruption bodies. Kosovo has the appearance that judges and prosecutors to avoid high-level corruption cases, due to physical threats and fear of

losing jobs (Dursun-Özkanca 2018, 71-94). The EU Commission also confirmed that WBCs links at all levels of government dealing with corruption through interlacing public and private interests (EC 2018, 3).
Although one of the most important factors for revealing the work of institutions and corruption in the society, *media* independence in the Balkan countries is at a low level. Like other segments in society, they are not immune to political interference, clientelist connection between centers of power and media owners, non-transparent funding according to their eligibility, intimidation of journalists, bias towards a particular political option, censorship or self-censorship (ECPMF 2017, 45). This is a special feature of public broadcasting services, which due to budget financing are seriously exposed to influence of the government. Moreover, verbal threats and physical attacks on journalists have increased in recent years, and they did not find the answer from the institutions that are competent to provide their protection, which led to media self-censorship. As a result, the World Press Freedom Index in 180 countries for 2018 shows that media freedom in the region is low (see table 2).

Country	Index	Rank
North Macedonia	32,43	109
Montenegro	31,21	103
Kosovo	29,61	78
Serbia	29,58	76
Albania	29,49	75
Bosnia & Herzeg.	27,37	62

Table 2. Reporters Without Borders 2018 World Press Freedom Index | RSF

From WBCs, Bosnia and Herzegovina (B & H) is ranked best, and the weakest is ranked NMK. This is due to disrupting investigative journalism and the still present political influence in our country, both from the government and the opposition, which prevents the citizens from obtaining objective information. (Priebe report, 2017). In Montenegro, journalists are often accused of being a threat to national interests and being "traitors to the nation" (Transparency International 2016, 24). In other countries, government institutions remain the largest advertising clients and use this to press the media to adopt editorial policies that promote their interests, which is obvious during election campaigns.
Despite the need for strong *non-governmental organizations*, they are still labeled in the WBCs that they only work for profit, either as foreign or opposition agents or public enemies, and are subject to constant threats. For this reason, the councils for cooperation between the non-governmental sector and the governments in NMK and Montenegro have long been boycotted by civil society representatives (BCSDN 2016, 6).

HOW TO RAISE THE LEVEL OF RULE OF LAW CULTURE IN WESTERN BALKANS COUNTRIES – CONCLUDING RECOMMENDATIONS

"You can create laws, you can change the laws. But changing the mindsets of a nation that was brainwashed for decades? That's the toughest job, the slowest process, and also the most important goal when trying to build a democracy. "
Miculescu S. 2014

Respecting the basic principles of the rule of law today are one of the civilization standards of all countries. The development of the legal culture is an important condition for the realization of the rights and freedoms of the citizens and for the reconstruction of the relations and values in the society. However, there is no perfect model of the rule of law culture. Transposing reforms from one order to another does not mean that they will yield the expected result, because each social context has its own unique cultural, social, economic, historical, political and legal dynamics. This can be challenging in transition countries, in which the boundary between authoritarian and democratic government is unclear. Reforms are necessary, but they must be acceptable to most citizens. Otherwise, their application will be uncertain and there will be attempts for their evasion.

From what has been said, we can conclude that instead of consolidating the rule of law culture in the WBC, it stagnates. Although the level of transformation differs, similarities can be observed in key areas. That's why the proposed solutions are similar.

One of the key reforms is the creation of judiciary, based on integrity, accountability, openness, results, accountability, monitoring and evaluation. This should increase its efficiency and reduce the level of corruption. In that sense, a positive example is a collective resignation of the judicial staff in Albania and their re-evaluation. All countries need to establish rules for merit promotion, assessment and dismissal. It is important to foster interaction between justice institutions and the community. One of the ways for this is open days in justice institutions, which will help citizens to understand the legal system and their rights. Also, citizens should have adequate access to information, simpler procedures and to establish free legal aid centers, which will be included in the judicial system, as instrument for access to justice for all citizens, especially for marginalized and vulnerable groups. At the same time, cooperation and coordination between the law enforcement institutions should be further enhanced. And most importantly for their "Europeanization", the WBC's judiciary should use the practice of the European Court of Human Rights and the European Court of Justice. In parallel with the previous one, a public administration reform process must take place, which includes improving its quality, professionalism, depoliticization and better services for citizens.

In order to deal with corruption, it is necessary to eliminate the patronage of parties on the society, especially on judicial institutions. Independent institutions are key to implementing more efficient procedures, resulting in court rulings, confiscation measures and the sale of illegally acquired property and a loss of right to public

function. WBCs also need to establish greater transparency in the management of public funds, especially in public acquisitions.
Special emphasis should be placed on depoliticizing of public broadcasting services, financial independence, institutional stability and the editorial independence of the media.
Governments should also ensure the establishment of a dialogue with the non-governmental sector, which should have greater access to key information on EU-related reforms and enable monitoring and evaluation of the rule of law processes.
But none of the proposed measures can be successful if the awareness and responsibility of the people themselves is not changed. A credible impulse for a more successful rule of law can be achieved through greater participation of citizens in the adoption of laws and greater confidence in their implementation. Through a more liberal reform process and a dialogue between the judiciary, the professional public and the citizens; the legal order in the WBCs can identify, recognize and respond to people's needs. That would be a true culture of rule of law.

ABREVIATION

WBCs – Western Balkan Countries
NMK – Republic of North Macedonia
EU – European Union

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EFFICIENCY AS AN INTERNATIONAL STANDARD IN CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA-TOWARD EUROPEAN UNION

Sasa Mijalkovic, PhD, Full professor in the Department for Security Studies and Vice-Rector for International Relations and Inter-institutional Cooperation, University of Criminal Investigation and Police studies, Republic of Serbia, sasa.mijalkovic@kpu.edu.rs;
Dragana Cvorovic, PhD, Assistant professor, University of Criminal Investigation and Police studies, Republic of Serbia, dragana.cvorovic@kpu.edu.rs;
Veljko Turanjanin, PhD, Assistant professor, Faculty of Law, University of Kragujevac, vturanjanin@jura.kg.ac.rs

Abstract
Realization of efficiency as an international legal standard stands as a big challenge for the contemporary criminal procedural legislations, whereas the trend of new solutions in criminal procedural legislation of the Republic of Serbia indicates of a big step forward when it comes to more efficient criminal procedure and fulfillment of the standards on its way of accessing to the European Union. Namely, the Republic of Serbia in the process of reform and accession to the European Union has legalized numerous procedural institutes, introduced time determinants when it comes to taking actions in criminal procedure, but also has adopted a large number of laws, with the aim of making more efficient normative foundation, and which require more detailed professional and critical analysis. Accordingly, the authors have analyzed the subject matter from several aspects: firstly, efficiency as an international legal standard and the reformed criminal procedural legislation of the Republic of Serbia in the process of accessing to the European Union; secondly, the principle of opportunity as an instrument for achieving the desired efficiency of criminal proceedings; thirdly, plea bargain as a simplified form of acting in the criminal procedural legislation of the Republic of Serbia; fourthly, conclusion remarks

EFFICIENCY AS AN INTERNATIONAL LEGAL STANDARD AND REFORMED CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA IN THE PROCESS OF ACCESSION TO THE EUROPEAN UNION

The process of reforming the criminal procedural legislation of the Republic of Serbia is a multiannual work, initiated by the adoption of the Criminal Procedure Code in 2001,[46] and which, in the process of Serbia's accession to the European Union, has improved the normative framework, by introducing new legal texts aimed at achieving efficiency as an international legal standard. The realization of

[46] Criminal procedure code (2001)"Official Gazette of the FRY", No. 70/ 01 and 68/ 02 and *"Official Gazette of the Republic of Serbia",* No. 58/2004, 85/ 2005, 115/ 2005, 49/ 2007, 72/ 2009 and 76/ 2010.

efficiency in itself sublimates the quantitative and qualitative aspects of the realization, and it is necessary that both aspects be fulfilled in order to achieve the international standard. Namely, the process of Serbia's accession to the European Union implies harmonization of Chapter 23, which relates to the judiciary and fundamental rights, with European standards and includes procedural guarantees. The key objection of the European Commission, outlined in the Screening Report – Chapter 23, is the need for a strategic approach to improving efficiency, through parallel improvement of procedural laws, settling old cases and investment in infrastructure (Kolaković-Bojović, 2016).

Following contemporary trends, the criminal procedural legislation of Serbia has undergone a number of changes in the process of accession to the European Union, all with the aim of increasing the efficiency and realization of criminal policy in general, especially the most serious crimes, such as criminal acts of organized crime, terrorism and corruption. The necessary changes concerned primarily the adoption of the new Criminal Procedure Code in 2011[47] and with it the introduction of a prosecutorial investigation, a time limit on the taking of search measures, evidentiary actions in pre-investigation proceedings as well as the measure of deprivation of liberty, which significantly contributed to the realization of the quantitative aspect of efficiency, but also opened numerous expert and critical arguments for derogating from the fair procedure in relation to this legal text.

Given that a party model of criminal procedure has been introduced into the criminal procedural legislation of Serbia, which sets the public prosecutor and the defendant in the foreground, special attention should be paid to the equality of arms as explicitness of a fair trial. When it comes to equality of arms as one of the elements of a fair trial, the legislator's intention to realize the equality in the position of the procedural parties in the criminal procedural legislation of the Republic of Serbia (Bejatovic, 2014a) has remained only in the domain of criminal procedural theory, which represents the views of modern procedural systems, which cannot exist without a fair trial, the foundation of which is the equality of arms. Unverified doctrinal explications and their standardization in the Criminal Procedure Code caused the opposite effects of the expected ones, and therefore, instead of efficiency as the key element of the reform of the criminal procedural legislation of the Republic of Serbia, there are illogicalities, deviations from fairness and inequality as the foundation of this maxim. The critical attitude towards the CPC from 2011 and the realisation of the principle of equality of procedural parties in criminal proceedings stems from the non-compliance of the provisions of the Criminal Procedure Code with the adversarial model of criminal proceedings, which is newly introduced in our procedural legislation and which deviates from the realization of equality by the convergence of elements from two different criminal procedural systems, primarily with regard to the inquisitorial maxim at which the prosecutorial investigation is based, while the adversarial court proceedings are based on the indictment principle. The incoherence of the organization of the prosecutorial investigation and the judicial part of the criminal proceedings in the adversarial

[47] Criminal procedure code of the Republic of Serbia (2011) RS Official Gazette.Nos.72/11, 101/11, 121/12, 32/13 and 55/14.

model requires irreconcilable distinctions between the pretensions that the public prosecutor has in the investigation and those that he manifests at the main trial and thus the deviation from fairness and efficiency (Bejatović, 2015) in qualitative terms.

The Criminal Procedure Code provides for two phases of the criminal proceedings before the indictment is issued. These are the pre-investigation proceedings and the investigation phase, which already in their definition indicate a deviation from the fair trial. Namely, the realization of a fair trial, which exists from the pre-investigation, and not from the beginning of the criminal proceedings in the narrow sense – investigation, finds its stronghold in the previously mentioned facts, which direct the relation between the public prosecutor and the police towards the presentation of evidence before the judicial criminal procedure, often without the presence of the suspect, especially if the investigation is conducted against an unknown perpetrator (Article 295, paragraph 1, item 2, CPC/2011), which is explicitly provided for in the new CPC, thus deviating from the realization of justice, efficiency in the qualitative meaning and compliance with European standards. However, the initiation of a regular criminal procedure under the new Criminal Procedure Code relates to the moment of passing a decision on the conduct of the investigation, i.e. the confirmation of an indictment not preceded by an investigation (Article 7, CPC), thus investigation being considered the phase in the criminal procedure in the narrow sense, which is considered to be completely illogical and inconsistent in relation to the features of the adversarial model of criminal proceedings with regard to regulating the criminal procedure as an adversarial and investigation as a strictly formal one. Namely, in its concept, the investigation should be as informal as possible, with the emphasis on collecting evidence, whose examination does not tolerate delay, which implies the determinism of the collection of evidence towards the decision making of the public prosecutor to issue an indictment (Đurđić, 2014). In accordance with the new CPC, the investigation is regulated on the inquisitorial maxim, which is equivalent to a judicial investigation standardized in the 2001 CPC, whereby the public prosecutor is appointed in the place of the investigating judge, who, by a strictly formal decision initiates the criminal procedure by the order of conducting the investigation and who, with the taking of evidentiary actions, later to be confronted at the main trial by their indirect presentation of evidence with the main trial arranged in a party model and the principle of immediacy, as one of the key in the realization of the idea of justice. It is necessary to point out that the indirectly examined evidence by means of the record of the evidence examined in the investigation (Article 406, CPC/2011) can be the basis of the judgment and have the same probative credibility as the ones the court examined, rather than the non-judicial authorities in one of the phases which preceded the main trial, and even the pre-investigation procedure. Accordingly, it is justified to raise the question of the realization of the right to a fair trial in our legal system, efficiency in a qualitative sense, when the principle of immediacy is minimized by this attitude of the legislator and when the equality of parties establishes only in the maxim the equality of arms, while the provisions of the new CPC imply a more powerful position of the public prosecutor, who besides

the personal satisfaction of proving guilt of the accused has all the normative prerequisites for achieving his goal.

If we take into account the stated determinism of European standards in the process of accession to the European Union and the reform of our criminal procedural legislation, we will notice that it is not only about the modalities of implementation of international standards in our normative framework, but about a great deviation from the mentioned framework, whereby the guarantees of a fair procedure are not realized, that is, the efficiency provided for by the Constitution, the CPC, but also Article 6 of the EC[48] leaves the image of a rather inconsistent and unjust procedure in our country. The reform of criminal procedural legislation (Bejatovic, 2014b) implies the convergence of elements from two major criminal procedural systems "which is a consequence of general global tendencies, as well as awareness of the need to incorporate into certain legal systems those elements that are potentially effective and necessary, regardless of the fact if they originate from one or the other criminal procedural system" (Skulić, 2014a). The convergence of elements from two distinct legal systems results in the constitution of criminal proceedings that are far from fair and that do not achieve the primary goal of the reform of criminal procedural legislation – efficiency. Given that the emphasis is on the pre-investigation procedure, in which the police is the most active entity, with the leading role of the public prosecutor, it is justified to analyse the role and place of the police in the realization of the right to a fair trial, the role of the public prosecutor and the necessity of respecting the guarantees of fair trial and realization of efficiency. Although the criminal charge implies initiation of criminal proceedings with the investigation phase, which does not include pre-investigation proceedings, the extensive interpretation of the European Court of the beginning of the proceedings in which those guarantees must be provided is moved to proceedings preceding criminal proceedings (Article 2, paragraph 1, item 14, CPC), and thus the prosecution's understanding in a broader sense corresponds with the first notice of the suspect on the criminal offense being charged with and other guarantees provided for by the CPC.

Apart from relativizing this provision through devaluation of the principle of truth in the new Criminal Procedure Code of Serbia (Skulic, 2013), the question of the police's contribution to the strengthening of the role of the public prosecutor in establishing the guilt of the defendant and distorting the equal position of the parties in the criminal procedure and a stronger position of the public prosecutor is raised. In support of the aforementioned statement, under the new CPC, the police is obliged to inform the public prosecutor about any measures and actions of operational character without delay, and at the latest within 24 hours from undertaking them (Article 286, paragraph 4, CPC), while when it comes to evidentiary actions, the legislator provided for the term without delay (Article 287, paragraph 1 of the CPC) (Ilic, 2013).[49] The correlation between the public prosecutor and the police in the pre-investigation procedure is more extensively set

[48] European Convention on Human Rights, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf

49 The authority of the police to take evidentiary measures in the pre-investigation procedure should be understood as a derivative of the general authority of the police to take measures and actions in order to find the perpetrator of the crimes and to secure the objects and traces that can serve as evidence (Article 286, paragraph 1, CPC) , so in accordance with that, a 24-hour notice of the undertaken operational tactical measures and actions could analogously be applied to the evidentiary measures.

in the provisions of the new Criminal Procedure Code when compared to the earlier pre-investigation procedure (CPC/2001), precisely regarding the participation of the public prosecutor in activities that were previously predominantly related to the police, which increased the role of the public prosecutor in the control over the work of the police in order to achieve a higher degree of efficiency of the criminal procedure, which extensively depends on the efficiency of the pre-investigation procedure. The determinism of the pre-investigation procedure, by issuing an order to conduct the investigation before or immediately after the first evidentiary action undertaken by the public prosecutor and the police in the pre-investigation procedure, and at the latest within 30 days from the date when the public prosecutor was informed of the first evidentiary action taken by the police (Article 296, paragraph 2, CPC), contributes to the quantitative aspect of the efficiency of the criminal proceedings, while the qualitative segment, which corresponds with the examination of evidence in the investigation, is transferred to the first phase of the regular criminal procedure, which, in line with its arrangement, deviates from fairness (Skulic, 2014b). Namely, the legislator only formally separated the pre-investigative procedure and the phase of the investigation (the order to carry out the investigation), while the key structural concepts, such as the degree of suspicion, the suspect, the defendant, the unknown perpetrator, are provided for in the same way, whereby he transferred the focus of evidentiary actions to the investigation. The investigation, explicitly provided for as the first phase of criminal proceedings in the narrow sense, is initiated by an order to carry out an investigation, which alone would not be questionable if the defendant as an equal party had the possibility of initiating a legal remedy against that decision, which is not provided for by the current legal provisions and as such requires the necessary changes to the reformed criminal procedural legislation.[50]

Also, although the police according to the new CPC is determined from more points of view, from the aspect of its duty of informing the public prosecutor of every action undertaken, the restrictive self-initiative character of the evidentiary actions that the police undertake in pre-investigation proceedings, through the possibility of initiating a disciplinary procedure against a person whom they consider to be responsible for failing to respond to their request (Article 44, CPC), the evidence that the police examined in the pre-investigation procedure can be used at the main trial. Accordingly, the legislator explicitly provided for that the evidence that the police obtained by taking evidentiary actions in the pre-investigation proceedings can be used in the further course of the proceedings, if the evidentiary actions are undertaken in accordance with the CPC (Article 287, paragraph 2, CPC).[51] Derogations from the principle of immediacy through the possibility of introducing non-judicial evidence to the main trial through the record of undertaken actions is far from a fair trial, and especially from the equality of arms, when the defendant at the main trial needs to be an "equitable" party to examine evidence, while the public prosecutor indirectly introduces evidence during the examination of which the

50Envisage an appropriate remedy (for example, an objection) and decide on this by a preliminary procedure judge.

51The expert public has a critical attitude towards the use of non-judicial evidence at the main trial, which includes the police, and accordingly, prof. Skulic (Skulic, 2015: 64) points out that such a legal solution "opens up the possibility of abuse, because in this case, in fact, any police action in the pre-investigation procedure can be used as evidence at the main trial, without any special conditions, which is in sharp contrast to the principle of immediacy"

defendant and his defence counsel were not present in the investigation (Article 300, paragraphs 2 and 7, CPC), or it was done to a limited extent, without the possibility of directly examining their witnesses and cross-examination of the prosecution witnesses (Spencer, 2004), which directly confronts the idea of justice. The derogation from the principle of immediacy refers also to the police, indirectly though, to its contribution to inequality, through the taking of evidentiary actions and the possibility of their use for the factual basis of the judgment.

The above facts speak in support of realization of quantitative aspect of efficiency through time determinants and speeding up the criminal procedure, while in terms of qualitative aspect or ideals of fairness, a number of legal provisions indicate illogicality, derogations from the realization of efficiency, which would certainly have to be the subject of serious analysis in work on future reform in the criminal procedural legislation of Serbia.

THE PRINCIPLE OF OPPORTUNITY AS AN INSTRUMENT FOR ACHIEVING THE DESIRED EFFICIENCY OF CRIMINAL PROCEEDINGS

In order to achieve the desired level of efficiency, contemporary criminal procedural legislation is increasingly resorting to simplified forms of criminal procedure, whereas the Republic of Serbia did not resist to apply this contemporary trend. Namely, the Republic of Serbia has adopted and developed an Action Plan for Chapter 23,[52] stating the difficulties that have arisen with the introduction of the prosecutorial investigation in the criminal procedural legislation of the Republic of Serbia and the finding that a large number of criminal cases ended with the application of the principle of opportunity and the conclusion of plea agreements. Accordingly, the most common simplified forms of treatment in the criminal procedural legislation of Serbia are: the principle of opportunity and the conclusion of plea agreements. Since the principle of opportunity is applied in the pre-investigation procedure and the conclusion of plea agreement begins with the application of the investigation phase, we can conclude that the pre-investigative and criminal proceedings have already been completed at this stage, which directly contributed to the increase in efficiency as an international legal standard. Bearing in mind the above facts, we devote special attention to normative elaboration and current changes, as well as to statistical indicators regarding these procedural institutes.

The reform of the criminal procedural legislation of the Republic of Serbia has brought numerous novelties regarding also the issue of simplified forms of treatment as one of the main instruments in achieving the desired efficiency of the criminal procedure. In addition to the conclusion of plea agreement and the summary proceedings, which, as simplified forms of conduct, exist in criminal proceedings, one of the most significant diversionary forms of treatment in criminal matters is the principle of opportunity as an instrument for achieving restorative

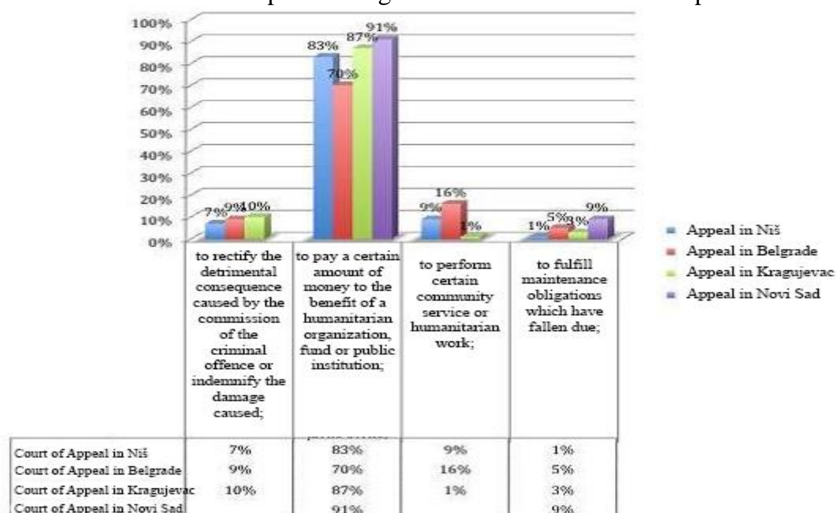
[52] In response to screening recommendations, the Republic of Serbia drafted and adopted the Action Plan for Chapter 23 adopted by the Government of the Republic of Serbia at a session held on April 27, 2016, which foresees concrete activities to be realized to implement the recommendations. http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf, date of access

justice. Its application solves the criminal matter by avoiding the use of coercive means of combating crime, alleviates the tensions arising from the conflict of the perpetrator and the environment, offers a better response to the expectations of the victim of the crime, does not produce stigmatizing effects, minimizes the work of the criminal justice system, thus contributing to its efficiency (Čvorović & Turanjanin, 2015)

Following the example of the German criminal procedural legislation, this procedural institute against adult perpetrators of criminal offenses was introduced into the criminal procedural legislation of the Republic of Serbia in 2001, whereas the latest legal solutions (CPC/2011) have led to the spread of the possibility of its use. Namely, the Criminal Procedure Code of Serbia, in its Article 283 provides for the so-called conditional opportunity of criminal prosecution, the possibility of deferring prosecution under the fulfilment of the following conditions. According to it, the public prosecutor may defer the prosecution of criminal offenses for which a fine or a term of imprisonment of up to five years is envisaged, if the suspect accepts to fulfil one or more of the following obligations:

1. to rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;
2. to pay a certain amount of money to the benefit of a humanitarian organization, fund or public institution;
3. to perform certain community service or humanitarian work;
4. to fulfill maintenance obligations which have fallen due;
5. to submit to an alcohol or drug treatment program;
6. to submit to psycho-social treatment for the purpose of eliminating the causes of violent conduct;
7. to fulfill an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

Table No1 - Imposed obligation in case of the criminal prosecution[53]



	to rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;	to pay a certain amount of money to the benefit of a humanitarian organization, fund or public institution;	to perform certain community service or humanitarian work;	to fulfill maintenance obligations which have fallen due;
Court of Appeal in Niš	7%	83%	9%	1%
Court of Appeal in Belgrade	9%	70%	16%	5%
Court of Appeal in Kragujevac	10%	87%	1%	3%
Court of Appeal in Novi Sad		91%		9%

[53] Mannual for the application of the principle of the opportunity, OSCE Mission in Serbia, Belgrade, 2019.

Source: Mannual for the application of the principle of the opportunity,
OSCE Mission in Serbia, Belgrade, 2019.

The aforementioned legal provisions imply the existence as *a condicio sine qua non* for the exercise of the discretionary rights of the public prosecutor, his assessment that conditional deferment of prosecution is prudent and the admission of the suspect to fulfil certain obligations – measures. Namely, the public prosecutor *in concreto* assesses whether all the legal requirements for prosecution have been met, and afterwards whether it is opportune to initiate criminal proceedings. The public prosecutor has to assess that from the point of view of the public interest, i.e. whether it is in the public interest that the perpetrator is prosecuted or not. Public interest, regardless of whether it is defined by law, in a doctrinal manner, through higher instances (Ministry of Justice, etc.) or on the basis of a joint decision, makes the basis of the discretionary decision of the public prosecutor in this context as well (Kiurski, 2009).

Significant novelties introduced by the CPC/2011 when it comes to the principle of opportunity of prosecutions refer to the provision of the form in which the application of opportunity is determined, namely the order to defer the prosecution, the period within which the suspect must execute commitments that cannot exceed one year and determining the authority responsible for monitoring the enforcement of obligations [54] - the trustee from the administrative authority competent for the execution of criminal sanctions. If the suspect within the deadline complies with the obligation specified in the order, the public prosecutor will reject the criminal charge by a decision and notify the injured party thereof, and the provisions on the complaint of the injured party referred to in Article 51 paragraph 2 of the CPC shall not apply to the decision of the public prosecutor on the dismissal of a criminal charge in accordance with the principle of opportunity.

When it comes to the injured party, first of all, we can notice the fact of deterioration of his or her position when it comes to the principle of opportunity. According to the Criminal Procedure Code, in the application of the principle of opportunity, the position of the injured party is aggravated since he or she does not have to grant their consent to undertake certain measures and since there are no instruments used to ensure the practical realization of their rights resulting from the commission of a criminal offense (Lukic, 2012). I In the process of future reforms of procedural rights and in the process of European integration it is necessary to improve the position of the injured party, especially from the aspect of European standards and the Directive 29/12/2018 of the European Union, which indicates the necessity of harmonizing the terminological definitions of the term injured party and victim, but also the improvement of their position.

Apart from conditional opportunity, the legislator also provides for unconditional opportunity, and not within a separate conceptually determined article, but being

54It is necessary to mention that the funds from the application of the principle of opportunity are allocated to humanitarian organizations, public institutions or other legal or natural persons, following a public call, which is issued by the ministry in charge of the affairs of the judiciary. Public competition is conducted by a commission formed by the Minister in charge of judicial affairs, with the exception that a commission may, at the request of a natural person, propose that funds be allocated for the medical treatment of a child abroad, without the public competition, if funds for treatment are not provided in the Republican Fund for Health Insurance. The implementation of a public competition, the criteria for the allocation of funds, the composition and method of operation of the commission are regulated by the act of the Minister in charge of judicial affairs. The decision on the distribution of funds received is made by the Government. (Article 283, paragraphs 4-8, CPC).

standardized as one of the grounds for dismissing the criminal charge. Namely, in the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss a criminal charge if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and the public prosecutor, and in view of the circumstances of the case the public prosecutor finds that pronouncing a criminal sanction would not be fair (Article 284, paragraph 3 of the CPC).

Table No 2 - *Deferral of criminal prosecution and total number of the criminal charges) (2015-2017)*[55]

Year	The total number of the criminal cases	Deferral of criminal prosecution	Total
2015	217.871	35.662	16,3%
2016	228.296	29.301	12,8%
2017	219.909	25.829	11,7%

Source: Mannual for the application of the principle of the opportunity, OSCE Mission in Serbia, Belgrade, 2019.

In accordance with the presented statistical indicators of the application of the principle of opportunity for 2015, 2016, 2017, we can notice a certain decline in the application of the principle of opportunity of criminal prosecution from Article 283 of the CPC in relation to the total number of reported criminal offenses in 2016 and 2017, compared to 2015. However, this decrease does not affect the attitude that in this manner a significant percentage of criminal cases was solved in the Republic of Serbia, which is one more confirmation of the complete criminal-political justification of this institute.

Also, the amount of funds paid on the ground of deferment of prosecution is impressive and collectively observed for 2015, 2016 and 2017 amounts to about EUR 14.9 million.

In line with the above, we can conclude that the principle of opportunity is one of the more important principles in criminal procedural legislation in general. The importance attached to this principle in criminal procedural legislation and criminal procedural science is best illustrated by the fact that it is one of the indispensable issues of the greatest number of reforms of criminal procedural legislation in the last few decades, in a way that the possibility of its application is constantly increased (Čvorović, 2009).

PLEA BARGAIN AS A SIMPLIFIED FORM OF ACTING IN THE CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA

The legalization of the institute of the plea agreement is one of the more important features of the process of reform of the criminal procedural legislation of Serbia. It is about the institute whose essence is reflected in the prior negotiations on the recognition of the criminal offense between the prosecutor and the defendant and

[55] Mannual for the application of the principle of the opportunity, OSCE Mission in Serbia, Belgrade, 2019.

his defence counsel and the subsequent acceptance or non-acceptance by the court of an agreement reached between these entities. The agreement was enacted by the Law on Amendments to the CPC from 2009 and in a relatively short time it has proven its absolute justification and there is a constant trend of increasing its application (Skulic, 2017).
Observed from the aspect of the CPC from 2011 there are more novelties regarding the agreement. Among them, the most important ones are the following: *First*, instead of the normatively limited possibilities of application, there is the possibility of applying agreements in all, even the most serious crimes;[56] *Secondly,* the absence of prescribing a minimum criminal sanction that can be proposed in the offered text of the plea agreement. Instead, it is only prescribed that "a sentence or other criminal sanction or other measure in respect of which the public prosecutor and the defendant have concluded the agreement proposed in accordance with a criminal or other law;" *Thirdly,* when it comes to sanction, a compulsory element of the agreement is also an "agreement on the type, measure or range of sentences or other criminal sanctions"; *Fourthly,* there is a possibility of lodging an appeal against a judgment accepting a plea agreement. Namely, pursuant to Article 319 paragraph 3 of the CPC, the public prosecutor, the defendant and his defence counsel may lodge a complaint against this judgment within eight days from the receipt of the judgment on the grounds that the proceedings are suspended after examination of the indictment in accordance with Article 338 paragraph 1 of the CPC [57], as well as in the event that the judgment does not apply to the subject of the plea agreement.
When it comes to the agreement, it should also be noted that the right to propose an agreement belongs exclusively to the public prosecutor and the accused or his defence counsel, whereby it is legally irrelevant who will initiate the conclusion of the agreement. The proposal may be submitted in writing or verbally to the minutes before the public prosecutor. If the proposal is not accepted, it can be submitted even later until the end of the final procedural moment for the possibility of filing, i.e. until the defendant states his position in relation to the charges of the trial at the main trial (Article 313, paragraph 1, CPC). Necessary elements of the plea agreement are the following: a confession of the defendant that he committed the criminal offence in question; the confession of the defendant that he has committed the criminal offense he is charged with; an agreement on the type, extent or scope of the penalty or other criminal sanction; agreement on the costs of criminal proceedings, on confiscation of the pecuniary benefits from the crime and the restitution claim, if one has been submitted; a statement on the parties' and defence counsel's waiver of the right to appeal against a decision with which the court has accepted the agreement in its entirety; the signature of the parties and the defence attorney (Article 314, paragraph 1, CPC).

56Compare Article 282a from the previous CPC with Article 313 paragraph 1 of the new CPC from 2001

57The reasons are as follow: the offence which is subject-matter of the charges is not a criminal offence, and that conditions for applying a security measure do not exist; the statute of limitation for criminal prosecution has expired, or that the offence is covered by amnesty or pardon, or that the other circumstances exist which permanently preclude criminal prosecution; there is insufficient evidence for a justified suspicion that the defendant committed the offence which is the subject-matter of the charges.

The judge for preliminary proceedings shall decide on the plea agreement and if the agreement is submitted to the court after the indictment has been confirmed, the president of the panel. The court may issue a decision accepting, rejecting or refusing a plea agreement.
Ratio legis of the provision of the plea agreement is the faster conclusion of a large number of criminal cases, and therefore a reduction in the costs of criminal proceedings, but this should not jeopardise fairness of the criminal procedure, or qualitative aspect of efficiency. Such expectations are based on extremely good results in the practical application of this institute in countries that have applied it for many years, and the results of its application in Serbia speak in favour of the justification of the provision of this procedural institute.

FINAL CONSIDERATIONS

One of the more important international legal standards regarding criminal proceedings is the efficiency understood both in a qualitative and quantitative meaning. One of the prerequisites for the efficiency of the criminal procedure is the effective conduct of the police and the public prosecutor, that is, their mutual relationship and cooperation, primarily in the pre-investigation procedure. This is due to the fact that it is undisputed that the efficiency of police conduct cannot be achieved without an adequate interrelation between the subjects of pre-investigation proceedings, and within that, especially the cooperation of the police and the public prosecutor as the manager of this phase of the proceedings. If the fact that an effective pre-investigation procedure is in the function of the efficiency of criminal proceedings as a whole is added to this, then the question becomes even more significant and must be given greater attention.
In order for the relationship between the entities of pre-investigation procedure to be in the function of its efficiency, it must be characterized by the following features: first, the relations and cooperation of entities of the pre-investigation procedure must be maintained during of the entire course of this procedure, and not only a part of it, whereby the type of relationship and cooperation depends on the type of entities and the type of actions because of which this cooperation is established. Secondly, the cooperation of entities of the pre-investigation procedure must be based on the principles of activity, professionalism, legality and mutual respect. Bearing all this in mind, as well as other specificities of the mutual relationship between the police and the public prosecutor, we can conclude that their relationship is extremely important. The achievement of the objective of the pre-investigation procedure as a whole, and hence the actions of the public prosecutor after its termination, depend to the highest extent on the quality and scope of their mutual cooperation.
In addition to the above, with regard to the effectiveness of criminal proceedings, there are inevitable and simplified forms of conduct, and above all the principle of opportunity and the plea agreement. When it comes to the normative elaboration and application of these procedural institutes, three positions must be satisfied – firstly, respect of the basic principles of criminal proceedings in their normative elaboration – secondly, the extremely high degree of precision of the norms they regulate – thirdly, theoretical explanations of the criminal-political or procedural

reasons for which they are foreseen and which should be the basis of the interpretation of the norms regulating them and their applications in the judicial practice.

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PREVENTION OF HATE CRIME*

Darko T. Dimovski, Ph.D.*
Ivan D. Milić, Ph.D.*
Miomira P. Kostić, Ph.D.*

Abstract
The authors, based on the fact that the crime of hatred exists throughout the whole human history, highlighted its great social danger. Numerous criminological studies have shown that the extent of hatred does not decline with the change in socio-economic order, but rather is persistent. A large dark figure makes it impossible to find accurate information about the real extent of this form of crime. Although high rates of dark numbers will exist in the future, it is necessary to work on the prevention of hate crimes, because only in this way can the security of all members of the community be guaranteed, regardless of their origin, religious belief, sexual orientation, gender etc. Therefore, the authors will explain the whole range of preventive measures by providing examples of good practice from countries around the world. In this way, the authors will try to bring closer the measures of prevention to criminal policy experts in order to apply certain measures in the Republic of Serbia.

Key words: hate crime, prevention measures

INTRODUCTION

Human history is full of examples of what we call with the modern vocabulary hate crime. Namely, such crimes not only left consequences for the victims of such a behavior, but also shaped the history of individual states. It is enough to mention the persecution of members of the newly founded Christian religion by the Romans, the crimes against the indigenous population during the colonization of America, the crimes against Armenians by the Turks, the apartheid in the South African Republic, the crimes against the Afro-Americans, and so on.

The diversity of hate crimes in relation to other forms of violent crime is reflected in the fact that a particular individual or group of people is not welcome only because they represent something on the basis of which the perpetrator of this offense names a prejudice towards him or herself. At the same time, from the first difference arises the second difference, which embodies the fact that the victims of this type of criminal violence are not only individuals but also of the entire group of individuals (Hate Crime Prevention Act Guide, 71).

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*Associate Professor, Faculty of Law, University of Niš, e-mail: darko@prafak.ni.ac.rs
*Assistant with Ph.D., Faculty of Law, University of Novi Sad, e-mail: i.milic@pf.uns.ac.rs
* Full Professor, Faculty of Law, University of Niš, e-mail: kosticm@prafak.ni.ac.rs

Many criminological studies have shown that hate crime resists socio-economic changes in one country, and that there is a high dark figure. Although hate crime represents only one percent of the total amount of crimes committed in the United States, the final conclusion about the social danger of hate crime should be made known by the fact that out of a total of five hate crimes committed, four include violence. Based on the above it can be concluded that regardless of the low rate of hate crime, the social danger of this form of crime is high and it is necessary to work on its prevention. Therefore, the authors will present the most important measures of prevention of hate crime that are applied in countries around the world.

MEASURES TO PREVENT HATE CRIME

Effective measures to prevent hate crime require a proactive and flexible approach to reducing the extent of this form of crime of violence, with the cooperation of several state authorities, cooperation with the local community, where all prevention measures are undertaken on the basis of a carefully designed program. Only a combination of different prevention measures can lead to effective results in reducing the extent of hate crimes. As measures of prevention, we can mention: 1) anti-racist and anti-biased education and sport, 2) programs aimed at groups of people who have a high degree of opportunity to commit this type of violent crime, as well as programs targeting areas where there is a high degree of victimization (special programs), 3) programs targeted at groups of people with the greatest risk of victimization, 4) programs that prevent the recruitment of new persons into extremist groups or programs that focus on motivating members to leave such groups, 5) groups devoted to providing support to victims of hate crime, 6) the application of different forms of restorative justice, and 7) the application of mass media to reduce the extent of hate crimes (Shaw, Barchechat, 2002, 22).

From the mentioned prevention measures, we can conclude that there is a wide range of programs and activities that can only provide appropriate results in their synergy. The achievement of these results requires individual consideration of each of these prevention measures in order to find appropriate frameworks for specific countries in which these preventive measures are taken. As the length of the scientific article does not allow for the analysis of all the aforementioned measures of prevention of hate crimes, thus the authors will present only the first two groups of preventive measures in the continuation of the paper. However, before we begin the explication of the given prevention measures, we will look at the principles of the program for the prevention of hate crime.

PRINCIPLES OF THE PROGRAM FOR THE PREVENTION OF HATE CRIME

The experience gained in the implementation of various programs for the prevention of hate crime has highlighted the existence of certain principles in their functioning. Namely, experts in the implementation of the Hate Crime Prevention Program consider that only by applying principles such as comprehensiveness, partnership, flexibility, careful diagnosis, development and implementation of the action plan, monitoring and evaluations, inclusion of young people, as well as the involvement of members of minority groups, adequate results can be achieved in the

fight for reduced scope of hate crime and prevention of its perpetration in the future. Therefore, in the next part of the article, these principles will be explained in order to work on further improvement of the functioning of the program for the prevention of hate crime.

The principle of comprehensiveness refers to the existence of short-term and long-term goals of a particular program of prevention of hate crimes, and it is necessary to include a large number of groups and organizations for which preventive measures are intended. In other words, comprehensiveness is embodied in a permanent protocol to deal with a specific case of hate crime, ensuring the necessary needs of victims of hate crime in order to remedy the consequences of the committed crime and the implementation of educational activities (Shaw, Barchechat, 2002, 26).

Partnership as the next principle stems from the principle of comprehensiveness. Namely, a successful program of prevention of hate crime necessarily involves cooperation with representatives of various associations at the local level in order to make an adequate assessment of the extent of hate crime and to develop a plan for the implementation of preventive measures (Shaw, Barchechat, 2002, 26).

The next principle, called flexibility, is reflected in the fact that the hate crime prevention program is sufficiently flexible for a particular victim of the crime when it is necessary to work on getting feedback on the implementation of specific preventive measures by the victims themselves and persons who are perpetrators. On the basis of the feedback received, it is possible to change the prevention program in order to get even better results in the fight for its reduction (Shaw, Barchechat, 2002, 26).

Careful diagnosis is the next principle in the application of the hate crime prevention program. This implies holding numerous meetings with representatives of groups that have the greatest risk of victimization due to the perpetration of this form of violent crime. At the same time, it is necessary to collect data from the interior authorities in order to determine the number of reported hate crimes, and and the total of the dark figure (Shaw, Barchechat, 2002, 26).

The next principle of the program for the prevention of hate crime is the development and implementation of the action plan. Based on the collected data on hate crimes, an action plan is drawn up for the implementation of numerous preventive measures in the form of special programs and projects, which implies the successful implementation of measures to achieve a wider consensus on their application in a particular local community (Shaw, Barchechat, 2002, 27).

Monitoring and evaluation, as the next principle in the application of the program for the prevention of hate crime, is very important because it should represent a corrective factor in case of shortcomings in certain preventive measures. The correction factor is reflected in the fact that in the case of shortcomings the program can exclude a group of individuals who are at risk of victimization because of the possible perpetration of a hate crime or to exclude a specific area in which the risk of enforcement of hate crimes is not great. Based on feedback, it is possible to correct individual programs for the prevention of hate crime in order to achieve better results in the future (Shaw, Barchechat, 2002, 27).

Success in fighting to reduce the extent of hate crime is conditional upon the number of young people involved in its implementation. Therefore, the need to involve young people is the next principle in the implementation of the program for the prevention of hate crime. Only in this way will a necessary base of young people be created, free of any prejudice and hatred towards members of other groups, and forming a foundation for conveying positive attitudes to coming generations in the future (Shaw, Barchechat, 2002, 27).

In addition to the fact that it is necessary to include young people in the implementation of the program of prevention of hate crime from the beginning, in order to further strengthen positive attitudes or change negative attitudes towards members of certain groups, it is also desirable to include members of minority groups in the implementation from the very beginning. As certain minority groups are at risk of being victimized by the commission of hate crimes, their perception of this form of crime of violence, their ideas for improving preventive measures, assessing their needs, and their experiences should be felt (Shaw, Barchechat, 2002, 27).

Implementation of all the above principles in certain programs for the prevention of hate crime creates the necessary conditions for achieving good results. Experts on crime prevention must be aware of them in order to plan each of the steps in the implementation of the program carefully.

ANTI-RACIST AND ANTI-BIASED EDUCATION AND SPORT AS MEASURES FOR THE PREVENTION OF HATE CRIMES

An education program called Facing Hate in Canada organized by the Canadian Race Relations Foundation, which gave the best results in terms of hate crime prevention, was designed in Canada during the 1990s. This program originated as a result of an increase in the volume of crimes committed due to hate. It is enough to point out the fact that several cities in Canada were the site of physical assault and murder by skinhead groups, such as Northern Hammerskins, Final Solution Skins and Aryan Resistance Movement (ARM). Thus, in 1990, the murder of Vietnamese student Tony Le by Toronto Kevin Dyer Lake, a member of skinhead group ARM, was carried out. Three years later, in the same city, an attack on an immigrant from Sri Lanka under the name of Sivarajah Vinasithamby occurred at a concert where the majority of the audience was white, which resulted in a paralysis of the victim. Nirmal Singh Gill, a janitor in the city of Surrey, was stripped of his life by skinheads during 1998.

The increase in the number of attacks in the United States, inspired by hatred for others, as well as the brutality that has been displayed in such attacks, has led to the launch of an educational program called Healing the Hate: A National Hate Crime Prevention Curriculum reducing the number of hate crimes in young people. At the beginning of this program, three schools were selected in different parts of the United States: 1) The Collins Middle School in Salem (Massachusetts), 2) The Notre Dame School in New York, and 3) The Allapattah Middle School in the Daid district of Florida. The program is designed for application in secondary schools in which students learn about different vocations - medicine, social studies, American history, administration, English, psychology, art, literature and others, which

contributes to the fact that a large number of high school students pass this vision education (McLaughlin, Brilliant, 1997, 2-6).

The professors in the aforementioned secondary schools, as well as other experts working with teenagers, had the obligation to apply a curriculum in which appropriate topics were addressed in order to reduce the extent of hate crimes. In other words, the lessons on the lessons are the methods on which the reduction of prejudice, as well as the strategies for preventing violence, are processed, and the topics are processed at ten o'clock. At the same time, it is necessary to emphasize that the curriculum is built on certain principles such as: 1) violence and the existence of prejudices can be prevented, 2) the application of preventive measures as early as possible, 3) the development of empathy, 4) the existence of consciousness, as well as respect for diversity 6) cooperative learning, 7) critical thinking, 8) taking positions, 9) media literacy, 10) interactivity, 11) social responsibility, and 12) addressing the topic of inequality, institutional violence and prejudice (McLaughlin, Brilliant, 1997, 2-6).

In the period from 1996 to 1998, a project entitled Education Pack was launched at the level of EU member states.The goal of implementing the project is to provide basic information to pupils about Islam by Prussians in order to break prejudices about this religion. Later, the goal of the project was extended to a lecture on the social status and discrimination faced by members of sexual minorities. The intention was to increase the tolerance of pupils of primary and secondary schools to members of the LGBT population in this way. It is necessary to address topics such as: 1) the impact of prejudice on LGBT population and the perpetretion of crimes, 2) what are hate crimes and what is their relationship with prejudice and hostility towards sexual minorities, 3) how a small incident with the LGBT population can grow into a serious incident with elements of violence, 4) measures that can be taken to prevent an incident in which a member of a sexual minority is a victim of criminal behavior, and 5) what are the legal and social consequences of condemning hate crime against the LGBT population. During the lectures, professors use practical examples in which members of sexual minorities have been victims of crimes of violence, with the motive of execution being hatred towards them.

Besides the above mentioned educational program for the prevention of hate crime, it is possible to specify programs that consist of a combination of several aspects. Namely, the Los Angeles County Bar Chamber has launched a program called Juvenile Offenders Learning Tolerance (JOLT), based on measures for early intervention and the prosecution of hate crimes. The program was implemented in the town of Antelope Valley in which over 200,000 people live with the existence of 64 schools. This city has been selected because the rate of hate crime committed by minors is highest in the state of California (Perry, 2003, 460).

As we already emphasized in the previous section, the JOLT program consists of three measures. At the core of the first measure, which includes the application of prevention, there are two parts. The first part relates to a two-day educational training for professors from primary and secondary schools, administrative workers and other staff at the Simon Vizental Center for Tolerance Center. The setting of the museum provided an interactive approach to getting to

know the basic facts about the Holocaust, based on which visitors were able to learn about the persecution of Jews, as the most drastic example of hate crime, and about other issues related to prejudice. The professors, administrators and other staff visiting the museum on this occasion, are obliged to participate in a workshop based on representation of diversity, the realization of communication among members of different cultural milieus, and the development of special skills in the application of knowledge acquired during lectures. The second part of the training is carried out in schools and other institutions dealing with youth issues when professors and other staff are attending a one-day training conducted by the Los Angeles Lawyers Bar, in cooperation with Facing History and the Ourselves National Foundation. At this training, they gain deeper insight into prejudices, hatred and crimes that may arise from hatred. At the same time, professors learn how to acquire knowledge in their classes in working with students (Perry, 2003, 460).

Early intervention, as the next part of the regulating BIH JOLT program, refers to the use of diversion of restorative justice for juveniles aged 12 to 18 who have demonstrated behaviors that are based on hatred. After juvenile behavior whose motive of hatred is presented to them, there are two possibilities - the pronouncement of a disciplinary punishment, which accuses and expels from school or participates in a diversion program. At the same time, the Los Angeles County Bar is sending minors to this program, leading to the large number of minors being given the option of choosing.

The first step with the juvenile, who choses the application of a diversionary model, is an informal conversation in the rooms of the bar chamber, where juveniles are in the company of their parents or guardians. Having an informal conversation within seven days of filing an application shows the juvenile that his behavior is most seriously understood and leads to certain consequences that he or she has to face. The juveniles, aware of their behavior and showing remorse for their behavior, sign the contract pursuant to which they undertake certain obligations. The first contractual obligation relates to the attendence of the anti-hate curriculum. After that, the juvenile submits himself to a training program in which the focus is on controlling the anger and ways of solving potentially conflicting situations. Apologizing to the victim in the form of a letter is the next obligation stipulated by the contract. The following obligations apply to compensation for damage incurred, if possible. Regular school attendance, obtaining satisfactory grades, as well as conformist behavior are the final obligations stipulated by the contract (Perry, 2003, 460-461).

The curiosity of contractual obligations - attending anti-hate curriculum, reflected in the fact that it applies to the juvenile, and to the parents or guardians, which takes an additional impact on changing behavior of minors through education by parents who have previously successfully completed this obligation. The difference is reflected only in the duration of the curriculum. Namely, when applied to a juvenile, the curriculum lasts three hours a day for seven weeks, while the parent lasts ten weeks. The basis for the purpose of attending an anti-government curriculum is to give participants the opportunity to better understand their prejudices and how these prejudices affect their behavior. At the same time, it is necessary to emphasize that the curriculum built by the National Conference for

Community and Justice (NCCJ). The benefit of fulfilling contractual obligations is that a criminal report will not be filed against a juvenile, after successful completion, and that he does not interrupt his or her education of a minor. Also, what is the most important juvenile becomes aware of their prejudices, which tend to change, leading to conformist behavior.[58]

The last part of the Juvenile Offenders Learning Tolerance program, as we have previously pointed out, refers to the prosecution of hate crime. There is a definition of the category of juvenile perpetrators of hate crimes that are not similar to the diversion procedure applied to them. Thus, for example, the diversion procedure does not apply to minors who have committed hate crimes with serious consequences, where violence is used. At the same time, juveniles who have committed more hate crimes are not suitable for diversion. Diversion proceedings are not carried out, also, according to a juvenile who is not ready to sign the contract, as well as to minors who fail to meet some of the contractual obligations in the midst of various circumstances (Reno, Marcus, Lou Leary, Gist, 2000, 11).

In the end, it is necessary to point out that the Juvenile Offenders Learning Tolerance program provides excellent results because it is a comprehensive way of reacting to criminal behavior based on hatred. In addition to the fact that juveniles have the ability to free themselves of their own prejudices and be referred to alternative ways of reacting to illicit behavior, professors with successful completion of training can successfully implement new knowledge about prejudice, hatred and criminal behavior that results from their consequences. The last benefit of the program is to protect the local community from minors who committed serious hate ecrimes or repeat offenders or refused to sign a contract or did not fulfill any of the contractual obligations (Reno, Marcus, Lou Leary, Gist, 2000, 11).

Hate crime prevention programs can include sports activities. In the 1970s, English football had a rapid increase in the number of black-skinned football players, resulting in fans throwing fruit at them, such as bananas, or small money to express intolerance and hatred for them. Therefore, the so-called Let's Kick Racism out of Football campaign, was launched in 1993 by the British Commission for Racial Equality (CRE) in association with the Professional Footballer's Association (PFA). Phe PFA, as an organization representing professional football players, has long been concerned about the situation in which certain football players found themselves, and sought a solution with the CRE to stand on the path of hatred towards them. The situation was becoming worse due to the fact that black players in the early 1990s already accounted for about 20% of the total number of professional football players in England (Cashmore, 2004, 255).

The campaign, launched in the 1993/1994 season, has the aim to emphasize that football clubs would not tolerate any form of racism and hatred, and that any fan caught in expressing this behavior would be immediately shown away from the stadium. For fans to become aware of the ban of racist cheering and the consequences of such behavior, alerts were printed on each ticket and events programs. At the same time, through the announcement, it was made known that

[58] Reno, J., Marcus, D., Lou Leary M., Gist, N., Promising Practices Against Hate Crimes: Five State and Local Demonstration Projects, UDIANE Publishing, Washington, 2000, p. 10.

any racist behavior would not be tolerated. The purchase of season tickets is conditioned by the fact that the potential buyer has not previously displayed racist behavior. Within the Let's Kick Racism Out of Football program, one of the preventive measures was seen in the prohibition of the sale of racist literature around and at the stadium. Exclamation of racist comments by the player also resulted in the initiation of a disciplinary procedure. The successful organization of the football game involves contacting the opposing clubs to consider all the security aspects of the game, which also means making sure that any racist comments of the visiting fans will not be tolerated. The effectiveness of the fight against racism and other forms of hate crime requires a unique action of the internal affairs authorities, which means that if one of the fans displays racist behavior during the game, the bouncer should identify him, and the internal affairs authorities arrest him immediately after the match, because the arrest may be a security risk before that. The fight against hate crime involves the removal of all graffiti in a stadium and buildings around stadiums that promote hatred for a particular group of people. The last measure within the Let's Kick Racism out of Football program is to offer equal opportunities for employment as well as the equal provision of services by the local self-government, because only in this way can long-term prevent the participation of certain individuals in events that are generated by hatred (Greenfield, Osborn, 2001, 150-151).

Almost all football clubs in England have accepted to apply this program, except for the York City football club. The effectiveness of the program was measured by criminologists McArdle and Lewis. They sent a questionnaire to the 91 football clubs on the basis of which they sought to determine the indicators of program efficiency. Of the total number of football clubs, 92% of them considered that they had successfully applied some kind of anti-racist measure, with only a few football clubs emphasizing that they had successfully applied all the measures of the Let's Kick Racism out of Football program or the measures applied for more than one football season. At the same time, McArdle and Lewis emphasized that the implementation of the program largely depends on whether the leaders of a football club recognize all of its benefits (Greenfield, Osborn, 2001, 152).

The Let's Kick Racism Out of Football program has evolved into an organization called Kick It Out in 1997, whose main goal is to combat racism through sports, education and the service sector. Every year, one whole week is devoted to an intense confrontation with racism in football. The number of activities has grown over the years, so over 800 events were held in 2006 to combat racism and hate crime. Also, during this year, dozens of football matches were held with the same goal all over England and Wales. Another activity of Kick It Out is the creation of standards of equal treatment for members of other races for professional football clubs (Racial Equality Standard). The strength of the organization embodies, among other things, the fact that during the World Cup in Germany in 2006, in cooperation with the World FIFA, it undertook numerous anti-racist activities (Human Rights Translated: A Business Reference Guide, 2008, 59).

Another project, which has had a lot of success in the fight against hate through sport, is known as the Camden United Football Team. Namely, in the central part of London, called Fitzrovia, an anti-racist football project was launched

(Norton, 2005, 28). The project's founder is Nasim Ali, who in 1995, along with his associates, came up with the idea of organizing an international football tournament in response to increasing violence between members of various ethnic groups and violence carried out by juvenile gangs.[59] The volunteers of this project managed to convince the leaders of local juvenile gangs to join the football tournament, which at the same time managed to convince those minors who were members of local gangs (Shaw, Barchechat, 2002, 27).

Apart from practicing certain football actions, trainings included lectures on racism, citizenship, the use of psychoactive substances, crime, health and relationships among young people. The tournament itself was played so that several teams were formed depending on the age of the tournament participants. Thus, teams of juveniles between 9 and 12 years old and of juveniles between 13 and 15 years old have been formed. At the same time, a team was formed by individuals between 16 and 24 years of age. After a certain period of time, the teams led the volunteers of this project to Denmark, where they played several friendly matches with the teams there. Ash Rahman, one of the project managers, testifies on the significance of the trip: "Most young people have never traveled outside their own territory, let alone outside the country." Another fact testifies to all the benefits of this project. Namely, John Muneghina, one of the juveniles involved in the project, managed to build a friendship with a minor originating in Asia and a minor of white origin, which Rahman described as prominent: that this project is extremely good - for the three of them prevented each other fighting between themselves in the streets. The success of the project has been recognized by the Commission for Racial Equality and the British Urban Regeneration Association.[60]

CONCLUSION

Although in the Republic of Serbia there is no legal basis for the qualification of certain offenses as hate crimes, and in practice there were only a few cases of application of Article 54a of the Criminal Code. However, this does not mean that we should not work on the prevention of hate crimes because it is reasonable to assume that their number is in reality much higher. The above examples of good practice of preventing hate crime from countries around the world should serve the Republic of Serbia in developing effective measures to prevent and combat this form of violence.

Effective measures of preventing hate crime will create a greater degree of safety for communities, which are, due to their specific characteristics, particularly exposed to victimization because of perpetration of criminal offenses, which essentially represent prejudice. At the same time, these communities will have a greater sense of security.

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INTERNATIONAL APPROACH TO TACKLING THE FOREIGN TERRORIST FIGHTERS

Ice Ilijevski, PhD, Assistant Professor,
Faculty of Law, University « St. Kliment Ohridski » - Bitola

Kire Babanoski, PhD, Assistant Professor
MIT University – Skopje

Zlate Dimovski, PhD, Professor
Faculty of Security – Skopje, University « St. Kliment Ohridski » - Bitola

Abstract
There does not exist a unique and authentic definition of the term "foreign terrorist fighters" nowadays. That is the reason why in this paper, there will be made an analysis of the current institutional and academic definitions, and the most specific elements and characteristics will be singled out. In regards to this, there will be provided an overview of the international legal framework for measures, as well as activities that need to be undertaken as a response to prevent returnees to commit terrorist attacks.
That is why the focus of the paper, is to raise the attention for designing methods and instruments, as well as developing strategies and policies for assessing the risk of returning foreign fighters together with the accompanying persons while returning to their home countries. Such methods, instruments and strategies would bring about an effective monitoring of their behavior, way of living, relationships and contacts.

Key words: Foreign, Terrorist, Fighters, International, Approach, Risks, Threats

INTRODUCTION

Unsurprisingly, foreign terrorist fighters are perceived to be a major terrorist threat. The fear they create ranges from the possibility that they will get involved in terrorist acts outside of their home country, to the threat that, once they return to their home countries, they will utilize their knowledge and experience of handling weapons and explosives in order to plan and carry out terrorist acts, set up new terrorist cells, recruit new members, or provide funds or training for future terrorist acts (UNODC 2017, 4).

The foreign terrorist fighters issue addresses an immense security challenge to national security authorities. A lot of countries in the world, especially the most affected by the phenomenon, are mainly concerned about the potential threat that the foreign terrorist fighters could represent for their country of origin. Indeed, they are perceived as a constant threat for domicile population and institutions, as they can use their "newly acquired combat experience, network of contacts and

ideological outlook", which can drive or them or be utilized "to carry out attacks" (Vidino 2014, 218). In other words, they can return to their domestic country hardened by the experience and possibly perpetrate terrorist attacks.

DEFINITIONS, CONCEPTS, TERMINOLOGY

There is no unanimous and uniform definition of the "foreign terrorist fighters", but many authors and international institutions precisely note certain characteristics of this phenomenon. In fact, the concept is similarly used with the term "foreign fighters" in the public debate and within the institutional sphere. The term 'foreign fighter' is a continued point of contention in academic debates, with significantly divergent perspectives on precisely who and what it describes.

In some studies, citizens and residents who travelled to conflict zones are referred to as 'departees,' whereas the term 'returnees' is favored for those who have came back to their countries of residence. They foregrounds the terms 'returnee' and 'departee' in order to bypass the confusion of the 'foreign [terrorist] fighter' debate (Ragazzi and Walmsley 2018, 27).

In the first place (Vestergaard 2018, 257), the phenomenon mainly called for measures more or less well suited for preventing individuals from *travelling to conflict zones* with the intention of joining militant or terrorist groups or organizations as associates, supporters or actual foreign fighters.

According to the academic David Malet (Malet 2013, 9), foreign fighters can be defined as "non citizens of conflict States who join insurgencies during civil conflicts". Nevertheless, he notes that there is no established term in the political science literature.

Thomas Hegghammer (Hegghammer 2010-2011, 55,57), academic specialist on violent Islamism, considers that it is due to the fact that "foreign fighters constitute an intermediate actor category lost between local rebels, on the one hand, and international terrorists, on the other". It can be observed that the researcher integrates the notion of terrorism in his definition of foreign fighter:

"An agent who:

(1) Has joined, and operates, within the confines of an insurgency,

(2) Lacks citizenship of the conflict state of kinship links to its warring factions,

(3) Lacks affiliation to an official military organization, and

(4) Is unpaid".

The United Nations' "Working Group on the use of Mercenaries as a means of violating human rights" (attached to the Office of the High Commissioner for Human Rights (OHCHR)) has defined the concept of foreign fighters as "individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-State armed group in an armed conflict".

In the Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of People to Self-determination from 19 August 2015, a "foreign fighter" has been defined as "an individual who leaves his or her country of origin or habitual residence to join a non-State armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship".

UNSC resolutions and legislative measures broadly adopted that the term foreign terrorist fighters in recent years it has been commonly used to refer to individuals who have travelled from their home states to other states to participate in or support terrorist acts, including in the context of armed conflict, especially in Iraq and Syria, whereas a broad range of research on the topic continues to refer to "foreign fighters" only rather than "foreign terrorist fighters".

According to the paragraph 29 of the Report of the Analytical Support and Sanctions Monitoring Team on foreign terrorist fighters by the United Nations Security Council (S/2015/358), foreign terrorist fighters can be differentiated from mercenaries and employees of private (military or security) companies in that the latter are usually recruited by States/governments and they join the warfare out of lucrative motives (though payment of salaries by ISIL (Da'esh) has been reported to be a financial incentive for some foreign terrorist fighters). The use of mercenaries is covered by both international and regional conventions, and domestic laws.

INTERNATIONAL LEGAL FRAMEWORK

In 2014, the UN Security Council adopted Resolutions 2170 and 2178 directed at what were labelled *foreign terrorist fighters*. They determined that the flow of foreign terrorist fighters constitutes an "international threat to peace and security". The two instruments enhance the sweeping obligations imposed on all states by Resolution 1373 (2001) adopted on the 28 September 2001, whereby the Council promptly followed up on the 9/11 attacks by placing itself in the position as international law-maker. Basically, Resolution 1373 stated a mandatory requirement concerning criminalizing the financing, planning, preparation, perpetration or supporting of terrorist acts, etc. It also established an obligation to refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including an obligation to suppress recruitment of members of terrorist groups. Furthermore, by adopting Resolution 1373 the Security Council decided that all states shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents. Still, Resolution 1373 did not include a specific obligation to criminalize travelling to areas where terrorist groups are involved in armed conflict.

When adopting Resolution 2170 (2014), the Security Council called upon all Member States to take national measures to suppress the flow of foreign terrorist fighters to (and bring to justice foreign terrorist fighters of) ISIL, ANF and all other individuals, groups, undertakings and entities associated with al-Qaeda. The Council further reiterated the obligations to prevent the movement of terrorists or terrorist groups by effective border controls, to expeditiously exchange information, and to improve cooperation among competent authorities to prevent the movement of terrorists and terrorist groups to and from their territories, etc. Member States were encouraged to engage with those within their territories at risk of recruitment and violent radicalization to discourage travel to Syria and Iraq for the purposes of supporting or fighting for terrorists.

The Member States' obligations were then further broadened by the adoption of Resolution 2178 (2014). This instrument instructs Member States to criminalize outward travelling aimed at activities related to terrorism, 'including in connection with armed conflict'. Resolution 2178 rounds up the primary target group in quite broad terms, and it is not solely addressing the situation in Syria and Iraq.

The basic obligation in Resolution 2178 (2014) is stipulated in Article 6, according to which the Security Council:

Decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:

(a) Nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.

(b) The wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,

(c) The wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

Recalling the UNSC resolutions, the 2014 OSCE Ministerial Council in Basel in the Preamble of the "Declaration on the OSCE Role in Countering the Phenomenon of Foreign Terrorist Fighters in the Context of the Implementation of UN Security Council Resolutions 2170 (2014) and 2178 (2014)", adopted on 05 December 2014, noted that the threat of foreign terrorist fighters may affect all regions and states, even those far from the conflict zones to which foreign terrorist fighters are travelling. Since then, the challenges have changed in several ways due to new trends in the return and relocation of foreign terrorist fighters from conflict zones in Iraq and Syria. UNSC Resolution 2396 (2017) adopted on 21 December 2017, sought to address those new challenges. It reiterated the characterization of foreign terrorist fighters, and in particular their return, as a grave threat to peace and security, and broadened states' obligations to respond to its manifestations. It also calls for additional action to be taken in the areas of border security and information sharing; judicial measures and co-operation; and prosecution, rehabilitation and reintegration strategies. This Resolution has been described as going significantly further than its predecessor in several respects. It requires states to "strengthen their efforts in border security, information-sharing, and criminal justice in ways that have serious implications for domestic legal regimes", for human rights and the rule

of law. In particular, its call to member states to develop “watch lists or databases” of persons suspected of engagement in or support for foreign terrorist fighters, and to share a broad range of relevant information, including personal biometric data with other states, necessitates careful attention as to whether and how human rights are being protected in co-operating states.

The Security Council resolutions not only have had an impact on states' legislations, but also on two other concerned regional organisations: the Council of Europe (CoE) and the European Union (EU). Indeed, the Additional protocol to the Convention on the prevention of terrorism written by the CoE was signed in October 2015 in order to address the security threat caused by the foreign terrorist fighters, while the European Commission initiated in December 2015 a revision of the Framework decision on combating terrorism.

To respond to the growing threat of terrorism, the CoE decided to create in 2005 a legal framework for its Member States. It was Convention on the Prevention of Terrorism adopted on 16 May 2005, which aimed to enhance their efforts in the fight against terrorism. It underlines the importance of information exchange, improving civil protection, “enhancing training and coordination plans for civil emergencies” and lastly international cooperation in combating this threat. In other words, the Convention “reinforces cooperation on prevention both internally (national prevention policies), and internationally” and criminalizes acts related to terrorist activities. Moreover, it criminalizes public provocation to commit a terrorist offence (article 5), recruitment for terrorism (article 6) and training for terrorism (article 7) referring to those that provide such a training. They are coupled with a provision on accessory (ancillary) offences (article 9) providing for the criminalization of complicity (such as aiding and abetting) in the commission of all of the three aforementioned offences and, in addition, of attempts to commit an offence under articles 6 and 7 (recruitment and training). One of the characteristics of the new crimes introduced by the Convention is that they do not require that a terrorist offence within the meaning of article 1 (i.e., any of the offences within the scope of and as defined in one of the international treaties against terrorism listed in the appendix) is actually committed. This is explicitly stated in Convention article 8, based on an equivalent provision in the International Convention for the Suppression of the Financing of Terrorism. Consequently, the place where such an offence is committed is also irrelevant for the purposes of establishing the commission of any of the offences set forth in articles 5 to 7 and 9. In addition, these offences must be committed unlawfully and intentionally, as is explicitly stated in each article.

The escalation of conflict in Syria and the emerging problem of foreign terrorist fighters has forced the international community to expand existing regulation to this phenomenon. Thus, the resolution 2178 was the first measure/step taken by the UNSC, and it has been followed by another document formulated by the CoE. In May 2015 CoE's Committee of Experts on Terrorism (CODEXTER) completed the Additional Protocol to the CoE Convention on the Prevention of Terrorism. This document was designed as a response to the need of a more coherent and detailed definition of terrorism and terrorist activities compared to the one proposed in 2005 by the CoE Convention on the Prevention of Terrorism. In its

articles 2 to 6 it gives several definitions of offences such as participating in an association or group for the purpose of terrorism (article 2-1), receiving training for terrorism (article 3-1), travelling abroad for the purpose of terrorism (article 4-1), funding travelling abroad for the purpose of terrorism (article 5-1), organizing or otherwise facilitating travelling abroad for the purpose of terrorism (article 6-1). Countries which ratify this Protocol are obliged to implement measures recognizing such acts as criminal offences. Furthermore, this legal act creates a "point of contact available on a 24-hour, seven-days-a-week basis" in order to provide efficient exchange of information related to potential foreign terrorist fighters. Moreover, in its article 8, the Protocol requires that all changes in legal acts and procedures designed to match these obligations must be made with respect to human rights.

Without any doubt (Council of Europe 2017, 70), this protocol will contribute to the convergence of the legal frameworks to combat the foreign terrorist fighters threat in Europe. However, the main aim of the creation of such an act was the criminalization of the most common activities that are perpetrated by individuals wanting to join ISIL in Syria or to organize attacks in European countries.

At the EU level, the Framework Decision 2002/475/JHA of the European Union calls on Member States to harmonize their legislation and to introduce minimum sentence requirements regarding terrorist acts. It therefore lays the foundations for the approximation of the criminal law provisions relating to terrorist offences. Prompted by the adoption of the Council of Europe 2005 Convention on the Prevention of Terrorism, the Framework Decision was amended in 2008 to also cover the three new offences: recruiting, training and public provocation for terrorism.

In light of incidents in Europe (Paris attacks on 13 November 2015), the Commission presented a proposal for a new directive to replace the existing Framework Decision. The proposal specifically targeted the problem concerning foreign terrorist fighters. The Directive proposal inter alia included offences regarding receiving training for terrorism and also dealt with travelling and facilitation, including cross-border travelling within the EU. In addition, the Commission proposed widening of the rules concerning criminal attempt and participation as well as of the rules regarding jurisdiction. Various actors criticized the proposal for imposing extraordinarily wide-reaching obligations without offering the necessary guarantees regarding fundamental rights (Vestergaard, 2018, 276).

The EU's Counter Terrorism Strategy adopted on 30 November 2005 based on the four PPPR (prevent, protect, pursue, and respond) pillars remains the primary prism through which the foreign fighters phenomenon is perceived and policy options formulated. It was only in 2013 that the EU began to respond to the foreign fighters threat, with the Counter-Terrorism Coordinator outlining 22 proposals which were endorsed by the Justice and Home Affairs (JHA) Council in June 2013. The following year (30 August 2014) the Council of JHA Ministers set out four priority areas: "[1] to prevent radicalization and extremism, [2] share information more effectively – including with relevant third countries, [3] dissuade, detect, and disrupt suspicious travel and [4] investigate and prosecute foreign fighters", which

has remained the core of the EU's policy response to foreign fighters (van Ginkel and Entenmann 2016, 21).

In November 2016, the EU's Counter-Terrorism Coordinator with document entitled Foreign terrorist fighter returnees: Policy options, informed the European Council of the need for 'a comprehensive approach towards returnees...' dispersed across the judicial, law enforcement, and social spheres. This sentiment has since been endorsed by the Council of the European Union.

CONCLUSION

The terrorism with a religious ideological background, is a serious global threat nowadays. The apposition to the emergence of "foreign terrorist fighters" and the strongest extremism has become the top priority of the international community, which has contributed to amending the existing legislation in order to initially resolve the issue with foreign fighters.

Even though all countries have adopted and is enforcing the measures for punishing the foreign terrorist fighters they are still aware that the repression are not always equalized with the conscious and repentance. Such measures may have opposite effect and contribute to further radicalization and realization of the terrorist goals. The approach ignores the question of re-integration of the human in the society. The closure or the monitoring of the movement of the foreign terrorist fighters is not enough for dealing with the roots of the problem and that is why such measures can have result only in short term. In long period of time the European countries should focus on accelerated development in direction of creating efficient strategies for reducing the number of new recruits-jihadists and the ideas for violent extremism and terrorism.

Through an essential understanding of the motive for joining the terrorist organizations and the radicalization in general as a process, and most importantly the circumstances and conditions that are enabling it, counter measures of violent extremist ideology are more likely to be used.

In the process of suppressing this phenomenon, it is necessary the whole society to be involved, which will help the increasing of the awareness of radicalization in the community and to build internal capacities for its opposition.

Here are some recommendations:

- Developing a specific policy for foreign fighters in the overall framework for combating terrorism
- Designing an instrument for assessing the risk of recovered foreign fighters and supporting research in this area
- Providing appropriate medical assistance for traumatized foreign returnee fighters
- Increased attention to children from returnees from conflict regions
- Developing a mechanisms and activities in the area of social reintegration.

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Original Scientific Articles
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THE NORMATIVE REGULATION OF PROHIBITION OF ILL-TREATMENT IN THE CRIMINAL LAW FRAMEWORK OF THE REPUBLIC OF SERBIA[61]

Milan Žarković, PhD
University of Crmiminal Investigation and Police Studies – Belgrade, Republic of Serbia
milan.zarkovic@kpu.edu.rs

Ivana Bodrožić, PhD
University of Crmiminal Investigation and Police Studies – Belgrade, Republic of Serbia
ivana.bodrozic@kpu.edu.rs

Nikola Kovačević, MA
The Belgrade Centre for Human Rights, Teaching Associate at the Union University, Faculty of Law
kovacevic@bgcentar.org.rs

Abstract
Despite the fact that the Constitution of the Republic of Serbia stipulates that no one can be submitted to torture, inhuman or degrading treatment or punishment, nor can be exposed to medical or other scientific experiment without freely given consent, and that the criminal law framework of Serbia contains, in both its procedural and substantive provisions, solutions which prove that the law maker was on good track towards the idea of prohibition of all forms of ill-treatment (torture, inhumane or degrading treatment or punishment), there is still plenty of room left for the improvement of the domestic legal framework with an aim of Serbia's successful fulfillment of all, in good faith, assumed international obligations arising from the ratified international instruments regarding the absolute prohibition of ill-treatment (*jus cogens*). For that reason, and taking in consideration the fact that the current solutions in criminal law framework that governs the area of absolute prohibition of ill-treatment was the subject of criticism by relevant international bodies (UN and CoE treaty bodies), the following article will present the current state of affairs as well as the analysis of all relevant provisions and standards arising from national and international documents (including the one which are incorporated in some of

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the states from the region), providing at the very end recommendations that have an aim to offer solutions for adequate harmonization of Serbia criminal law response towards the prohibition of ill-treatment.

Key words: prohibition of ill-treatment, criminal law system of the Republic of Serbia

INTRODUCTION

The criminal law of a liberal, democratically oriented, legal state is based on the five fundamental principles: legality, legitimacy, guilt, humanity and proportionality and justice. Although only in their complementary effect and the permeation of the entire national system of criminal law provisions, criminal law as a whole gets the prerogative of democracy, and some of them have special significance when it comes to the protection of certain basic human rights and freedoms.

In this context, the principle of the inviolability of physical and psychological integrity, which, in Article 25 of the Constitution of the Republic of Serbia, proclaims that physical and psychological integrity is inviolable and that no one can be subjected to torture, inhuman or degrading treatment or punishment, has its basis both in the principle of legitimacy and the principle of humanity. As it is in Art. 3 of the Criminal Code of the Republic of Serbia (CC of the RS) implicitly stipulates that the basis and limits of criminal law enforcement are the protection of man and other social values necessary for the realization of these rights, it is clear that the criminal law, as an instrument of the state reaction to crime, is a priority humanistic oriented. The criminal law thus designated is also a mechanism for the protection of the basic constitution of proclaimed values, but also a correction to the *ius puniendi*, which leads to the achievement of the desired standards of protection of society from crime, with minimal limitation of the basic freedoms and rights of man and citizen.

The prohibition of ill-treats (and torture), as a constitutional law standard, is one of the issues which, by criminal law, need to be concretized, through an incriminating expression, which in its dispositive part anticipates an illicit form of abstract delinquency, and in the part on sanction, the range of penalties, which presupposes proportional and just ethical disregard, which a society has the right to pronounce to an individual, who can be considered to be guilty for specific wrongdoing.

Criminal offense ill-Treatment and Torture as an instrument of the state reaction to a violation of the freedom and rights of man and citizen

As a starting point for the alignment of the national criminal law corpus with ratified binding international documents, above all the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in the year of 2005, the Republic of Serbia, in Article 137 of the CC of the RS, foresaw ill-treats and torture as a criminal offense.

Although Article 1 of the CAT provides that for the purpose of this Convention, the term "torture" means any act by which a person's physical or mental suffering is intentionally inflicted on a person for such purposes as obtaining from him or a third person or a third party, has committed or is suspected of committing or intimidating or coercing him or a third person or for any reason based on any kind of discrimination where such pain or the suffering is caused by or upon the initiation of or with the consent or acquiescence of a public official or other person acting in official capacity, the work referred to in Article 137 of the CC of the RS is not systematized into a group of criminal offenses against official duty, but in Chapter XIV entitled " CRIMINAL OFFENSES AGAINST FREEDOMS AND RIGHTS OF MAN AND CITIZEN ". The acts of ill-treats by an official in the criminal legislation of the Republic of Serbia until 2005, were explicitly incriminated by the term "abuse in service" in Art. 66 of the Criminal Code of Serbia (CCS). In spite of the fact that this offense provided for the responsibility of an official who, in the performance of the service abuse another person, insults or generally treats another in a manner that offends human dignity, this criminal offense was foreseen in the chapter entitled "CRIMINAL OFFENCES AGAINST FREEDOMS AND RIGHTS OF MAN AND CITIZEN ", and not in a group of offenses against official duty.

The first paragraph of Article 137 of the CC of the RS states that Whoever ill-treats another person or treats such a person in a humiliating and degrading manner, shall be punished with imprisonment of up to one year. The second paragraph predicts that Whoever causes anguish to another with the aim of obtaining from him or another information or confession, or to intimidate him or third party, or to exert pressure on such persons, or if done from motives based on any form of discrimination, shall be punished with imprisonment from six months to five years. In the third paragraph, there is a qualified form that implies a more severe punishment in cases where the offense from the first two paragraphs is made by an official person in the performance of the service, with different criminal ranges (punishment from three months to three years for the offense from paragraph 1 and imprisonment from one to eight years for the offense referred to in paragraph 2). The term official person is defined in Art. 112 (3) of the CC of the RS and it denoting a person discharging official duties in government authority; elected, appointed or appointed person in a government authority, a local self-government body or a person permanently or periodically discharging official duty or office in such bodies; public notary, executor and arbitrator, as well as an officer in an institution, enterprise or other subject, discharging delegated public authority, who decides on the rights, obligations or interests of natural persons or legal entities or in relation to public interest; an official shall also be a person who is actually assigned a discharge of official duty or duties; a member of the military. The term performing a service implies the conduct of an official person within the scope of his authority.

It is indisputable that, in the legislative and technical sense, the incrimination referred to the Article 137 of the CC of the RS is complex. In addition, it can be said that it has two basic and one qualified forms, and its structure whic is particularly interesting, in fact, consist of two separate criminal

offenses under the same article. In principle, they could be systematized in different chapters of criminal offenses, within the specfic part of the CC, since it is a matter about multiple crimes with a plurality of protective objects (Stojanovic, Peric 2011, 3), where the only criterion for the systematization, due to significant similarities, determined their prediction within the same chapter of criminal offenses, even within the same criminal law norm. For these reasons, it is often pointed out that the aforementioned *pro futuro* might be the reason for the separation of the criminal offense of ill-treats and torture in two separate incriminations, observed from the view of *ratio legis* (Kolaric 2017, 702). In addition, in Article 137, paragraphs 1 and 2, two separate criminal offenses are factually defined, which are only for certain nomotechnical reasons and the chosen systematization criterion (which, as a common denominator, denotes both the freedom and the rights of man and citizen) (Stojanovic 2016, 485), there is also the fact that the above provisions define the easier (basic) and the more difficult (qualified form) of the same criminal offense (Lazarevic 2015, 528 - 529; Simovic, Jovasevic 2017, 484).

As a group protective object that is violated or threatened by the commission of a crime, ill-treats and torture we can recognize the fundamental freedoms and rights of man and citizen, that is, personal rights and freedoms, rights related to personality or personal sphere (Stojanovic 2016, 466). As the immediate object of protection in the first paragraph, human dignity is distinguished as an internationally guaranteed category, which implies the honor and reputation of a person, that is, the right to respect and the appropriate ethical relation to the individual in continuity from birth to life. In the second paragraph, in addition beside protection of human dignity *per se*, the protection of physical and physical integrity is emphasized.

Objective features of the criminal offense of ill-treats referred to in paragraph 1 of Article 137 of the CC of the RS are exhausted in the conduction of acts of abuse or treatment in another way that offends human dignity. In the national legal theory, under the term ill-treats, in the broadest sense, it is usually understood the causing physical and psychological suffering of a lower intensity which does not result in the appearance of bodily injury (slapping, pouring in a certain fluid, pulling the nose , ear, pushing, etc.). In this context, acting in a manner that offends human dignity is a general clause, the existence of which will be judged by the court in each case, assessing the aspect of objective criteria, which may indicate whether, according to quality, it would be possible for a citizen, who is a passive subject , with average abilities and characteristics, causes a sense of dignity to be violated, but not at the expense of the subjective, as a passive subject's sense of harm to his dignity (Stojanović), Delic 2013, 49). As an example of such activities, it could be cited the actions where the other person is left unreasonably to wait for another person for an unreasonable period of time to exercise a certain right may be mentioned, not taken into account, or in relation to certain attitudes and opinions, and the like (Lazarevic 2015, 529).

The subjective feature of the offense of a criminal offense under Article 137 of the CC of the RS, paragraphs 1 and 2, implies intent, and its perpetrator can be any person. This is different from the solution present in Art. 66 of the CCR, since the incrimination had the characteristics of the *delicta propria*, where the

perpetrator may only be official. In paragraph two of Art. 137 CC of the RS it is incriminated torture, i.e. causing great pain or severe suffering by the use of force, threat or other illicit means for the purpose of achieving a specific purpose in the code listed goals (gaining recognition, testimony or other information, intimidation or unlawful punishment) or from other reason based on any form of discrimination. From this it can be seen that the subjective feature of this form of criminal offense with the intent implies the achievement of a particular goal, that is, the existence of an intention that directs the intent as a realization of the precisely stated goal. As with all offenses that as a subjective feature of the offense of a criminal offense contain intent, its realization is irrelevant from the aspect of the existence of a criminal offense, but only the criminal act will not exist, if the intention is not proved. Alternatively with the intention of achieving the goals set forth, it is also envisaged to take actions from certain motives under which they can be considered, hatred, perversity, and cunning, based on some form of discrimination, such as religious, racial, national, political and other.

Given that the qualified form of the criminal offense of the ill-treatment and torture is provided for the case of the offence under Article 137 paragraphs 1 or 2 of the CC of the RS when it is made by an official person in the performance of the service, with the reason it is emphasized that such a defined incriminator can be classified in the group so-called unjustified criminal offenses against official duty (Stojanovic 216, 993) which can be committed by every person, and becomes an act against official duty only when executed by an official person.

That is precisely why it is not contained in the head against official duty, but in the head against the freedom and the rights of man and citizen. Quasi-criminal offences against the official duty envisaged within the same chapter of the Criminal Code of the RS ("CRIMINAL OFFICES AGAINST FREEDOMS AND RIGHTS OF MAN AND CITIZEN") are Violation of Equality (Article 128); Violation of the Right to Expression of National or Ethnic Affiliation (Article 130); Violation of the Freedom of Religion and Performing Religious Service (Article 131); Unlawful Deprivation of Liberty (Article 132); Violation of Freedom of Movement and Residence (Article 133); Infringement of Inviolability of Home (Article 139); Violation of the Privacy of Letter and Other Mail (Article 142); Unauthorized Wiretapping and Recording (Article 143); Unauthorized Photographing (Article 144); Unauthorized Publication and Presentation of Other Texts, Portraits and Recordings (Article 145); Unauthorized Collection of Personal Data (Article 146); Violation of the Right to Legal Remedy (Article 147); Violation of Freedom of Speech and Public Appearance (Article 148); Prevention of Printing and Distribution of Printed Material and Broadcasting (Article 149); Prevention of Public Assembly (Article 151); Prevention of Political, Trade Union or other Association and Activity (Article 152). Despite the fact that for some certain forms of the criminal offenses is foresaw a private lawsuit, legislators among them is not included any of those in which the only offenders that is listed are officials. It is interesting that the legislature in this head foresaw two criminal offenses in which the only official persons can appear as perpetrators: Extortion of Confession (Art. 136) and Illegal Search (Art. 140).

Since the relevant international documents, define the term of torture as an action of an official person, or any other person who is acting in an official capacity or on his incentive or with his explicit or tacit consent, the conclusion may be drawn that the legislature in the Republic of Serbia has provided enhanced criminal protection of human dignity and inviolability of physical and mental integrity. This provides punishment for ill-treatment and torture and when it is committed by any other person in the capacity of perpetrator.

At the same time, in terms of the meaning of the term ill-treatment, and therefore with regard to the content and scope of the incrimination referred to in Article 137 of the CC of the RS, there are different attitudes. They were created under the strong influence of the practices and standards arising from the work of universal and regional international bodies for the protection of human rights (e.g. the Human Rights Council and the Committee against Torture, bodies established under special procedures), the United Nations Human Rights Council, such as the Special Reporter on torture and other cruel, inhuman or degrading treatment or punishment, the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) in which the abuse (ill-treatment) is defined as a generic term that includes torture, inhuman and degrading treatment or punishment, as its forms graded by gradation from the heaviest to the weakest. In other words, these forms represent a sort of scale of abuse (Jankovic 2010, pp. 15, 52, 68 and 88; Nowak, McArthur 2008, 558), which is defined as any unjustified interference with the individual's physical or psychological integrity, which reaches a minimum level of seriousness.

This understanding also implies a critical attitude towards a solution by which the legislator "makes a difference" between ill-treatment on one and torture on the other hand. Although a legislator does not dispute that various forms of ill-treats has been incriminated in the existing criminal convictions of Art. 137 of the CC of the RS, it is pointed out that it was not created with the consistent respect of the peremptory norm of international customary law on the prohibition of ill-treatment. This, with reference to the recommendations which was directed by the Contracting authorities of United Nations to the Republic of Serbia.

The first complaint which was sent to the Republic of Serbia by the Committee against Torture[62] and the Human Rights Council[63] refers to the cycle of possible perpetrators of the crime of ill-treatment and torture. It is pointed out that it is set too broadly, and that the criminal offense of incriminating torture should be prescribed in the manner provided for by Art. 1 CAT. So, the torture and all other forms of ill-treats listed in Art. 16 of CAT, should be prescribed as *delicta propria*, or so in a way that perpetrators have the status of an official person. Because of the fact that policemen and prison guards often have the opportunity to physically control the citizens, and abuse them, in violation of the law and the rules of the service, in the focus of the creators of CAT, are precisely the acts of abuse of officials (Jankovic 2010, 15). Although this solution does not exclude the obligation

[62] Final remarks on the second periodic report of the Republic of Serbia, May 12, 2015, CAT / C / SRB / CO / 2, paragraph 8

[63] Final remarks on the third periodic report of the Republic of Serbia, April 10, 2017, CCPR / C / SRB / CO / 3, paragraphs 26 and 27.

of the state to prosecute persons who do not have the status of the officials(or related persons), for the acts of ill-treatment, the *ratio* of recommendations, but also the purpose of adopting CAT, is that States parties pay special attention to acts of ill-treats that are committed by authorized persons. To these officials who were delegated the possibility to use the force, who have misused the force through the history at the expense of certain individuals (e.g. political untruths or members of certain social groups).

The practice of the judicial authorities of the Republic of Serbia related to the criminal act of ill-treatment and torture shows that in the status of the defendant there were persons who do not have the status of an official officer (out of 427 cases, which were brought to the basic courts in Serbia for the criminal act of ill-treats and torture in in the period from January 1, 2012 to December 31, 2015, 221 of them referred to paragraphs 1 and 2, ie cases where the defendants did not have the status of an official person). On the other way, although the alleged delicts have unequivocally contained elements of inhibition of the physical integrity and human dignity of the individual, they are essentially not such as to qualify as ill-treatment in the sense of CAT (Kovacevic, Dicic Dragicevic, Jekic Bradajic, Tintor 2017, 64).

The second objection of the international bodies relates to the overlapping of the criminal offense of ill-treatment and torture in its second basic form when it is committed by an official (Article 137, paragraph 2 in conjunction with paragraph 3) and the basic and qualified form of criminal offense extortion of testimony (Art. 136 of the Criminal Code of RS), which is explicitly defined as a *delicta propria* and which exists when an official uses the force or threat or other unauthorized means or inadmissible way when they are on duty in order to extort a testimony or other statement from the defendant, witness, expert or other person (for the basic form foresawed in paragraph 1, a prison sentence of three months to five years is foresaeen). If the extradition of a statement or testimony is accompanied by severe violence or if the extradition of the testimony has produced particularly severe consequences for the defendant in the criminal proceedings, the legislator (in paragraph 2) foresaw the possibility of imposing a more severe sentence (prison of two to ten years). Indeed, if the two legal acts are carefully compared, it is clearly that the extradition of the testimony itself is alternatively foreseen as one of the acts of the commission of ill-treats and torture (Article 137, paragraph 2 in relation to paragraph 3).[64]

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[64] About the confusion and inconsistency of normative solutions regarding the prohibition of torture defined in Art. 1 CAT testifies also the provisions of the criminal laws of a numerous regional states (the solution best suited to the provisions of the CAT is present in the Republic of Northern Macedonia). In the Criminal Code of Montenegro, under the chapter entitled "Crimes against the freedom and rights of a man and citizen", it is distinguishes between ill-treatment (Article 166a) and torture (Article 167). In this case, only the qualifying forms of both delicts are related to the conduct of an official officer. At the same time, Article 166 provides for the criminal offense of extortion of the statement in which the official is stated as the perpetrator. In the Republic of Croatia, in addition to the criminal offense of "torture and other cruel, inhuman or degrading treatment or punishment" foresawed in Article 104 (in the group of criminal offenses against humanity and human dignity), it is defined by taking over the contents of Art. 1 CAT and threat of imprisonment of one to ten years, Art. 297 (in the group of criminal offenses against official duty) foresawed for the criminal offense of extortion of evidence. In the Criminal Code of the Republika Srpska, in the chapter entitled "Crimes against the freedom and rights of citizens" in Art. 149, the criminal offense of "ill-treatment, torture and other inhuman and degrading treatment" is envisaged (although the title of the article indicates that the legislator relied on the provision of Article 1 of CAT, he does not do so because, as a possible perpetrator, he foreseen only an official person). At the same time, in the group of criminal offenses

The recommendations of The Committee against Torture[65] that goes into the definition of such substantive legal solutions that will ensure the equal treatment of judicial authorities in cases of the same or similar nature, represent another point of reference for the idea of merging these two offenses into one (defined in the way it is done in Article 1 CAT). In this way, the situations that may occure in practice will be avoided in which the public prosecutor is facing a dilemma as to whether a criminal act committed by an official who inflicts severe pain or severe suffering on the other person or, an official who by force, threat or other illicit manner, or receives a confession, testimony or other information from a third party, and it is qualified as abuse and torture in the sense of Art. 137, paragraph 2[66] in conjunction with paragraph 1 or as an extortion of the testemony referred to in Art. 136 paragraph 1 or paragraph 2[67] (in the event that an official officer used force or threat or other unauthorized means or an unauthorized means in order to bring a testemony or other statement from the defendant, witness, expert witness or other person).

Regarding the penalties for crimes referred to Art. 136 and 137 of the CC of the RS, and in particular with regard to the practice of judicial authorities, there are very strong opinions that the penalties for torture and other forms of ill-treats, as well as the extortion of testimony, are not proportionate to the degree of social danger they carry with them.[68] This is also evidenced by the fact that out of 35 criminal proceedings conducted against 48 police officers for criminal acts of ill-treatment and torture and extortion of an testimony in the period from 2010 to 2016, 26 of them (nearly 75%) were terminated by the pronouncement of conditional sentence, 3 by applying the institution of postponement of criminal prosecution (in conditions fulfilled by commitments and dismissal of criminal charges), 2 by imprisonment sentence of 4 and 8 months, 2 by pronouncing the sentence of imprisonment to be made in the premises where the convicted person lives, in one case it is concluded plea agreement, while at one case a punishment of work in the public interest was pronounced.

The current state of things is brought up by the Special Rapporteur on torture[69] in connection with the phenomenon of impunity and highlights. On this occasion, it is stated: "In order to correct this alarming situation and to prevent impunity for any and all forms of ill-treatment on the part of the police, the Special Rapporteur urges the Serbian authorities to ensure that there are completely

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against official duty, the legislator foresaw the criminal offense of "extortion" (Article 328). In the same chapter (in Article 329), the criminal offense is also "a violation of human dignity by ill-treats by abusing an official duty or authority" in witch is stating that an official who abuses, physically hurts or in general, ill-treats, abuses his position or powers to ill-treats the other in the performance of his duty treats him in a way that violates human dignity, he will be punished by a fine or by imprisonment for a three years.

[65] Final remarks on the second periodic report of the Republic of Serbia, May 12, 2015, CAT / C / SRB / CO / 2, paragraph 8.

[66] Basic Public Prosecutor's Office in Novi Sad, Decision on dismissal of criminal charges KT 3873/14 of 24.06.2014. and the Basic Public Prosecutor's Office in Niš, a decision on the dismissal of the criminal complaint KT 477/15 of 19 February 2015.

[67] I Basic Public Prosecutor's Office in Belgrade, a decision to reject criminal charges KT 3963/14 from 15.10.2014.

[68] In the Criminal Code of Bosnia and Herzegovina for a criminal offense "torture and other forms of cruel and inhumane treatment", as defined in Article 190, based on the content of the provision of Article 1 of the CAT, imprisonment of at least six years has been impaired.

[69] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 25 January 2019., A/HRC/40/59/Add.1, par. 24.

independent, expedient and effective complaints, oversight and investigative mechanisms, and that systematic medical examinations by independent medical personnel trained in effective investigation, interpretation and documentation of signs of torture and ill-treatment are assured ". At the same time, this is one of the objections that have been sent to the Republic of Serbia by the already mentioned bodies for almost 20 years. Regarding the procedural aspects of the prohibition of ill-treatment, the fact that the Criminal Procedure Code, due to the range of imprisonment, provides for a summary procedure for all except for the qualified form of extortion of evidence for which imprisonment for up to 10 years has been impeded (Article 236, paragraph 2 of the CC of the RS).

Finally, the fact that the appearance of an absolute obsolete prosecution for both criminal offenses is possible led to the fact that the period from 1 January 2010 to 31 December 2015 was absolutely obsolete in total 16 criminal proceedings conducted against 31 official officer (police officers and employees in the security service of penitentiary institutions) for the criminal act of ill-treatment and torture and one procedure that was conducted against 4 officials for criminal offense extraction of evidence and that qualified form.[70] This information was the reason for criticism of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Committee Against Torture called on the Republic of Serbia to suspend the possibility of occurrence of obsolescence.[71]

FINAL REMARKS

The importance of incriminating ill-treatment and torture as a separate criminal offense in a group of criminal offenses against the freedom and rights of a man and a citizen is a priority in the concretization and strengthening of the constitutional principle of the inviolability of physical and psychological integrity. It has emerged as an unequivocal reflection of the connections and attachments of criminal law to constitutional postulates and as a result of the harmonization of the national corpus of criminal law norms with ratified relevant international regulations in this area. This incrimination can also serve as an example of continuous improvement of criminal law in accordance with the maximum *ius criminale semper reformanum est*.

Based on the fact that the duty of the state is to protect all persons under its jurisdiction from ill-treatment, and to discover the perpetrators and adequately punish them, when it comes to abusing. No doubt that the fulfillment of this obligation can be fulfilled in the most effective way through the protective function of the criminal rights. The question that remains open is which is the most appropriate way and what forms of incrimination of ill-treats can provide a compromise between the already established substantive solutions of national criminal law legislation and new solutions which are imposed through freely adopted international obligations of the Republic of Serbia. We should also have in mind that the obligations are also formed through the legally binding decisions of

[70] Data obtained from the database of the Belgrade Center for Human Rights.

[71] Final remarks on the second periodic report of the Republic of Serbia, May 12, 2015, CAT / C / SRB / CO / 2, paragraph 8.

the European Court of Human Rights, but also through the recommendations and standards of other international bodies belonging to the soft law domain. These recommandations provide to the States Parties fulfillment of the obligations in the best way.

In the part of the academy comunity, as well as among the practitioners, the point of view is that in the amendments of criminal legislation, *de lege ferenda* could consider the separation of ill-treatment and torture into separate incriminations. It is emphasized that in this way the criminal repression will be further strengthened, and therefore a general preventive effect in the fight against ill-treatment and torture, since the degree of crime in torture is far greater than in the case of ill-treatment. This, relying on the view that torture should not be viewed as a serious form of ill-treatment, but rather as a distinctively incriminating expression. This expression, with torture, is only for legislative reasons, envisaged within the same article.

When we analyse the provisions of international legal instruments ratified by the Republic of Serbia, the practice of the European Court of Human Rights, as well as the principles standards and recommendations that are contained in the reports of relevant international institutions and their representatives, where the absolute prohibition of every act of ill-treats is understood in a wider sense (from those that violate human dignity, to those which physical and psychological integrity is damaged in the most difficult way), we can conclude that regulatory solutions presented in Art. 137 of the CC of the RS are not sustainable. In accordance to this incrimination *delicta propria* is proposed, with the exclusion of the possibility of obsolescence of the criminal prosecution for the officer who did the offense.

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THE RISE OF POPULISM - MAJOR THREAT FOR THE EUROPEAN UNION

Valeri Modebadze, Doctor of Social Sciences,
Professor of International Relations
Saint Andrew the First-Called Georgian University of the Patriarchate of Georgia.
E-mail: valery_4@yahoo.com

Abstract
The popularity of extremist parties in Europe is on the rise. Populist parties have become serious electoral contenders and are no longer confined to the political margins. The principal causes of the rise of populism are the 2008 financial crisis and the 2015 refugee crisis. People were especially dissatisfied by harsh austerity measures which were carried out in Europe during the economic crisis and lost confidence in liberal democracy. They became radicalized and began to vote for extremist parties. Sudden influx of refugees from Syria and Middle East created favorable ground for the rise of populism and extremism.
Populism draws strength from public opposition to multi-culturalism, mass migration processes and the perceived "decline" of national identity and national culture.
The aim of this article is to explain why the rise of populism represents a major threat to the "Old Continent's" stability.

Keywords: Populism, Extremism, refugee crisis, economic crisis, right –wing parties

INTRODUCTION

Europe's political landscape has undergone a radical transformation over the last years, especially after the 2008 financial crisis and the 2015 refugee crisis. Europe's mainstream political parties have gradually lost popularity because of their inability to solve socio-economic problems and reduce crime after the massive refugee flows from the Middle East and Africa. People started to vote for populist right - wing and left - wing parties and as a result, these parties managed to enter national parliaments across Europe. Some right-wing populist parties have even managed to win elections and come to power. Populist parties are especially strong in Eastern Europe. In seven Eastern European Countries populist parties managed to come to power. These countries are: Bosnia, Bulgaria, the Czech Republic, Hungary, Poland, Serbia and Slovakia. (Martin Eiermann, Yascha Mounk & Limor Gultschin, 2017)

RISE OF RIGHT – WING POPULISM IN EUROPE

Right –wing populism gained popularity since 1989, especially after the fall of the Iron Curtain, when thousands of migrants and refugees from former Eastern

communist countries started crossing the borders and arrived in Western Europe in seek of employment and job opportunities. The Anti-immigration stance became the salient characteristic of the right-wing populist parties. Since the 90s, right-wing populist parties obtained parliamentary representation in Europe (France, Belgium, Denmark, Sweden, Estonia, Romania), some of the populist parties formed a coalition government with other parties (Switzerland, Austria, Greece, Slovakia, Lithuania, Latvia, the Netherlands and Italy) and some even came to power as in the case of Hungary and Poland. Since the beginning of this decade, previously marginal movements such as the National Rally (previously named National Front), Alternative for Germany (AfD), the Italian Northern League, the Party for Freedom (PVV), and the UK Independence Party (UKIP) have become very popular parties and began to gain support from those people that were especially hit hard by the Global Financial Crisis. The leaders of the above mentioned populist parties blame often the European Union of all the ills of society. The above mentioned populist parties have one thing in common: they have simplistic programs based on Europhobia and Euroscepticism, but at the same time very charismatic and aggressive leaders. These parties are opposed to the European integration process and show hatred towards the Brussels' bureaucratic elites. The populist parties show strong anti-immigration stance and believe that migration processes represent a major threat to the national identity and national culture. They are in favor of highly restrictive immigration policies and are fervent advocates of protectionist economic policies. The hostility towards migrants appears in all the programs of the current populist parties. Compared to the traditional political parties, most of the European populist parties have a short history and they owe their existence to the global financial and economic crisis. (Ana González-Páramo, 2018)

THE MAIN CAUSES FOR THE RISE OF POPULISM

The reasons for this rise of populism must be sought in the social changes that have occurred in recent decades in Europe. Populism draws strength from public opposition to multi-culturalism, mass migration processes and the perceived "decline" of national identity and national culture. People attribute the "decline" of national identity to the arrival of large numbers of migrants and the rise of multi-culturalism. Many demagogues started to blame the European Union for refugee crisis and "the loss of national identity." The refugee crisis and the recent terrorist attacks in France, Belgium and Germany contributed to the strengthening of populist nationalist ideas in the European Union.

The case of Hungary is paradigmatic: the country that was an exemplary case of neoliberal transition, today it is governed by the Fidesz party led by the authoritarian Viktor Orbán who controls all the institutions of government, while the neo-fascist Jobbik party has consolidated its position as the second largest political force in Hungarian Parliament.

Although Fidesz was founded as a pro-European and liberal party, in the wake of Hungary's socio-economic transformations, it has ideologically developed into an authoritarian and Eurosceptic party, representing national-conservative and right-wing populist positions. The Fidesz government has radically changed

Hungary's political system. It has considerably restricted the freedom of the Press and the Constitutional Court. Prime Minister Orbán has completely destroyed the foundations of Hungarian democracy and established an authoritarian regime. To silence critics of his administration, Orbán has not hesitated to foment xenophobia and racism, blaming "foreigners" for the country's problems, even calling for an anti-immigrant referendum last year. Currently, government campaigns are directed against refugees and national minorities.

But the case of Hungary is not unique, since other countries of Central Europe also regularly carry out xenophobic policies. Member states of the Visegrad Group and Austria have sealed their borders in order to prevent asylum seekers entering their territories. Poland is another example of far-right government, that tries to justify its anti-immigration policies by stating that the Polish people want to "avoid a situation of insecurity generated by terrorist attacks such as those experienced in France, Germany or Belgium." (Ana González-Páramo, 2018)

Poland's governing Law and Justice Party (PiS) represents a serious threat to the Polish liberal democratic system, since it has gradually taken control of state media and the judiciary in recent years, undermining the freedom of the press and the independence of Judiciary. The polish government has now an immense influence on judiciary and Mass Media. The Minister of Justice can dismiss judges if they do not obey the government orders. Under a new law, the National Parliament appoints the Judicial Council, a 15-member body responsible for selecting judges throughout the country. The judicial council is staffed only with the followers of the governing Law and Justice Party. They make decisions who will become a judge in Poland and who will not. Thus, Judiciary is not independent in Poland and is entirely controlled by the populist government. (Ajndrea Dernbach et al., 2018) The EU officials and political leaders often express concern over the rule of law situation in Poland.

MAJOR THREATS COMING FROM THE POPULIST PARTIES

The success of the populist, Eurosceptic and anti-immigration parties accelerates the restructuring of the political landscape and represents a serious threat to the European Union. Since the year 2000, the number of populist parties in Europe has grown dramatically, from thirty-three to sixty-three. The populist parties have managed to augment not only their electoral weight, but also have increased their capacity to set a political agenda and dictate a course of action in Europe. Racist discourse is a common feature of these parties, which have taken advantage of the tensions related to the refugee crisis to gain votes and popularity over the last years. Right-wing populists try to portray themselves as the "true representatives of the people". In their slogans and campaigns, the right-wing populists often express the doubt that the people are actually represented by the ruling politicians. They often describe politicians as "traitors of the people", and the free media as a "lying press" that spreads the fake news. These parties are famous for their Europhobic discourse. One of the most important enemy images for the European right-wing populists is the supranational entity - European Union. According to them the enemies that threaten to "destroy national identity and culture" include immigration and supranationalism. The European Union is often

accused of acting against the interests of the people. Despite their Europhobia and Euroscepticism, right-wing populist parties participate in the EU parliamentary elections and have great ambitions to become the major political force in the European Parliament. Some right –wing parties have even used European funds in their campaigns (Britta Shellenberg, 2017)

The rise of populism and nationalism represents a deadly threat to the European Union. The strong man of the populist government of Italy, Matteo Salvini is a hard Eurosceptic and believes that "The current European Union is a walking dead." (Julio Algañaraz, 2018) The right-wing populist parties of Europe intend to unite in order to have more “weight” and influence in the European parliament. The union of all these parties would form a political group that could surpass the 250 MPs in the European parliament. In this way they could create a very powerful force that could have more influence in European politics. Mateo Salvini regularly meets the leaders of the right-wing populist parties in order to unite Europe’s anti-migrant and national political movements and create a political union – “Freedom Front”. (Idafe Martin, 2019) The “Freedom Front” will include following right-wing parties: The National Rally, the League, the Belgian Flemish Interest, the Dutch Party for Freedom, and Austria’s FPÖ. According to Le Pen the aim of this new movement is to fight against the European Union. (New Europe, 2018)

Since 2016 it became apparent that the anti-liberal, populist movements and right-wing parties would use the issue of refugee and economic crisis for their own advantage. The right-wing populists, indeed took advantage of the impact of the international financial crisis and the austerity policies carried out by the European Union to spread their Europhobic discourse across “the Old Continent”. The above mentioned populist parties often blame the European Union and its liberal economic policies for causing the economic crisis. The populist parties try to distance themselves from the austerity policies carried out by the European Union and favor interventionist economic policies in order to reestablish the foundations of the welfare state. (Matías Mongan, 2018) In the post-communist countries of Eastern Europe, populist often demand greater state control of liberalized markets. In Scandinavian countries right-wing populists frequently criticize the dismantling of the welfare state.

Some analysts compare the current rise of populism to the rise of fascism in Europe in the 1930-s. Like in 1930-s, European people began to turn their backs on mainstream political parties because of their incapacity to solve social and economic problems. After the 2008 Global Financial Crisis, European countries have been crippled by recession and unemployment. Many people lost faith in liberal democracy and European institutions. They became radicalized and started to support left-wing and right wing populist parties. As a result, the support for the mainstream parties has been shrinking over the last decades.

CONCLUSION

In these turbulent times we have witnessed how in member states of the European Union, anti-European and populist parties are having electoral success. Two decades ago, right-wing extremism and populism used to be a marginal

phenomenon and populist parties did not have any chance to enter parliaments and win parliamentary elections. Financial crisis and economic crisis helped populist parties to gain popular support. The results of recent elections and public opinion polls show that far-right political parties are gaining popularity in many member states of the European Union. The rise of extremist parties sends tremors across Europe. If the popularity of these parties will continue to rise, then the European Union will be in serious trouble. The European Union is experiencing a serious crisis that can put an end to its existence. Populism can cause significant damage to a democratic political culture and democratic institutions. As we have seen above, when the populist parties come to power, they often carry out anti-liberal and anti-democratic "reforms." These parties are famous for their Anti-European discourse. If Populist right-wing leaders in France, Germany and other member states of The European Union will come to power, they might accelerate the breakup of the European Union.

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VIOLATION OF RIGHT TO PRIVATE LIFE REGARDING DEFAMATORY POSTS ON SOCIAL NETWORKS

Ivan Ilić, PhD
Assistant Professor, Faculty of Law, University of Niš, ivan@prafak.ni.ac.rs
Saša Knežević, PhD
Full Professor, Faculty of Law, University of Niš, knez@prafak.ni.ac.rs
Katarina Momirović
teaching associate, Faculty of Law, University of Niš, katarina.m@prafak.ni.ac.rs

Abstract
European court of human rights reiterates that the concept of private life extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral integrity. Person's reputation is a part of their personal identity and moral integrity, which are a matter of private life, even if the person is criticised in a public debate. Thus, the protection of person's privacy and person's reputation falls within the scope of private life, as protected by Art. 8 of the European Convention on Human Rights. The State infringed upon someones right to protection of private life by failing to ensure an effective deterrent against grave acts to his/her reputation. In order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life. There must also be a sufficient link between the applicant and the alleged attack on reputation. Author deals with European court of human rights case law regarding defamatory posts on internet, as an interference into the right from article 8 of the Convention.

Keywords: ECHR, ECtHR, right to private life, defamatory post

INTRODUCTION

As it is said, unlimited freedom represents its own negation. Therefore, freedom of expression, although extremely important for all democratic societies, cannot be absolute and it has constraints in certain situations, eg. in case of defamation, insult, of hate speech.

The life and legal regulations in today's era of computers and the Internet, have many specificities, especially regarding controversial content, the actors and lack of consequences. Analysis of defamatory posts on the Internet, in general, can only be seen as illustrative, and not definite, because it represents a specific area of unlimited freedom, in which often there are not enough possibilities to intervene in terms of eliminating unwanted content, and due to the fact that the state cannot control or supervise all posts on the Internet. The Internet is filled with statements behind which they are more or less recognizable actors, such as site owners, bloggers and similar. But, on the other hand, the characteristic of many online forums and social networks is anonymous content placement. This way, completely

unknown persons can, without real fear of consequences, express intolerance towards anyone and in a way they choose. Therefore, many writers of offensive content remain unpunished. Harmful content is often expressed in the way of defamatory posts, by which the right to private life of some individual is violated. The question is which statements would represent a violation of the private life, and how to strike a fair balance between this right and the right to freedom of expression, in the context of he European Convention for the Protection of Human Rights and Fundamental Freedoms (Further in text: ECHR).

Regarding this issue, site moderators play a very important role, because when harmful content appears on the Internet, only a quick reaction and removal can have a satisfactory effect. That is why the self-regulation is foreseen on many internet sites. The question is how fast and efficient it would be for the state authorities to be monitoring all this content.

The main issues that arise in this area are what goods can be protected through the right to private life, what is the importance of freedom of expression in a democratic society, and in the event of a conflict of these two rights, which one should have priority and whether there is a unique answer to that question.

RIGHT TO RESPECT FOR PRIVATE LIFE ACCORDING TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The right to private life in the ECHR is protected under Article 8 which reads as follows: *Everyone has the right to respect for his private and family life, his home and his correspondence*; *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others* (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

The main questions that the European Court of Human Rights in Strasbourg (Further in text: ECtHR) is concerned about, regarding the right to private life is which behavior, performed either by state authorities or other individuals, might lead to the violation of this right and what are the obligations of the State party for that matter. In this sense, a positive obligation for the state is foreseen, which means that the State must act actively to enable and protect the enjoyment of rights guaranteed by Article 8, whose application domain covers very different aspects of private life (The right to respect for private and family life under the European convention on human rights-article 8, 2006:2). When it comes the issue of the violation of the right to respect for private life by defamatory posts on the internet, judicial practice, however, has been developing gradually and slowly, following the development of a modern society. It is important to stress the effect the accumulated online world has, regarding the uncontrollable distribution of defamatory material, which is why this area demands specific rules on exercising and limiting certain rights, in order for some other rights to be protected. When messages of hate are circulated via social networking services, the actual amplification of those

messages, coupled with a perception that their dissemination is uncontrollable, can increase victims' distress levels (McGonagle, 2013: 32).

CASE LAW OF THE ECHR REGARDING THE RIGHT TO RESPECT FOR PRIVATE LIFE

There is no completed list of aspects of human life that can be protected by Article 8 of the ECHR. Thus, highlighting some relevant cases or attitudes of the court, is only an excerpt from the rich practice of the ECtHR.

Several questions are opening up as the most important regarding this topic. Firstly, the ECtHR found that the person's reputation is a part of their personal identity and moral integrity, which are a matter of private life, even if the person is criticised in a public debate (*Pfeifer v. Austria*, 2007). The same considerations apply to a person's honor (*A. v. Norway*, 2009). In the Court's case-law, reputation has only been deemed to be an independent right sporadically, and mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the applicant's private life (*Armonienė v. Lithuania*, 2008). In the case of *Karako v. Hungary,* the Court stated that for a reputational attack to fall within the scope of Art 8 the published information and comments on the Internet must be of such seriously offensive nature that their publication had a direct effect on the applicant's private life (*Karako v. Hungary*, 2009).

In order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (*Axel Springer AG v. Germany [GC]*, 2012). In *Egill Einarsson v. Iceland*, the applicant had been a subject of an offensive comment on Instagram, an online picture-sharing application, in which he had been called a "rapist" alongside a photograph. The Court held that this kind of comments, placed on public platforms, were capable of constituting interference with the applicant's private life in so far as it had attained a certain level of seriousness (*Egil Einarsson v. Iceland, 2017*). In the case of *Tamiz v. The United Kingdom* the Court had found that offensive comments about the applicant on Google Inc. platform had not attained a sufficient level of seriousness, since the context in which they were written is likely to be understood by readers as conjecture, which should not be taken seriously (*Tamiz v. The United Kingdom*, 2017).

In the context of the Internet, the ECtHR has emphasised that the test of the level of seriousness is important. Millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory (*Tamiz v. The United Kingdom*, 2017). In the case of *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (2016), the Court observed that the use of vulgar phrases in itself was not decisive. The expressions used in the posts and comments, belonging to a low register of style, were common in communication on many internet portals, so the impact that could be attributed to them was thus reduced. The Court stressed out, in case of *Bladet Tromso and Stensaas v. Norway* (1999), that some of statements, which included threats were serious, but were expressed in rather broad terms and could be

understood by readers as having been presented with a degree of exaggeration. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person's reputation (*Tamiz v. The United Kingdom*, 2017).

The case of *Popovski v. FYRM* (2013) is where the significance of Article 8 of the Convention is indirectly emphasized, when the court pointed out that violation of the individual's rights is done not only through defamatory posts, but by the effect that post had on other people and whether it led to violation of other human rights. In this case, the Court found a violation of the Art 8, because the applicant's private and family life was severely damaged by the published article in which the applicant was characterized as a thief. After that, people painted applicant's house with offensive graffiti, his wife had to close the office and the children had problems at school.

FREEDOM OF EXPRESSION ACCORDING TO EUROPEAN CONVENTION ON HUMAN RIGHTS

Freedom of expression is one of the essential foundations of a democratic society, and also one of the basic conditions for its progress. It is also considered as one of the cornerstones of democracy and a prerequisite for enjoying many other rights guaranteed by the Convention (Nastić, 2012:35-36). Freedom of expression contributes to discussions on issues of public importance and encourages the overall development of each individual. By contrast, arbitrary prohibition of the right to freedom of expression is characterized by totalitarian regimes where the political opposition is not tolerated and individual expression is considered dangerous for social unity (Freedom of expression under the European convention on human rights-article 10, 2006:2).

Freedom of expression in the European Convention on Human Rights is, in Article 10 prescribed as follows: *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises; The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Freedom of expression guaranteed by this article is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb, such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society. (*Handyside v. the United Kingdom*, 1976). The term "expression" had been widely construed by the Court to cover various different

forms of expression, including expression in words, in pictures, by video and through conduct intended to convey an idea or information (*Handyside v. the United Kingdom, 1976*). A positive obligation within this article implies that a State may be required in certain cases to take measures to protect individuals from unlawful interference by others (Freedom of expression under the European convention on human rights-article 10, 2006:9-10).

It is accessible for States parties of the Convention to harmonize their legal and judicial practice with the European standards. On the other hand, it must me mentioned that the U.S. Constitution, as well as practice of the US Supreme Court are providing a broad protection to freedom of speech, based on ideology that allowing individuals to freely express themselves leads to a transparent and representative government, more tolerant ideas and a more stable society. Although this right is not absolute, there are no explicit definitions nor criteria under the US law for limitations to free speech, unlike the European Convention on Human Rights (Ilic, Stanojevic, 2016:75).

THE CONFLICT BETWEEN THE RIGHT TO PRIVATE LIFE AND THE RIGHT TO FREEDOM OF EXPRESSION

Pursuant to positive obligations, under Article 8, national authorities have to strike a fair balance between the person's right to respect for her private life, enshrined in Art. 8 of ECHR, and the right of the opposing party to freedom of expression, protected by Art. 10 of the Convention (*MGN Limited v. the United Kingdom*, 2011), which merit, in principle, equal respect (*Hachette Filipacchi Associés (ICI PARIS) v. France*, 2009). Relevant criteria for balancing the right to respect for private life against the right to freedom of expression, established in the case of *Von Hannover v. Germany (no. 2),* are following*:* the contribution to a debate of general interest; how well-known is the person concerned and what is the subject of the report; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanctions imposed (*Von Hannover v. Germany-no. 2*, 2004).

While establishing the balance between the right to private life and the right to freedom of expression, the Court distinguishes between public persons and people unknown to general public (*Minelli v. Switzerland,* 2005). Public figures cannot claim protection of their right to respect for their private life in the same way as private individuals, unknown to the public (*Ernst August Von Hannover v. Germany*, 2015). In the case of *Egill Einarson v. Iceland* as to the subject matter, the Court concluded that the applicant was a well-known person in Iceland, who participated in public discussions about his professional activities and the complaints against him of sexual violence, thus had to accept being the subject of public discussions (*Egil Einarsson v. Iceland*, 2017). Also, the person's personality and past should be taken into account.

The existence of a general interest is assessed in each particular case (*Axel Springer AG v. Germany*, 2012). In case *Standard Verlags GmbH v. Austria-no. 2* (2009), the Court has underlined that a fundamental distinction needs to be made between reporting facts, even controversial ones, capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their functions, and

reporting details of the private life of an individual, who does not exercise official functions (*Standard Verlags GmbH v. Austria*-no. 2, 2009). In the case of *Campmany y Diez De Revenga v. Spain*, the Court held that the information published did not possess the essential characteristic that could make its dissemination legitimate, namely being of public interest, since it referred to an alleged love affair between two people whose publicly conveyed image, assuming it existed, had never extended to their love lives. In addition, it stressed that such reports in issue cannot be regarded as having contributed to a debate on a matter of general interest to society (*Campmany y Diez De Revenga v. Spain*, 2000). An essential criterion is the contribution made by photos, or articles in the press to a debate of general interest (*Standard Verlags GmbH v. Austria*, 2012). The Court considers, however, that in a democratic society even small and informal campaign groups must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment (*Appleby and Others v. the United Kingdom,* 2003).

The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion (*Von Hanover v. Germany*). Although in certain special circumstances the public's right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case, despite the person concerned being well known to the public, where the published photos and accompanying commentaries relate exclusively to details of the person's private life and have the sole aim of satisfying public curiosity in that respect (*Von Hanover v. Germany*).

In its case law, the Court pointed out that it specifically discusses the way in which the content was published, as well as the way in which a person has been shown (*Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H v. Austria, 2014*). In *Karhuvaara and Iltalehti v. Finland*, the Court concluded that, when publishing information about private life, it is important in which scope the content will be available to the public (*Kahuvaara and Italehti v. Finland*, 2004). The Court also observes if the person who published a statement acted in good faith and on an accurate factual basis and provide "reliable and precise" information (*Fresozz and Roire v. France [GC]*, 1999). In the case of *Fressoz and Roire v. France* the Court stated that subject of observation is also whether the publisher acted in good faith and on an accurate factual basis and provide "reliable and precise" information (*Fressoz and Roire v. France*, 1999). In order to assess the justification for an impugned statement, a distinction needs to be made between statements of fact and value judgments (*Egil Einarsson v. Iceland*, 2017). While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof (*Do Carmo de Portugal e Castro Câmara v. Portugal*, 2016). However, in *Brosa v. Germany* the Court pointed out, even where the statements amounts to a value judgment, there must exist a sufficient factual basis to support it (*Brosa v. Germany*, 2014). Also, for this matter, it is important to emphasize that, for the Court, style constitutes part of the communication as the form of expression and is as such

protected together with the content of the expression (*Magyar Tartalomszolgaltatok egyesulte and Index.Hu Zrt v. Hungary*, 2016).

In Court`s practice one of the criteria, when assessing the proportionality between the competing rights and interests, arising under Article 8 and Article 10, is the nature and severity of the sanctions imposed (*Jokitaipale and Others v. Finland*, 2010). In the case of *Flinkkila and others v. Finland* the Court has stated that severity of the sentence and the amounts of compensation must be regarded as substantial, given the maximum compensation afforded to victims of serious violence, at the time (*Flinkkila and others v. Finland*, 2010).

As the right to respect for private life requires not only that the State refrain from interfering with private life (*Mosley v. the United Kingdom*, 2011), it follows that Art 8 encompasses a positive obligation on the States to ensure the effective protection of the right to respect for reputation to those within their jurisdiction (*Pihl v. Sweden*, 2017). However, e-mail users, once connected to the Internet, could no longer enjoy effective protection of their private life and were exposed to the reception of undesirable messages or comments, which they could control by the use of computer „filters". The Court notes that, in view of the difficulties involved in policing modern societies, a positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (*K.U. v. Finland*, 2008).

One of the problems in dealing with crimes, such as incitement to hatred, are the lack of capacity and expertise in criminal justice systems for analyzing such, thus specialisation of law enforcement and prosecutors is needed (OSCE-ODIHR, 2010: 6). To ensure an effective protection of victims of defamatory posts or, even more important, hate speech, states should introduce, for example, Special Prosecution Departments for high-tech criminal with specialized trained law enforcement officials and prosecutors for criminal offenses, committed via internet, computers and high-technology, including hate speech on the Internet (Convention on Cyber Crime of the Council of Europe, 2001). It is clear that the European Court builds its practice by examining in detail every case which appears in practice, individually and with a lot of attention. Precisely this is one of the reasons why the practice of this court should serve the states as an example of good practice for dealing with similar cases. Also, the importance of the European Convention as a living instrument is very important, as its ability to adapt to the challenges of the modern era through its autonomous concepts and case law.

THE RESPONSIBILITY OF THE INTERMEDIARY FOR DEFAMATORY POSTS ON THE INTERNET – INTERNATIONAL STANDARDS

The ECHR is a part of the internal legal systems of State parties and is binding for domestic courts and all state authorities. It follows that all individuals in the country concerned draw rights and obligations from the Convention, so that in domestic proceedings they can directly referre to the text of the Convention that must be applied before domestic courts. The general scheme of the Convention is that the original and initial responsibility for the protection of the rights set forth in the Convention is the responsibility of the Contracting Parties. In that sense, it is

necessary to emphasize a number of key points that the European Court has taken on this current issue.

For example, in the case of MTE and Index.hu v. Hungary, the Court took the view that responsibility for statements by third parties on the Internet portal may have a direct or indirect effect on the weakening of freedom of expression on the Internet. This effect could be particularly damaging to non-commercial websites. According to the Court's practice, the punishment for statements made by another person should not be foreseen unless there are particularly strong reasons for that (*Jersild v. Denmark*, 1994:§35). When it comes to the criminal liability of blog owners, or similar platforms, should only be foreseen exceptionally. The Court also made a difference in liability and emphasized that the responsibility of blog owners must be more restrictive in relation to the responsibility of website owners (*Delfi AS v. Estonia*, 2015:§142-143).

As far as this issue is concerned, the author of the defamatory post should always be held responsible before the intermediary. Regarding that, the Court, in the Pihl v Sweden, recognized the IP address of the computer used as a means of finding the author (*Pihl v Sweden*).

If we move away from the practice of the European Court for a moment and and go a little further, we can find similar solutions seen in some general principles. Hence, the E-Trade Directive, for example, does not allow national authorities to impose a general obligation to monitor stored and exchanged content by internet providers (Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, 2000). Also, the United Nations Human Rights Committee stressed that human rights restrictions must be specific and detailed in order to be allowed, as well as the fact that general prohibitions on the work of sites, including blogs, are incompatible with freedom of speech (United Nations Human Rights Committee, 2011). According to the Joint Declaration, mediators (blog owners) must never be responsible for the content of other persons on the Internet, unless they participate in the release of content, or refuse to comply with an order adopted in accordance with the guarantees of the prescribed procedure of an independent, impartial, authoritative supervisory body (as the court) to remove it and they have the technical ability to do so (Joint declaration on freedom of expression and “fake news”, disinformation and propaganda, 2017).

CONCLUSION

There is a thin line between speech that can be seen as a legitimate freedom of expression, and one that can be observed as an illegitimate extreme speech (Dimovski, Kostic, Anđelković, 2018:472). That is why the Commission relied on Article 17 and expressed the view that freedom of expression can not be used in a way of destruction of the rights and freedoms guaranteed by the Convention (*Kühnen v. The Federal Republic of Germany*, no 1988).

If the practice of the European Court in this area would be perceived superficial, it might look like there is a slight inconsistency in the application of relevant factors and assessing their importance. However, the variance in practice, in the eyes of the superficial observer, actually shows the individuality of each legal

case appearing before the court. European convention is constantly improving through its case law. That's why, the criteria explained in this article, can serve as guiding principles to the courts when a delicate question arises - when it is necessary to limit freedom of speech in order to respect the right to private life.

Knowing the standards set by the European Court of Human Rights does not mean at all that the standards applicable in the practice of the US Supreme Court, which gives somewhat more liberal approach, are understandable to us. The US Supreme Court's point of view on freedom of speech is in many ways advanced, as compared to the European Court of Human Rights. It is strongly based on protection of free speech, even in the context which many may find debatable. Only the speech that incites violence can potentially be restricted (Ilic, Stanojevic, 2016:79).

When it comes to the liability of intermediators, there are several points of view, with a slight distinctions. For example, it is evident that the Directive on electronic commerce does not allow national authorities to impose a general obligation to monitor stored and exchanged content by internet providers (Directive on electronic commerce,§15). On the other hand, according to the Joint Declaration, mediators (blog owners) must never be responsible for the content of other people on the Internet, unless they participate in the release of the content, or refuse to obey the order to remove it (Joint declaration). In the judgment of *MTE and Index.hu v. Hungary*, the Court took the view that the responsibility for third party statements on the Internet portal may have a direct or indirect effect of weakening the freedom of expression on the Internet (*Magyar Tartalomszolgáltatók Egyesülete and Index.hu zrt v. Hungary judgment*, 2016:§86). This is to draw the direction in which the practice of the European Court is moving. Therefore, the finding of the court from the judgment Delfi AS v. Estonia is surprising.

In a separate opinion, in the case of *Delfi AS v. Estonia* it is stated that the system of responsibility of the intermediary, imposed by this judgment, requires the monitoring of postings from the moment of their publication in order to prevent the spread of hate speech. This obligation requires constant monitoring of the blog and thus is impossible in practice. As a result, bloggers will have a reason to stop publishing articles because of fear of responsibility, which in the worst case is a call for self-censorship (*Delfi AS v. Estonia*).

It cannot be denied that the E-Commerce Directive (2000/31) provides broader protection than Article 10 of the Convention (*Scarlet v. Sabam* ECLI:EU:C:2011:771, 2011:§35). Although the views from above mentioned sources are not identical, they essentially have the same goal of preserving freedom of speech while providing the most effective protection for individuals with regard to the right to private life. What the Council of Europe, the European Union, the United Nations and the European Organization for Security and Cooperation certainly agree is that intermediates should not be held liable for content originating from third parties, unless they did not quickly remove the illegal content or if they disavowed the approach when they became aware of the defamatory post (*Tamiz v. The United Kingdom*).

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WHY EU ENLARGEMENT IS ESSENTIAL IN THE BALKANS FROM SECURITY ASPECT

Gelencsér Ildikó Éva, PhD
Associate Professor, O. P. Jindal Global University School of International Affairs
Sonipat, Haryana, India
iegelencser@jgu.edu.in

Abstract

This study intends to point out that integrating the whole Balkan Peninsula within the European project is essential from security aspect. Deepening or enlarging the European Union has been a debate for decades. Unifying the continent, however, not only a project but a need as well. The Balkan Peninsula is the last region to wait for membership after the mass enlargement in 2004. Moreover, recent events in international relations showed cases when security was directly violated. Train camps of extreme groups, criminals mingled among asylum seekers, last but not least the activities of the human traffickers in the Mediterranean should not be treated on the level of irregular migration or border security only. This phenomenon should be investigated from two aspects: one from EU security issue and the security interest of the non-EU members in the Balkan Peninsula. The study seeks to point out that the two interests should be harmonised, and before the accession negotiations are completed, a common strategy should be worked out on behalf of the EU and its Member State on one side, and the candidate countries, on the other side.

Keywords

European Union, enlargement, security, conflict resolution, foreign fighters, Western Balkans

INTRODUCTION: EU ROLE IN THE OLD AND NEW INTERNATIONAL ORDER

The European Union is an ongoing project. It started as an economic co-operation among six Western European states and by now it has developed into one of the leaders of the world economy and politics. The Cold War provided the framework for the creation of a system that is unique in its nature. EU is neither a state nor a pure international organisation, it bears the characteristic features of both forms.

There are significant milestones in the political development of the European integration. The first treaties did not have any provisions regarding to foreign relations. The French initiated a proposal in the early 1960s to change the community into a "Union of European peoples", an inter-governmental cooperation, as part of Charles de Gaulle's new Europe Plan. Despite the fact that this initiative failed, the Member States agreed to collaborate within the framework of the European Political Cooperation (EPC) between 1970 and 1993. It did not become

an institution until 1987 when the Single European Act codified it. This first amendment since 1958 laid the foundation for the future cooperation in the field of foreign and security policy. With the Single European Act, the European Economic Communities began changing its profile and started off from being a single economic community to become a political unit.
With the end of the Cold War in 1989, the international context suddenly changed: a more complex system replaced the bi-polar world order. Ironically enough, the European Economic Communities launched the most fundamental changes to be discussed within the context of the Cold War. By the time a new treaty was drafted, signed and ratified, the international context had fundamentally changed. The structure the legal architects built up reflects the Cold War framework. The Maastricht Treaty established a three-pillar system collaboration in the hope that the Member States could coordinate their interests and act in a responsible way.
In the post-Cold War period, the EU is obliged to play a complex role in the international arena. It takes actions in guaranteeing sustainable peace – first and foremost on the European continent. EU has a major role to strengthen security both on European and on international level. Today security is not restricted only to traditional topics, it takes other, more complex forms too. EU addresses all the symptoms of global threats: fights the root causes of conflict, reacts to climate change and its consequences, combats against terrorism, challenges organised and trans-national crimes – just to mention a few of them. Peace and security are essential components to provide better future for people. In order to achieve it, EU pursue an integrated and coherent approach in which it combines economic and political instruments.
In this essay the arguments support three clear themes: enlargement, a completely new approach to revitalise the EU enlargement methods, and finally the protection of the common European values is in the interest of all of us. The enlargement of the European Union in the Balkans is the best way to guarantee peace and security not only in the region alone but also on the continent. The states out of the European integration in the region have been struggling with socio-economic issues, they have been balancing on ethnic-religious conflicts, and they have again become the stage of great powers' rivalries. Without a clear prospect to EU integration, effective assistance, the countries in the region can fall in the hand of extremist organisations, exporters or supporters of extremism. A totally new methodology is needed to be developed to successfully fight against the negative impact of extremism.
Another argument supporting the common values of the whole European structure is based on a stable and strengthened Balkans. The European Union has no interest in having a conflict zone along its southern borders, or in assisting to create dividing lines among great powers' interests south of its border. In the global world, not a single state can alone combat against contemporary threats, countries can be successful only within a stable regional integration.
The first part of the essay summarises the role of the European integration in the Balkans in order to show the first steps toward a better conflict management and resolution. The most important global threats (terrorism, organised crime, irregular

migration and external influences) are to be discussed in the next section. Finally, the responsibility of the European Union and the Member States is explained.

SECURITY ISSUES IN THE BALKANS

After Dayton, there were three major security and stability crises in the Balkans: 1997 Albania, 1999 Kosovo, and 2001 Macedonia. In 1997 Albania, which was not involved in the regional armed conflicts in connection with the collapsing Yugoslavia, drifted on the brink of falling apart. It suffered severe economic crisis and almost collapsed as a consequence of a pyramid scheme. Due to the lack of strategy, policy framework or institutional capacity, EU was unable to effectively respond to the crisis. It only provided economic assistance and prospect of association and potential membership, but these reliefs were proposed too late. The crisis management was led by Italy, mandated by UN Resolution 1101[72]. Eleven countries (eight EU members and three non-EU states) participated in the multinational mission. EU itself was simply unable to provide effective and sufficient emergency response.

In the case of Kosovo in 1998-99, the EU still lacked unity and faced many problems in implementing its decisions. It follows from the structure of the EU's pillar system introduced by the Maastricht Treaty, the inter-governmental co-operation barred the effective response in 1999. Even a relatively minor issue could have caused major co-ordination problems in policy positions. As early as 1998, the EU appointed a Special Envoy for Kosovo. His role was to cooperate with the EU Special Representative to the Federal Republic of Yugoslavia and to promote EU policies in relation to Kosovo. However, humanitarian intervention had to be made by NATO to halt humanitarian catastrophe and the escalation of the conflict in the region.

The first good job done by the EU was in the then FYROM[73] in 2001. Since the early days of the conflict, EU promoted a political solution through the assistance of the High Representative of the Common Foreign and Security Policy, Javier Solana, who closely cooperated with the NATO Secretary-General George Robertson. After OSCE diplomatic efforts did not provide the desired result, the EU and the US decided to get involved more directly and the conflicting parties achieved arrangement through the *Ohrid Framework Agreement*.

In the case of the Albanian and the Kosovo crisis, it was clear that the EU did not possess the necessary resources, organisational and institutional background or the coordinated political will from the Member States. Thus the gap between capability and expectations was too wide. On the other hand, EU used multi-lateral diplomacy as well as the combination of mediation and facilitation. In Macedonia regional organisations – OSCE, NATO and EU – collaborated in an effective way. Furthermore, the political will on behalf of the EU Member States was essential in the successful conflict resolution.

[72] http://unscr.com/en/resolutions/1101 Accessed 8 April, 2019.

[73] Since February 2019, the new official name of the country is North Macedonia by which a more than twenty-year long dispute between FYROM and Greece came to an end.

The new millennium has brought new challenges to the Balkans. New wars need new actors. The most significant ones are the independent, profit-motivated foreign fighters who are defined as 'mercenary' by the Geneva Convention (1949) Protocol I, article 47. The foreign fighter phenomenon first appeared in the Balkans during the war in Bosnia and Herzegovina (1992-95). Many of them came from Afghanistan and from the Arab states taking the Salafi ideology with themselves. From the 2010s, Bosnia and Herzegovina as well as Kosovo became the source of foreign fighters in Syria/Iraq and in Ukraine.

Terrorism – foreign fighters

Since 2001, terrorism is connected to Islam extremism. Locally, its threat stems mainly from the 1992-1995 wars when radical Islam entered in the Balkans through various routes. Al Qaeda members or sympathisers came as foreign fighters to Bosnia and Herzegovina in order to combat on the side of their Muslim brothers. Many of these fighters had been radicalised in the Soviet-Afghan war between 1979 and 1989, others belonged to different terrorist groups e.g. Armed Islamic Group, Hezbollah, Hamas, or Jamaat al-Islamiyya.[74] Others arrived from different Arab countries (Egypt, Saudi Arabia, Algeria, Sudan, and Syria) or Iran, Turkey and Pakistan bringing the Salafi doctrines into the Balkans.

Islam came with the Ottoman invasion of the Balkan Peninsula as early as the 14th century. The Ottoman sultans were among the first who adopted the relatively more flexible line, the Hanafi School of the Sunni Islam, which later took roots in the region. This version of Islam is flexible to accommodate new ideas and to fit into the modern times. The Salafi School, on the other hand, is an ultra-conservative reform movement also within Sunni Islam. Salafi refuses the modernisation of the religion and strongly support Sharia Law. The movement is organised along three factions: the purists refuse to participate in politics, the activist get involved in politics and the third group, are the jihadists.

The Muslim countries were very supportive of Bosnia during the war in 1992-95. They provided financial assistance and sent fighters to the Balkans where they were quickly integrated into the Bosnian military structures. Local organisations served as covers for Al Qaeda and other Islamic organisations supporting jihad. Bosnian passport were issued for members of terrorists organisations who came to fight in the Balkans. After the war, the political elites in Bosnia gave assistance to the foreign fighters to settle in the country. Many of them found employment in armed forces such as the police and the army, other went to live in remote villages[75], married local women, spread Salafism and maintained training camps. Al Qaeda had at least two training bases in Bosnia. After Dayton, the mujahedeen activities were turned down, however, "four of seven terrorists responsible for 9/11 attacks

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[74] Gibas-Krzak, Danuta. *Terrorism in the Balkans: Genesis – types – prognoses*. **International Security Review 19/18** p318. http://webcache.googleusercontent.com/search?q=cache:fNYEFY58SKsJ:www.abw.gov.pl/download/1/2557/PBW19-Gibas-Krzak-angielskawersja.pdf+&cd=1&hl=hu&ct=clnk&gl=in&client=firefox-b-d Accessed 17 March 2019.

[75] There are three major centres – Ovše, Gornje Maoče and Donja Bočinja – which used to be pure Serbian villages but during the war locals were expelled and replaced by Islam extremists who operated training centres.

had been fighting in Bosnia and Herzegovina and had a citizenship of the country."[76]

After the peace agreement had been concluded in Dayton, Ohio, the Muslim states changed tactics in the Balkans. They set up humanitarian organisations in Bosnia and Kosovo. Under their umbrella, many missionaries and recruiters have come to the country with financial support which they used first to weaken the structure and religious authority of the local Islamic community then to fund families requiring them to follow the strict doctrines of Salafism in return. During the armed conflicts, many *djamis* were destroyed both in Bosnia and Kosovo. Saudi Arabia, the Gulf States and Turkey generously financed the restoration of not only the mosques but also other religious and cultural buildings. They were perceived by the local population as aid, however, the assistance helped affirm Saudi (Sunni) leadership against that of Iran (Shia) to drag Bosnian Muslims under the control of Saudi-aligned beliefs and practices.

With the restoration projects, the demand to spread the ultra-conservative Islam in the region came with the money and this influence transformed the previously tolerant Muslim community into the source of radicalism. Kosovo sent the highest number of foreign fighters per capita in Europe to Syria and Iraq.[77] In Bosnia, those villages became the largest senders where the foreign fighters had settled and maintained training centres. Syria and Iraq became the fertile soil of religious extremism. Many people from the Western Balkan states went to fight alongside their Muslim brothers over there. They were recruited by individual recruiters or through mosques where Salafi ideas are spread. Bosnia, Kosovo, Macedonia and Albania were the major sources of fighters. The influx of fighters was between 2012 and 2016. Many of them died, others returned and a small minority decided to stay. Besides that, the Western Balkans have become the headquarters of the terrorist activities marked Western European targets. Many used porous borders along the Greek-Macedonian, Kosovo-Macedonian or Bosnian-Serbian borders to smuggle arms and travel in support of terrorist activities in Western Europe.[78]

After 9/11 concerns were raised that international terrorist groups had infiltrated into different Balkan states.[79] Al Qaeda commenced to recruit the new generation of terrorist from the South Slavs in the Balkans, set up new recruitment centres in Bosnia, Kosovo, Sandžak, and even in Croatia. Suicide bombers were trained in North Albania and Kosovo. The terrorist and cover organisation worked with organised crime networks and the terrorist activities were financed through drug trafficking.

However, it is not only Islam that motivates people to join armed conflicts outside their states from the Balkans. Foreign fighters from the Serb community sided with

[76] Ibid. p325.

[77] Gall, Carlotta (21 May, 2016), How Kosovo was Turned Into fertile Ground for ISIS. https://www.nytimes.com/2016/05/22/world/europe/how-the-saudis-turned-kosovo-into-fertile-ground-for-isis.html Accessed: 24 March 2019.

[78] Zakem, Vera, Rosenau, Bill, and Johnson, Danielle. *Shining a Light on the Western Balkans. Internal Vulnerabilities and Malign Influence from Russia, Terrorism, and Transnational Organised Crime*. C&A Analysis, May 2017. https://www.cna.org/cna_files/pdf/DOP-2017-U-015223-2Rev.pdf Accessed 4 April 2019.

[79] Bin Laden and the Balkans: The Politics of Anti-terrorism. ICG Balkan Report, No. 119. https://www.files.ethz.ch/isn/28037/119_balkans_anti-terrorism.pdf Accessed 3 April, 2019.

the Russians to fight in Eastern Ukraine. "They carried out combat and counter-intelligence mission for several pro-Russian paramilitary units including the notorious Wagner group of mercenaries."[80]

They served in several units tasked with securing military facilities, unloaded humanitarian aids or other tasks in defence. Those who had been fighting in Ukraine were later convicted but convictions failed to prevent fighters returning to the battlefields. Moreover, they get less strict punishment at home.

Organised crime and irregular migration

The link between terrorism and organised crime is inevitable. Terrorist organisations need money to be raised in order to finance their activities. The Balkans were an attractive and lucrative market for arms dealers during the Bosnian and the Kosovo wars of the 1990s. It has been functioning as a transit zone for suppliers of heroin, weapons and women. Corruption, weak civil society, lack of trust of the citizens in the state institutions and the culture of impunity all feed the illegal activities in the region. Money laundering is supposed to be an important connecting point between terrorism and organised crime. Drug, human trafficking and weapon smuggling are also important sources for financing terrorist activities.

The heroin smuggling through the Balkans is well-organized and Albanian groups from the Western Balkans seem to control most routes. There are allegations that the ports of Albania, Croatia, Montenegro, and Slovenia on the Adriatic are hubs for cocaine trafficking to Western Europe. Significant amounts of cannabis, home-grown mostly in Albania destined for Italy and Greece as well as Western Europe via the Western Balkans.

The human trafficking has become one of the main types of organized crime in the Balkans. The region is the source of trafficked victims, it is a transit region and the destination for trafficked women who are the victims of sex trafficking from Moldova, and Ukraine. They also do forced labour, including domestic servitude and forced begging. Migrants and asylum seekers transiting the region trying to reach Western Europe have become vulnerable to trafficking.[81] In 2015, large number of people from Albania and Kosovo took advantage of the chaos to move with the mixed migration flows.[82] Traffickers have learnt how to use new technology to do their business: they operate from hotspots around key transportation hubs, like railway stations, ports, airports of bus terminals. This enables them to attract clients, arrange logistics, and shift money. The human traffickers provide false documentation, act as guides, provide transport, accommodation and tickets, and bribe border guards.

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[80] Zivanović, Maja. *Donbass Brothers: How Serbian Fighters Were Deployed in Ukraine.* **BalkanInsight.** 13 December, 2018. https://balkaninsight.com/2018/12/13/donbass-brothers-how-serbian-fighters-were-deployed-in-ukraine-12-12-2018/ Accessed 27 March 2019.

[81] In 2015, 764,000 people illegally crossed the border into the Western Balkans – 16 times more than the previous year. Source: Crooked Kaleidoscope: Organised Crime in the Balkans. June 2017. Global Initiative against Organised Crime. p10. https://globalinitiative.net/wp-content/uploads/2017/07/OC_balkans.pdf Accessed 4 May 2019.

[82] Albania and Kosovo were the second and third highest source countries for people claiming asylum in Germany in 2015. Ibid. p12.

External influences
Bosnia-Herzegovina and Kosovo are highly fragile and instable states at the heart of the Balkans. Their stability or instability directly influence other states in the region namely North Macedonia, Albania, Montenegro and Serbia. These states were granted different legal status in relation with the European Union. Serbia and Montenegro are in their accession negotiations, Albania and North Macedonia are candidate countries while the ones that need the most assistance from the EU – Bosnia and Kosovo – are only potential candidates. Both Russia and Turkey take advantage of the tension between the states in the region applying well-proven techniques (related language, common faith, common history) and new ones (fake news spread through social media, false reports through propaganda channels). Also, there is another interested party, China that exploits the opportunities the EU misses.
Both Russia and Turkey have already invested in strategically important industries. It is energy in the case of Russia, in order to make the Balkan states dependent on Russian gas – the same strategy as with Europe. A weak and dependent Balkan serves the interest of Moscow that seeks to weaken the EU by any methods. Besides establishing economic dependence, Russia seeks to insert political control over the region too. The NATO enlargement with countries close to Russia is still a thorn in Putin's eyes and the Russian propaganda does everything possible to prevent the Balkan states to join the Western military alliance: a coup attempt in Montenegro in 2016, blocking the name disputes between FYROM and Greece just to mention a few. Nevertheless, it is only the question of time when Russia and Turkey will clash in the region.
The Turkish government, however, present itself as a main stabiliser in the Balkans saying that they create jobs in regions suffering from high unemployment, e.g. they invested in mines in Kosovo, do airline cooperation with Albania, concluded a new free trade agreement with Bosnia. Turkey argues that they make distinction between Muslim and non-Muslim states, they invest in all Balkan countries without discrimination in regards to ethnic and/or religious identities.[83] To prove this idea, the Turkish government agreed to fund a $3.5 billion highway connecting the capital cities of Bosnia and neighbouring Serbia.[84]
China also seeks a role for itself in the Balkans. Since 2011, Beijing has become an increasingly important international investor using the Western Balkan states as their springboard for free trade with the EU. China seeks to connect approximately 65 countries in order to improve regional cooperation and connectivity on a trans-continental scale within the framework of the *Belt and Road Initiative* (BRI) announced in 2013. Furthermore, Beijing initiated cooperation with the former communist states in Eastern Europe, eleven of which are already EU members and five Western Balkan states. Launched in 2012, this *16+1 Initiative* focuses on investments, transport, finance, science, education and culture. Additionally, the

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[83] Kalin, Ibrahim, *What does Turkey want in the Balkans*? https://www.dailysabah.com/columns/ibrahim-kalin/2018/06/02/what-does-turkey-want-in-the-balkans Accessed 3 April, 2019.
[84] Al Yafai, Faisal. *Turkey's growing influence in the Balkans has profound implications for the Middle East.* https://www.thenational.ae/opinion/comment/turkey-s-growing-influence-in-the-balkans-has-profound-implications-for-the-middle-east-1.737313 Accessed: 3 April 2019.

port of Piraeus in Greece acquired by the Chinese shipping company COSCO has become China's main access point to the Mediterranean. Moreover, China is in the process of finalising the *Land and Sea Express Route*, an important corridor spanning from Greece via the Western Balkans as far as to Central Europe. China's ambitious advance in investing in the Balkans challenges the region's relations to the European Union as China-backed projects undermine the reforms promoted by the EU.

WHAT DOES THE EU DO?

Jean-Claude Junker's declaration on the next possible enlargement in 2025 deteriorated the EU-Western Balkans relations. Brexit and the migration crisis of 2015 diverted the attention of the EU and the Member States from the Balkans. Germany took over the leadership in 2014 and initiated a framework to revitalise EU and Western Balkan relations and bring the EU membership for them into a reasonable proximity. The *Berlin Process*, however, has not brought a breakthrough. First and foremost, not all EU Member States are involved in the diplomatic initiative which makes the impression that the EU is not fully committed to the region. Secondly, the initiative is limited in time and in scope. The work is restricted between 2014 and 2018 and was organised around summits. Thirdly, the scope of the agenda concentrates on traditional topics (economic growths, regional cooperation, civil society, etc.) of the ill-functioning European approach and does not address real problems such as regional security, the inter-relation between terrorism and organised crime, the impact of the returnees from Syria, Iraq and Ukraine, the constitutional backlash in Bosnia and the unsettled status of Kosovo. Finally, the initiative does not encourage to reach an all-Balkan solution.

What the EU should do has not been formulated on behalf of the Member States. First of all, there is no initiative to bring each Member State within the scope of the EU-Balkan relations. It is clear that there are Member States that should have more interest and commitment toward the region. Slovenia, Croatia and Italy cooperate but Hungary, Romania and Greece keep themselves away from the process. There is no initiative to re-formulate the enlargement and put in it a new context within the security architecture of the EU.

CONCLUSION: TOWARDS PRACTICABILITY

First of all, the European Union does have responsibility on the whole continent – regardless the region or the countries are members or not. If it is the major provider of peace and stability, the European Union must be the major actor in the Balkans. The security of the EU citizens highly depends on the stability and security of the Balkans.

The European Union must re-consider its enlargement strategy. The Communication of 2018[85] on behalf of the European Commission repeats the same procedure that has already been proved not to be working at all. A completely new approach is needed which is better designed to meet the needs of the Western Balkan states. With the enlargement, the EU can reinforce the peace and stability in the region

The European Union must address the major threats of the region. The Western Balkans states not only struggles with the issues of globalisation but also the threats of terrorism, organised crime and the intrusion of certain powers. The states in the region are not able to establish a common strategy alone as level of willingness to cooperate is very low. The European Union must address this issue as well. Furthermore, EU should re-consider its Western Balkan approach and extend the concept over the whole region working out an all-Balkan strategy.

Additionally, the EU should make each Member State interested in the Balkan issue and mobilise the resources to design a new credible enlargement perspective for the region. The security threats, which the states in the region have to struggle with, must be addressed together on the basis of a developed common strategy. Neither Bosnia nor Kosovo alone is able to terminate the work of the terrorist training centres. Neither countries alone in the region can successfully fight against extremism or organised crime and terrorism.

Finally, EU and the Member States must accept the fact that the issues the (Western) Balkan states face is not only their internal problem, it is already a European concern. Common European values – human dignity and human rights, freedom, democracy, equality and the rule of law – must function on European level and on the whole continent. In order to successfully defend these values, the European Union and the Member States must cooperate with the Balkan states. Enlargement should not only be a territorial and market extension but also the establishment of a common platform.

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THE CONSTITUTIONAL JUDICIARY IN BOSNIA AND HERZEGOVINA SPECIFICATIONS AND CHALLENGES

Prof. Dr. Svetlana Veljanovska
Law Faculty Kicevo, UKLO Bitola
svetlana.veljanoska@uklo.edu.mk

Prof. Dr. Sasha Dukoski
Law Faculty Kicevo, UKLO Bitola
sasa.dukoski@uklo.edu.mk

Ass M-r Pakiza Tufekgi
Law Faculty Kicevo,UKLO Bitola
pakiza.tufekci@uklo.edu.mk

Abstract
In this paper we develop the constitutional judiciary in Bosnia and Herzegovina with its specifics. Namely, besides the Constitutional Court of Bosnia and Herzegovina, the entity Constitutional Court of the Federation of Bosnia and Herzegovina and the Republika Srpska Constitutional Court also operate in the country.
The reason why the constitutional judiciary in Bosnia and Herzegovina became the object of our interest is the fact that it is a specific situation because it has two entity and one state constitutional court. This type of organization is not typical of any of the countries that emerged from the former Yugoslavia. It is for these reasons that we will be subject to our interest in terms of their subject matter and eventual conflict of interests.

Keywords: Constitutional Court, Federation, Entity

INTRODUCTION

One of the things that citizens in the judiciary are interested in is which body in the judicial system is competent to protect their rights. The judicial system in Bosnia and Herzegovina has a series of specifics that will be elaborated in this paper, with special attention to the Constitutional Court in the country.
Namely, the network of courts in Bosnia and Herzegovina starts at the level of basic courts that are called Municipal Courts in the Federation of Bosnia and Herzegovina then the cantonal courts in Republika Srpska are called District Courts, which means that there are entity and state courts.
Each of these courts has its own jurisdiction. Which court will judge in a certain legal dispute depends on whether it has the right to act, that is, whether the parties

to a particular court can claim protection of their rights. In general, the jurisdictions of the courts are categorized according to the local and the actual competence.

Local jurisdiction refers to the territory. This means that the Municipal and Basic Courts are competent to prosecute accused persons for crimes committed in the territory of one or more municipalities that the certain court covers. They are also competent to judge all types of lawsuits by citizens who are inhabited in one territory and act in cases against citizens, enterprises, associations, or state authorities. In these courts, hearings are held for lawsuits, land books are being kept, the lawfulness of a strike, debt claims, divorce, misdemeanour procedures, interrogation of the culprits for most of the crimes, obstruction of the property right, right of working relationship, determines or challenges paternity and the obligation to support a child. The bankruptcy and liquidation of enterprises in the Federation of Bosnia and Herzegovina are also performed in these courts, while in Republika Srpska these cases are under the jurisdiction of the district commercial courts.

Because of this local competence, municipal and primary courts are in the first category of courts where citizens can seek protection of their rights. (Law on Courts of FBiH Chapter 2)

Of course, we have to emphasize that the local competence is not unlimited. If the plaintiff (citizen or legal entity) sues someone who does not live in the same territory, he / she is obliged to do so before the court that covers the territory where the defendant has his / her address (or work for a legal entity). This is in order to facilitate the position of the defendant, since it is generally considered that the court is more likely to be biased if it is tried in the plaintiff's place of residence.

However, there are exceptions. If it is tried because of the damage caused, the court has jurisdiction over the territory where the defendant lives, as well as the court where the damage occurred. It is for this reason that the plaintiff can choose which court to initiate the procedure or where he will file a lawsuit. If the subject of the dispute is real estate, the local competence without exception is with the court on whose territory the property is located.

The second category is the real competence, also regulated by the Law on Courts of FBiH. It depends on the jurisdiction of the court in terms of the type of the case under consideration. Basic and municipal courts are not competent for any committed criminal act. For example, for offenses for which a sentence of imprisonment of 10 years or more is imposed in the Federation of Bosnia and Herzegovina, the jurisdiction of the cantonal courts (Law on Courts of FBiH Article 28) and in the Republika Srpska District Courts (RS Law Courts Article 31).

When we are already in Republika Srpska, we can emphasize that there are two types of district courts: district courts and county economic courts (Articles 28 and 29 of the Criminal Code).

The procedure before the cantonal and district courts is conducted on appeal against decisions of a municipal or basic court. This means that anyone who is not satisfied with the decision of the municipal or primary court will appeal the verdict in the cantonal court of the Federation of Bosnia and Herzegovina or in the district court of Republika Srpska.

Municipal courts in the Federation of Bosnia and Herzegovina, i.e.the Basic Courts in Republika Srpska, are the first line of the legal protection of citizens in this country.
Cantonal and district are second instance courts which should enable the achievement of equality in the protection of citizens' rights.
Equalization of judicial practice is also ensured in the Supreme Courts in the Entities in Bosnia and Herzegovina: the Supreme Court of the Federation of Bosnia and Herzegovina and the Supreme Court of Republika Srpska.
They work exclusively on appeal to review the decisions or procedures of district or cantonal courts. This is the so-called three-stage judicial decision-making in Bosnia and Herzegovina.

THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA

The previous slightly broader introduction was needed to familiarize ourselves with the positioning of the judicial system of entities in Bosnia and Herzegovina from the point of view of the possibility of protecting citizens' rights before the court within the three-tiered judicial system.
However, our field of interest is the Constitutional Court i.e. the Constitutional Courts because there are three in the territory of Bosnia and Herzegovina. Two of them are entities and the third is state.
Historically, the proceedings before these courts could be managed only by presidents, prime ministers, parliamentary caucus groups, municipalities, cities, cantons and other public authorities and public figures.
The reason for this is the fact that the Constitutional Courts dealonly with the largest and most complex issues at the border between law and politics, by assessing the compatibility of adopted laws and other acts with entity constitutions, the relationship between federal units, the relationship between cities, Municipalities and entities, the existence of vital interests of constitutive people.
This is part of the work of the Constitutional Courts of Republika Srpska and the Federation of Bosnia and Herzegovina.
By contrast, the Constitutional Court of Bosnia and Herzegovina is the highest court in the country and its jurisdiction is other issues other than the compliance of the laws of BiH and the entities with its constitution. Among other things, this court also decides upon citizens' appeals in cases where they believe that they have violated the rights guaranteed by the Constitution of BiH by any court.
When we are in this procedureof appeal, we must emphasize that the BiH Constitution guarantees a number of rights that, in addition to the domestic legislation, are guaranteed by the international agreements accepted by the state and added as an annex to the BiH Constitution.
The decisions of the Constitutional Court that refer to the right to a fair trial deserve special attention. The practice suggests that the decisions of the Constitutional Court in this area are based on the decisions of the European Court of Human Rights, that is, the starting point is determined in the European Convention for the Protection of Human Rights as an international source ratified by BiH. According to international law protection, the European Court of Human Rights can only request

citizens of BiH only after all legal remedies provided for by domestic law are exhausted.
The BiH Constitutional Court is composed of nine judges, four of them are elected to the Federation of BiH Parliament and two by the National Assembly of Republika Srpska. The remaining three judges are appointed by the President of the European Court of Human Rights in consultation with members of the BiH presidency.
Their responsibilities are in the part of:
1.Assessment of the constitutionality of entity constitutions, laws and other acts;
2. Appeal jurisdiction;
3. Settlement of disputes between state bodies of BiH and entities;
4. Assessment of the constitutionality of entity decisions to establish special parallel relations with neighboring states.

AUTHENTIC CONSTITUTIONAL COURTS
Constitutional Court of the Federation of Bosnia and Herzegovina
Judges in the Constitutional Court of the Federation of BiH as an entity court are elected at a public competition announced by the Council of Judges and Public Prosecutors. Then the council ranks the registered candidates and the proposal for constitutional judges is submitted by the president of the Federation after it aligns its position with the vice-presidents of the Federation of BiH. Constitutional judges are appointed after they receive the majority of votes from the present Members of Parliament in the BiH Parliament.
The competences of the constitutional judges of the Federation of BiH include:
1. Settlement of disputes between different levels of government, institutions and between institutions of government;
2. Protection of constitutionality;
3. Protection of the rights of the local self-government;
4. Deciding on constitutional issues;
5. Deciding on a vital national interest at the level of the Federation;
6. Deciding on a vital national interest at the level of the cantons;
7. Deciding on a vital national interest for the City of Mostar;
8. Deciding on the removal of the President or the Vice-Presidents of the Federation;
9. Deciding on immunity;
10. Giving an opinion.

Constitutional Court of Republika Srpska
This court was established in 1992 and started operating in 1994. Its responsibilities are in the part of:
1. Deciding on the harmonization of laws and other general acts with the Constitution;
2. Deciding on the harmonization of the regulations and general acts in the Law;
3. Deciding on a conflict of jurisdiction between the legislative, executive and judicial authorities;

4. Deciding on a conflict of jurisdiction between the authorities of the Republic, the City and the Municipality;
5. Deciding on the compliance of programs, statutes and other general acts of political parties with the Constitution and Laws;
6. Deciding on the harmonization of the laws, other regulations and acts of the National Assembly with the provisions of the Constitution that refer to the protection of the vital interests of the constitutive peoples;
7. Deciding on the issue of immunity arising from the Law on granting immunity in Republika Srpska.

The Republika Srpska Constitutional Court may assess the constitutionality and legality of regulations and general acts that have ceased to be valid only if from the time of their termination to the initiation of the procedure, not more than one year elapsed (Article 115 paragraph 2 of the RSC).

3.3. Procedure before constitutional courts

A procedure for assessing constitutionality and legality before the Constitutional Courts can be initiated only by subjects that are authorized by the Constitution. As a rule in the Constitution, this is enabled for the highest state officials: the President of the state; the presidents of parliaments and governments, or the court of the highest general jurisdiction.

The procedure before the Constitutional Court takes place in two stages: Pre-trial and Phase of review and decision-making.

The Constitutional Court's decision applies to everyone in the country, it is final, binding and enforceable. Very often, the Constitutional Court is also called a negative legislator, because its decisions annul the entire laws or their individual chapters and members.

FINAL CONSIDERATIONS AND RECOMMENDATIONS

The position of the judicial system in Bosnia and Herzegovina is specific from the aspect of the various solutions that the entity communities constitute the state. Regarding the functioning of the Constitutional Court in the state from the foregoing, it is clearly understood that in addition to the competences that overlap with the constitutional courts in the Federation of Bosnia and Herzegovina and Republika Srpska, they still have some differences. It is in that part that the jurisdiction of the Constitutional Court of Bosnia and Herzegovina is in place.

We must also highlight the following data:

The Constitutional Court of Bosnia and Herzegovina performs its competencies in accordance with the BiH Constitution, the Rulebook of the Constitutional Court of BiH and the European Convention on Human Rights and Fundamental Freedoms.

The Constitutional Court of the Federation of Bosnia and Herzegovina derives its competencies from the Constitution of the Federation of Bosnia and Herzegovina, the Law on Action before the Constitutional Court of the Federation of Bosnia and Herzegovina and the Rules of Procedure of the Constitutional Court of the Federation of Bosnia and Herzegovina.

The Republika Srpska Constitutional Court performs its competencies on the basis of the Constitution of the Republika Srpska, the Law on the Constitutional Court of

Republika Srpska and the Rules of Procedure of the Constitutional Court of the Republika Srpska.
Considering the competences of the Constitutional Court of Bosnia and Herzegovina, the recommendation of the authors of this paper is instead of the Rulebook, its operation will be regulated by the Law on the Constitutional Court of Bosnia and Herzegovina to be adopted by the Parliamentary Assembly of BiH. This law would regulate the procedure before this court and at the same time determine the appellate jurisdiction in accordance with Article 6 of the Constitution of Bosnia and Herzegovina.
This Law should regulate the manner of election of domestic judges instead of judges of foreigners who are now part of the Constitutional Court of Bosnia and Herzegovina and are elected by the President of the European Court of Human Rights. Namely, the current judges - foreigners should have a mandate until the Law on the election of domestic judges is passed instead of those judges who in the first term elected the President of the European Court of Human Rights.
According to the Constitution of Bosnia and Herzegovina, all institutions in the judiciary are regulated exclusively within the Entity communities (Republika Srpska and the Federation of Bosnia and Herzegovina). Only the Constitutional Court of Bosnia and Herzegovina has jurisdiction over the two entities in the state.
The Constitutional Court of Bosnia and Herzegovina, besides the competencies in the area of resolving conflict of competences, assessment of the constitutionality of the laws and their compatibility with the European Convention on Human Rights and Fundamental Freedoms and its protocols, also has appellate jurisdiction over issues of the Constitution that will emerge upon the basis of the judgment of any court in BiH (Article 6/3 item b of the BiH Constitution).
In such a case, the Constitutional Court can act as a court with full jurisdiction, that is, it can decide on a meritorious basis, abolish the verdict or return the case to the court that made that verdict for a retrial. The court whose judgment has been revoked must bring another in an urgent procedure, whereby the legal understanding of the BiH Constitutional Court for the violation of the rights guaranteed to him by the BiH Constitution of the appellant is compulsory.
Appeals (individuals) who believe that by a judgment or other decision of any court violated some right, they have the possibility of lodging an appeal after all legal remedies within the courts of the entity community have been exhausted. The BiH Constitutional Court is always the highest court instance in relation to regular courts.
This confirms its role in the sense of a special institutional guarantor for the protection of human rights and fundamental freedoms as enshrined in the BiH Constitution and undertaken by the European Convention on Human Rights and its protocols. In the BiH Constitution in Article 2.2. these rights are directly applicable in BiH, and "have priority over all other laws".

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ARTIFICIAL INTELLIGENCE AND HUMAN RIGHTS. EVOLUTION OR INVOLUTION?

PhD. Laura Stanila
Senior Lecturer
West University Timisoara, Romania
Faculty of Law
laura.stanila@e-uvt.ro

Abstract
The extended use of Artificial intelligence (AI) in all areas of social life activities and relations could have a dramatic impact on a long-term view. AI tends to be used not only in the areas of applied science – medicine, technology, engineering, design etc. – but also in areas where its benefits are more difficult to understand – law, procedures, human rights. The U.S. criminal justice system is increasingly using AI in order to ease the managing of the parole sentencing system and also in other areas. But studies have demonstrated that despite the careful programming phase, there are important risk of errors and cumulative disadvantages. The growing use of AI in the criminal justice system risks interfering with rights to be free from interferences with personal liberty. In this study we aim to present these risks and try to find solutions in order to maintain the increased use of AI in the justice system while safeguarding the human rights.

Key words: artificial intelligence, human rights, the right to non-discrimination, criminal justice system, labelling risk

INTRODUCTORY ASPECTS ON AI AS KEY FACTOR FOR JUDICIAL SYSTEM

Artificial Intelligence (AI) is one of the most fashionable doctrinal debates nowadays, tending to become the most important one, since the accelerated development of AI systems and their widespread use in all dimensions of social life. Ordinary people and their everyday lives are dramatically influenced by AI as there is a constant demand for better and faster decisions and for objectivity. In the same time, the constant appeal to AI in common daily activities may lead to a weakening capacity of questioning, a changing way of working and approaching different tasks, etc.

It is worth to mention, from the beginning that the only responsibility for constructing, monitoring or misusing AI are us, humans. Every aspect of developing and operating AI may be logged, so the test of due diligence must be claimed.

”MISSBEHAVING” ALGORITHMS

As artificial agents borrow the leading role in decision-making process, more attention needs to be paid to the effects of flawed or misbehaving artificial agents. As non-human entities, their conduct cannot be judged in terms of moral standards. As noticed, moral judgment typically requires an element of choice, empathy, or agency in the actor. There can be no meaningful morality associated with artificial agents; their behavior is causally determined by human specification. The term *misbehaving algorithm* is only a metaphor for referring to artificial agents whose results lead to incorrect, inequitable, or dangerous consequences" (Obosa & Wessler 2017, 7-8).

It is not the purpose of this study to analyze all aspects involving AI in the field of criminal justice but, using AI as a criminal justice tool, rises the issue of bias concerns in the first place. Bias concerns were emphasized since 1996, in a discussion on the use of computer systems (algorithms) for tasks as diverse as scheduling, employment matching, flight routing, and automated legal aid for immigration. Scholars reported inequitable or biased behavior in these algorithms and proposed a systematic frame-work for thinking about such biases. Unlike in our dealings with biased individuals with whom a potential victim can negotiate, biased systems offer no equivalent means for appeal (Friedman & Nissenbaum 1996, 331).

The term *bias* refers to computer systems that provide discriminatory outputs, in other words systematically and unfairly discriminate against certain individuals or groups of individuals in favor of others, denying opportunities or goods or assigning an undesirable outcome to an individual or group of individuals on grounds that are unreasonable or inappropriate.

Biases may be categorized as follows (Friedman & Nissenbaum 1996, 333-336):

1. Preexisting Bias - Preexisting bias has its roots in social institutions, practices, and attitudes. When computer systems embody biases that exist independently, and usually prior to the creation of the system, then the system exemplifies preexisting bias. Preexisting bias can enter a system either through the explicit and conscious efforts of individuals (e.g., a client embeds personal racial biases into the specifications for loan approval software) or institutions, or implicitly and unconsciously, even in spite of the best of intentions (e.g., gender biases present in the larger society that lead to the development of educational software that overall appeals more to boys than girls).

2. Technical Bias - Technical bias arises from technical constraints or technical considerations. Sources of technical bias can be found in several aspects of the design process, including limitations of computer tools such as hardware and software; the process of ascribing social meaning to algorithms developed out of context; imperfections in pseudorandom number generation; and the attempt to make human constructs amenable to computers, when we quantify the qualitative, discretize the continuous, or formalize the non-formal (e.g. in a database for matching organ donors with potential transplant recipients certain individuals retrieved and displayed on initial screens are favored systematically for a match over individuals displayed on later screens; a scheduling algorithm that schedules airplanes for take-off relies on the alphabetic listing of the airlines to rank order flights ready within a given period of time; a legal expert system advises defendants on whether or not to plea bargain by assuming that law can be spelled out in an

unambiguous manner that is not subject to human and humane interpretations in context).
3. Emergent Bias - Emergent bias arises only in a context of use, sometime after a design is completed, as a result of changing societal knowledge, population, or cultural values (e.g., a medical expert system for AIDS patients has no mechanism for incorporating cutting-edge medical discoveries that affect how individuals with certain symptoms should be treated; educational software to teach mathematics concepts is embedded in a game situation that rewards individualistic and competitive strategies, but is used by students with a cultural background that largely eschews competition and instead promotes cooperative endeavors; educational software to teach mathematics concepts is embedded in a game situation that rewards individualistic and competitive strategies, but is used by students with a cultural background that largely eschews competition and instead promotes cooperative endeavors).
Based on the research results on biases, part of the doctrine has presented biased computer systems as instruments of injustice (Friedman & Nissenbaum 1996, 345).
Despite concerns expressed by the doctrine, specific AI tools are being increasingly used in the criminal justice system, as instruments to predict mainly recidivism, but also in other areas and stages of the criminal process.
The verification of the risk factors most predictive of adult offender recidivism and identification of the actuarial instruments best suited to that end have major implications for corrections policymakers, practitioners, and program evaluators (Gendreau, Little & Goggin 1996, 575). Nowadays, when the management of prisons must meet the standards of cost-effectiveness while dealing with the increase in incarceration rates, it has been pointed out that maximum security prisons be reserved for the highest risk offenders while the design of effective offender treatment programs is highly dependent on knowledge of the predictors of recidivism (Gendreau, Little & Goggin 1996). But still, the issue of misbehaving algorithms remains, the debate becoming even more fierce, as fundamental rights of the person could be in peril.

RISK ASSESSMENT AI TOOLS
Recently our society has witnessed an explosion in the use of algorithms in the public sphere especially in the United States, the US criminal justice system moving as well, from predictive policing to risk assessment in the corrections system (Kehl, Guo & Kessler 2017, 3).
Criminal doctrine identifies 19 risk assessment instruments in US criminal system (all of them being evaluated in 53 studies published between 1970 and 2012). The risk assessment instruments varied widely in the number, type, and content of their items, but generally were characterized by static risk factors to the exclusion of dynamic risk factors and protective factors. But neither of these risk assessment instruments emerged as producing the most accurate risk assessment in U.S (Desmarais, Johnson & Singh 2016, 216).
There are a lot of types of recidivism risk assessment instruments and they may be distinguished in terms of their approach, item type, and item content. Desmarais,

Johnson and Singh identified two broad categories related to approaches used by risk assessment instruments: actuarial and structured professional judgment.
a) Actuarial approach represents a mechanical model of risk assessment in which offenders are scored on a series of items that were most strongly associated with recidivism in the development samples. Then, total scores are cross-referenced with actuarial risk tables.
b) Structured professional judgment approach guides assessors to consider a set number of factors that are empirically and theoretically associated with the outcome of interest. Though individual items are scored, assessors ultimately make a categorical judgment of risk level (e.g., low, moderate, high) based on their professional judgment rather than using total scores (Desmarais, Johnson & Singh 2016, 207).
Risk assessment tools, measures and techniques are also classified within a developmental framework: first generation, second generation and third generation.
a) first-generation techniques are based on clinical intuition and professional judgment.
b) second-generation assessments are actuarial in nature. They are based on standardized, objective risk prediction instruments, such as the Salient Factor Score (SFS), that are based almost entirely on static criminal history items. These kinds of measures provide little direction for classification and treatment decisions because the fixed nature of the items does not allow for changes in the offender's behavior to be reflected on subsequent retesting.
c) third generation instruments are of two types:
c.1 – prediction is based on dynamic factors (e.g., Community Riskmeeds Management scale; Level of Service Inventory (LSI-R)), which assess a wide range of criminogenic needs.
c.2. - prediction is based on personality test scales in the antisocial personality/ sociopathy/psychopathy content area which are dynamic in nature but do contain static items. (e.g., the MMPI Pd scale, the Psychopathy Checklist - PCL-R); the Socialization scale – SOC - of the California Personality Inventory - CPI) (Gendreau, Little & Goggin 1996, 577-578).
In United States authorities prefer 6 (six) risk assessment AI tools using them to assess key risk factors in adult and youth correctional populations and to provide decision support for practitioners, risk for recidivism, in order to support various decision points in the criminal justice system (pretrial, community supervision, prison intake, etc.).
Here are the most used AI risk assessment tools shortly presented:

a) *Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)*

This AI tool was developed by Northpointe Institute for Public Management, Inc. in 1998. This statistically-based tool was designed to assess key risk and needs factors in adult and youth correctional populations and to provide decision support for practitioners charged with case planning and management. COMPAS can assess four types of risk - general recidivism, violent recidivism, non-compliance, and failure to appear - for use at a variety of decision points in the criminal justice system (Brennan, Dieterich & Ehret 2009, 22-23; Matacic 2018).

b) *Inventory of Offender Risk, Needs, and Strengths (IORNS)*

IORNS was created by Dr. Holly Miller in 2006 as an offender assessment of static risk, dynamic risk/need, and protective strength factors. The tool is complimented by several subscales for specific assessments in the areas of violent and sexual criminal behavior (Miller 2006, 772). IORNS has been described as demonstrating potential as a self-report measure of static risk, dynamic risk and treatment/management needs, and protective strengths. IORNS examination with several additional samples of offenders is warranted to further validate the measure. Additionally, studies that further examine the predictive power of the IORNS, especially to predict re-offense, are warranted in order to substantiate its use in the prediction of general, violent, and/or sexual recidivism (Miller 2006, 780).

c) *LSI-R (Level of Service Inventory-Revised) and LS/CMI (Level of Service/Case Management Inventory) LS/RNR (Level of Service/Risk, Need, Responsivity)*

LSI-R was first developed in 1995 by Don Andrews and James Bonta as a third-generation approach to offender risk assessment. As shown before, third generation tools assess static and dynamic risk and needs factors in the evaluation of an offender's risk for recidivism and assess whether the offender may be amenable to community intervention/treatment for the purpose of risk reduction. The LS/CMI is the fourth-generation revision of the LSI-R that assesses offender risk, needs, and responsivity (RNR) to inform case planning via a built-in case management system. The LS/RNR is similarly comprised of the updated risk, need, and responsivity scales, but offer these separately from the LS/CMI case management system for organizations already equipped with established case management systems of their own. A quite important number of studies confirm predictive validity of LS/CMI with recidivism and prison adjustment, no matter the type of the offender (i.e., adults, juveniles, natives, females) (Gendreau, Little & Goggin 1996, 590).

LSI-R is in use also in other countries such as Scotland, and in about 20 probation services in England, Wales and the Channel Islands. It is the product of about 20 years' development, and a considerable amount of research has been carried out on its psychometric properties and its capacity to predict reconviction and various other correctionally-relevant outcomes in North America (Raynor, Kynch, Roberts & Merrington 2000).

d) *ORAS (Ohio Risk Assessment System)*

ORAS was developed in 2006 by the University of Cincinnati Center for Criminal Justice Research at the request of Ohio Department of Rehabilitation & Correction. It is a system meant evaluate offender risk, needs, and responsivity to be use statewide (in US). ORAS was meant to be used at various decision points in the criminal justice system (i.e., pretrial, community supervision, prison intake, reentry) to facilitate communication and continuity across criminal justice agencies. Although the data collection period gathered information on over 1,800 offenders in Ohio, studies have shown it would be imprudent to assume that the findings are representative of all offenders in Ohio and, although the samples were gathered from specific populations, certain types of cases may be underrepresented in the population (e.g. sex offenders, Hispanic offenders, female offenders). The underrepresentation in the population has led to small numbers of these types of

offenders in the sample (Latessa, Smith, Lemke, Makarios & Lowenkamp 2009, 39).

e) OST (Offender Screening Tool)

OST was developed and implemented in 1998 by the Maricopa County Adult Probation Department and David Simourd, being validated for statewide (US) use in 2003 and fully implemented statewide in 2005 pursuant to Arizona Supreme Court Administrative Order 2005-12. It was also revalidated in Arizona in 2008. In 2009, the Arizona Judicial Council adopted the use of a statewide standard presentence report that incorporates the criminogenic risks identified in the OST (Ferguson 2002, 480-481). Still, studies have shown that obtaining quality information is the key factor for an accurate result of using this tool. Quality assessment information is essential if the assessment tool is going to be used to inform decisions.

e) STRONG (Static Risk and Offender Needs Guide)

In 2008, the Washington State Department of Corrections implemented there an automated offender assessment and case planning system with the research services of Washington State Institute for Public Policy and technical assistance from Assessments.com, following the adoption of Washington State's Offender Accountability Act in 1999 which identified the need to "reduce the risk of reoffending by offenders in the community." STRONG is an automated system including the Static Risk Assessment and an Offender Needs Assessment, which is used to identify offender needs and protective factors for use in case planning. It is a fourth-generation risk and needs assessment system and presents certain advantages:

- Increased predictive accuracy;
- Prediction of three types of high-risk offenders—drug, property, and violent;
- Increased objectivity;
- Decreased time to complete the assessment;
- Accurate recording of criminal history for use with other Department of Corrections reporting requirements.

The Risk Level Classifications include the following categories: high violent; high non-violent (drug/property); moderate; low (Drake & Barnoski 2009, 2).

Specific risk assessment tools were proposed to be used in Europe following terrorist attacks as a result of discussions which took place in Brussels on 9 and 10 July 2018 on Radicalization Awareness Network - RAN P&P meeting on risk assessment implementation. The risk assessment tools proposed, addressing only terrorism issues were: Radicalization Risk Assessment in Prisons (RRAP) tool set, VERA-2R and ERG 22+.

Issues referring to the use of AI risk assessment tools in judicial system

Accuracy

Accuracy is of the most debated issues in terms of using risk assessment instruments, especially in relation with sentencing. Some studies have confirmed that risk assessment instruments can predict who is at risk to recidivate with at least

some degree of accuracy (Kehl, Guo & Kessler 2017, 11). Others suggest that most risk assessment tools have poor to moderate accuracy in most applications, that is more than half of individuals judged by tools as high risk are incorrectly classified, meaning they will not recidivate (Douglas, Pugh, Singh, Savulescu & Fazel 2017,134-137).

Legality - Due process challenges

In US the issue of legality of using risk assessment tools was raised in the case of *State v. Loomis.* This case was one of the first major cases to address concerns about whether a judge's consideration of a software-generated risk assessment score during sentencing constitutes a violation of due process or overt discrimination (Palazzolo 2016).

The defendant in the case, Eric Loomis, was arrested for operating the vehicle during a drive-by shooting and pled guilty to lesser charges of fleeing the police and driving a stolen car. After he pled guilty, the court requested a presentence investigation report, which included among other information a risk score calculated using COMPAS risk assessment tool. COMPAS algorithm designated him as high risk for all three types of recidivism measured by the program: pre-trial recidivism, general recidivism, and violent recidivism. The score was determined, among other factors, by the fact that he was a registered sex offender. Loomis sentenced to six-year prison. Loomis challenged his sentence, arguing that the judge's use of the risk assessment score violated his right to due process for at least three reasons: (1) it violated his right to be sentenced based on accurate information because the proprietary nature of the COMPAS software prevented him from assessing the accuracy of the score; (2) it violated his right to an individualized sentence because it relied on information about the characteristics of a larger group to make an inference about his personal likelihood to commit future crimes; and (3) it improperly used "gendered assessments" in calculating the score. The court also addressed the information that should be included in any pre-sentence investigation report containing a COMPAS score. This "written advisement of its limitations" should explain that:

1.COMPAS is a proprietary tool, which has prevented the disclosure of specific information about the weights of the factors or how risk scores are calculated;

2. COMPAS scores are based on group data, and therefore identify groups with charac- teristics that make them high-risk offenders, not particular high-risk individuals;

3. Several studies have suggested the COMPAS algorithm may be biased in how it classifies minority offenders;

4. COMPAS compares defendants to a national sample, but has not completed a cross-vali- dation study for a Wisconsin population, and tools like this must be constantly monitored and updated for accuracy as populations change; and

5. COMPAS was not originally developed for use at sentencing.

The public opinion becomes more and more concerned about the fact that an algorithm could actually send people to prison. President of the college in upstate New York Shirley Ann Jackson, asked Chief Justice John G. Roberts Jr: "Can you foresee a day when smart machines, driven with artificial intelligences, will assist

with courtroom fact-finding or, more controversially even, judicial decision-making?" The chief justice answered: "It's a day that's here and it's putting a significant strain on how the judiciary goes about doing things" pointing that judges had work to do in an era of rapid change: "The impact of technology has been across the board and we haven't yet really absorbed how it's going to change the way we do business" (Liptak 2017).
The Loomis case, discussed above, challenged the use of COMPAS as a violation of the defendant's due process rights. But the Wisconsin Supreme Court held that Loomis's challenge did not clear the constitutional hurdles. Importantly, the case relies on two prior state court decisions: *State v. Samsa*[86], which considered the court's reliance on COMPAS scores provided in pre-sentence investigation reports (but did not address due process considerations), and *State v. Skaff*[87], a 1989 decision which held that the right to be sentenced based on accurate information includes the right to review and verify information contained in the pre-sentence investigation report. As a matter of fact, one of the most important arguments in the court's reasoning in the Loomis case was the fact that the COMPAS score cannot be the only thing the sentence is based on, or even the determinative factor, thereby arguably ensuring that the judge will consider other information about the particular case and assign an individual sentence based on the totality of the circumstances (Kehl, Guo & Kessler 2017, 22).

ECQUAL PROTECTION – DISCRIMINATION

Starr (2014) has proposed a thesis according to which using risk assessment scores in criminal sentencing represents *"an explicit embrace of otherwise-condemned discrimination, sanitized by scientific language."* Starr argues that these systems are unconstitutional, because the US Supreme Court has consistently held that otherwise-impermissible discrimination cannot be justified by statistical generalizations about groups, such as a particular race or gender - even if those generalizations are, on average, accurate (Starr 2014, 806).
Other studies have shown that humans are still no better than machines at eliminating bias, finding that people were just as likely as COMPAS to overstate re-arrest risks for black defendants and understate risks for white defendants - they incorrectly flagged black defendants as high risk 37.1% of the time (compared to 40.4%) and white defendants as low risk 40.3% of the time (compared to 47.9%) (Matacic, 2018). Matacic observes that could be troubling, given that similar algorithms are increasingly influencing not only court decisions, but also loan approvals, teacher evaluations, and even whether child abuse charges can be investigated by the state in US. "People get awed by mathematical sophistication, but it's mostly a distraction," says mathematician O'Neil noting that our algorithms are no better than us - or the data we feed them. *At the end of the day… all we can do is make it biased in a way we're comfortable with. There's nothing objective about putting people in prison.*

[86] *State v. Samsa* 2015 WI App 6.
[87] *State v. Skaff*, 447 N.W.2d 84, 85 (Wis. Ct. App. 1989).

Despite all the *pro*-s and *con*-s, one should always keep in mind that criminal justice system is premised on the idea that people have a right to be treated as individuals under the law, and not as communities or groups (Kehl, Guo & Kessler 2017, 24).

CONCLUSIONS AND PREDICTIVE ASSESSMENTS. WHAT IS TO BE DONE IN ORDER TO PREVENT INVOLUTION AND URGE EVOLUTION?

AI and systems relying on it should be operated having in mind a set of guiding principles for the AI systems development: transparency, accountability, fairness, explainability, traceability.

The *bias peril* may occur implicitly, accidentally or deliberately.

Implicit bias is absorbed automatically using machine learning on data from ordinary culture and can be overcome with design, architecture and careful programming of the algorithms,

Accidental bias is introduced through ignorance by insufficiently diverse or careful development teams and may be overcome by diversifying work force, testing, logging, improving the methods, techniques and tools.

Deliberate bias introduced intentionally as part of the development process (planning or implementation) of the AI system and it is the most difficult to overcome, by audits and specific regulation.

Although AI risk assessment tools are increasingly being used in the criminal justice system due to their undeniable advantages, one has to admit that the AI risk assessment tools field is a domain in its early stage of development, insufficiently regulated and still perfectible in its technical details. The only thing that is certain in this domain is that AI systems are created by humans, making humans responsible in the first place for errors and biased outputs. AI trained on human language replicates our implicit biases, studies showing that it can also aggravate and perpetuate those biases with the unwanted result of violation of human rights.

Thus, an initiative of a human rights and technology groups coalition called The Toronto Declaration raised the issue of machine learning standards, calling on both governments and tech companies to ensure that algorithms respect basic principles of equality and non-discrimination: *the rights to equality and non-discrimination are only two of the human rights that may be adversely affected through the use of machine learning systems: privacy, data protection, freedom of expression, participation in cultural life, equality before the law, and meaningful access to remedy are just some of the other rights that may be harmed with the misuse of this technology. Systems that make decisions and process data can also implicate economic, social, and cultural rights.*[88]

The Toronto Declaration focuses on the right to equality and non-discrimination, a critical principle that underpins, in the opinion of its initiators, all human rights.[89]

According to Toronto Declaration, States should be preoccupied, among other things, in[90]:

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[88] Preamble of *Toronto Declaration*.

[89] *Toronto Declaration*, Paragraph 12.

[90] *Toronto Declaration*, Paragraphs 31-32.

1. Identifying potentially adverse outcomes for human rights. Private-sector actors should assess risks an AI system may cause or contribute to human rights violations. In doing this, actors must: identify both direct and indirect harm as well as emotional, social, environmental, or other non- financial harm; consult with relevant stakeholders in an inclusive manner, particularly any affected groups, human rights organizations, and independent human rights and AI experts; if the system is intended for use by a government entity, both the public and private actors should conduct an assessment.
2. Taking effective action to prevent and mitigate the harms, as well as track the responses. After identifying human rights risks, private-sector actors must mitigate risks and track them over time.
3. Being transparent about efforts to identify, prevent, and mitigate the harms in AI systems. Transparency to all individuals and groups impacted as well as other relevant stakeholders is a key part of human rights due diligence and involves communication.

Also, the open, inter-disciplinary and multi-stakeholder debate during the Conference *Governing the Game Changer – Impacts of artificial intelligence development on human rights, democracy and the rule of law*[91] held in Helsinky, Finland, on 26-27 February 2019 closed up with a set of guiding directions for the way forward to ensure a safe AI development for the benefit of all among witch it is worth to mention[92]:

1. AI requires a coordinated effort of states and all stakeholder groups to share information and good practices, since it affects all aspects of human life globally and transversally.
2. AI should be developed in a human-centric manner to produce benefits for individuals and for societies and needs to be assessed in the matter of appropriateness of its application in a specific context and its benefits and risks.
3. AI requires public awareness of the potential risks and benefits. It also demands new competencies and skills to be developed;
4. AI requires effective and legitimate mechanisms to prevent human rights violations and discrimination, inequality and bias.

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THE MEANING OF ECONOMIC DIPLOMACY IN SMALL COUNTRIES-A SPECIAL REFERENCE TO THE REPUBLIC OF NORTH MACEDONIA

Ile Masalkovski, PhD
University St. Kliment Ohridski-Bitola, Faculty of Law-Kichevo
ile.masalkovski@gmail.com

Assosiate professor Bozidar Milenkovski, PhD
University St. Kliment Ohridski-Bitola,
Faculty of Information and Communication Technologies-Bitola
bozidar.milenkovski@fikt.edu.mk

Abstract
The increased complexity of international economic relations has led to increased interest of the states for greater economic engagement in their diplomatic activities. At the same time, the role of diplomacy as a tool for promoting and protecting the economic interests of the states becomes very important. The developed economic diplomacy should contribute to increasing exports, attracting investments, promoting bilateral economic relations with other countries and establishing quality economic cooperation with international organizations.In this context, the concept of economic diplomacy is of great importance for small countries like the Republic of Macedonia, which are trying to accelerate economic development and economic integration.

Key words: economic diplomacy, economic relations, globalization, foreign direct investment.

INTRODUCTION

As a result of the processes of globalization and trade liberalization, the competition in the domestic and foreign markets has increased. The process of globalization greatly complicates relations between countries that increasingly depend on each other economically, and are linked by economic, political, social and other interests. This, brings new challenges to the countries about outlining strategies for foreign policy and diplomatic activities. In conditions of continuous increase in the free flow of people, goods, capital and services, the biggest priority of diplomacy is the economic prosperity of its own country. The economy has never played such a big role and has never had such importence in foreign policy and diplomacy as it has today. Foreign policy can not be separated from market realities. Countries that do not have built a concept of economic diplomacy, can not have a proactive role in relations with other countries. Even though it is burdened with numerous difficulties, this concept has a real potential to grow into a strong mechanism for development of the domestic economy.

This is especially evident in the small countries that are highly dependent on the economic exchange with other countries, such as the Republic of Macedonia which aspires to engage in large multilateral economic, political and security integrations. Small and open economies, such as the economy in our country, are demanding greater involvement in the globalized economy, fitting into the world market and finding their own specialized areas in which they will achieve comparative advantages. That is why the role of economic diplomacy is very important.

THE CONCEPT OF ECONOMIC DIPLOMACY

The concept of economic diplomacy brings together two different theoretical concepts: diplomacy and economics, both of which, as understood in the past, constitute complementary means of foreign policy (Bayne Nicholas, Woolcock Stephen, 2011). The modern system of international economic relations imposes the need for intensive economic and diplomatic activities aimed at the realization and protection of economic priorities and interests.The classical diplomacy as a way of acquiring international-legal political sovereignty is no longer sufficient.Today, a new combination of classical political diplomacy and economy that develops good economic relations is needed. David Baldwin called the combination of foreign policy and international trade-economic statecraft, meaning "all the economic means by which foreign policy makers try to influence international subjects" (Baldwin A. David, 1985, p. 40). According to Harold Lasswell, economic statecraft is one of the techniques of statecraft that uses economic instruments (Lasswell D. Harold, 1945, p. 9). It is needed diplomacy which transforms political advantages into economic gains. In the conditions when creating a concept of economic diplomacy is the best way that leads to successful foreign policy, it is necessary to constantly seek quality foreign investors and new markets for domestic products, as this ensures economic development of the countries and reduction of unemployment. Economic diplomacy means diplomatic activities aimed at developing and protecting the economic interests of the country. Diplomacy that uses economic resources, either as awards or sanctions, in achieving a specific foreign policy goal is sometimes referred to as the economic skill of the state (Beeridge G.R., James Alan, 2003). It, in a wider sense, refers to all entities of a society that participate in strengthening the economic competitiveness of a country by diplomatic methods. In the narrow sense, economic diplomacy refers to the exclusive activities of the Ministry of Foreign Affairs in defending the economic interests of its country.The country can count on fast and sustainable economic development only if in the realization of this goal it uses economic diplomacy as a strategic tool. To achieve that, the concept of economic diplomacy should be strategically conceived, well coordinated in practice and coherent. There are several areas in the economy in which the diplomacy is of great importance. Those areas are (Mavlanov R. Ibrahim, 2008):

-internationalization of the process and increasing the independence of the world economic system that is moving towards global and regional integration,

-striving for the economic systems of the states and the companies to act according to the principles of the market economy and the free flow of people and capital,

-the process of globalization set on new qualitative and quantitative bases,

- use of new management methods that work according to the energy efficiency lawsand the modern operation of information technologies,
-development and application of innovations to achieve competitive advantages.
These are the areas in which economic diplomacy is expected to show the highest level of efficiency and effectiveness, i.e. to contribute to the realization of the most important economic goals of one country. Professor Evan Potter from the University of Otawa, defines five basic activities of economic diplomacy: (1) promotion of exports, (2) fostering foreign direct investment, (3) cooperation in science and technology (including research and development) and the acquisition of benefits from the transfer of technologies, (4) promotion of tourism, and (5) advocacy of the interests of the national business community (Potter Evan, 2004, p. 55-60). Furthermore, this concept should have political support, which primarily involves creating a favorable business climate within the country. Attractive sectors and activities that would be recognized and would motivate foreign investors to invest should be identified. Economic diplomats should work daily to monitor and discover potential business opportunities, as well as gather public and confidential economic information, analyze them and submit them to the competent state authorities. The concept of economic diplomacy abroad is primarily based on the work of diplomatic missions and consular offices, honorary consuls, as well as specialized agencies for export promotion and attraction of foreign investments.
In our case, economic advisers should be set up in the most important embassies, whose work will be exclusively related to economic diplomacy. They should have a good insight into the economic situation in the receiving countries, built business contacts, know the legal norms that relate to business operations in the receiving country and the focus of their interest should be information on economic sectors of interest for exports.In this context, special attention should be paid to the development of bilateral relations with the countries inhabited by a number of Macedonian diaspora.This can be done in the form of a network of business clubs that would be places where business people would gather and socialize, places of business contacts, exchange of information and signing of contracts.

THE CHALLENGES OF ECONOMIC DIPLOMACY IN SMALL STATES

There is no precise definition in the professional literature, nor is unanimity about which country is small. But there are at least two approaches that define this notion - quantitative, based on objective criteria (population size, size of territory, GDP, military capacity, etc.) and qualitative, which focuses on the psychological dimension (entrepreneurial abilities, the goals and priorities of state leaders, the competence of the administration, etc.). Hence, it seems that the best definition of the term small country would be obtained if both approaches combine (Elman Miriam, 1995). The term "micro" countries cover those countries whose population does not exceed 1.5 million inhabitants (Ali Naseer Mohamed, 2002, p. 1).
Small countries have limited human and financial resources, and their impact in the world is much lower compared to large countries. They are usually open and as such are highly dependent on the external economic environment. As a consequence, small countries, under the influence of external factors, must build resilience to the shocks coming from the international environment. This can be

achieved by strengthening the capacities of adaptation and absorption of the shock of the environment. Small countries use economic diplomacy to alleviate the protectionist and interventionist policies of the other countries. The main logic is to establish a friendly environment for the internationalization of the work of the companies and the exchange of goods and services. In classical forms of behavior of small countries in international relations, the following points out: (1) low involvement in world politics and limitation of action in the close geographical environment, (2) a relatively narrow circle of international themes that matter to them, (3) the use of diplomatic and economic instruments instead of military, (4) insisting on "moral aspects" in international relations such as international law, international principles, etc., (5) focus on multilateral cooperation and multilateral organizations, (6) neutral oppinion, (7) reliance on the great forces for protection and resources, (8) a focus on cooperation in order to avoid conflicts, and (9) rational spending on energy and resources to ensure the physical and political security of the countries (Hey Jeanne, 2003, p. 5). The small countries, aware of their “weakness”, are striving to increase their significance to the international community through an active “virtual expansion” approach. That means they reduce the power of the big players by using psychological tactics: human resources, intellectual and propagandistic skills (Chong Alan, 2007). Although small countries have certain advantages in the context of their integration into global economic flows, their size may be a disadvantage. For example, if a company operates on a small market, it can be viewed as a large one. Therefore, when entering the global market, companies must be well-prepared to protect themselves from major international players. The small market may also imply lack of resources, especially human and financial. Because of that, it is very important to achieve efficient resource management. This is particularly emphasized in economic diplomacy. Engaged personnel must be well-trained, flexible, ready to adapt to changes in the environment and active in the process of seeking new business opportunities. The key to the success of economic diplomacy is a system that does not produce post mortem analysis, which suggests why the outcome was negative, but the pre-mortem, which ensures a bad outcome does not happen at all or at least tries to mitigate the shocks and the damage (Penev Slavica, Udovič Boštjan, 2014, p. 271-287). It is also necessary to understand the cultural differences. In a multicultural environment, people with knowledge of certain skills are needed, such as: managing cultural diversity and change, functioning in flexible organizational structures and teams, skills related to international negotiation, innovation, skills related to the knowledge of international marketing etc. In addition, the large number of participants complicates the reliability of international operations. The Internet and the information society generate certain weaknesses such as: unauthorized access, cyber conflicts, destruction of databases etc. At the same time, social networks become very important. All this requires new knowledge and skills for both diplomats and business people. It is obvious that there is a convergence of skills in both professions. For diplomats, this means having the skills of the business people, while business people need the skills of the diplomats. However, the view that economic diplomats must learn and adopt skills of business people is dominant, rather than vice versa. Diplomats abroad and business people from small countries

and companies must have vast knowledge and skills to be able to handle the challenges of the environment that is changing (Ruëll Huub, Zuidema Lennart, 2012). They must negotiate in the host country, decide, settle conflicts, negotiate with the unions, communicate with the public in order to respond to legal, financial, trade and development issues, strengthen relationships with employees, resolve disputes, etc. Another, very important challenge in the short term, is the selection of personnel for the work abroad. The first mistake is reliance exclusively on professional criteria and experience. Often, those who have been very successful in their countries are failing abroad. This happens not only because of the inability to adapt to the new environment, but also because individuals can become successful in their countries because of the specific "contacts" that they do not have abroad.The second mistake is insufficient willingness to work abroad.

POTENTIAL OPERATIONAL ACTIVITIES OF ECONOMIC DIPLOMACY IN THE REPUBLIC OF NORTH MACEDONIA

The activities of economic diplomacy should take place in the home country, in international organizations and in specific countries. The goal of these activities should be attracting investments, organizing meetings at international level, seminars, business forums and other business conferences. Economic diplomacy should focus on increasing and improving the export of Macedonian enterprises. On the other hand, it should be borne in mind that capital in the Republic of Macedonia goes on three bases, and that economic diplomacy should analyze it. These three bases are: remittances from abroad, foreign direct investment (FDI) and foreign loans.

1) The Republic of Macedonia, as well as the entire Western Balkans, exports work force. These people, through remittances sent home, finance a substantial part of the country's trade deficit. Unfortunately, although they may be several times larger than FDI, remittances generally finance consumption rather than investments. Most of the remittances are direct aid intended for the consumption in the daily lives of the families. The second part goes to the civil engineering and finances the construction of houses and apartments thatshould serve as residences to the migrants who send remittances when they retirein the future. However, if those fondsare invested in something, then they are invested in fast food kiosks, petrol stations and auto repair shops (Inotai Andreas, 2007, p. 198). This does not contribute much to the promotion of the country's export competitiveness.

2) Attracting foreign direct investment. In transition countries, there is usually a lack of austerity and consequently a lower level of investment that are necessary for ensuring long-term development. The lack of capital is provided from abroad. The best way to secure foreign capital is direct foreign investmentIn order to create new jobs, and thus to reduce the unemployment rate in the Republic of Macedonia, it is necessary to provide a stable inflow of foreign direct investments, especially in the production facilities and services. With the economic diplomacy, the country should be made recognizable as a suitable investment destination, direct contacts with potential foreign investors should be made and the diplomacy should help them find business partners in the country.

3) The third source from which the trade deficit of the Republic of Macedonia is financed are loans from abroad.[93] In search of possible attractive investments, the international financial capital did not “bypass” the Republic of Macedonia. For example, in the period 2005 to 2018, the Republic of Macedonia is in charge of six Eurobonds: (1) the first Eurobond was issued in 2005 in the amount of Euro 150 million with a maturity of 10 years and an interest rate of 4.625%; (2) the second Eurobond was issued in 2009 in the amount of 175 million Euros, with a maturity of 3.5 years and an interest rate of 9.875%; (3) the third Euro bond was issued in 2014 in the amount of 500 million Euros, with a maturity of 7 years and with an interest rate of 3,975%; (4) the fourth Eurobond was issued in 2015 in the amount of 270 million Euros, with a maturity of 5 years and with an interest rate of 4.875%; (5) the fifth Eurobond was issued in 2016 in the amount of Euro 450 million, with a maturity of 7 years and with an interest rate of 5,625%; (6) The sixth Eurobond was issued in 2018 in the amount of 500 million Euros with a maturity of 7 years and with an interest rate of 2.75%.The largest investors in the Macedonian Eurobonds are well known world investment banks, pension funds, insurance companies and equity funds.The inflows from Eurobonds are used to cover the budget deficit, i.e. for regular execution of all budget expenditures, as well as repayment of previous debts.

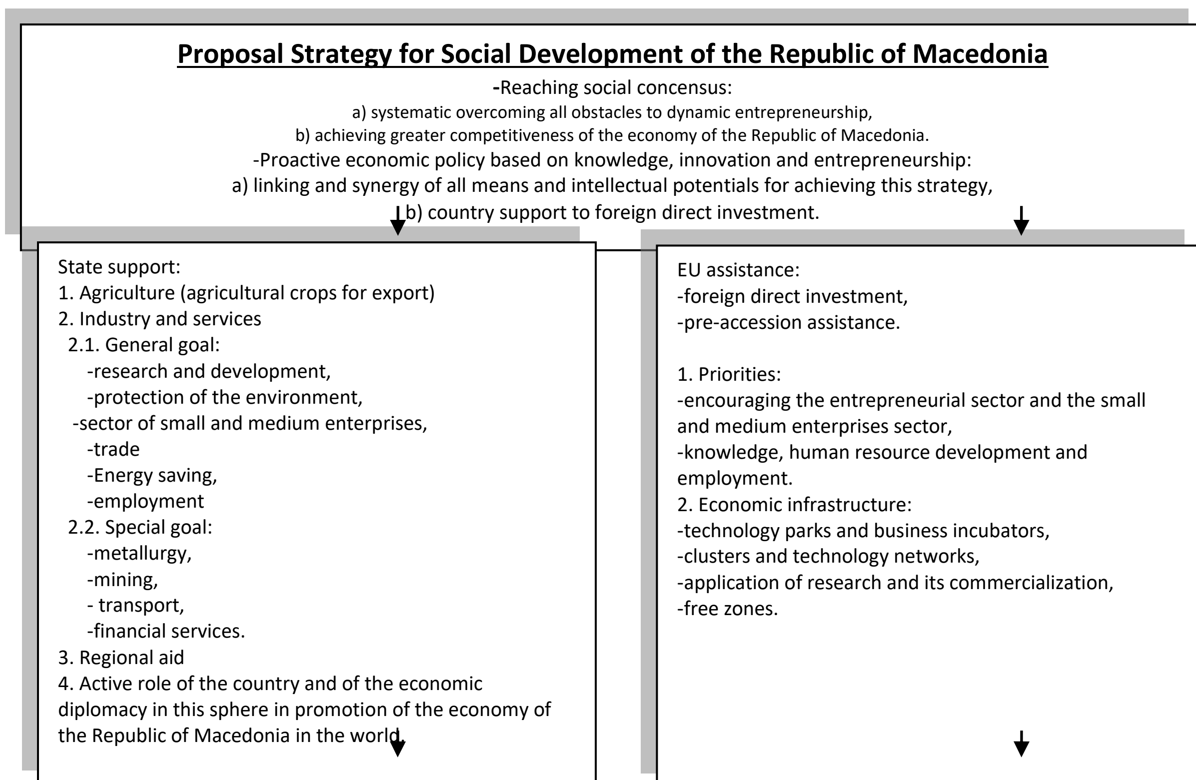
PROPOSAL STRATEGY FOR SOCIAL DEVELOPMENT OF THE REPUBLIC OF NORTH MACEDONIA WITH THE HELP OF ECONOMIC DIPLOMACY, IN THE FUNCTION OF ITS JOINING THE EU

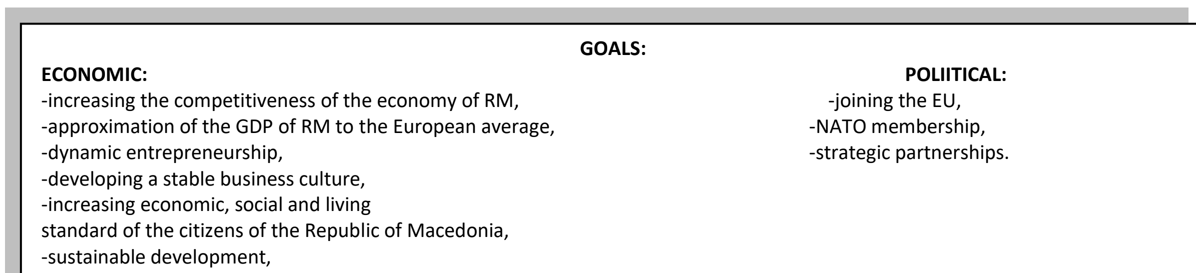
Economic diplomacy in the modern world of economic interdependence is relevant to all types of countries - small, large, developed, undeveloped, transitional, and it is of enouromous importance for any small or medium-sized nation trying to survive in times of globalization and competition (Naray Olivier, 2008, p. 2). Economic diplomacy in a stable economic environment is more relevant in: (a) transition countries and countries in which decision-makers in politics can exert a strong influence on economic decisions / activities, or (b) in small countries, which do not determine the prices, and therefore have little impact on the economic developments in the world and have to adapt quickly to the changes that occur. It can be concluded that economic diplomacy is a *conditio sine qua non* for small transition countries such as the Republic of Macedonia. Furthermore, the strategies of economic development today are related to the development of science and technology in the society. The integral development strategy also depends on the historical, cultural, socio-political and other characteristics of the countries in which it is necessary to implement certain economic reforms, but also from the social values, norms and rules, as well as from the powerful and influential groups in the countries. In addition, in defining a strategy with a particular goal, there must be a clear understanding of one's own abilities and existing resources. The integrated strategy must possess a certain quantum of decisions that include the following: goals, policy principles and plans for achieving goals, a way of organizing people

[93]The gross external debt of the Republic of North Macedonia in 2017 is 7.403 billion euros (according to the NBRM) or 73.6% of GDP.

and other resources to achieve the goals, as well as economic and non-economic contributions to the target group of the project. The basic political goals of the Republic of Macedonia as a state are: joining the EU, membership in NATO and strategic partnerships with developed countries. The Republic of Macedonia must face the need to regulate its economy and bring it to such a level that enables the achievement of the above-mentioned political goals. If the Republic of Macedonia wants to bring its gross domestic product (GDP) closer to the European average (or at least to the GDP of the new EU Member States), the Republic of Macedonia must take all necessary steps to create conditions for applying the contemporary paradigm of economic development with helping economic diplomacy and thus developing the following: dynamic entrepreneurship, stable business culture, economic, social and living standard of the citizens of the Republic of Macedonia, competitiveness, productivity of labor, etc. The role of the state, and therefore the economic diplomats, is not to be an investor and an entrepreneur, but to create an appropriate institutional framework and to create a more favorable infrastructure environment. The following picture presents possible solutions to the social development strategy of the Republic of Macedonia with the help of economic diplomacy, in the function of its joining the EU.

Picture 1. Proposal strategy for social development of the Republic of Macedonia with the help of economic diplomacy





Conclusions

In conditions of globalization and liberalization, many institutions and economic laws have changed their meaning and content. Nowadays, it requires new forms of organizing the diplomatic service, as well as a new diplomatic profile. The traditional pattern of organizing diplomacy does not match the challenges and needs of the 21st century. Therefore, economic diplomats that would promote business in foreign countries are needed. Although there is no single definition of economic diplomacy, its role and significance are inviolable. In this context, the biggest problem of the Republic of Macedonia, and at the same time the task of economic diplomacy is increasing the level of FDI and developing foreign trade. The Republic of Macedonia, as a country facing numerous challenges, should formulate a special strategy for economic relations with foreign countries that would contain the goals of economic diplomacy and the ways of their realization within the framework of the implementation of the set foreign policy. In doing so, it should be borne in mind that a good and efficient concept of economic diplomacy implies a multidisciplinary approach to the areas it covers. Also, this form of diplomacy will have to be systematically developed. This concept can certainly contribute to reducing poverty and increasing well-being, but only if it is supported by a proactive policy that will engage institutions at all levels. The basis of this concept is the joint appearance of the President of the Republic of Macedonia, the Government of the Republic of Macedonia, the chambers of commerce and entrepreneurs in the removal of political obstacles and non-commercial risks in the emergence of new markets or in the acquisition of new market shares in the existing markets. The business and diplomacy connection is necessarily needed in building political-economic relations and for affirmation of the international legitimacy of the Republic of Macedonia. It is remarkable that economic diplomacy can achieve the highest level of efficiency only when it acts in a stable political, security and business environment. Only with this diplomacy, the Republic of Macedonia will be able to preserve its identity, have political legitimacy and economic recognition in the globalized world.

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CREDIT CARD FRAUD WITH A COMPARATIVE LAW APPROACH

David Toth, PhD
Assistant Lecturer at Criminology and Penal Law Department,
University of Pecs, Hungary
toth.david@ajk.pte.hu

Abstract
The study analyses the possible prevention means against credit card fraud with a comparative law approach. These crimes can be committed in several ways. Offenders have convenient methods to misuse our cash substitute payment instruments.
In the first part of the study I analyse the regulation of the German Criminal Code. There are two specific credit card fraud related crimes the Counterfeiting of debit cards (Section 152.a) and credit cards (Section 152.b).
The second part of the study compares the Hungarian and the German regulation.
The third part of the study deals with EU legislation.
In the conclusions I give recommendations for the legislators

Key words: credit card fraud, prevention, cybercrime, comparative law, criminal law.

INTRODUCTION

The use of cash-substitute payment instruments, especially the use of credit cards is increasing in the everyday life of the people. Furthermore, the financial transactions in the internet is also rising. Newer type of payment instruments, virtual currencies appear (e.g. bitcoin, Litecoin etc) appear and their legal status is not fully clear. On one hand the development of information technology made it easier to undertake financial services, on the other hand offenders have more and more option to misuse these.
The crimes related to credit card fraud can be committed against clients and banks with a deception. These can be considered as fraudulent conduct type of crimes. Other forms of credit card fraud can be directed to obtain unlawfully the bank account user's data. These are the misuse type of crimes. Lastly credit fraud can be aimed to steal the money of the credit card users. In this study I use a comparative law approach analysing the Hungarian and German criminal law regulation regarding credit card fraud.
The aim of the study is to explore the forms of credit card frauds and to give suggestions to the lawmaker to improve the current regulation.

THE CRIMES RELATED TO CREDIT CARDS IN GERMANY

The systematic place of credit card crimes in the German criminal law

The German Criminal Code (in German: Strafgesetzbuch) regulates the credit card crimes in the Special Part 8th Chapter titled "Counterfeiting of money and official stamps". The following crimes can be considered as credit card related:

1. Counterfeiting of debit cards, etc, cheques, and promissory notes (Section 152a);
2. Counterfeiting of credit cards, etc., and blank eurocheque forms (Section 152b).

The German Criminal Code regulates credit card related crimes as a crime against property (in German: Straftat gegen das Vermögen). (Schmidt and Priebe 2012, 295)

Counterfeiting of debit cards, etc, cheques, and promissory notes (Section 152a)

The statutory provisions reads as follows:

"(1) Whosoever for the purpose of deception in legal commerce or to facilitate such deception

1. *counterfeits or alters domestic or foreign payment cards, cheques or promissory notes; or*
2. *procures for himself or another, offers for sale, gives to another or uses such counterfeit cards, cheques, or promissory notes*

shall be liable to imprisonment not exceeding five years or a fine.
(2) The attempt shall be punishable.
(3) If the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of offences under subsection (1) above the penalty shall be imprisonment from six months to ten years.
(4) Payment cards within the meaning of subsection (1) above are cards

1. *which are provided by a credit or financial services institution, and*
2. *which are specially protected against imitation through design or coding.*

(5) Section 149 to the extent that it refers to the counterfeiting of stamps and section 150(2) shall apply mutatis mutandis." (German Criminal Code in the version promulgated on 13 November 1998, Federal Law. Last amended by Article 14 of the Law of 18 December 2018, Federal Law Gazette. Section 152a)."

The legal object is a human value which is protected by criminal law measures. According the statutory provisions of the German Criminal Code regarding Section 152a the legal object of the crime is primarily the order of ownership and secondarily the protection of the flow of cash substitute payments instruments like debit cards, cheques and promissory notes. (Schmidt and Priebe 2012, 340)
The crime has three perpetration objects:

- debit cards,
- cheques,
- promissory notes.

In connection with debit cards it is necessary that they are issued by a financial institute and they shall be specially protected against counterfeiting by designing or coding. Financial institutions can be typically banks, electronic money institutes. (Fischer, 2013, 1075).

The statutory provisions contain six perpetration conducts. The first two is counterfeiting and altering. These conducts are established to create imitations or counterfeited copies of debit cards, cheques and promissory notes. Counterfeiting means that the perpetrator creates a new copy based on the original one. Altering means that the offender falsifies the original credit card which was issued by the financial institute. Counterfeiting is the more typical form of the crime in the practice.

The second group is consisted of the conducts which are related to the already existing counterfeit or falsified debit card. According to this the obtaining, the offering for sale, giving, the use of these is punishable.

The statutory provisions contain two qualified cases. If the crime is committed on a commercial bases or the in a crime a group. The definitions of these can not be found in the Criminal Code they are laid down by the criminal court practice. According to the courts a criminal group consists at least three persons, which is organized for longer period of time, the members have a concurrence of will to commit crimes in the future. Commercial type of perpetration means that the offender is organized to commit the crime repeatedly for a long time as a source of income or even ancillary income. It is not necessary here to realize a profit, it is enough if he or she pursues an income (Wessels, and Hettinger 2014, 290-293).

The German Criminal Code does not contain a special perpetrator the subject of the crime can be anybody. The crime can be committed only intentionally and with a goal to bring it into circulation or at least ease the distribution. (Wessels, 2014. 290-293).

If we analyse the stages of the crime, we can establish that only the attempt is punishable of the crime, the preparation is not. This is different than the Hungarian regulation. In the Hungarian Criminal Code attempt is generally punishable for all crime. The attempt is only punishable at certain crimes. Here it is punishable in connection with the credit card fraud related crimes. Furthermore, in Hungary the offender has to establish at least one but not all elements of the objective side of the crime. In Germany the attempt is wider. In Hungary the offender has to start but not complete the crime. Attempt can be established in Germany in addition to this if the offender previous conduct directly results in the completion of the statutory provisions. (Neparáczki. 2010, http://jesz.ajk.elte.hu/neparaczki41.html).

Counterfeiting of credit cards, etc, and blank eurocheque forms (Section 152b)

The second credit fraud type of crime reads as follows:

"(1) Whosoever commits an offence listed in section 152a(1) with regard to guaranteed payment cards or blank eurocheque forms shall be liable to imprisonment from one to ten years.

(2) If the offender acts on a commercial basis or as the member of a gang whose purpose is the continued commission of offences under subsection (1) above the

penalty shall be imprisonment of not less than two years.
(3) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years and in less serious cases under subsection (2) above imprisonment from one to ten years.
(4) Guaranteed payment cards within the meaning of subsection 1 above are credit cards, eurocheque cards, and other cards

1. *the use of which can oblige the issuer to make a guaranteed payment by money transfer; and*
2. *which are especially protected against imitation through design or coding*

   (5) Section 149 to the extent that it refers to the counterfeiting of money and section 150(2) shall apply mutatis mutandis." (German Criminal Code in the version promulgated on 13 November 1998, Federal Law. Last amended by Article 14 of the Law of 18 December 2018, Federal Law Gazette. Section 152b)."

I would like to only highlight the differences between this and the earlier crime. The most important deviation is that here the credit cards are protected with a guarantee function (e.g. with a chip). Secondly here not the cheques but eurocheques are under the protection of the statutory provision. From 2002 the eurocheques are withdrawn from the circulation. It is still in the in force regulation in case to deal with old cases if necessary. The lawmaker had no intention to amend it even though it is outdated regulation. (Wolfgang 2010. 278)
Furthermore, it is an important difference that the sanction is higher than in the previous crime. Lastly here we have a privileged case, this is the so called less serious cases. These cases are not defined by the criminal law. (Wolfgang 2010. 278)

COMPARING THE HUNGARIAN AND GERMAN REGULATION

The Hungarian Criminal Code (The Act C of 2012) regulates credit card related crimes in a similar chapter to the German. These can be found in the XXXVIII. Chapter titled counterfeiting and philatelic forgeries. It contains three relevant crimes:

- Counterfeiting of Cash-Substitute Payment Instruments (392.§),
- Cash-Substitute Payment Instrument Fraud (393.§), Aiding in Counterfeiting Cash-Substitute Payment Instruments (394.§). (Gál, 2013. 224.)

The similarities and differences between the Hungarian and German criminal law regulation regarding counterfeiting can be summed up in the following table:

Table no.1.: The German and Hungarian regulation regarding the counterfeiting of credit cards (Sources: The Hungarian Criminal Code in the version promulgated on the first of July 2013. Last amended by the Act XXXVI of 2019 article 54, Hungarian Law Gazette. The German Criminal Code in the version promulgated on 13 November 1998, Federal Law. Last amended by Article 14 of the Law of 18 December 2018, Federal Law Gazette)

	The German Criminal Code	The Hungarian Criminal Code
Name of the crime	Counterfeiting of debit cards, etc, cheques, and promissory notes (Section 152a); Counterfeiting of credit cards, etc., and blank eurocheque forms (Section 152b).	Counterfeiting of Cash-Substitute Payment Instruments (392.§); Aiding in Counterfeiting Cash-Substitute Payment Instruments (394.§).
Legal object	Primarily the order of property, secondarily the security of the flow of payment cards (considered as a financial crime)	The security of the flow of non-cash payment instruments. (Considered as a crime against the economy)
Perpetration object	§152.a - Debit cards, - cheques, - promissory notes §152.b - credit cards with a security function - eurocheques	According to the interpretation section (459. § (1) 19.-20.): - non-cash means of payment and negotiable credit tokens provided for in the act on credit institutions, as well as treasury cards, traveler's checks, credit tokens that may be granted in accordance with the relevant legislation subject to tax charged to the payer, or tax exempt, to be used to acquire a limited range of goods or services, and bills of exchange, provided they contain protective fixtures, such as coding or signature, against duplication, fraudulent making or forgery, and against unauthorized use; - 'electronic payment instrument' shall mean, in addition to the non-cash means of payment provided for in the act on credit institutions, treasury cards and electronic credit tokens made out in accordance with the Personal Income Tax Act, provided that they are used through the information system;
Perpetration conducts	- counterfeiting, - altering credit cards - obtaining, - the offering for sale, - giving, or - the use of counterfeit or falsified credit cards	The statutory provision contain three conducts - counterfeiting - altering credit cards, or records data stored on electronic payment instruments or the related security features, using technical means;
subject	anybody can be an offender there is no special regulation.	anybody can be an offender there is no special regulation
elements of the subject	it has a goal: to bring it into circulation	it has a goal: to use it
aggravated cases	commercial basis or committing in an organized crime group(from 6 months to 10	Counterfeiting has no aggravated case. The aiding of counterfeiting has

	years of imprisonment) Also in Section 152b but the punishment is at least 2 years of imprisonment	two aggravated cases: if someone commits the crime in a criminal association or on a commercial scale (punishable up to 2 years of imprisonment)
privileged cases	The so called milder cases	there is none
The stages of the crime	the attempt is punishable	attempt, preparation and aiding (as delicta sui generis) punishable
sanction in basic case	Sanction152a maximum of 5 years of imprisonment or fine Sanction 152b: 1 to 10 years of imprisonment	1 years of imprisonment

The two regulations are very similar. The perpetration objects are much wider in the Hungarian Criminal Code. The traveler's cheques in Germany are considered as money in a criminal legal sense so if someone forges such it will be punishable as counterfeiting money.
There are major differences in the stages of the crime and in the sanctions. The German regulation has more moving space for the courts to give a punishment. The Hungarian regulation is very lenient compared to the German but also very restricted.
The following table shows the registered numbers of credit card related crimes in Hungary:

Table no. 2.: The registered numbers of credit card counterfeiting in Germany and in Hungary
(Sources: https://bsr-sp.bm.hu and the Polizeiliche Kriminalstatistik Bundesrepublik Deutschland Jahrbuch 2013-2017)

Year	**2014**		**2015**		**2016**		**2017**	
Crime / country	Germany	Hungary	Germany	Hungary	Germany	Hungary	Germany	Hungary
counterfeiting of credit cards	2078	202	1160	130	1311	425	1409	739

If we look at the statistics proportional to the population then we can establish that Germany has lower rates of counterfeiting credit cards than in Hungary. In the last few years the numbers of credit card counterfeiting are rising in Hungary. In my opinion the stricter German regulation has a stronger retenetive effect and therefore the registered number of crimes are lower.

THE CURRENT REGULATION OF THE EUROPEAN UNION

The Hungarian regulation is based on the 2001/413/JHA: Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.
Under the organizations of the EU it is necessary that a description of the different forms of behaviour requiring criminalisation in relation to fraud and counterfeiting of non-cash means of payment cover the whole range of activities that together constitute the menace of organised crime in this regard. By giving protection by criminal law primarily to payment instruments that are provided with a special form of protection against imitation or abuse, the intention is to encourage operators to

provide that protection to payment instruments issued by them, and thereby to add an element of prevention to the instrument.
According to the Framework decision “Payment instrument” shall mean:

- a corporeal instrument,
- other than legal tender (bank notes and coins),
- enabling, by its specific nature,
- alone or in conjunction with another (payment) instrument,
- the holder or user to transfer money or monetary value,
- as for example credit cards, eurocheque cards, other cards issued by financial institutions, travellers' cheques, eurocheques, other cheques and bills of exchange, which is protected against imitation or fraudulent use, for example through design, coding or signature. (Article 1)

The list of examples are indicative and not exhaustive.
There are 3 groups of perpetration conducts under the EU regulation.

1. Offences related to payment instruments
2. Offences related to computers
3. Offences related to specifically adapted devices

Offences related to payments instruments can be committed with the following the conducts.

- theft or other unlawful appropriation of a payment instrument;
- counterfeiting or falsification of a payment instrument in order for it to be used fraudulently;
- receiving, obtaining, transporting, sale or transfer to another person or possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument in order for it to be used fraudulently;
- fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument; (Article 2)

The second group can be committed only intentionally with the following conducts

- performing or causing a transfer of money or monetary value and thereby causing an unauthorised loss of property for another person, with the intention of procuring an unauthorised economic benefit for the person committing the offence or for a third party, by:
    - without right introducing, altering, deleting or suppressing computer data, in particular identification data, or
    - without right interfering with the functioning of a computer programme or system. (Article 3)

The third group contains preparation type of conducts:

- the fraudulent making, receiving, obtaining, sale or transfer to another person or possession of:
    - instruments, articles, computer programmes and any other means peculiarly adapted for the commission of any of the offences described under Article 2(b);
    - computer programmes the purpose of which is the commission of any of the offences described under Article 3.

The council framework decision requires the Member States to punish these conducts in their Criminal Code because it is not directly applicable only after it is transferred into the national law. The EU also requires the Member States to punish the participation, instigation and attempt of these crimes. (Article 5)
As for punishment the framework decision requires that each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 to 5 is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition. (Article 6)
Also it is important to mention that according to the council framework decision legal persons are also punishable if they commit these crime. The framework decision offers examples for sanctions against legal entities which can be applied by Member States:

1. exclusion from entitlement to public benefits or aid;
2. temporary or permanent disqualification from the practice of commercial activities;
3. placing under judicial supervision;
4. a judicial winding-up order. (Article 8)

All in all, the Hungarian legislation fully adapts to the framework decision and thus no amendment is required for the Criminal Code at this moment.

A NEW DIRECTIVE PROPOSAL FOR THE EUROPEAN UNION

The European Comission drafted a new Directive proposal for the European Parliament and the Council to replace the current framework decision and modernise the regulation regarding credit fraud type of crimes. (Directive Proposal, 2017)
The reasons for the new Proposal is that the current EU legislation that provides too minimum rules to criminalise non-cash payment fraud. The European Agenda acknowledges that the Framework Decision no longer reflects today's realities and insufficiently addresses new challenges and technological developments such as virtual currencies and mobile payments.
Credit card fraud hinders the development of the digital single market in two ways:

- it causes important direct economic losses, as the estimated level of card fraud of EUR 1.44 billion mentioned above indicates. For example, the airlines lose around USD 1 billion per year globally in card fraud;
- it reduces consumers' trust, which may result in reduced economic activity and limited engagement in the digital single market. According to the Eurobarometer on Cyber Security Internet users express high levels of concern about cyber security. 87% of the asked people agree that they avoid disclosing personal information online, and 76% agree that the risk of becoming a victim of cybercrime has increased. (Eurobarometer 2013, 5).

The Directive draft has three specific objectives that address the problems identified:

- Ensure that a clear, robust and technology neutral policy/legal framework is in place.
- Eliminate operational obstacles that hamper investigation and prosecution.

- Enhance prevention.

The proposal has several important and modern definitions.

- “payment instrument” means a protected device, object or record, other than legal tender, which, alone or with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value or to initiate a payment order, including by means of digital mediums of exchange;
- “protected device, object or record” means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature;
- “payment order” means a payment order as defined in point (13) of Article 4 of Directive (EU) 2015/2366;
- “virtual currencies’ means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically.

The Member States if the Directive will be adopted has to implement the rules and punish the following crimes:

- Fraudulent use of payment instruments
- Offences preparatory to the fraudulent use of payment instruments
- Offences related to information systems
- Tools used for committing offences

Article 8 would consist the penalties for natural persons:

- Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 7 are punishable by effective, proportionate and dissuasive criminal penalties.
- Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least three years.
- Member States shall take the necessary measures to ensure that the offences referred to in Article 6 are punishable by a maximum term of imprisonment of at least two years.
- Member States shall take the necessary measures to ensure that offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least five years if:
    - they are committed within the framework of a criminal organisation, as defined in Framework Decision 2008/841/JHA, irrespective of the penalty provided for in that Decision;
    - they involve extensive or considerable damage or an aggregate advantage of at least EUR 20 000.

Article 10 would contain the sanctions for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:

- exclusion from entitlement to public benefits or aid;

- temporary or permanent disqualification from the practice of commercial activities;
- placing under judicial supervision;
- judicial winding-up;
- temporary or permanent closure of establishments which have been used for committing the offence.

Personally I think the legal definitions of virtual currencies progressive due to many countries have no regulation regarding these. The virtual currencies are currently in a "gray area" in Hungary. They are not considered as a cash-subsitute payment insturments. They are not regulated by criminal law nor civil law. They can not be perpetration objects. These a major problem because cryptocurrencies can be used for many type of crimes in the practice.

- Offenders can steal from cryptowalletts (Orme 2019, 8) or use cryptojacking which is a malicious code that uses computing processor units (CPU) resources from your computer to mine cryptocurrencies. (Sigler, 2018(9), 13–14.)
- They can use them for a ponzi schemes (Eszteri, 2015, 159-161).
- In theory they can use them for virtual money counterfeiting.
- They can use them for money laundering (Niels, 2017). These are only examples with no claim of being exhaustive.

The adoption of the Directive proposal would clarify the legal status of the virtual currencies. Cryptocurrencies would be a perpetration object and therefore the fraudulant conducts can be punishable without breaching the principle of prohibiton of analogy in criminal law.

SUMMARY

All in all the Hungarian regulation is very similar to the German one. Propably for the Hungarian lawmaker the German Criminal Code was a role modell. One important difference is that the German courts have much wider discretionary. This can showed by the wider options to impose sanction and with the so called less serious or milder cases paragraph. In my view the Hungarian lawmaker should follow the German modell in these aspects.

I would also recommend to adopt some rules from the Directive proposal even if it won't be adopted in the future. This would modernize the current regulation because the misuse of virtual currencies would be also punishable.

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EUROPEAN AND NATIONAL LEGAL STANDARDS ON HARASSMENT AT WORK

Brković Radoje, Full professor
Faculty of law, University of Kragujevac,
e-mail: rbrkovic@jura.kg.ac.rs

Totić Mirza, Assistant professor
Department of law, University of Novi Pazar,
e-mail: mirzatotic@yahoo.com

Abstract
The paper deals the abuse at work and laws which regulate it within the European Union (EU) and Republic of Serbia. The legal regulation of mobbing did not give the expected results, as envisaged in Universal Declaration of Human Rights (1948), where every person is granted the right to just and satisfactory living and working conditions, standard, health and well-being. Since the acquis communautaire treats abuse at work through secondary legal sources (Directive 89/391 from 1989), the authors seek for reasons why only a few countries (Norway, Sweden, Switzerland, France) have explicitly regulated this issue by law. In the Republic of Serbia mobbing (psychological violence) is regulated by the adoption of a special Law on Abuse at Work in 2010. Also, the Labor law and Law on Safety and Health at Work contain labor law frameworks related to mobbing, while the protection of human rights is guaranteed by the Law on Responsibility for Human Rights Violations, the Law on Obligations and the Criminal Code.

Key words: European Union (EU), workplace violence, mobbing, acquis communautaire, judicial protection of victim, Republic of Serbia labor law system

INTRODUCTION

In his book called *The Harassed Worker*, the American psychiatrist Carroll Brodsky used and described the term mobbing in detail in 1976, but he did not name it in that way. For a long period of time people have believed that the German physician and psychiatrist Heinz Leymann was the founder of the concept of workplace mobbing, since he used exactly that term in order to describe violence at workplaces. Although being German, he started researching problems of harassment at work in Sweden, about forty years ago. He called mobbing a kind of long-term hostile behavior detected in employees at workplaces (Ángeles Camero, et al., 2010: 4). On the other side, Halik defines mobbing as a mean manipulating, systematic humiliation, psychological terror, manoeuvre, targeted induction of stress (Halik, 2008: 108). Unfortunately, today mobbing represents a growing threat in all its forms. There are various types of classifications of mobbing regarding the national legislations all around the world, but certain forms come out as common. Therefore,

horizontal mobbing is the one that happens between colleagues, while vertical happens among managers and employers and represents much more spread phenomenon. Strategic mobbing can be defined as series of actions aimed at making the worker to resign, while the straining is excessive stress on work due to violent pressures (Urciuoli, 2016) to achieve the goals set by company programs. Nowadays, people mostly in European countries use the word mobbing when they want to define a certain state as a disease, depression or resignation caused by hostility of hierarchical superiors or colleagues in the workplace. That hostile mood is directed towards the employee or colleague in the workplace. In terminology, which is predominantly under the influence of American legal theory, the term bulling is also used in order to define different kinds of harassment among colleagues. Legal theorists in United States of America, United Kingdom and Australia, use the term bulling, or more precisely "workplace bullying," In recent years bulling become an industry in itself, launching careers and businesses in consulting, coaching, testing, and training (Harper, 2012). Bullying and harassment are terms that describe a wide variety of negative workplace behaviors including verbal threats, personal attacks, innuendo, and deliberate isolation of a colleague. Separate incidents may be relatively innocuous but are often sustained or persistent in character, it is their cumulative effect that is damaging (Pinkos, 2012: 2).
So, there are different names used to determine harassment (psychological, sexual…) in countries across the globe, but the term mobbing has European origin and gets more applied in the Old Continent. When it comes to mobbing, we must note that it was first determined as sociological, then as health and socio-economic and ultimately as legal problem. So, mobbing must be considered multidisciplinary. It is not a modern phenomenon, since when there is work there is also abuse at work. From the legal point of view, it must be pointed out that the issue of mobbing "so far has not been processed in a satisfactory manner on both levels (Jovanović, 2018: 267-268) in international and our legal literature and legislation". Workplace harassment is not sufficiently legally regulated in international and European law. The legal concept of mobbing in universal and regional legal documents can be achieved only by analyzing the provisions of these acts related to the realization and protection of basic human rights and freedoms.

LEGAL FRAMEWORK FOR REGULATION OF MOBBING IN SERBIA

Serbia belongs to the small group of European countries that explicitly provide law legislation to prevent harassment at work. In addition to the legislation of labor and legal character, mobbing is regulated by norms of other branches of law (constitutional, civil, criminal, etc.). Serbian Constitution (2006) regulates basic human rights and freedoms ("Official Gazette of Republic of Serbia", No. 98/2006). Article 60 stipulates that "everyone has the right to respect for the dignity of personality at work, safe and healthy working conditions, necessary protection at work, limited working hours, daily and weekly rest, paid annual vacation, fair remuneration for work and legal protection in case of termination of employment. No one can give up these rights". Very often, as in other countries, these rights may be compromised by mobbing. The norms of civil law are also important for regulation of mobbing, primarily the provisions of the Law on Obligations that are

related to the compensation of damage (material and non-material) caused at work and in connection with the work, which an employed cause to a certain person (Perović, 1995: 387-400) In comparative law, the harassment at workplace is more and more often envisaged as a special form of criminal offense. In Serbia there is a special criminal offense of harassment and torture in section XIV (art. 137). Criminal offense is committed by person who abuses another person or treats in a way that offends human dignity. The act of crime is determined alternatively. It represents causing to another person great suffering, while the incentives can be different: hellishness, hatred, cunning. Direct intent followed with certain intentions is necessary for committing this crime. The hardest form of crime is when it is done by an official person during an official duty (Lazarević, 2006: 427-429). We believe that Republic of Serbia, while dealing with criminal legislation, has to got more appropriate regulation on work harassment, perhaps as a special (more severe) form of abuse.

In the case of the protection of personal data, in 2018 Serbia has adopted a completely new Law that comprehensively regulates issues related to the protection of persons in relation to the processing of personal data and free flow of such data ("Official Gazette of Republic of Serbia", No. 87/2018). We emphasize that this is a good law, which provisions apply from August 21, 2019. The Law is, almost indefinitely, in line with the General Data Protection Regulation (2016), which is a generally binding legal act for all Member States of European Union (EU). The violation of data privacy is a very common form of mobbing (especially if during the assessment of working skills specific categories are being presented, such as health status, family circumstances - especially for pregnant women). It is important to state Article 16 of the Law on the Prohibition of Discrimination in the Field of Employment ("Official Gazette of Republic of Serbia", No. 22/2009), since employees are often victims of mobbing when it comes to the right to equality (for equal work equal payment), professional development, career advancement, etc.

Labor law regulations are also important for harassment at work. While the Labor Law ("Official Gazette of Republic of Serbia", No. 24/05, 75/14) and the Law on Safety and Health at Work ("Official Gazette of Republic of Serbia", No. 101/2005) contain basic provisions that may apply to mobbing, the Law on the Prevention of Abuse at Work ("Official Gazette of Republic of Serbia", No. 36/2010) regulates harassment at work in much more detail. We point out that it is a good practice that Serbia stands among a small number of countries (Stefanović et al., 2014: 61-68) in the region, that have regulated harassment at work by a special law, and not by Labor Law provisions. This document should ensure the respect for the right to dignity at work, since Serbia is a country where the transition has left visible consequences. Mobbing is considered to be the main problem of transition workers. According to some research, there are around 45 forms of expressing mobbing.

The Law on Prevention of Abuse at Work regulates the following issues: prohibition of abuse at work and in connection with work, measures for preventing maltreatment and improvement of work relations, procedure for protecting persons exposed to abuse at work and in connection with work. Its wide application represents the main characteristic of this law. The application applies to all employers in the public and private sector and to all persons engaged in

employment regardless of whether they are in employment with an employer or entrepreneur or have another contractual obligation (on temporary and occasional affairs, on supplementary work, professional development, etc.). Therefore, this is a good legal solution because all working persons are treated equally in terms of preventing harassment at work. Also, we believe that the adoption of a special Law on Agency Employment will reduce the chances of mobbing of this group of persons engaged in employment through the temporary employment agency. Some countries in the Region, such as Croatia and Montenegro, regulate this type of work by the provisions of the Labor Law

The provisions of the Law on Prevention of Abuse apply also to cases of sexual harassment, in accordance with Article 21 of the Labor Law. What also represents a special specificity of the Law is the equalization of the right to protection against abuse and the right to protection against maltreatment of right to protection against abuse (Article 5). The law defines the concept of abuse and perpetrators of abuse. This is a good side of the Law, but it is also a rarity because a very small number of laws define the term of subjects subjected to legal regulation. Therefore, perpetrators of abuse are not only employers, but also employees or groups of employees. In order for a particular conduct of the perpetrator of abuse to be considered as abusive, two cumulative conditions must be met: repetition and intent. In order repetition (duration) to produce certain negative consequences, it must take some time. The law does not regulate the period of duration or a number of repetitions, which is its major shortcoming. We think that it is sufficient the abuse to be repeated once, but it is necessary that perpetrator is the same person that the victim is the same person and that violation of the protected good is unchanged. Also, it may be necessary the Law to determine the period of repetition, that should not be too long, but also not too short. Problems arise if abuse lasts for several months, stops and then proceeds again. The expiration of time in which the harassment has been repeated prevents victim from seeking legal protection, which would be a great illogicality of the law that contains the provisions on mobbing, regardless of whether these provisions are part of Labor Law or a separate Law on Prohibition of Abuse at Work. We must note that in practice, there are numerous problems of what is considered under passive incitement with the intent to commit abuse.

The employer is obliged to protect the employee from harassment. He must act preventively that it does not occur, and if the harassment is already in progress then the mediation procedure should be applied without delay. Mediation is important, since it acts preventively to the crisis situation in order to prevent the initiation of court proceedings. The employer is responsible for the damage caused by the responsible person or employee by committing abuse towards another employee. Also, the employer has the right to file a recourse request.

Mobbing motives can be viewed as emotional and strategic. In strategic mobbing, economic and political interests prevail. Perpetrator by systemic action ("reserve bench", "forced paid leave", "termination of the employee's need for work", "assessment of worker’s ability and doctor's recommendations" (Kojić, Mustabjegović, 2007: 71), "consensual termination of employment", "employee isolation", "attacks on the personal reputation of workers"- an imaginary story

"about the victim and her private life") (Lalić, Kešetović, 2012: 30-45) aims to make the employee to quit the job, which releases the employer out of obligations in the case of cancellation of labor contract or other contract for work engagement. In that case the victim of mobbing most often loses personal health, emotional and social security with unpredictable consequences that can ultimately endanger life. What has to be done is to regulate by law the strategic mobbing, because practice shows that this is its most harmful type, not only for employees, but for society as a whole.

The law also regulates the procedure for protection against harassment by the employer. The initiation of the procedure is a very important procedural action whereby the employer is obliged to receive a reasoned request for initiating a procedure for protection against harassment, to submit within three days the mediation proposal to the parties in dispute as a way of resolving the issue. The selection of the intermediary is done by agreement of the participants in the procedure. A mediator is a neutral person mediating between the parties in dispute in order to resolve the existing problems. He acts independently and impartially. We believe that it is good the mediator to be chosen from employees, because he knows best the working environment, even though there are opposite perceptions regarding the suspicion of the independence and impartiality of such an intermediary. What is most important is the urgency of the mediation procedure and the fact that proceedings must be closed to the public. It must be completed within eight days, and only if there are justified reasons the deadline can be extended up to thirty days. We point out that the deadline of eight days is short for the completion of the procedure, so it should be determined differently. The specificity of this process is the secrecy of data collected during the mediation. The deadline for submitting a complaint to the competent court is 15 days, which is much shorter than the one established by the Labor Law (60 days). In Serbia, High Court is competent for harassment at work, while the second instance is the Court of Appeal. Another specificity represents the process of proof collection. The burden of proof is on the defendant. The employer is obliged to provide evidence of "negative facts" that there was no abuse. This is a "civil law precedent in Macedonian law, but it is needed". Namely, the victim of mobbing is hardly determined to suggest that an employed colleague is heard about abuse as witness. The aim is to avoid the unfavorable measures for witness. (Jovevski, 2011: 515-527). It is an exception from the classical procedure of proving and it was introduced with the aim of establishing the so-called - process balance. This follows from the European Parliament Directive 2002-73-EC. Otherwise, this burden of proof is envisaged in anti-discrimination laws as well as in the Law on the Protection of Whistleblowers (Antić, 2015: 365-376)

Unlike the employer for whom is applied the alleged guilty for harassment, it is sufficient for the prosecutor to make probable the existence of abuse. We think that this is not the best legal solution. In practice, it is very difficult to determine the "probable" standard. Does this mean that a judge can rule on the basis of the likelihood that the abuse was committed in a particular situation where the defendant does not have evidence to challenge the probability of the prosecution's request? Therefore, this procedure is complex, it is necessary the court to determine

the true factual situation, to base the verdict on undoubtedly established evidence, to fully respect the discretion in the entire process and above all in the evidentiary procedure as the most important stage of the proceedings.
The lawsuit in order to obtain protection against abuse is urgent. The court will deliver the lawsuit with attachments to the respondent within 15 days from the date of receipt of the complaint. During the course of the proceedings, the court may, at the request of party or *ex officio*, order provisional measures to prevent violent treatment or to eliminate irreparable damage. According to the Law (Article 33.), a special appeal is not allowed against the decision on the determination of provisional measure. We think that it is sometimes difficult to implement measures, bearing in mind that perpetrator and victim most often work together. Perhaps it is possible measures to be easier implemented in the case of horizontal mobbing, but even then there can be objective reasons that the measure cannot be implemented. Then, a logical question arises: why the court has determined them since being familiar with the circumstances of the harassment at work?

UNIVERSAL ACTS OF UNITED NATIONS

According to the Preamble to the Charter of the United Nations, which was signed on June 26, 1945 in San Francisco and came into force on October 24, 1945, the states have established this world organization, among other things, with the aim of reaffirming the faith in fundamental rights of man, dignity and worth of the human personality, equality of men and women and big and small nations, in order to ensure social progress and improve living conditions. According to its article 1, United Nations have the task to promote respect for human rights and fundamental freedoms for people regardless of race, gender, language or religion. In order to achieve these objectives, according to article 56 of the Charter all members are obliged to work on this plan and in cooperation with the United Nations. Therefore, every member of the United Nations, including Serbia, is obliged to adopt legal regulations that will implement goals set by the Charter.
In addition, Universal Declaration of Human Rights (1948) in its article 1 prescribes that everyone has the right to life, freedom and personal security, and that all people are born free and equal in dignity and rights regardless of race, language, gender ... Except this, we consider that also article 23 is significant, since it stipulates that everyone has the right to just and satisfactory working conditions and the right to a standard of living that provides health and well-being. Starting from the principles contained in two aforementioned universal international documents, the right to dignified working conditions and right to safety and protection at work are also guarantied in International Covenant on Economic, Social and Cultural Rights, adopted in 1966. ("Official Gazette of Socialist Federal Republic of Yugoslavia", No. 7/1971). We can conclude that the three aforementioned international documents also indirectly define harassment at work, primarily in the workplace, which can be said also with certainty for the acts adopted by the International Labor Organization. In European Union (EU) law, the question of mobbing is especially regulated through secondary legal sources, primarily directives.

EUROPEAN UNION (EU) LEGISLATION ON MOBBING

European Union, a specific regional and supranational organization, together with its Member States, represents one of the biggest protectors of human rights on international level. It is the greatest achievement in the institutionalization and harmonization of common economic, but also social, politics of European countries (Kalamatiev, Ristovski, 2014: 110). The very object of its establishment was primarily peaceful, considering the period of its creation and desire to eliminate traditional antagonisms that existed among European nations. However, its formation was largely conditioned by economic interests, which is best reflected through the four basic freedoms that form the basis of its functioning. After the foundation of the European Coal and Steel Community (1951), Member States realized its economic advantages, which was an additional motivation for the formation of European Economic Community (EEC) and European Atomic Energy Community (EUROATOM). Namely, membership costs were significantly lower than those suffered by non-member states. Bearing in mind that European Union (EU) is based on the principles of democracy and a strict ban on all forms of discrimination, it is not surprising that in the field of combating mobbing it has already taken concrete legislative activities. European Union (EU) has its own, completely independent, legal system and institutions (Totić, 2015: 114) which have the competence to adopt the secondary sources of community law. Taking into account the intention to adopt documents at the European Union (EU) level it can easily be concluded that the main goal is the Member States uniqueness and uniform application of community law norms. Today we live in an increasingly globalised economy and that's why European Union (EU) must promote principles set out in its policy on safety and health at work by strengthening cooperation with International Labor Organization (ILO) or World Health Organization (WHO) and every other international organization dealing with position of workers. It is the only way to secure the best possible conditions for healthy working conditions.

The question of the position of workers attracted the attention of European Community officials for the first time in the late eighties of the last century, more precisely in 1989, when Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work was adopted. It is important to note that its adoption did not call into question the existing of national or Community provisions or those that will be adopted in the future if they provided more favorable conditions for protection of worker's safety and health at workplace. Thus, the *acquis communautaire* did not prevent Member States from adopting more favorable conditions for the protection of workers. It gave the possibility of making more effective measures on the national level. Article 3 of Directive, which was adopted in cooperation between the Council of Ministers, the European Parliament and the European Commission (initiated the adoption of the document), after consulting the Economic and Social Committee, as an advisory body, defined, *inter alia*, the terms worker, employer and prevention, while furthermore, determined the obligations of subjects of employment in greater detail. Member States were required to bring into force the laws and other regulations necessary to comply with the Directive by December 31, 1992, which they had to report to the European Commission. Special significance represented the

introduction of health control, as Member States were required to introduce, in accordance with national regulations, measures to allow medical supervision in the workplace. Therefore, a worker could, if he expressed desire, be subjected to health control at regular intervals. Regarding the obligations of the employer, Article 7 explicitly stated that the latter had to determine one or more workers for carrying out activities related to the protection and prevention of occupational risks.

The major contribution of Directive was reflected in the provisions on health and safety at work, as it provided the responsibility of employers if workers in the workplace suffer any form of damage, including violence. The emphasis on combating workplace violence was to prevent it, properly evaluate the risk of abuse, and to take appropriate measures to prevent any harm. The next document adopted on September 22, 1994 by the Council of Ministers was the Directive No. 94/45/EC which provided the improvement of worker's rights. This Directive introduced the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees in companies or related entities in the territory of the European Union (EU). Unlike the previous one, whose provisions did not apply to the public administration sector (armed forces or police), this Directive, that should be implemented until September 22, 1999 leaved the freedom as Member States had the possibility not to apply it to merchant navy crews, if they decided so. Also, its Article 2, paragraph 1, defined more closely the concept of a community-scale undertaking which means any undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States (https://eur-lex.europa.eu/legal-content/SL/TXT/PDF/?uri=CELEX:31994L0045&from=EN).

The same article determined the concept of group of undertakings, employee's representatives, central management, European Works Council, special negotiating body, etc. Article 6 emphasized that central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees. As it was further prescribed, the agreement must stipulate by what method the employee's representatives shall have the right to meet to discuss the information conveyed to them. The European Union (EU) has paid particular attention to the issue of mobbing when the European Parliament in 2001 adopted Resolution A5-283 which was entitled "Mobbing in the Workplace", in addition to earlier resolutions of 1999 and 2000, that regulated the substance of the organization work. However, it must be noted that resolutions, unlike the directives, are not documents that states must comply to (La Peccerella, Romeo, 2006: 15). In 2002, the European Parliament called on all European nations to help victims of mobbing by passing anti-bullying legislation. It based its argument on studies on incidences of workplace harassment throughout Europe, as well as the serious health consequences for the victims (Browne, et al., 2008: 144). That same year, the European Parliament and the Council of Ministers adopted the Directive No. 2002/73/EC, which had to be implemented in Member States domestic legislation by October 2005. This document amended Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women in terms of

access to employment, vocational training and promotion and working conditions. In that way, two European Union institutions with the largest legislative power wanted to harmonize Member States laws regarding the equal treatment of men and women (McGolgan, Grant, 2004: 11).
In 2007 European Union (EU) adopted Strategy on health and safety at work for next five years, since it was obvious that only high quality of health could improve productivity on workplace, which is the main condition for economic development. European officials were worried since carried out researches gave unexpected results. Namely, many workers in Member States claimed that their jobs posed a real threat to their health or safety, while almost every third worker (28%) thought he had some health issues caused by current or previous job, while even more (35%) were sure that their job put their health at risk (European Parliament, 2007: 3). Every year, more than 350 000 workers were forced to change jobs following an accident, 300 000 suffered permanent disability to differing degrees and 15 000 were excluded from the labor market for good (Eurostat, 1999). These data have showed that mentioned surveys gave pretty much clear picture of what needed to be done in order to move things forward. That's why the guarantee for the proper implementation of European Union legislation, encouraging of changes in behaviour of workers and their employers in order to adopt health-focused approaches and especially finishing methods for identifying and evaluating new potential risks were listed as some of the Strategy's main objectives. Member States were obliged to ensure that legislation takes full effect, which means that they were responsible for health and safety of workers in enterprises in their own territory.
The European Commission had the authority to control the proper implementation of prescribed measures. In addition, the European Union has adopted the EU Strategic Framework on Health and Safety at Work 2014-2020, which is the result of activities undertaken by the European Commission, Parliament and Council, European Economic and Social Committee and Committee of Regions. It particularly emphasizes that women must be included in decision-making processes regarding the creation of better health and safety working environments, while technological innovation may be very useful and beneficial to society. Strategic Framework on Health and Safety at Work 2014-2020 urges Member States to secure conditions in order to ensure that employers report the accidents at work and highlights the importance of the protection of workers against exposure to substances that are toxic to reproduction. This document has the task to provide better working conditions for millions of workers across the European Union (EU). Once again, it was stressed out that physically and mentally safe and healthy working environment represents one of man (worker) basic rights. In that way Union on the first place wants to help Member States to improve working environment in order to protect worker's health and safety, by emphasizing the importance of labor inspectorates that play a key role in enforcing worker's rights.
The last document regarding the fight against any kind of discrimination on workplace represents the European parliament Report on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces and political life in the EU (2018/2055(INI). Report stipulates that company organization, negative or hostile environment, incompetent management, social vulnerabilities or

a culture which accepts or rewards harassment are very good preconditions for mobbing or any kind of harassment to appear. That is why Member States must invest in the training of labor inspectors who will work with specialist psychologists. Together, they will ensure that companies, enterprises and organizations provide well trained and skilled professionals who are able to support victims in any time. Also, it is crucial that public and private companies organize mandatory trainings on sexual harassment and mobbing for all employees and particularly for those in management roles. This document is a reaction on the fact that mobbing together with sexual harassment represents most spread form of gender-based discrimination, with almost 90% of female victims. Also, this negative phenomenon involves victims and perpetrators of all socio-economic statuses, ages, educational backgrounds and unfortunately it happens every day and in every country. Therefore, it became clear that many victims of violence and harassment do not take legal action because they are afraid of retaliation, so underreporting represents a big and problem number one not only in European union (EU), but worldwide.

Also, during time authorities came to conclusion that certain occupations are considered to be more exposed to violence (mobbing). It is determined that people who work in public sector (transport, education, politics, healthcare) are working under bigger pressure, since being in direct contact with people. The same thing goes for people employed in clothing, footwear and textiles sectors, but what really concerns is the fact that sometimes even whole groups or workers (pregnant women or women with disabilities, LGBTI people) can be affected by various types of bulling on workplace. In Italian case, the data speak for themselves: in the last five years in Italy, maternity mobbing cases have increased by 30 percent. According to the latest estimates of the National Mobbing Observatory, in the last two years almost 800 000 women have been fired or forced to resign. At least 350 000 are those discriminated due to maternity or for making requests to reconcile work with family life (Giunti, 2018). It was estimated that only in 2005 in Italy happened 417 975 mobbing cases. Every victim was compensated with approximately 1.894 euro, which means that only in mentioned year cases of mobbing made Italian authorities to pay almost 792 millions of euro (Unione Italiana degli Immigrati del Friuli, 2010: 13).

In addition, the situation is getting even worse in some Member States. Best example is the fifth Danish Work Environment Cohort Study, carried out in 2010 by the National Research Centre for the Working Environment, that revealed a significant increase in the number of people reporting being exposed to bullying (13%), physical violence (8%) and threats of violence (11%) as against the figures reported in 2005 (10%, 3% and 6% respectively). In another Scandinavian country, Finland, the 2008 Finnish Quality of Work Life Survey provided data that two out of five (44%) Finnish workers reported that bullying took place at their workplace at least occasionally, while 6% of respondents reported constant bullying at the workplace (Eurofound, 2013: 10). Some surveys have shown that almost 140 000 Finns have suffered some type of harassment at work.

If being observed individually there are only few European countries (Sweden, Netherlands, France and Belgium) who have passed a special legislation to combat

harassment at work. Some other countries, like the United Kingdom or Ireland are also using the existing provisions of the Criminal civil rights. The United Kingdom's Protection against Harassment Act offers a very effective measure in order to secure the position of employee who has been a victim on the workplace. The latter is entitled to compensation based on the financial losses of earnings and of pension. If the worker has to resign since being the object of harassment or bulling, he will have the right to compensation of losses of salary until he finds a new job. Sweden was the first country that adopted the legal text on the prevention of mobbing. It happened in 1993, when the Decree on victimization at work prescribed activities in which employees may be exposed to victimization. The latter is defined as all forms of violence in the workplace, such as abuse, psychological abuse, social isolation, harassment and sexual harassment.

By following the Swedish example, France became the second European Union (EU) country that adopted a specific legislative instrument for the fight against the mobbing. Its Special law on social modernization from 2002, along with the Labor Law and Criminal Code, provide necessary protection to employees of moral harassment, which prescribe imprisonment and fines payment when perpetrators sometimes must pay more than 10000 euro. It must be noted that French courts have adopted a very wide concept of workplace harassment, which is very helpful for employees while trying to prove the justification of their claims. French Court of Cassation in 2006 has found that the employer for was guilty for moral harassment. Namely, several workers complained that their superior's behavior was cruel, humiliating and insulting, so they decided to take legal actions against him. The Court based the sentence on the report of labor inspector who proved that superior's behavior had elements of moral harassment which resulted in worsening of working conditions. In the same time, it represented the violation of human rights and dignity of worker (Cour de Cassation, Chambre Sociale, 21 June 2006).

In Germany, the state Constitution provides the protection of personality and a wide range of human rights, including defining mobbing as unlawful action. A very useful example of cooperation between company and its employees represents the agreement signed in German company Volkswagen in 1996. Namely, the main aim was the prevention of mobbing on workplace and ban on any type of discrimination and harassment, especially sexual. The agreement was signed between company and union of workers, in order to improve working conditions and create better labor environment. Also, the German Civil Code, the General Equal Treatment Act (2006) and the Occupational Health and Safety Act (1996) provide the legal foundation for prevention of any form of discrimination on workplace, since these documents are aimed to improve health and safety of employees and to promote equality among workers. In Italy, on the other hand, there is no specific legislation on mobbing and therefore this phenomenon is not defined as a typical type of crime in Italian domestic law (Alfieri, 2018).

CONCLUSION

Unfortunately, we live in a world where there is less and less tolerance among people, which certainly negatively affects the working conditions. Therefore, it is very important to have an adequate legal protection that will successfully respond to

various cases of harassment at workplace. So far, the European Union (EU) has taken appropriate steps to combat mobbing, while not preventing Member States from providing more favorable conditions for the protection of workers under norms of domestic law. European Union (EU) institutions have a task to adopt documents which are in line with demands of time we are living in. We can say without any doubt that European Parliament, Council of Ministers and European Commission have responded in a proper way to many challenges they faced in order to improve the position of workers. On the other hand, the Republic of Serbia, which intends to become a full member of the European Union (EU) in the coming period, has a wide range of laws that regulate mobbing. This is only a confirmation that we have good laws in many fields, but the fact is that authorities must work on their proper and more effective implementation.

The practice has shown that the main task regarding the prevention of mobbing is its identification. That's why international and regional organizations, states and their authorities must not tolerate any type of harassment of workers. It is crucial and in the same time very helpful to have trained managers and labor inspectors able to recognize signs of discrimination at workplace. In contrary, everybody loses. At first place, the workers whose health is in danger and might have fatal outcome, since certain percentage of victims cannot overcome the consequences of continuous maltreatment at work. Secondly, employers in a case of mobbing might lose good and high quality workers. Sometimes it represents an irreparable damage. It is important to note that once in a while also employers may become victims of harassment. Most often it happens in politically unstable environment, when subordinate workers mistreat their superiors. At the end, practice shows that states pay large amounts of money every year in order to compensate harassed workers. For sure, that money could be better invested in different, much more useful purposes.

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SOCIOECONOMIC ANALYSIS OF THE LABOR MARKET MOBILITY IN THE REPUBLIC OF NORTH MACEDONIA AND ITS IMPLICATIONS ON REGIONAL ECONOMIC DEVELOPMENT

Elizabeta Tosheva, PhD
Associate Professor
University "St. Kliment Ohridski" - Bitola, Faculty of Law
e-mail: elizabeta.tosheva@uklo.edu.mk

Blagoj Gjorgjievski, PhD
Associate Professor
University "St. Kliment Ohridski" - Bitola, Faculty of Law
e-mail: blagoja.gorgievski@uklo.edu.mk

Abstract
The paper addresses the question of the role of labor force movement as an adjustment process by analyzing the relationship between unemployment and labor force mobility in terms of social policies and measures of regional economic development in the context of the Republic of Macedonia. By using available statistical data provided by Macedonian state institutions and by exploitation of experiences from developed European countries, the paper is making an attempt to contribute for the development of modern migration policy, and regulation of internal and external migration in accordance with the developmental strategy of the country and its labor market requirements. Further, by detecting and isolating the main problems and requirements, we will try to suggest possible solutions to current and future regional economic development policy creators.

Keywords: *migration, labor market, regional economic development policy*

INTRODUCTION

The Republic of Macedonia has the character of evident migration area characterized by intense internal population movements as well as by a continuous process of moving out of the population in the other countries. In the last decades, the Republic of Macedonia has been facing numerous problems related to the population, as well as numerous challenges arising from the existing economic and social conditions, which have a direct impact on the demographic trends in the country. Also, the Republic of Macedonia faces a pronounced regional imbalance in the growth of the population, as well as with marked differences between urban and rural areas. The demographic potential of a country, region, or township is the main prerequisite for creating any policies and designing eventual future development (economic, political, educational, health, etc.). Demographic development assumes an obligation for all decision-makers, an active and consistent policy, and

coordinated efforts of government institutions and civil society at all levels achieving the goals and development of the population (*MLSP, 2015.p.4*).
Migratory movements are one of the socio-economic processes that marked the 20th century, and with the same intensity continued in the next decades of the 21 century. At long terms, external migration of the Republic of Macedonia is characterized by dominant participation of evictions in European and overseas countries. Contemporary migration from the Republic of Macedonia abroad, in the past four decades has had a tendency of steady increase, followed by changes in the structural characteristics of the migrants, directions of movement and the length of their stay. In relation thereto, it is important to indicate the phenomenon of so-called potential migration - a phenomenon that in the last decade in Macedonia reached disturbing dimensions. An increasing number of young and educated people, as well as students of the last years of Universities of technical and natural sciences are considering or planning to move abroad *(Government of the Republic of Macedonia, 2008).*
The Skopje region is the smallest, but the most populated region in the Republic of Macedonia. Almost a third of the population of the country lives on only 7% of its territory. The population growth is due to the natural increase and immigration in the region. About 35% of the total internal migration movements in the country took place only towards the Skopje region and within the region in the period 2005-2015 (*Toshevska, et al. 2017*). For the first time in the country in 2017 is evidenced negative natural population growth in five regions: Vardar, Eastern, Pelagonia, Southeast and Southwest. The largest negative natural increase occurs in Pelagonia region 909, followed by East with 470, Southeast with 135, the Vardar region with 107 and Southwest by 19. In contrast, in the Skopje region, there is an increase of 2.011, in Polog is 867, and in Northeast by 182 (*SSO, 2018*).
There is a lack of statistical record of external migration (especially emigration). Statistical data at the national level for the volume of immigration abroad do not reflect the real situation and the assessment of the Macedonian emigration can only be done through foreign sources of data from international institutions and countries of reception. In recent years, there has been an increase in the number of persons temporarily residing abroad.
World Bank reported that 447,000 Macedonian citizens moved out from the state until 2010 *(World Bank & ETF, 2008).* It is even 21.9% of the total population of Macedonia, so the country is ranked 23rd in the group of countries in the world with the most participation of migrants in population. In the region, the company makes Albania with 45.4% of the population in the emigration and Bosnia and Herzegovina with 38.9%. World Bank concluded that the Macedonians moving up to Italy, Germany, Austria, Slovenia, Croatia, France, Canada and Australia. However, considering records from destination countries of these immigrants, it is estimated that the annual level of emigration from Republic of Macedonia is between 10 and 15 thousand people *(International Organization for Migration, 2017).*
The influence of contemporary economic emigration on the socio-economic development of the Republic of Macedonia is manifested through short-term and insufficiently expressed developmental effects, and numerous negative

consequences and implications with long-term effect. In such circumstances, given the scope and dynamics of the emigration movements in the last decade, then the great potential emigration (especially the intellectual emigration), as well as their consequences and implications on the socio-economic and demographic development of the country, is undeniable the need for conceptualizing complex demographic policy compatible with overall economic development of the country.
The paper addresses the question about the role of migration as an adjustment process by analyzing the relationship between unemployment and labour force mobility in terms of social policies and measures of regional economic development in the context of the experience of the Republic of Macedonia. Migration policy should be directed towards overcoming the steady-state with extensive and permanent migrations, especially of youngsters with higher education on the one hand and activation of the available developmental migratory potential in function of the total socio-economic development of the country, on the other hand.

MIGRATORY MOVEMENTS IN THE REPUBLIC OF NORTH MACEDONIA

The motivation for migration may be described as a combination of social, ethnic, and politically related push and pull factors. Yet, economic reasons remain to be the chief motive for migration of the Macedonian citizens. Unfortunately, because of a lack of comprehensive data from the domestic and foreign sources, it is very difficult to determine the amount and the trends of Macedonian immigration and emigration. Official institutions do not have relevant data about the number of people that had left the country. Last Census of the population, households, and dwellings in 2002, recorded a total sum of 694,032 persons who do not have the character of the indigenous population (when moved), of which 32.1% moved only locally (within the same municipality), 56.5 % moved from one municipality to another, and 11.4% who had immigrated from abroad (*State Statistical Office, 2005).*
Internal migratory movements in R. Macedonia include population movements within the country, as well as changes in residence (address). Internal migration flows have different intensity in different periods and in general, they include rural-urban relationship or movements towards capital city Skopje (both in rural and urban areas). The most intense wave of this type of migration occurred in the period of industrialization of the country (the sixties and seventies years of the last century). During this period, more than 175,000 people left rural areas to seek their livelihoods in urban areas. Such migratory flow has caused a kind of rural exodus, over-dimensioning of urban settlements (especially city of Skopje) and important consequences for the process of demographic aging of the population at the regional and geographical plan (*Ministry of Labor and Social Policy, 2008*). External migrations include movements to and from the Republic of Macedonia, as for Macedonian citizens and foreigners.
In the Republic of Macedonia, one of the most important factors that cause these migration movements is the current situation on the labor market and the high percentage of youth participation in the total unemployment rate. The problem of long-term unemployment exists in all categories of unemployed persons, regardless

of age. Hence, the employment of young people, including those with a higher education level remains a serious problem in order to reduce youth emigration in the world known as "the brain drain". According to an assessment, outside the country, there are at least 15 to 20 thousand people with university education (*Janeska 2003; pp. 65-80*). Similar to other countries in the Western Balkans, the labor market in the Republic of Macedonia is rated as insufficiently inclusive, despite existing legislation in the field of labor relations and equal employment opportunities (*Mojsoska-Blazevski, 2009).* The unemployment rate, although decreased from max 38,7% in 2005 to 24% in 2016, and 21.8 in 2018 still remains rather high. (*State Statistical Office, 2018*). Youth unemployment drops as the level of education rise, but is more than two times as high as the average – 48.2% (47.9 for men and 48.8% for women) (*State Statistical Office, Labour Force Survey, 2016*). In 2016, 25.2% of the persons between 15 and 24 years of age have neither been included in the education system nor have been employed and in 2018 the rate of youth unemployment age 20-35 is 49.8% (*SSO, 2018*). Characteristics of unemployment are its durability, it is structured as a result of the obsolete economic structure and the lack of investments for its change and modernization.

The number of unemployed in the country is 284,823, of which 61.4% are men and 38.6% are women, while the majority of the unemployed are between the ages of 15 and 24 - 53.5%, out of 25 up to 49 years is 28.3 percent and from 50 to 64 years are 24.8 percent (2004 - 64.8% record). Of the unemployed, 159,171 are with secondary education, 68,534 with elementary education, and 40,183 with higher education. With incomplete primary education there are 10,566 people, with 3,936 higher educations and 2,433 people without education *(SSO, 2018).*

During the last years, most of the job vacancies were created in the sectors of processing industry, construction, transport and warehousing, administrative and supporting activities and art, entertainment and recreation. Around 53% of new jobs related to the secondary vocational education and 34% to lower levels of education. In future most of the vacancies will appear in the processing industry (40%) and trade (9%) at the levels of secondary/vocational (62%) and higher education (10%) *(State Statistical Office, Labour Force Survey, 2016*).

During the period of 2009-2015, the net migration was continuously increasing from 1,065 to 4,342 – mostly due the number of foreigners with temporary stay – but registered decrease to 4,113 in 2016 (See *Table 1*). At the same time, the net migration of the country citizens slightly improved remaining, however, negative (from -510 in 2009 to -157 in 2016) *(State Statistical Office, Migrations 2016*).

Table 1: Migration flows in the R. Macedonia in the period 2009-2016

	2009	2010	2011	2012	2013	2014	2015	2016
Immigrants		**2715**	**3211**	**3787**	**3991**	**4208**	**5358**	**4743**
Citizens of the country	259	303	349	396	490	265	259	283
Foreigners with temporary stay	1000	1356	1747	2072	1941	2273	3617	2481
Foreigners with extended stay	598	1056	1115	1319	1560	1670	1482	1979
Emigrants	**792**	**1007**	**1290**	**1415**	**1041**	**839**	**1016**	**630**

Citizens of the country	769	923	1143	1330	945	740	767	440
Foreigners with temporary stay	23	84	147	85	96	99	249	190
Net migration	**1065**	**1708**	**1921**	**2372**	**2950**	**3369**	**4342**	**4113**

Source: State Statistical Office, Migrations, 2016.

The largest group of emigrants are those with secondary education (25.0% of all emigrants in 2016, 31.0% in 2014, 34.4% in 2013 and 41.8% in 2012) followed by the graduates of Universities (including those with Master degree) comprising 9.8% of emigrants in 2016 (10.7% in 2014, 11.2 in 2013 and 9.0% in 2012). The cohort of emigrants with primary education was – 6.1% although much bigger in the previous years: 13.2% in 2014, 17.3% in 2013 and 28.3% in 2012. People holding doctoral degree are the smallest group of emigrants – around 0.2% (*Cabuleva et al., 2013).* Most of the young people would like to move permanently to one of the EU member states, and the reason for the eventual abandonment of the country is required in the greater employment opportunities in accordance with the qualifications young people have and the better standard of living *(Popović and Gligorović, 2016).*

In 2013, top 5 destination countries of tertiary students from Macedonia were Bulgaria (1,197) Italy (507), Germany (425), Austria (412) and Turkey (361), while foreign students studying in the local universities were mainly from Serbia (1,146), Albania (230), Turkey (211), Bulgaria (30), and Croatia (24) (*UNICEF, 2014).*

Macroeconomic developments today will have significant implications on demographic indicators in the future. The increase in economic activity and economic growth as job creator remain the main goals in the policy of raising the living standard of the population, and furthermore for the creation of better economic and social conditions, which would encourage them in the birth and raising of children.

IMPLICATIONS OF THE LABOR FORCE MOBILITY ON REGIONAL ECONOMIC DEVELOPMENT

The labour force migration can affect economies in several ways. Firstly, since migration is a key aspect of labour market flexibility, it is a mechanism through which local and regional labour market differences can be reduced. Secondly, the characteristics of in and out-migrants have important implications for the current and future performances of the local and regional economies. Third, high-unemployment regions in particular lose their young and educated workers. The danger of the process of cumulative causation is bigger in these regions.

Effects of internal migration on the demographic situation are twofold. That, on the one hand directly affects the quantity, territorial layout, and structure of the population, and on the other hand, determines the birth rate and mortality, due to the effects of gender and age structure of the population. Consequences for parts of the country from where people migrate are the shortage of working population and untapped human capital (land, etc.), and in areas in which they migrate are a surplus of the labor force, unemployment, poverty, increased population density and reduced quality of life.

Macroeconomic consequences and implications of a migration in the short term have a positive impact if the positive effects of reducing unemployment and hidden unemployment, foreign exchange inflow, migrants acquiring new knowledge and skills are greater than the losses on different bases, such as reduced production, direct losses from the outflow of highly skilled and educated people (for their education costs and the expected economic effects of their engagement in the country).

Long-term consequences of emigration are negative and are characterized by permanent loss of a part of the population and the adverse impact on the demographic development; outflow of the quality of the workforce - human capital, which are larger than the expected positive effects, in the forms of foreign currency inflow, economic cooperation with member admission countries and the like.

Consequences and implications are more pronounced in areas where migration, especially emigration abroad, noted a significant intensity, which contributed to the deepening of regional disparities in the development of the country's population and changes in spatial-demographic ratios. These movements take place spontaneously in the absence of migration policy and policy of balanced regional development, especially for the development of rural areas and smaller municipalities.

There are large disparities in labor market outcomes between regions. One of the aims of the policy on balanced regional development as a system of goals, instruments, and measures are aimed at reducing regional disparities and attainment of balanced and sustainable development in Republic of Macedonia (*Tosheva & Temelkovska 2018; p.7*). In Macedonia, there is greater dispersion of labor market indicators between different areas. Great heterogeneity of labor market outcomes within a given country is related to differences in the standard of living in different areas.

General economic and social conditions along with the rest of the overall **balanced development policy** throughout the entire transition period are the essence of the existing economic structures and social conditions at the regional (local) level. In other words, there are significant regional differences in the country. The city of Skopje absorbs almost 29% of the total population and 40% of the urban population of the country. There is an enormous amount of financial resources, investment (including foreign direct investment (FDI)) and a huge concentration of knowledge, science, culture and other human and social capital. Obvious economic and social differences between the municipalities and the differences between urban and rural areas continue to increase (*Toshevska et al. 2017*).

Further analysis is needed to understand the potential role of internal migration in the regional evolution of labor market outcomes. The lack of convergence in various areas indicates weakness of mechanisms for establishing balance, such as the adjustment of wages and restrictions on interregional migration. Recognition why this happens is an area of great interest within which could be developed in the further analyzes. Unfortunately, data on internal migration and mobility in LFS (Labor Force Survey) are very limited in order to conduct such an analysis.

Absence of consistent and comprehensive migration policy in the Republic of Macedonia in the past almost five-decade period, emphasized the negative effects of migratory movements abroad. Namely, that greatly contributes that the influence of contemporary economic migration on the socio-economic development of the country itself is manifested through short and insufficiently expressed positive developmental effects and numerous negative consequences and long-term implications with strongly expressed influence. In addition, there is necessary to take into account especially the adversed effects of conversion of the temporary emigration in permanent, as well as the great wave of emigration that hit the country in the last decade.

Recognizing the fundamental determinants and the tendency of population movements, as well as their permanent and expected immediate and long-term economic and social consequences, we suggest that the adoption of long-term and transparent migration policy is more than necessary. It has to be integrated and stems from the country's overall population policy and the politics of the socio-economic development. One of its main objectives is to influence external and internal migration in order desirable demographic and socio-economic development *(Kjurciev 1997,45-54).* Migration policy should be directed towards overcoming the steady-state with extensive and permanent migrations, especially of a younger layers of the population with higher education on the one hand and activation of the available developmental migratory potential in function of the total socio-economic development of the country, on the other hand.

Given the scope, dynamics and species of migratory movements, and the complexity of the issue of migration in terms of their causal association with socio-economic, demographic, and regional development**, migration policy of the Republic of Macedonia aims to create a unique approach** in this area in order to:

- Development of a modern migration policy and regulation of an emigration in accordance with the developmental strategy of the country and the needs of its labor market;
- Creating a consistent policy towards the diasporas, that focusing diasporas attention within the migration, development and use of its developmental potential for the country's progress;
- Improving labor market conditions, strengthening market potentials for engaging work population at all levels, establishment and implementation of a comprehensive package of policies at the micro-level and macro-economic policies.

Microeconomic reforms should further improve the business climate, in order to facilitate administrative procedures for start-up and growth of the companies. These actions, along with measures to reduce labor force costs, will encourage the creation of new jobs and labor demand. Coordinated **macroeconomic policies** need to preserve the current stable environment, but also to provide greater dynamics in the economy. Commencement of investment activity based on the use of domestic resources and domestic work force will mean double incentive for domestic economic entities and citizens, who will be hired. In a recession, taking measures to encourage domestic production factors becomes a necessity to establish dynamic economic growth.

Prevention of future emigration of young people requires the joint efforts of many institutions and approaches aimed at improving the quality of life of young people in all aspects (education and qualifications, work and professional training, family and children, conditions of life, personal development, participation in civil society and others.). Here is a look at some instruments and measures to reduce the population outflow.

Arrangements for organized employment abroad - In order to reduce the negative effects of a further uncontrolled emigration, the Government should actively act in order to encourage employment of a base of temporary stay abroad, occurrence of a bilateral and a regional agreements with the countries of reception and organized involvement in global labor supply through organized involvement in the manufacturing and service sectors in other countries.

Measures to recover part of the permanent migrants and second-generation migrants as well as temporarily working abroad persons in the following areas: customs, tax, credit policy, encouraging foreign direct investment, employment, agriculture and development of small and medium enterprises, facilitating administrative and bureaucratic procedures, activities related to the reintegration of migrants (especially migrants who possess migratory developmental potentials - fundings, organizational and entrepreneurial skills), help with the transfer of foreign currency savings, pensions and other incomes from abroad, and so on.

Encouraging the inflow of foreign currency from remittances and their productive use - with appropriate economic and monetary policy, banking facilities, expansion of banking operations, interest rate policy, security and rights of depositors, development and expansion of primary and secondary securities and exchange market, reliable and timely transfer of funds of a migrants, their direction in productive investments and their treatment as a factor of economic development, direct and indirect measures of political and overall social stability, and more.

RECOMENDATIONS FOR THE POLICY OF REGIONAL ECONOMIC DEVELOPMENT

There are several implications for the migration policy on regional economic development and we divided them into four groups as follows:

(1) Demographic and socio-economic development implications

a) ***Utilization of the demographic potential*** should be accomplished by increasing the amount of funds in prioritized areas: employment, education and training and social inclusion of the marginalized groups on the labor market. It is encouraging within the human resources development component as a part of the state policy for strengthening these resources.

b) ***A rural-urban disparity in education and training,*** as well as achievements in learning, needs to be overachieved with a decentralized education system, by establishing standards for skills development and training centers.

c) ***Increased influence of ICT -*** in rural areas increases the possibility of employment of the population; it is necessary to overcome the problem of illiteracy, high ICT-costs and inadequate ICT infrastructure in disadvantaged areas.

d) ***The employment of the female population*** needs to be increased through improved infrastructure (roads, transportation, and closeness to schools), entrepreneurial education and improved conditions for obtaining bank loans.

(2) Structural factors

a) ***The integration of young people in the labor market*** should be expressed with the constant opening of new vacancies, by aligning educational system with the needs of the labor market, and in particular with strengthening the interest and conditions for starting their own business. In addition, by providing support for the young people's first employment, by gaining work experience through internships and training, many young people more easily can get their employment or social engagement. In this framework, there is a need of highlighting the activities: employment subsidies for orphans, activities in work clubs, professional orientation, etc., which should lead to employment and reduced time wait for the first employment of young people. There is necessity of individual employment plans and training programs for young people who will start their own business.

b) ***Successful stories:*** encouraging the development of firms that operate using the benefits of economies of scale and constantly expanding capacities. The state's role is to provide technical support to the new owners, to facilitate the process of registration procedures, through decentralization and community participation, technical support, capacity building and the establishment of an institutional and legal framework.

(3) Developmental Inputs

a) ***Human resources development*** - strategic goal of regional development is to foster the human resources development, in particular by improving the quantity and quality of human capital, which leads to more and better jobs, higher living standards, growth and development. For this purposes, it is necessary to overcome certain specified conditions that affected the incidence of poverty and social exclusion.[95]

b) With the establishment of conditions for sustainable demographic development based on a better quality of life and well-being for every individual and every family, regardless of place of a residence, gender, age and ethnicity of the citizens, allows the human rights to individual choice and behavior, having accounted the needs of present and future generations.

c) ***Access to bank credits*** should have to be increased through microfinance institutions, by applying best practices that include full autonomy in prices, as well as access to international finance based on "ratings" of the international financial institutions.

d) ***Support the business centers, business incubators and technical-technological parks and strengthening the capacity of existing regional centers***, with numerous developmental programs that will provide new business relationships across the world. Particularly important for market development and capacity is establishing new and supporting existing

[95] Observed all acts, documents and strategies related to social exclusion in Macedonia.

business incubators, which provide a range of services for small and medium enterprises. Support and business development agency can offer support to small businesses for rural diversification goals (vocational training, assistance in marketing and in formalizing their status).

(4) Institutional and legal framework

a) ***Active labor market policies:*** it is necessary to strengthen the expansion of their services to the informal sector and the establishment the local representative offices. Active labor market policies have a better impact if they target specific categories of citizens.
b) ***Improved environment for investment*** and openness to the global economy leads to increased competitiveness.
c) ***Arrangements for organized employment abroad*** with a broader scope and increased integration (through labor standards and on-line information on international labor market).

CONCLUSIONS

Successful implementation of future migratory policy of the country needs further strengthening of the institutional capacities including human resources, as well as their material and technical equipping. Taking into account its complexity, successful implementation of planned activities needs coordination and cooperation of the competent authorities and institutions, as well as clarification of the responsibilities on already formed organizations and groups in the field of migration in the country. According to the decentralization process, it is necessary to determine specific activities at the local level, particularly in the implementation of migration measures and integration of foreigners in local communities.

Macedonia until 2025 will officially have less than two million populations, young people under the age of 14 will fall to 14.4% by 2030 (from 33.2% in 1994), and every year out of the country irreversibly will move over 15,000 people. In Macedonia by 2050, there will be no more than 1,746,000 residents (*Ministry of Labor and Social Policy, 2015*).

The experience so far confirms that international migration may have a significant impact on the development of the population, and on the social and economic development of the country. Hence, their continuous research is very important for national planning, demographic and socio-economic development. Of no less importance is internal migration, due to which the Republic of Macedonia has a serious approach to the totality of migration in principle. From this aspect, the preparation of the annual migration profile and keeping active migration policy in the Republic of Macedonia is an extremely important tool for the understanding of the migration flows, their analysis and basis for planning future activities.

As the strategic measures that will generate conditions to stop the migratory movements of population are dynamic economic growth, creating new jobs, higher living standards, arranged state and administrative-bureaucratic and infrastructural aspect and stability in the long term, we propose the following:

- Improvement of the overall business climate in the country and creation of the new jobs as well as supporting unconventional types of employment.

- Introduction of the instruments for reducing poverty on the part of the population that does not earn enough for the living.
- Construction of an educational inclusion policy which will develop equal access to education and equal opportunities for education with certain quality standards.
- Developing a model of health insurance based on principles of solidarity, equality and adequate performance, along with the expected trends of an aging population.
- Improve the process of obtaining social services and benefits, especially in terms of needs based on assessment, capacities for their supplying and decentralization of social services.
- Formulate and implement the long-term policy that will incorporate the direction of indirect measures for specific components of the total population movement.
- Acceptance of a permanent long-term migration policy that will incorporate the direction of internal and international migration.
- A balanced regional development for reducing internal migration primarily towards the City of Skopje.
- Understanding the migration potential (in total and in relation to certain categories of Macedonian citizens), by identifying the reasons for the expressed migration intentions.
- Reducing the intensity of the permanent emigration of the Macedonian citizens abroad.
- Reducing the emigration of highly educated young people and talents (brain drain).

The prevention of future emigration of the young people requires joint efforts of many institutions and an approach aimed at improving the quality of life of young people in all aspects (education and qualification, work and professional training, family and children, domestic living conditions, personal development, civil society development, etc.).

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SPREAD OF DEMOCRACY BY PANEUROPEAN MOVEMENT: AN HISTORICAL OVERWIEV

Prof. d-r Ivanka D. Vasilevska
m-r Ivan Stojanovski
Faculty of Law "Iustinianus Primus",
University "Ss. Cyril and Methodius", Skopje

Abstract
For the majority of Europeans, World War I meant the beginning of the end of the European civilization. The minority, however, drew the conclusion that Europe's capacity to react the war depended on its ability to overcome the aggressive nationalisms that had dragged the European continent into catastrophe and to adopt the ideal of a united and peaceful Europe as a common project. Europe as a continent and community was dying due to the fact that its inhabitants were killing each other and destroying by means of modern technology. Therefore, a need was born at that time, to change the political system and to make a foundational difference. World War I changed the political map of Europe, but the political system of Europe remained the same. Ideas regarding united Europe and the methods for its realization have changed through the various stages of European and world history. One of the most valuable concepts in this context is the concept of Richard Coudenhove-Kalergi, Austrian cosmopolite, who published an all-time book titled "Paneurope" in 1923, which contains a specific proposal for a united Europe and on whose basis is organized Paneuropean movement as a concept of European integration. Because of that, our concept for this article is focused on the role of Paneuropean movement in spreading democracy across Europe, its efforts in the prevention of Second World War, the self-sacrificing struggle against the Nazi and in the following years the Communist regime. By employing data and experiences from the work of the Paneuropean movement, we present the influence over development of European countries, in the subsequent formation of European Union and in the development and spread of democracy in Europe and worldwide.

Key words: World War I, Richard Coudenhove-Kalergi, Paneurope, Paneuropean movement, Second World War.

INTRODUCTION

The twentieth century was the bloodiest of all in human history. It was completely overtaken by wars, but still like never before it managed to bring welfare and progress to the entire world. *The greatest tragedy to Western civilization erupted with World War I in 1914... Classical liberalism was thereby murdered, and virtually disappeared, and was replaced by collectivism which reined both intellectually and in practice throughout the remainder of the twentieth century.*[96]

[96] Denson, John V., A century of war, Ludvig von Mises Institute, United States of America, 1997, page:19.

World War I or the Great War began on 28th of July 1914 and lasted until 11th of November 1918. During this war in Europe more than 9 million combatants were killed or deadly injured and 7 million civilians suffered as casualties.[97] This was the deadliest conflict in history up to that moment. In the period of this Great War where world's economic and military powers were drawn in, two opposing alliances appeared: the Triple Entente: United Kingdom, France and Russian Empire and Central Powers of Germany, Austro- Hungary and Italy. These alliances were reorganized and expanded as more nations and states entered the war. More than 70 million military personnel, including 60 million Europeans, were mobilized in one of the largest wars in history up to that moment, but nobody could have even imagine that life will bring another war in future greater than this Great War.
By the end of the World War I, German, Russian, Austro-Hungarian and Ottoman empires ceased to exist, notably to say is that the former two lost substantial territory, while the latter two were dismantled and ceased to exist as such. World War I radically altered the political landscape of Europe. Later, after the World War I, the League of Nations was formally created during the 1919 Paris Peace Conference with the aim of preventing any repetition of such an appalling conflict. This aim failed with weakened states, renewed European nationalism and the German feeling of humiliation contributing to the rise of Nazism, these conditions eventually led to World War II.[98]
In the World War II there was massive number of casualties among civilians, including the Holocaust, where approximately 11 million people were killed. During strategic bombing of industrial and population centres approximately one million people were killed including the use of two nuclear weapons in combat and it resulted in an estimated total number of 50 million to 85 million fatalities, which made World War II the deadliest conflict in human history.
After the war, inspired by the will of states not to allow such wars to repeat, the institution United Nations (UN) was established to foster international co-operation and prevent future conflicts. After ending the Second World War, the Soviet Union and the United States emerged as rival superpowers in the new political reality, setting a stage for the upcoming Cold War which lasted for the next 46 years.
The struggle for dominance was expressed via proxy wars around the globe, psychological warfare, and technological competitions. "A clash of very different beliefs and ideology- capitalism versus communism- each held with almost religious conviction, formed the basis of an international power struggle with both sides vying for dominance, exploiting every opportunity for expansion anywhere in the world."[99]
The USSR consolidated its control over the states of the Eastern Bloc, but the United States began strategy of global containment to challenge Soviet power extending military and financial aid to the countries of Western Europe and therefore they created the NATO alliance.[100]

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[97] Ellis, John/ Cox, Michael, The World War 1 Databook: The essential fact and figures for all the combatants, Aurum, London, 2001, page: 270.
[98] Vasilevska, I,. The Versailles System from 1919, ResPublica, Skopje, 2016, page: 309.
[99] http://www.historylearningsite.co.uk/what%20was%20the%20cold%20war.htm (accessed on 20.03.2019).
[100] Kissinger, Henry, Diplomacy, Simon and Schuster Paperbacks, New York, 1994, page:456.

In the same time, a young man, only 29 year old Richard Coudenhove-Kalergi, Austrian cosmopolite, published an all-time book titled "Paneurope" in 1923. As one of the most valuable concepts, which contains a specific proposal for a united Europe and on whose basis is organized Paneuropean movement as a concept of European integration. His input in the master piece "Paneurope", activities in regards to the establishment of numerous committees of Paneuropean Union in foreign countries and his noble work against the tyranny of different regimes. The role of Paneuropean movement in spreading democracy across Europe, its efforts in the prevention of Second World War, the self-sacrificing struggle against the Nazi and in the following years the Communist regime.

SPREAD OF DEMOCRACY BY PANEUROPEAN MOVEMENT

In the 20th century transitions to liberal democracy have come in successive waves of democracy, variously resulting from wars, revolutions, decolonization and religious and economic circumstances. Paneuropean movement was grounded in liberal democratic values and was considered staunchly anti-communist from its inception and especially during the Cold war. Because of that, this movement was reviled by the communist regimes of the Easter Bloc. Later Paneuropean Union became renowned for its role in organizing the Paneuropean Picnic.

Liberal democracy is a form of government where representative democracy operates under the principles of liberalism, i.e. protecting the rights of the individual which are generally enshrined in legislation.[101] This as form of government was characterized by fair, free and competitive elections between multiple distinct political parties, a separation of power into different branches of government, the rule of law in everyday life as part of an open society and the equal protection of human rights, civil rights, civil liberties and political freedoms of all people. To define the system in practice, liberal democracies often draw upon a constitution, either formally written or not codified to delineate the powers of government and enshrine the social contract. After a period of sustained expansion throughout the 20th century, liberal democracy became the predominant political system in the world. After the World War I, the dissolution of the Ottoman and Austro-Hungarian empires contributed in the creation of several nation-states from Europe, most of them at least nominally democratic. Also in the 1920's Nazism, Fascism and dictatorships were flourishing in Nazi Germany, Italy, Spain and Portugal, as well as non democratic regimes in the Baltic, the Balkans, Brazil, Cuba, China and Japan among other countries.[102]

Later, after the World War II, a definitive reversal of this trend was in place and started democratization of the American, British and French sectors of Germany, Austria, Italy and Japan, who served as a model for the later theory of regime change. But most of Eastern Europe, including the Soviet sector of Germany fell into the non democratic Soviet bloc.

[101] Friedman, Milton, The Basic Principals of Liberalism, Lecture-Wabash College, 1956, page: 1.
[102] Raza, Syed Ali, Social Democratic System, Global Peace Trust, 2012, page: 54.

After in 1960's majority of the countries were nominally democracies, most of the world's population lived in nations that experienced sham elections and other forms of subterfuge, particularly in Communist nations and the former colonies.
A subsequent wave of democratization brought substantial gains toward true liberal democracy for many nations in the world. In the 1980's economic malaise, along with resentment of Soviet obsession, contributed to the collapse of Soviet Union, and associated end of the Cold War and the democratisation and liberalisation of the former Eastern bloc countries.[103]
In the period of Hitler's ascendance in Germany, Paneuropean Union convoked its second international congress on 17th of May 1930 in Berlin. In the years before Hitler, Paneuropean Union worked for German-French reconciliation and a revision of the Paris-suburban contracts.[104]
The third congress was held in Basel in October 1932. Coudenhove-Kalergi repeatedly accentuated his uncompromising rejection of Hitler and Stalin.
On 30th of January 1933, on the day when Hitler was appointed Chancellor of the German Reich, Coudenhove-Kalergi held his last address in Berlin. That year all Paneuropean literature was forbidden in Germany. From 1933 Paneuropean movement was concentrated strongly in Austria, but not in Germany. "Coudenhove – Kalergi was convinced: the future of Europe depends on the maintenance of Austria's independence."[105]
Chancellor Engelbert Dollfuss[106] took over the honorary presidency of the Austrian Paneuropean Union. Coudenhove – Kalergi analyzed also in writing the National-Socialism and Communism. His work "Stalin & Co" appeared in 1931. In 1937 for the first time was printed "Total State-Total Man" (Totaler Staat-Totaler Mensch), it was philosophical, political and polemic settlements in regards to the two large totalitarian movements of the century.
Federal Chancellor Dollfuss was murdered, and his successor became Kurt von Schuschnigg who took over the Honorary Presidium of the Austrian Paneuropa Union. He was in the leadership of the 4th Paneuropa Congress in 1935 in Vienna, an event that represented "a great international demonstration against the National-Socialism."[107] "For Coudenhove-Kalergi the Nazi rise was a disaster for paneuropeanism".[108] Because of that after 1933 he turned his paneuropean energy to a campaign against Hitler and likeminded followers.

In the period between 1934 and 1938 Coudenhove-Kalergi tried to achieve alliance between Austria, France and Italy.

[103] Kissinger, Henry, Diplomacy, (quoted work), page:710.
[104] http://www.epaneurope.eu/tl_files/epaneurope2011/downloads/documents/Paneuropa%20History.pdf (accessed on 24.02.2019) pg. 5.
[105] Baier, Stephan,"The history of Paneurope", 2006.
http://www.epaneurope.eu/tl_files/epaneurope2011/downloads/documents/Paneuropa%20History.pdf
[106] Encyclopaedia Britannica, Engelbert Dollfuss was born October 4, 1892 in Texing, Austro-Hungarian Empire - died July 25, 1934 in Vienna, Austria, Austrian statesman and, from 1932 to 1934, chancellor of Austria, was assassinated by Nazi followers.
[107] http://www.epaneurope.eu/tl_files/epaneurope2011/downloads/documents/Paneuropa%20History.pdf
[108] Glassheim, Eagle, Noble nationalists: The transformation of the Bohemian aristocracy, 2005, page:121.

"When Nazi regime came to power, Paneuropa movement was outlawed."[109] In March 1938 Austrian government resigned under the pressure of German ultimatums and Nazi revolts within the country, and few days later Germany formally annexed Austria.

After the Annexation (Anschluss)[110] of Austria in 1938, the Paneuropean center in Vienna Imperial Palace (Hofburg) was occupied. That's why the Austrian Paneuropean centre moved its activities in Switzerland and Paris. There they endeavoured to establish an Austrian exile government also closely known by Coudenhove's future successor, the Austrian crown-prince Otto von Habsburg. After the occupation of Czechoslovakia, Coudenhove-Kalergi received French citizenship. However later he would write: "Since the breakdown of my Austro-Hungarian home country, I am a convinced European patriot, despite my French and previously my Czechoslovakian citizenship".[111]

Coudenhove-Kalergi endeavoured to obtain a close alliance between France and Great Britain, because these states declared the reason why they are waging this war, is to put an end to it and assist the creation of Paneurope.

In 1940, Coudenhove-Kalergi fled from the Nazis, via France, Spain and Portugal to New York, the United States. From there he continued to work on paneuropean plans, as co-director of the "Research Seminar for Post war European Federation" at New York University. Even after Japanese forces made an assault on Pearl Harbour, Coudenhove's determination was not personally affected.[112]

On 25th of March in 1943 in New York he convoked the 5th Paneuropean Congress.

In the period between the years of 1940 to 1944, Otto von Habsburg lived in Washington and together with Coudenhove-Kalergi worked at that time in political advocating for Austria, in humanitarian aid actions, in the Southern-Tirol question, as well as in paneuropean activities.

Paneuropean movement in the union of the Western European states saw only the starting point for an entire European unity. That's why its conviction firstly required the breakdown of the communist system and liberty for the people of Central and Eastern Europe.

After that, Paneuropean movement actively tried to establish contacts with freedom movements on the other side of the "Iron Curtain"[113] (Eiserner Vorhang).[114] A historical cut was the Paneuropean picnic at the Austrian-Hungarian border which was organised on 19th of August 1989, near the town Sopron (Odenburg). It was a peace demonstration and tore the first hole in the Iron Curtain, and bravely heralded the end of Europe's partition. It was organised by the Paneuropean Union and the

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[109] Holzner, Burkart/ Holzner, Leslie, Transparency in Global Change: the Vanguard of the Open Society, 2006, page:129.

[110] (personal note) "Anschluss" was the annexation of Austria into Nazi Germany in March 1938.

[111] Baier, (q.w.).

[112] (p.n.) Richard von Coudenhove-Kalergi's mother was Japanese.

[113] (p.n.) The Iron Curtain symbolized the ideological conflict and physical boundary dividing Europe into two separate areas from the end of World War II in 1945 until the end of the Cold War in 1991. The term symbolized efforts by the Soviet Union to block itself and its satellite states from open contact with the west and non-Soviet-controlled areas. On the east side of the Iron Curtain were the countries that were connected to or influenced by the Soviet Union. On either side of the Iron Curtain, states developed their own international economic and military alliances.

[114] Translation of the wording "Iron Curtain" in German language.

Hungarian opposition Hungarian Democratic Forum under the protection of Otto von Habsburg[115] and Imre Pozsgay-Hungarian State Minister and on the event came 661 people.[116]

"On the basis of previous agreement between the Austrian and Hungarian authorities, the participants of the Paneuropean picnic symbolically opened the border"[117]

In the year of 1989 situation in Central Europe was under tension. Formally, people were still under dictatorship and were calling for democratic elections, freedom of speech and withdrawal of Soviet troops.

The Iron Curtain remained a dominant factor in the movements to tear down the walls and unite Europe. Some of the countries faced a severe communist power structure, but some of them assumed a more reform-oriented approach. Supported at that time by Gorbachev's new policies, the communist leadership realized the necessity for change.

Civil society organizations and political parties played a role in moving towards a democratic multi-party system. In several Central European countries in the year of 1989, round tables have been organized in order to peacefully and consensually change the political system. That's why in February 1989 formal Round Table discussions began in the Hall of Columns in Warsaw. Later on 4th of April 1989 the historic Round Table Agreement was signed legalizing Solidarity (Solidarnosc)[118] and setting up partly free parliamentary elections to be held on 4th June 1989 (coincidentally the day following the crackdown on Chinese protesters in Tiananmen Square).

In that time, there were still orthodox hardliners who did not believe in democracy and human rights and proclaimed the leading role of the communist party and thus their dictatorial regime.

Having in mind the previously written, it is explanatory why in Germany the Berlin Wall was constructed (1961-1989), and only pensioners were allowed to pass through (debatable also). These backward forces were predominant in East Germany, Czechoslovakia, and Romania. In regards to Hungary, the situation was a bit more relaxed, due to the fact that since 1988, Hungarians possessed so-called "world-passports" enabling them to travel relatively freely. In 1989, many Romanian citizens escaped the dictatorship in their country and were filling refugee camps near Debrecen, at Hungarian-Romanian border.

The Hungarian government was bound by a bilateral agreement, and should have legally sent these people in Romania, and thus exposing them to revenge by the Romanian authorities. That's why Hungary formally joined the United Nations

[115] Shepherd, Gordon Brook, Uncrowned Emperor: The Life and Times of Otto von Habsburg, A&C Black, England, 2003, page: 211.

[116] http://thevieweast.wordpress.com/2009/08/19/cracks-in-the-iron-curtain-remembering-hungarys-pan-european-picnic/ (accessed on 06.03.2019).

[117] Rev, Istvan, Retroactive Justice: Prehistory of post- communism, 2005, page: 7.

[118] (p.n.) Solidarity (Solidarnosc in Polish) is a Polish trade union federation that emerged on 31st of August 1980 at the Gdansk Shipyard under the leadership of Lech Wałęsa. It was the first non-Communist Party-controlled trade union in a Warsaw Pact country.

Convention Relating to the Status of Refugees (CSR) in 1989,[119] which gave them a legal base not to deport them back to their country of origin.
Lake Balaton in Hungary where East German citizens often spent their summer holidays was the place where they were meeting their relatives and friends from Western Germany.
Otto von Habsburg on 20th of June 1989, visited the university in Debrecen, where he addressed the interested Hungarian audience about the question of how Europe would look without borders, and what impact the European Parliament elections had on the people of Central Europe. After the speech, followed a dinner where two representatives of the local MDF (Hungarian Democratic Forum, the conservative party of later Prime Minister Jozsef Antall), Maria Filep and Ferenc Meszaros, surprised the attendees with the idea of arranging a picnic at the Austro-Hungarian border.[120]
National leadership of the MDF had doubts about that, but Maria Filer wanted intensive action to recruit participants and to find the exact location suitable for such an event. She suggested on the gathering to involve intellectuals and opposition activists from the CEE countries taking place in Martonvasar (close to Lake Balaton) with a planned end date of 20 August 1989. It was agreed to host the picnic next to Sopron, in Sopronpuszta, at the old Bratislava Road, which has been a border since 1922.
The picnic was intended to be an informal gathering of international participants, with special regard to Austrians and Hungarians who should be coming together directly at the border, at the meadow, to grill, eat and interact.
The border was opened a short-time, just for three hours so that pedestrians from both sides of the border can meet each other and share their dreams of a European continent without borders.
The organizers engaged Otto von Habsburg and Imre Pozsgay[121] as patrons of the event, which demonstrated the will of all sides involved to work for the goals of the event. The flyer that advertised the picnic was distributed to East German citizens and somehow in their minds it represented a way to defect to Western Germany via Austria.
What was left of one of those regimes in Budapest had already agreed with the Austrian and German authorities not only the day, but the precise hour, 2:30 in the afternoon of 19 August, when the border crossing at Sopron will be opened up. The German government was involved because the grounds of its Embassy in Budapest were by now packed with hundreds of East Germans who had camped there on an escape route to the West. During the previous fortnight, their food and water from the Embassy had been distributed, together with small maps showing the way to Sopron. When the gates were open, a total of 661 East Germans swarmed through to join the picnic. It was, Walburga said: “like watching birds escaping from a cage,

[119]https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en (accessed on 07.03.2019).
[120] Shepherd, (q.w.) page:191.
[121] (p.n.) Imre Pozsgay is born in 1933 in Kony. He is Hungarian, ex-Communist, politician who played a key role in Hungary's transition to democracy after 1988.

embracing freedom as though it were the first dawn of spring". She and her youthful fellow Pan-Europeans had lived up to their name.[122]

East German citizens, under German communist law, were not allowed to travel to "West", but they had to write an official petition to East German authorities. For them the picnic was an opportunity to act. The destiny of these approximately 100,000 people for several months was top news story which was broadcasted and showed Europe's urgent need to find a suitable way out.

The East German rulers, planning to celebrate the 40th birthday of the "GDR"[123] on 7th of October 1989, were keen to hide the problems and were silent about the mass exodus of their own people.[124] Several hundred "GDR" citizens conducted a "run" to the picnic site, literally overrunning the old wooden gate and getting to Austria. With this picnic the organizers made history because the gate was opened and the first brick from the Berlin Wall was knocked out in Hungary.

Subsequent events led to a total and unconditional opening of the Hungarian borders on 11th of September 1989, to the fall of the Berlin Wall on 9th of November 1989 and finally to the end of the Iron Curtain. That day Paneuropean Union could form its first Membership-Organization in the "Eastern Bloc" in Hungary. The contacts with citizens, freedom-fighters and new groups in the declining Eastern Bloc were not restricted on the leadership of the International Paneuropean Union, but were based widely on the initiatives of regional or local Paneuropean groups.

On 27th of June, 6 kilometres away from this spot, in a symbolic act Austria's then foreign minister Alois Mock and his Hungarian counterpart Gyula Horn,[125] together crossed the border fence in a move highlighting Hungary's decision to dismantle its surveillance installations along the border, a process started on 2nd of May 1989.[126]

Organizers of the Paneuropean Picnic had distributed pamphlets advertising the event. Ministry of Interior of Hungary before the event made an order for the guards on the border, not to intervene and not to bear any arms on the day of the event.[127]

Thousands more East Germans were waiting, in Budapest and around the Lake Balaton, for their chance to cross the border. On that day, the number of people who crossed the border into the West was limited on a few hundred.

The next few days, only a relatively small number actually reached the West successfully because the Hungarian government increased the number of guards patrolling through the border. The reason was that people were informed by the Hungarian guards that they could obtain West German passports issued by West German diplomats working in Hungary, and because of that a lot of East Germans temporarily stayed in Hungary waiting for the issue of passport and the event to unfold.

Hungary opened its borders on 11th of September 1989 for citizens of the German Democratic Republic and other Central European countries. With that the borders of the Central European countries for the first time officially were opened for the

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[122] Ibid. page:192

[123] East Germany- officially the German Democratic Republic or GDR.

[124] http://www.windservers.com/pan-european_picnic/background (accessed on 07.03.2019).

[125] (p.n.) European University Institute, Alois Mock and Gyula Horn, the Foreign Ministers of Austria and Hungary Clip the Barbed wire Fences on the Austro-Hungarian Boarder , 27 June 1989.

[126] http://www.eurovelo13.com/stages/austria-hungary?set_language=en (accessed on 01.04.2019).

[127] Europe for citizens, The Charter of European Rural Communities, 2011, page 16.

citizens of the Soviet bloc states. That marked the fall of Iron Curtain, and few months after the opening, more than 70.000 East Germans fled to West Germany.

THE LONGING OF MANY IS THE REALITY OF FEW!

20th century brought great evil, but also nobility and humanity that were able to fight it. During the Nazi regime, although Richard von Coudenhove-Kalergi and Otto von Habsburg were under threats of losing their lives due to their believes and actions, they still remained devoted to their principals and morality. They had to leave their homeland Europe and fight the battle for freedom over the oceans.

Their courage and ingenuity set them to be the loudspeakers of future Europe, to promote the political system of post war continent and to rethink the international arena made up by European countries. Their courage and will guided them through the Second World War and the Cold War.

Today many people of this World wish to live in a free and democratic society, that number was even greater in the recent past. In the year of 1989 situation in Central Europe was under tension. Everyone knew that the end of Soviet Bloc is coming, but nobody dared to challenge it. Formally, people were still under dictatorship and were calling for democratic elections, freedom of speech and withdrawal of Soviet troops. The Iron Curtain remained a target and dominant factor in the movements to tear down the walls and unite Europe.

Such proposal and courageous adventure came directly from the Paneuropean movement, to organize a picnic right in front of the Austro-Hungarian border. With this picnic the organizers made history because they managed to open the gate and gave signal that other actions can take place, finally leading even to taking down of the Berlin Wall.

CONCLUSION

Democracy, the best political system of all others that mankind has been able to organize, is under pressure during these days. Clashes between the east and west are currently taking place on European territory, repeating history as many times before. Europe faced these types of challenges previously in its history and was able to overcome and continue with great victories, but not without numerous casualties and suffering to the human lives and European civilization and values.

One great idea of a young gentleman in the first half of the 20th century, that promoted united Europe, was crucial in the struggle against tyranny and the dangers threatening Europe and its civilization. It offered a path of salvation to unity and brotherhood for European peoples and nations previously engaged in wars and blood sharing among each other. It emerged from the ashes of the First World War and offered a solution to hostile and ever in war neighbouring countries and nations.

It was Richard’s past and cultural heritage that gave birth of his great will to form the future United Europe. Coudenhove-Kalergi was a citizen of the world, born in Tokyo, Japan on 16th of November 1894, by a Japanese mother of a well situated and educated family and an Austrian-Hungarian father, who happened to be an experienced diplomat.

He became to be politician and philosopher, published his lifework, the masterpiece “Paneurope”, created the idea of a Paneurope and undoubtedly with great passion

started promoting Paneuropean movement. He righteously earned the title Pioneer of European integration among intellectuals and common people of this world.
It is to be noticed that Richard von Coudenhove-Kalergi at such a young age of 29, was able to create and publish his programmatic book “Paneurope”. Paneuropa manifesto became famous in a short time and was translated in 15 languages. That was the beginning of Paneuropean movement. The prophecy of this idea is significant today as it was in its initial time. Statements made in the epochal manifest of “Paneurope” and its idea for united Europe are true today as they were in 1923 when it was released to public, true and applicable as in the after mach of Second World War and also as in the years of Cold war in Europe.
Paneuropean movement had the task to affect the media and influence the public opinion. For its mission it grabbed the attention of the government and its politicians. Coudenhove-Kalergi was perfectly aware that United Europe will be achieved only by the will of politicians and their people, and not by a military action or occupation.
Paneuropean followers proudly continued the mission for united Europe and spread the wave of democracy into lands previously hostile to the warming light of democratic values. Their will and determination introduced freedom and free will to those dreaming of it, thus creating brotherhood of freedom and democracy loving countries and nations.
The will for United Europe was inspired by the greatness of European culture, art and science on one side and was pushed by the necessity of preventing repetition of future wars such as the World War I and World War II. The will and decisiveness of many, made triumph in history by forming the European Coal and Steel Community and declared to be first step in the federation of Europe. Subsequent successes followed and in 1957 the Treaty of Rome was signed followed by The Merger Treaty of 1967.
Inspired by the will and ideology of great people that served the Paneurope idea, te creation of European Union followed by the will of the great variety of different political parties and their own particularities of local, regional and national cultures, languages and traditions. European Union was born and the process of European unification begun. With the Maastricht Treaty the European Union was formally established. Huge debates are active even today in which direction should the process continue, but nevertheless it still offers a path of benefit and mutual cooperation.

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EUROPEAN ARREST WARRANT: GROUNDS FOR NON-EXECUTION

Veljko Turanjanin, PhD
Assistant professor
Faculty of Law, University of Kragujevac, Serbia

Abstract
The author in this work deals with the European Arrest Warrant, as one of the form of mutual recognition of the judicial decisions. More correctly, it is a first concrete measure implementing the principle of mutual recognition of the judicial decisions in the criminal law of the European Union, marked as a cornerstone of judicial cooperation. The adoption of the European Arrest Warrant and the related human rights and constitutional concerns led to calls for measures enhancing the protection of the defendant after he or she has been surrendered to the issuing Member State. Because of its political nature, it creates problems in its practical implementation. In addition, Court of Justice of the European Union dealt with this issue and brought new insights into this complex matter.

Key words: European Arrest Warrant, Court of Justice of the European Union, mutual recognition of the judicial decisions, EU Criminal Law, extradition

INTRODUCTION

European Arrest Warrant (hereinafter: EAW) represents result of the years of the activity started in Tampere in 1999[128], and especially after the September 2001. Although the third pillar does not contain an explicit basis for the adoption of the criminal procedure measures, it did not stop negotiations in that way (Mitsilegas 2009, 90). Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2002/584/PUP (hereinafter: FD) was adopted 13/06/2002. The surrender system is very simplified in this way and it represents the replacement of the complicated system of the extradition, which shown many deficiencies (Babic 2011, 262; Hinarejos 2007, 796; O'Shea и Robinson 2011: 147). However, EAW suffers constant critics (Blackstock 2010, 19), but it represents one of the rare mutual recognition instruments that is fully implemented in European Union, besides original 23 measures based at the mutual trust between the Member states. By them, Member states are obliged to respect the principles of the freedom, democracy, respect for human rights and rule of law (Panainte 2016, 210). Although system of the mutual recognition has a significant number of the positive elements, the field of the execution of the judicial decisions always requires a reaction of the state that affects the freedom of the individual (Marin 2014, 330). In this field it is important jurisprudence of the European Court of Justice (hereinafter: ECJ), which after the *Pupino* case (Pupino

[128] http://www.europarl.europa.eu/summits/tam_en.htm, приступ: 26.02.2019. године.

2005) accepted an obligation to interpret harmonization of the national legislations with the framework decisions (Klimek 2015, 34).
EAW could be issued just under certain conditions. In the first place, a European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months. (Article 2 (1) FD). Then, there are 32 crimes for which the country can issue EAW. More exactly, the following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of the FD and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant: participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests, laundering of the proceeds of crime, counterfeiting currency, including of the euro, computer-related crime, environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties, facilitation of unauthorised entry and residence, murder, grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, organised or armed robbery, illicit trafficking in cultural goods, including antiques and works of art, swindling, racketeering and extortion, counterfeiting and piracy of products, forgery of administrative documents and trafficking therein, forgery of means of payment, illicit trafficking in hormonal substances and other growth promoters, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, arson, crimes within the jurisdiction of the International Criminal Court, unlawful seizure of aircraft/ships and sabotage (Article 2 (2) FD). Consequently, for the mentioned crimes the condition of the double criminalization does not apply. However, if we reconsider these crimes, we can conclude that they are common, and national legislations have an obligation to provide them. Additionally, prescribing double criminality condition lead to the long procedure, which is not a part of the modern tendencies (Bapuly 2009, 12). But, in this way legislation that issue EAW is in the better position (Fletcher, Lööf and Gilmore 2008, 114). For these considerations it is important judgment *Openbaar Ministerie v. A* (Openbaar Ministerie v. A 2015). Here, we will emphasize that in one of the most famous decisions related to the EAW, *Advocaten voor de Wereld* (Advocaten voor de Wereld 2007), ECJ considered does and Article 2 FD violates principles of the legality, equality and nondiscrimination.

GROUNDS FOR THE REFUSAL EAW

Grounds for the non-execution of the EAW can be mandatory and optional. Article 3 FD regulates mandatory reasons:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

In the next article we can find seven optional reasons for the non-execution of the EAW. So, the executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory (Article 4 FD).

According to the judgment *AY* (AY 2018)Article 1(2) FD must be interpreted as requiring the judicial authority of the executing Member State to adopt a decision on any European arrest warrant forwarded to it, even when, in that Member State, a ruling has already been made on a previous European arrest warrant concerning the same person and the same acts, but the second European arrest warrant has been issue\d only on account of the indictment, in the issuing Member State, of the requested person. Article 3(2) and Article 4(3) FD must be interpreted as meaning that a decision of the Public Prosecutor's Office, such as that of the Hungarian National Bureau of Investigation in question in the main proceedings, which terminated an investigation opened against an unknown person, during which the person who is the subject of the European arrest warrant was interviewed as a witness only, without criminal proceedings having been brought against that person and where the decision was not taken in respect of that person, cannot be relied on for the purpose of refusing to execute that European arrest warrant pursuant to either of those provisions.

In addition, FD must be interpreted as meaning that the executing judicial authorities cannot refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard in the issuing Member State before that arrest warrant was issued (Radu 2013). However, ECJ considers that Article 3(3) is to be interpreted *as meaning that the judicial authority of the executing Member State must refuse to surrender only those minors who are the subject of a European arrest warrant and who, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based*. Further, Article 3(3) FD *is to be interpreted as meaning that, in order to decide whether a minor who is the subject of a European arrest warrant is to be surrendered, the judicial authority of the executing Member State must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, without having to consider any additional conditions, relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor for such acts are specifically subject under the law of that Member State* (Piotrowski 2018).

Then, ECJ in its jurisprudence dealt with the issues related to the resident status. In *Kozlowski* (Kozlowski 2008), ECJ states that Article 4(6) FD is to be interpreted to the effect that: 1. *a requested person is 'resident' in the executing Member State when he has established his actual place of residence there and he is 'staying' there when, following a stable period of presence in that State, he has acquired connections with that State which are of a similar degree to those resulting from residence*; 2. *in order to ascertain whether there are connections between the*

requested person and the executing Member State which lead to the conclusion that that person is covered by the term 'staying' within the meaning of Article 4(6), it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State.

In *Wolzenburg* (Wolzenburg 2009), ECJ considers that a national of one Member State who is lawfully resident in another Member State is entitled to rely on the first paragraph of Article 12 EC against national legislation, such as the Law on the surrender of persons (*Overleveringswet*), of 29 April 2004, which lays down the conditions under which the competent judicial authority can refuse to execute a European arrest warrant issued with a view to the enforcement of a custodial sentence. Article 4(6) FD must be interpreted as meaning that, in the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in that provision subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration. Article 12 EC is to be interpreted as not precluding the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst such a refusal is, in the case of a national of another Member State having a right of residence on the basis of Article 18(1) EC, subject to the condition that that person has lawfully resided for a continuous period of five years in that Member State of execution.

In *Lopes Da Silva Jorge* (Lopes Da Silva Jorge 2012), Article 4(6) of FD and Article 18 TFEU must be interpreted as meaning that, although a Member State may, in transposing Article 4(6), decide to limit the situations in which an executing judicial authority may refuse to surrender a person who falls within the scope of that provision, it cannot automatically and absolutely exclude from its scope the nationals of other Member States staying or resident in its territory irrespective of their connections with it. The national court is required, taking into consideration the whole body of domestic law and applying the interpretative methods recognised by it, to interpret that law, so far as possible, in the light of the wording and the purpose of FD 2002/584, with a view to ensuring that that framework decision is fully effective and to achieving an outcome consistent with the objective pursued by it.

Very interesting is *Poplawski* (Poplawski 2017) judgment. According to it, Article 4(6) of FD must be interpreted to the effect that it precludes legislation of a Member State implementing that provision which, in a situation where the surrender of a foreign national in possession of a residence permit of indefinite duration in the territory of that Member State is sought by another Member State in order to execute a custodial sentence imposed on that national by a decision which has become final, first, does not authorise such a surrender, and secondly, merely lays down the obligation for the judicial authorities of the first Member State to inform the judicial authorities of the second Member State that they are willing to take over

the enforcement of the judgment, where, on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged. The provisions of FD do not have direct effect. However, the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, is obliged to interpret the provisions of national law at issue in the main proceeding, so far as is possible, in the light of the wording and the purpose of that framework decision, which in the present case means that, in the event of a refusal to execute a European arrest warrant issued with a view to the surrender of a person who has been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State are themselves required to ensure that the sentence pronounced against that person is actually executed. Article 4(6) of FD must be interpreted to the effect that it does not authorise a Member State to refuse to execute a European arrest warrant issued with a view to the surrender of a person who has been finally judged and given a custodial sentence, on the sole ground that that Member State intends to prosecute that person in relation to the same acts as those for which that judgment was pronounced (Poplawski).
Council Framework Decision 2009/299/JHA of 29 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, implemented a new, Article 4a, which brought additional reason for the refusing to execute EAW: The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

a) in due time: i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial and ii) was informed that a decision may be handed down if he or she does not appear for the trial;
   or
b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;
   or
c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original

decision being reversed: i) expressly stated that he or she does not contest the decision or ii) did not request a retrial or appeal within the applicable time frame;

or

d) was not personally served with the decision but: i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed and ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

In *Dworzecki* (Dworzecki 2016), ECJ considers that Article 4a(1)(a)(i) of FD must be interpreted as meaning that the expressions 'summoned in person' and 'by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial' in that provision constitute autonomous concepts of EU law and must be interpreted uniformly throughout the European Union. Article 4a(1)(a)(i) of FD must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter's address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.

In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender (Article 4a FD).

About this issue ECJ took a view in *Melloni* (Melloni 2013). For the trial in absentia important are judgments *I.B.* (I.B. 2010) (Christou and Weis 2010) and *Tupikas*

(Tupikas 2017). In *Meloni*, Article 4a(1) must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant issued for the purposes of executing a sentence conditional upon the conviction rendered in absentia being open to review in the issuing Member State. Then, Article 4a(1) of FD is compatible with the requirements under Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union. Finally, Article 53 of the Charter of Fundamental Rights of the European Union must be interpreted as not allowing a Member State to make the surrender of a person convicted in absentia conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution. According to the *I.B.*, Articles 4(6) and 5(3) of FD must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed in absentia within the meaning of Article 5(1) of the FD, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State. In *Tupikas*, where the issuing Member State has provided for a criminal procedure involving several degrees of jurisdiction which may thus give rise to successive judicial decisions, at least one of which has been handed down in absentia, the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) *must be interpreted as relating only to the instance at the end of which the decision is handed down which finally rules on the guilt of the person concerned and imposes a penalty on him, such as a custodial sentence, following a re-examination, in fact and in law, of the merits of the case. An appeal proceeding, such as that at issue in the main proceedings, in principle falls within that concept.*
Then, in *Zdziaszek* (Zdziaszek 2017), ECJ considers that the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) must be interpreted as referring not only to the proceedings which gave rise to the decision on appeal, where that decision, after a fresh examination of the case on the merits, finally determined the guilt of the person concerned, but also to subsequent proceedings, such as those that led to the judgment handing down the cumulative sentence at issue here, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority which adopted the latter decision enjoyed a certain discretion in that regard. FD must be interpreted as meaning that, where the person concerned has not appeared in person in the relevant proceeding or, as the case may be, in the relevant proceedings for the application of Article 4a(1) of that FD and where neither the information contained in the standard form for a European arrest warrant annexed to that FD nor the information obtained pursuant to Article 15(2) of that FD provide sufficient evidence to establish the existence of one of the situations referred to in Article 4a(1)(a) to (d) of FD the executing judicial authority may refuse to execute the European arrest warrant. However, FD does not prevent that authority from taking account of all the

circumstances characterising the case brought before it in order to ensure that the rights of the defence of the person concerned are respected during the relevant proceeding or proceedings. For these considerations it is important *Ardic* (Ardic 2017) judgment also: where a party has appeared in person in criminal proceedings that result in a judicial decision which definitively finds him guilty of an offence and, as a consequence, imposes a custodial sentence the execution of which is subsequently suspended in part, subject to certain conditions, the concept of 'trial resulting in the decision', as referred to in Article 4a(1) must be interpreted as not including subsequent proceedings in which that suspension is revoked on grounds of infringement of those conditions during the probationary period, provided that the revocation decision adopted at the end of those proceedings does not change the nature or the level of the sentence initially imposed.

For these considerations it is important well known judgment *Aranyosi and Căldăraru* (Aranyosi and Căldăraru 2016). Between the other issues reconsidered in this judgment, ECJ scrutinized the postpone issue of the EAW. According to it, Article 1(3), Article 5 and Article 6(1) of FD must be interpreted as meaning that, where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State.

Finally, according to the *RO* (RO 2018), Article 50 TEU must be interpreted as meaning that mere notification by a Member State of its intention to withdraw from the European Union in accordance with that article does not have the consequence that, in the event that that Member State issues a European arrest warrant with respect to an individual, the executing Member State must refuse to execute that European arrest warrant or postpone its execution pending clarification of the law that will be applicable in the issuing Member State after its withdrawal from the European Union. In the absence of substantial grounds to believe that the person who is the subject of that European arrest warrant is at risk of being deprived of rights recognised by the Charter of Fundamental Rights of the European Union and FD following the withdrawal from the European Union of the issuing Member State, the executing Member State cannot refuse to execute that European arrest warrant while the issuing Member State remains a member of the European Union.

CONCLUSION

As we can see from the above at the first sight, an application of the EAW is not simple. There are many reasons and grounds for mandatory and optional rejection of its execution. Very rich jurisprudence of the ECJ is mainly devoted to the consideration of the conditions for approval/refusal. Statistically speaking, in 2005

we have issued 6894 EAW, while 836 are executed; in 2006 there are issued 6889 EAW, but executed 1223; in 2007 was issued 10883 EAW – executed 2221; 2008 issued 14910 EAW, while 3078 was executed; in 2009 there are 15827 issued EAW, but executed 4431; in 2010 issued 13891 EAW – executed 4293; in 2011 there are issued 9784 EAW, while 3153 was executed; in 2012 issued 10665 EAW, executed 3652; in 2013 issued 13142 EAW, but executed 3476; in 2014 there are 14948 issued EAW, while executed 5535 and in 2015 was issued 16144 EAW, while there are 5304 executed EAW.[129] So, application of the EAW continuously grows, while critics of this legal instrument of the mutual recognition stay in the field of the legal theory. Judges and prosecutors are mainly for the EAW, which very simplifies surrender procedure, so it is much better than extradition. In which way it will develop through the explanations of the ECJ, we will see in the future.

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DE-RADICALIZATION IN PRISONS AS A CHALLENGE FOR THE WESTERN BALKANS COUNTRIES

Dr.Sc. Vasko Shutarov
European Center for Security Studies "George C. Marshall"
Alumni Scholar
sutarov@yahoo.com

Abstract
Radicalization in prisons presents a long-standing challenge receiving importance with hundreds of foreign terrorist fighters (FTFs) captured, indicted, sentenced or waiting repatriation. Some received short sentences and have been already released and more to be at large either without going through de-radicalization programs, or be further radicalized. This paper presents the experience of different Western Balkans (WB) countries, including the current status of terrorism related prisoners, their activities and interaction, existing de-radicalization and re-socialization programs or further radicalization in prisons. The paper also focuses on the approach of the penitentiary institutions, capacities development (training), cooperation with religious communities, and the support provided by foreign partners. The comparative view contributes to the ongoing debate on de-radicalization in prisons but also the national efforts of the Republic of North Macedonia where these processes are still at initial phase.

Key words: *radicalization, de-radicalization, terrorism, prisons, foreign terrorist fighters*

INTRODUCTION

The issue of terrorists within prisons is among the many challenges for counter terrorism (CT) nowadays. One aspect is counter-radicalization - how to prevent radicalization and recruitment of ordinary criminal offenders by terrorist convicts. Other aspect is de-radicalization of inmates related to terrorism, that will take away from their commitment to radical ideology and terrorism.

To discuss this challenge and exchange best practices, the European Center for Security Studies "George C. Marshall" hosted a Global CT Alumni Community of Interest (COI) workshop from 29-31 August, 2017. CT professionals from forty-six countries identified the following recommendations:

- Political will to include prisons in national CT strategies and develop an action plan to counter radicalization in prisons;
- Improving information sharing between prison authorities, law enforcement, and intelligence agencies on person's background, before and after leaving prison;
- Review the penalties for terrorism offences and consider harsher sentencing;

- Isolation of high-risk terrorists to minimize their opportunities to radicalize other prisoners;
- Appropriately to train and resource prison staff so they can recognize potential indicators of radicalization and recruitment;
- Vetting religious leaders with access to prisons;
- Establish practical rehabilitation programs for extremist offenders;
- Role of families;
- Implementation comprehensive post-release programs (job opportunities, counseling, mentoring);
- Sharing experiences and best practices and information across borders (conferences, shared databases, research, and publications).[130]

The issue is very relevant for the WB countries where there are already a big number of convicts, ongoing and expected cases in the context of the activity of terrorist groups in Syria and Iraq or other terrorism related crime.

BOSNIA AND HERZEGOVINA

The processing of persons traveling to Syria and other related crimes started in September 2014. As of March 2019, about 25 people have been processed, receiving total of 50 years in prison.[131] After guilt admission agreements, most of the FTFs have been sentenced to one year in prison and they are either serving or served their sentences.[132] The radical preacher Hussein Bilal Bosnić received the highest punishment of seven years.[133] The fact they were given short sentences and some of them even swaping their one-year sentences for fines is seen as a serious problem.[134] Aside from the Syrian context, Bosnia has previous experience with other terrorism convicts. Mirsad Bektašević was sentenced 8.4 years (2007) for terrorist planning; Mevlid Jašarević received 15 years (2013) for terrorist attack on the US embassy in Sarajevo in 2011.
Rijad Rustempašić was sentenced 4.6 years (2012) for planning terrorist attacks in 2010, and already released in 2015.[135]

In 2017, security experts warned that FTFs in prison are much more radical and dangerous than they were before sentencing, claiming B&H has no designed strategy for their resocialization and de-radicalization.[136] Due to the lack of psychologists and sociologists in prisons, the possibility that FTFs returnees will be

[130] Jim Howcroft , "The Prison Terrorism Nexus: Recommendations for Policymakers", Perspectives, George C. Marshall Center for Security Studies, September 2017, https://www.marshallcenter.org/mcpublicweb/mcdocs/files/College/F_Publications/perspectives/perspectives_2.pdf

[131] Amer Jahić, "Povratnici sa sirijskog ratišta bez oslobađajućih presuda", May 22,2017, https://ba.voanews.com/a/sirija--isil--sud--tuzilastvo/3864898.html

[132] Haris Rovcanin and Admir Muslimovic, "Terrorism Focus Shifts from Trials to Deradicalisation", November 27, 2017, https://balkaninsight.com/2017/11/27/terrorism-focus-shifts-from-trials-to-deradicalisation-11-27-2017/

[133] BIRN, "Širenje radikalizacije u zatvorima u Bosni i Hercegovini", BIRN, March 29, 2017, http://ba.n1info.com/Vijesti/a145724/Sirenje-radikalizacije-u-zatvorima-u-Bosni-i-Hercegovini.html

[134] Haris Rovcanin and Admir Muslimovic (2017)

[135] Dž. Čolak, "BiH deradikalizacijom želi prevaspitati teroriste i radikaliste, stručnjaci vjeruju u promjene", October 15, 2017, https://www.klix.ba/vijesti/bih/bih-deradikalizacijom-zeli-prevaspitati-teroriste-i-radikaliste-strucnjaci-vjeruju-u-promjene/171005056

[136] Boris Knežević, "POVRATNICI SA RATIŠTA U BOSNI KAO NA IZLETU U zatvorima regrutuju nove teroriste, kreću se bez ikakve kontrole", April 11, 2017, https://www.blic.rs/vesti/republika-srpska/povratnici-sa-ratista-u-bosni-kao-na-izletu-u-zatvorima-regrutuju-nove-teroriste/bhm3rck

further radicalized during serving their sentence was also recognized.[137] They could also radicalise other convicts because the potential to easily become leaders *vis a vis* other prisoners. Authorities already confirmed examples of one convict radicalising one, five or ten others in prisons.[138] In addition, no one from prison warns the police or the local community that a person convicted of terrorism would be released within a month and no one controls or monitors their movements after his release.[139]
The Law on Execution of Criminal and Legal Sanctions envisages a support system for convicts while in prison and after release, but is not being implemented due to the lack of resources. According the law, each individual should get a personalised treatment plan, which includes preparing a resocialisation and rehabilitation programme. The treatment service is obliged to prepare a personality profile, listing all potential problems that might appear after person has been released, and inform social work centres. The treatment involves psychologists, pedagogues, social workers, doctors, instructors, lawyers and other experts.[140] However, due to lack of financial resources, prisons have shortcages of medical staff, psychologists, sociologists and other experts and their number is insufficient to prevent further radicalisation.[141] As part of the efforts, prisons in B&H trained psychologists and additionaly educated psychotherapists.[142]
At the end of 2017, the Ministry of Security and Justice has redirected resources for deradicalisation projects in prisons and the local communities where the convicts live. One of the projects was implemented in 2017 with financial support by the EU and partnership with Slovenia and USAID. The project entails the entire deradicalisation process, a part of which is tackling deradicalisation and work with persons serving sentences for various crimes linked with terrorism. The project also encompasses work with the families and work on the technical conditions required for separating terrorism suspects and defendants from other prisoners. Part of the project is preparation of a protocol for assessing the risk and needs of prisoners.[143]
From April 2017 to march 2018, the project "Support to the Reintegration of Violent and Extreme Prisoners in B&H" was implemented with the support of the CoE and the UK. The project aim is to prevent the return of prisoners to violent extremism when releasing them into the community. Ministry of justice has also considered what kind of help to provide to a convict after his prison release: financial help and support to start own business, additional education, retraining and additional qualification and housing or social housing and psychosocial assistance that will affect their future behavior.[144]

KOSOVO

[137] BIRN (2017)
[138] Denis Džidić, "No Deradicalisation Schemes for Bosnian Terror Convicts", March 28, 2017, http://detektor.ba/en/no-deradicalisation-schemes-for-bosnian-terror-convicts/
[139] Boris Knežević (2017)
[140] Srna, "U BiH zbog terorizma u zatvoru 17 osoba", June 13, 2017, http://ba.n1info.com/Vijesti/a266272/U-BiH-zbog-terorizma-u-zatvoru-17-osoba.html
[141] Denis Džidić (2017)
[142] Dž. Čolak (2017)
[143] Haris Rovcanin, Admir Muslimovic (2017)
[144] Dž. Čolak (2017)

As part of the legal and repressive measures to counter participation and recruitment for terror groups in Syria, 155 Kosovars have been arested, 128 charged, 106 sentenced and 42 are under investigation. Curently 43 are in prison, while 42 have been released. Only 18 prisoners have passed a de-radicalization program.[145] Most have been convicted in a group, receiving sentences from 1 to 7 years[146] while radical preacher Zeqirja Qazimi 10 years in prison.[147] In adition, 9 Kosovars coordinated from Albanian leaders within "Islamic State", were sentenced for planning attacks in Kosovo, Albania in 2016. One received 10, while others between 1.5 to 6 years in prison.[148]
Most of the suspects were accused of having fought in Syria and Iraq in 2013/ 2014 and they couldn't be tried under the new law[149] of March 2015 predicting 5 to 15 years in prison.[150] In the absence of evidence, courts either give low sentences for defendants, some of whom have admitted having been in Syria but didn't engage in terrorist activities.[151] One of the indicted in a terrorism plot case was even released with a bail.[152]
Ministry of interior and justice confirmed that there is a process of radicalization inside prisons, including among those sentenced for other crimes.[153] Several dozens suspected FTFs were kept in prolonged detention some being detained up to one year and shared collective spaces with other suspects. There is an increase of religious practice and inmates detained for violent crimes becoming religious practitioners while being associated with terrorism suspects. Some disillusioned returnees were being radicalised again in detention, some of which have managed to inspire other prisoners.[154]

Aware of the danger that the FTFs impose after their release from prisons, authorities initiated de-radicalization programs, but inmates are not obligated to attend them.[155] Since April 2018, the U.S. Department of Justice has helped to implement rehabilitation programs for terrorism suspects. It sends government psychologists, sociologists, social workers and imams from the Islamic Community

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[145] Kujtim Bytyqi, senior security policy analysts (April, 2019)
[146] Associated Press, "6 Kosovars jailed for joining terror groups", January 22, 2019, https://www.seattletimes.com/nation-world/nation/kosovo-man-jailed-for-5-years-for-joining-is-in-syria/
[147] Perparim Isufi, "Kosovo Engages Imams To Deradicalize Extremists", May 14, 2018, https://www.eurasiareview.com/14052018-kosovo-engages-imams-to-deradicalize-extremists/
[148] Associated Press, "ISIS-linked extremists jailed in Kosovo over thwarted attack on Israeli soccer team", May 18, 2018, https://www.foxnews.com/world/isis-linked-extremists-jailed-in-kosovo-over-thwarted-attack-on-israeli-soccer-team
[149] Ervin Qafmolla, "Kosovo's Wa on Terror Turns Into Court Farce", May 25, 2016, https://prishtinainsight.com/kosovos-war-terror-turns-court-farce-mag/
[150] Amra Zejneli Loxha, "Izazov vraćanja u društvo nakon zatvorskih kazni za terorizam", June 22, 2017, https://www.slobodnaevropa.org/a/kosovo-sirija-islamisti/28573031.html
[151] Ervin Qafmolla (2016)
[152] Srbija Danas, "Teroristi pušteni iz zatvora, vratili se na Kosovo: Planiraju stravicne napade, a o svemu javno govore!", October 08, 2018, https://www.srbijadanas.com/vesti/drustvo/teroristi-pusteni-iz-zatvora-vratili-se-na-kosovo-planiraju-stravicne-napade-o-svemu-javno-govore-2018-10-08
[153] Ibid
[154] Ervin Qafmolla (2016)
[155] Srbija Danas (2018)

(IC) to work with inmates.[156] Efforts were also focused on developing a mechanism for their families in order to talk to them and these persons to be accepted again in their families and society. Such a pilot project has been successfully implemented in Gnjilane with the goal to be expanded to other municipalities. Special attention would be put on cooperation with convict's neighborhoods in order to be again accepted in the society. [157]

In May 2018, Kosovo Justice Ministry signed an agreement with the IC accrediting 20 clerics for deradicalization programs, after a vetting procedure by the Intelligence Agency.[158] The first aspect of the program includes lectures by imams where prisoners will increase their awareness about danger of religious radicalism.[159] Previously, imams were selected either by the corrective service or prisoners.[160] The second aspect includes inspection and evaluation of religious literature in nine prisons. There were translations from Arabic with unknown authors[161] provided either by members of the family or some baned association.[162] Many books were withdrawn from prison libraries and replaced by IC published or translated books that describe traditional Islam by Albanian or eminent Muslim scholars.[163]

Some FTFs refused to engage in the program and those who participated were other Muslim convicts. They rejected IC imams and literature and studied famous Jihadi literature through digital copies translated into Albanian, seating all together, talk about Jihad, and encouraging each other in their further commitment to terrorist groups. [164]

NORTH MACEDONIA

There are different categories of prisoners are related to different type of extremism and terrorism (religious, ethno-nationalist). In relation to the activity of the terrorist groups in Syria and Iraq, 23 persons have been sentenced, 16 arrested in police actions "Cell 1" (August 2015) and "Cell 2" (July 2016), while seven have been repatriated (August 2018) from custody in Syria. With hope to receive shorter sentences these FTFs have admited guilty and received sentences from 3, 5, 6, 7 and 9 years in prison.[165] The radical preacher Rexhep Memishi was sentenced to 7 years

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[156] A.J. Naddaff, "Kosovo, home to many ISIS recruits, is struggling to stamp out its homegrown terrorism problem", August 24, 2018, https://www.washingtonpost.com/world/2018/08/24/kosovo-home-many-isis-recruits-is-struggling-stamp-out-its-homegrown-terrorism-problem/?noredirect=on&utm_term=.116aa58719e4

[157] Amra Zejneli Loxha (2017)

[158] Perparim Isufi, 14.05.2018

[159] Kossev, "Kosovo počelo da deradikalizuje zatvorene džihadiste", May 14, 2018, https://kossev.info/kosovo-pocelo-da-deradikalizuje-zatvorene-dzihadiste/

[160] Amra Zejneli Loxha (2017)

[161] Amra Zejneli, Pete Baumgartner, "Kosovo Seeks To Root Out Radical Islam In Prison System", March 07, 2017, https://www.rferl.org/a/kosovo-root-out-radical-islam-from-prisons/28356290.html

[162] Amra Zejneli Loxha (2017)

[163] Amra Zejneli, Pete Baumgartner (2017)

[164] Anne Speckhard, Ardian Shajkovci, ""Returning ISIS Foreign Fighters: Radicalization Challenges for the Justice System", November 04, 2018, https://www.hstoday.us/subject-matter-areas/terrorism-study/returning-isis-foreign-fighters-radicalization-challenges-for-the-justice-system/

[165] Meta, "Обвинетите во „Ќелија" што ја признаа вината, осудени на вкупно 32 години затвор", March 25, 2016, https://meta.mk/obvinetite-vo-kelija-shto-ja-priznaa-vinata-osudeni-na-vkupno-32-godini-zatvor/

in prison.[166] Some of those imprisoned for at least two years, have already finished their sentences.[167] Another category of prisoners include the 33 members of the so called "Kumanovo group", arrested after a fierce fighting (May 2015) leaving 8 policemen and 14 terrorists dead.[168] They received sentences from 12, 13, 14, 20, 40 years or life imprisonment.[169] The third category is those indicted for the violent events in the Macedonian parliament (April 27, 2017), sentenced from 7 to 15 years.[170]

As a new experience for the country, penitentiary institutions didn't have specific programs for de-radicalization and resocialization of FTFs or other extremists and terrorists. Ministry of justice admits that prisons are not immune of radicalization, already observed among male convicts aged 18 to 24.[171]

The Directorate for executuion of sanctions (DES) is part of the National Strategy and Action plan for prevention of terrorism and violent extremism and leads the following activities for prevention of radicalization in the penitentiary institutions:

- Strengthening of the capacities of the employees for early recognition signs of radicalization;
- Deepening of the cooperation between the institutions;
- Improvement of the instrument for assessing the risks and needs of the convicts;
- Using the religious communities capacities for convicts de-radicalization;
- Development of special treatment programs for prisoners with signs of radicalization and educational programs and professional training for convicts.
- Improvement of living conditions;
- Measures to help convicts and their families after prison release;
- Programs for informal education and vocational training for convicts.[172]

With the support of the Council of Europe (CoE) and experts, working groups have been established to develop the most adequate solution, programs and a strategy for de-radicalization. This include: a special screening (risk assessment) tool, a special methodology-treatment module for treatment of radicalized convicts that would be piloted out in several prisons, information on signs of radicalization, and methodology for making an individual program for the treatment of radicalized convicts.[173]

In order to strengthen the supervision and control over the behavior of these convicts, and in the absence of an instrument for the assessment of radicalization and specific treatment programs, guidelines have been given for improving the

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[166] Фросина Факова – Серафиновиќ, "Терористи излегуваат на слобода, нема програма за ресоцијализација", August 13, 2018, https://nezavisen.mk/mk/vesti/2018/08/78470/

[167] Ibid

[168] Slobodna Evropa, "Завршена операцијата во Куманово, најмалку 14 убиени терористи", May 10, 2015, https://www.slobodnaevropa.mk/a/27008457.html

[169] **Akademik,"Пресуди за обвинетите во случајот 'Дива населба'", November 02, 2017, https://www.akademik.mk/sudenje/presudi-za-obvinetite-vo-sluchajot-diva-naselba/**

[170] **Akademik, "Пресуда за предметот '27 април'", March 15, 2019,** https://www.akademik.mk/sudenje/presuda-za-predmetot-27-april/

[171] Ibid

[172] Управа за извршување на санкции – активности за спречување радикализација (March 01, 2019)

[173] УИС (2019)

monitoring and dealing with this phenomenon in the initial phase. Multidisciplinary teams have been established in the prisons where convicts connected with terrorism serve their sentence and additional personal files were prepared, through which these teams will proactively monitor their behavior. The objectives of risk assessment is: categorizing persons according to the level of risk they represent (low, medium, high), documentation of changes in the behavior, assistance in making decisions related to accommodation, classification, deployment, use of amenities and support of early releases. Three groups of radicalized convicts (leaders, followers and opportunists) have been identified.[174] There is also an institutional cooperation in order to monitor the potential development and dissemination of radical ideas after the exit from the prisons.[175]

Awareness rising and training activities have also been organized. In October 2018 Skopje hosted a regional conference funded by CoE and EU sharing experience on de-radicalization, approach and resocialization of prisoners in the WB, with goal to produce a joint strategy.[176] Prison's directors and management staff have also increased their awareness and knowledge of targeting radicalization in prisons through a training (February 2019) also co-funded by the EU and the CoE. They have considered the phenomenon of radicalization in prisons in terms of international standards and best practices and CoE's guidelines. Participants also discussed the application of screening and risk assessment tools, multidisciplinary treatment teams, and the importance of good prison management.[177]

Country's de-radicalization and re-socializationin efforts could be constrained by: *overcrowded prisons* as a key problem where resocialization work is very difficult; *lack of personel*, including those to be involved in the process (educators and psychologists) where one educator worked with over 100 prisoners, opposite to the EU rules (10 to 15) and *inadequate education* of educators. As an advantage, authorities could use existing experience with specific programs already implemented in several prisons for convicts for sexual offenses and those who endure long prison, with expectation to be included in the regular resocialization programs. [178] From 2017, programs for informal education and vocational training have been implemented in Idrizovo, Stip, Skopje and Kumanovo prisons, including also women and juveniles.[179]

The IC stance is that religious representatives must work with convicts in prisons, where they would receive vocational training for crafts, and help them to resocialize and return to society.[180] Unfortinately, their project "Stop radicalization &

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[174] Ibid

[175] Nezavisen, "Забележани тенденции за радикализација на машки затвореници од 18 до 24 години", October 03, 2018, https://nezavisen.mk/забележани-тенденции-за-радикализац/

[176] Ibid

[177] Council of Europe, "Обука за директори на затворите и високи раководни структури во Северна Македонија", Fevruary 18-20, 2019, https://www.coe.int/mk/web/skopje/-/training-for-prison-governors-and-high-level-prison-management-on-radicalisation-in-prisons

[178] Nezavisen, "Затворска ресоцијализација: Еден воспитувач на околу сто затвореници, "May 06, 2018, https://nezavisen.mk/mk/vesti/2018/05/50346/

[179] УИС (2019)

[180] **Vedrana Maglajlija, "Šta s borcima ISIL-a kada izađu iz zatvora?, Äpril 27, 2017, http://balkans.aljazeera.net/vijesti/sta-s-borcima-isil-kada-izadu-iz-zatvora**

involvement in terrorism" (December 2014), which also included work with prisoners, was not implemented.

Conclusion

Common challenges for the WB countries include: short sentences, lack of adequate programs, lack of human resources and cooperation among the institutions. Most of activities are not aimed for de-radicalization, but prevention of radicalization among other prisoners. There is a different level of implementation of programs and activities.The reaction of authorities to this issue is belated as it was with the other aspects of the FTF phenomenon (radicalization, recruitment, travels and returning processes). Convicts have already exited prisons or they're in the middle of serving sentences and the measures are still in the phase of consideration. This issue is further important with the expected process of returning and repatriated FTFs and their families that would lead to new legal cases and convicts. Aside from the Syrian context, the approach to prisoners related to other form of extremism and terrorism should not be overlooked.

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EUROPEAN UNION ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS: REALITY OR UTOPIA?

Vesna Stefanovska, PhD
vesna.stefanovska87@gmail.com

Abstract
The accession of the European Union (EU) to the European Convention on Human Rights (ECHR) is a process that has been enduring for decades, while the past few years has reached some level of constructive discussion. The constitutional significance placed upon the accession trigged a long sequence of dialogues and compromises based on the Lisbon Treaty, which established a much closer bond between the EU and the ECHR.
The prolonged non-accession has raised some concerning issues in relation to the possible endangered autonomy of the European Court of Justice (ECJ) and the question of supremacy between the ECJ and the European Court of Human Rights (ECtHR) due to its subject matter-protection of fundamental rights. This article argues the disagreements of the ECJ to the draft accession agreement from one side and the benefits that could arise from the accession. Lastly, it will provide an analysis to the future steps that should be taken and the possible scenarios for final accession or already closed unsolved issue.

Keywords: *European Union, accession, ECJL, Lisbon Treaty, ECtHR.*

INTRODUCTION

The adoption of the Lisbon Treaty gave a new perspective to EU accession to the ECHR by giving it full legality and legitimacy. The issue of accession has been discussed for more than forty years arguing that such accession is necessary in view of the need to ensure the ECHR standard of fundamental rights protection in Europe.

This article first of all, emphasizes the historical background of accession starting from the moment of foundation of the European Communities and moving forward to what we now today as European Union. Further, it elaborates the consequences of a delayed non-accession as a result to the negative opinion given by the ECJ and how it will affect the longer-term effectiveness and validity of the Convention system. The main obstacle to accession once again has been proven to be the autonomy of the EU legal order, which has been jealously policed by the ECJ, thus pointing the supremacy between Luxembourg and Strasbourg Court as important issue. Finally, this article will try to give a new perspective to further steps and future measures that should be taken in order to re-start the accession negotiations and will try to give an answer to which way the accession issue is moving: towards reality or utopia?

FIRST STEPS IN THE PATH TO ACCESSION

It is quite deceptive to say that the EU accession to the ECHR started with the Treaty of Lisbon or with the negotiations for preparing of the draft accession agreement between EU and Council of Europe. The beginnings of this still undefined relationship should be traced decades ago where the lack of generally accepted or written basis for respect of fundamental rights was the reason to develop an idea for accession.

Nonetheless, in its case law the ECJ started to threat fundamental rights as unwritten 'general principles of Community law' thereby granting them a status of primary law. As for the source of these general principles of Community law, the ECJ referred to the common constitutional traditions of the Member States and to which they were party, in particular referring to the ECHR. Following 1969, in its judgment of the case 29/69 *Stauder v. Stadt Ulm*, the ECJ ruled that the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court (EP Briefing, 2017). This approach was developed in the subsequent ECJ judgment of 1970 in case 11/70 *Internationale Handelgesellschaft case* and in the *Nold case* in 1974, the ECJ made a reference to the ECHR although not mentioning explicitly as its source of inspiration. The ECJ agreed that such fundamental rights did indeed form an integral part of community law as derived from the constitutional traditions of Member States, to which belong '*international treaties for the protection of human rights on which Member States have collaborated or of which they are signatories'* (Kwiatkowska et.al.2010). This interpretation has been confirmed in the *Rutili case* of 1975 and even some practitioners have interpreted this practice as a *de facto* accession of EU to the ECHR.

Over time, ECJ has moved not only to consider the ECHR and its provisions, but also to draw on specific judgments by ECtHR. In the 1997 *case of Familiapress*, the ECJ was dealing with the freedoms of expression as protected by Article 10 ECHR.

The *Bosphorus case* became a test not only for the ECJ but also for the ECtHR regarding the issue about protecting fundamental human rights. The ECtHR developed the doctrine of equivalent protection, which presumes that the EU legal order provides protection, which is equivalent to that of the ECHR and considers claims against the EU inadmissible. However, in the same time, the ECtHR maintained the principle that Member States remain responsible for the activities of an international organization, whether it has a separate legal personality making it responsible for violation or not (White, 2011). By equivalent protection the ECtHR meant 'comparable', not ' identical' protection and in this particular case, the Court did not found any manifest deficiencies to the protection of applicant's rights and the application was found inadmissible. Hence, as a closure to understand this doctrine, it is important to clarify that the ECtHR made clear that it had the jurisdiction to review application directed against national measures that directly or indirectly implement or derive from EU law obligations.

LEGAL BASIS FOR ACCESSION

The debate for accession to the ECHR has been actual from the 1950s with the foundation of the European communities. Although Article 2 TEU stated among

other values that EU is founded also on the value of respect for human rights, there was no specific provision which will address to human rights. Many scholars justified this approach with the fact the than EEC Treaty started out as an economic treaty of limited ambitions with the aim of creating a Common Market (Douglas-Scott 2011, p.647). Thus human rights were not relevant and consequently have not been included in the wider picture. However, through the years, the EU has gone beyond being just a Common Market and started enlarging a much greater range of activities including the need for respect of fundamental rights.

The debate on the issue of accession was triggered in 1964 when the ECJ in order to ensure application of Community Law throughout the community, established the principle of supremacy of Community Law over the domestic law of Member States (Defeis 2012, p.389). It was unacceptable to some member States to implement community legislation without reference to their own constitutional guarantees of fundamental rights. Accordingly, in 1967 the German Constitutional Court held that since the Community legal order lacked specific protection of human rights, the transfer of powers from the German legal system to the Community had to be measured against domestic constitutional provisions.

Having in mind the above mentioned, the Commission adopted a memorandum recommending accession in 1979 and a formal proposal was made to the Council in 1990. But, in its Opinion 2/94, the ECJ held that the European Community had no competence in the field of fundamental rights because accession required a revision of the founding treaties (Ritleng, 2012). Indeed, the real reason for rejection was not only the fact that there was no legal basis for accession, but also the present resistance of the Luxembourg Court to share its supremacy with the Strasbourg Court in the field of fundamental rights. Even the EU Charter of Fundamental Rights, which in great deal reproduces many of the rights set forth in the ECHR and provides that those rights are the minimum to be observed by Union law could not replace the ECHR or the real need for EU accession to the Convention,

The legal basis for accession was established with the adoption of the Treaty of Lisbon in 2009 inserting a new provision in the Treaties that required the EU to accede to the ECHR. Thus, Article 6 (2) of the Lisbon Treaty states:

> *"The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties".*

Moreover, paragraph 3 ensures that Fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. This means that the Lisbon Treaty not only gives EU the competence to conclude an accession agreement, but also puts in order an obligation to do so and not just a (voluntary) legal basis for accession. Moreover, Protocol No.8 to the Lisbon Treaty added additional conditions for EU accession and required that the Draft Accession Agreement (DAA) must ensure that accession shall not affect the competences of the Union or the powers of its institutions.

OPEN DILEMMAS AND NEGOTIATIONS FOR FINALIZING THE DRAFT ACCESSION AGREEMENT

From the beginning it was clear that the accession will not be a simple affair, there is a reason why it took 40 and more years to start negotiations, to finalize a DAA and still to face with the obstacle by the ECJ in a form of negative opinion regarding the accession agreement. Douglas-Scott argues that given the particular characteristics of the EU and its singular nature as a *sui generis* international organization rather than a state, accession will prove challenging and moreover because the Council of Europe and its institutions are not designed with supra-national entities in mind. This means that accession must follow long and complex mandatory procedure that governs all EU agreements with third countries and requires unanimity in the Council of Europe.

It is inevitable to say that there are many benefits with the EU accession to the ECHR. First and foremost, accession constitutes a move forward in the process of European integration and involves one further step towards political Union. Secondly, it will afford citizens protection against the action of the Union similar to that which they already enjoy against action by all Member States (White, 2011). Finally, the accession will not call into question the principle of the autonomy of the Union's law, as the ICJ will remain the sole supreme court adjudicating on issues relating to EU law and the validity of the Union's acts, while the ECtHR will be regarded as a specialized court exercising external supervision over the EU.

Accession negotiations started in 2000 between the European Commission and the Council of Europe Steering Committee for Human Rights (CDDH). They have led to the adoption on 19 July 2011 of draft legal instruments on the accession including a DAA of the EU to the ECHR and a Draft Explanatory report based on three core principles such as: equality before the ECHR, autonomy of Community law and subsidiarity (Tulkens 2013, p.7). In February 2010 the Commission published document 6180/10 on EU accession where among the legal and technical issues posed a question of the scope of the EU accession to the ECHR system i.e. whether the EU shall accede not only to the Convention proper, but also to the Additional Protocols to the ECHR and if yes to which of these Protocols (Miller 2011, p.5). Additionally, it raised the question of the most appropriate manner to ensure that the accession complies with EU Treaties and their protocols and in the same time preserving the supremacy of ECJ.

In 2012 the accession process moved from legal/technical discussion to a more political negotiation where all 47 States and the Commission on the EU side, the imperatives were to preserve the autonomy of EU law and not to disturb the division of powers and competences between the EU and Member States. The aim of non- EU States was to keep any changes to the present Convention mechanism to a minimum. Thus, there were four key points in the discussion: 1) scope of the accession (EU foreign and security policy to be excluded); 2) co-defendant status; 3) prior involvement of the ECJ and 4) voting in the Committee of Ministers in the context of execution (Callewaert, 2012). Therefore, beside these points, the negotiations were faced also with obstructions by opponents who were against accession, mainly because this process triggered the risk of allowing control from outside and beside the Lisbon Treaty which ordered accession, some were still not

prepared because the accession would certainly cause changes towards more transparency and more progress within the EU.
Having in mind the above mentioned, problems appeared while reading the final version of Draft legal instruments on the accession of the EU to the ECHR produced by CDDH referring to the fact that the Convention system requires certain adjustments especially in using the terms 'State', 'State Party' or 'States Parties'. Unsurprisingly, the possibility of interpreting this as meaning that the EU should be considered a state was unacceptable by EU Member States' delegations (Jones, 2014). Finally, on 5 April 2013 negotiations finalized with a DAA which provided in particular that the EU accedes to the ECHR itself and to the two protocols to which all Member States are party, while permitting the EU to accede to other protocols at a later stage. The EU's accession would impose upon its institutions, bodies, offices and agencies the duty to respect the ECHR, but at the same time would not require them to adopt any act or measure for which the EU would not have competences under EU law itself (EP Briefing, 2017). Moreover, the DAA also provided that a delegation of the European Parliament would be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe (PACE) whenever the PACE exercises its functions related to the appointment of the ECtHR judges.

OPINION OF THE ECJ: LOST OPPORTUNITY FOR FINALIZING THE ACCESSION PROCESS

According to Article 218 (11) of the TEU, the DAA must be approved by the ECJ which means that the Court shall give an opinion upon provisions basis. Thus, on 18 December 2014, the ECJ delivered its Opinion 2/13 ruling that the DAA was incompatible with EU law for five main reasons. Firstly, it did not take account of the specific characteristics of EU law in three respect. It did not clearly curtail the possibility of Member States having higher human rights standards than EU law, even though the ECJ had ruled, in the 2013 *Melloni judgment*, that Member States could not have higher standards than the EU Charter of Rights when the EU has fully harmonized the law and the EU legislation is itself compatible with the ECHR and Charter.
Moreover, the DAA did not provide for the application of the rule of 'mutual trust' in Justice and Home Affairs matters and failed to rule out the possibility that when applying Protocol 16 ECHR, which provides for national courts to send questions to the ECtHR interpretations of the ECHR, those national courts would ask the ECtHR to rule on EU law issues before they asked the ECJ (Peers 2015, p.216). The principle of mutual trust holds that Member States may be required to presume that fundamental rights have been observed by the other Member States. In the Opinion 2/13, the ECJ held that *'to check that another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between those Member States'* would upset the underlying balance of the EU and undermine the autonomy of the EU (Meijers Committee, 2014). Having in mind this, the Meijers Committee considered that this statement by the ECJ left national courts and authorities in the dark regarding to how to deal with instruments of

mutual trust, in cases where applicants raised concerns about the protection of fundamental rights in another state.
Secondly, there is a contradiction between Article 3 of Protocol 8 from the DAA and Article 344 of the TFEU. The later one, provides that Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for the Treaties. Consequently, where EU law is at issue, the Court has exclusive jurisdiction in any dispute between the Member States and between those Member States and the EU regarding compliance with the ECHR. The DAA still allows for the possibility that the EU or Member States might submit an application to the ECtHR concerning an alleged violation of the ECHR by a Member State or the EU in relation to EU law. Thus, the very existence of such a possibility undermined the requirements of the TFEU (Opinion 2/13 ECJ, 2014). In those circumstances, DAA could be compatible with the TFEU only if ECtHR's jurisdiction was expressly excluded for disputes between Member States, or between them and EU, regarding the application of the ECHR in the context of EU law.
Thirdly, the co-respondent system set up in the DAA, creates a new type of procedure where both the EU and a Member State could be parties to an ECtHR case and this mechanism was incompatible with EU law. The DAA provides that a Contracting Party is to become a co-respondent either by accepting an invitation from the ECtHR or by decision of the ECtHR upon the request of that Contracting Party. If the EU or Member States request leave to intervene as co-respondents in a case before the ECtHR, they must prove that the conditions for their participations in the procedure are met with the ECtHR deciding on that request in the light of the plausibility of the reasons given. This means that the ECtHR could adopt a final decision while accessing the rules of the EU law governing the division of powers between the EU and its Member States (ibid, 2014). To permit the ECtHR to adopt such a decision would risk adversely affecting the division of powers between the EU and its Member State, which according to ECJ is unacceptable.
Forth, the rules in the DAA on the prior involvement of the ECJ before the ECtHR ruled on EU law issues were also incompatible with EU law. First, they did not reserve to the EU the power to rule on whether the ECJ has already dealt with an issue. Second, they did not permit the ECJ to rule on the interpretation, not just the validity of EU law (Peers 2015, p.216).
Finally, the rules on the Common Foreign and Security Policy (CFSP) were incompatible with EU law because a non-EU court cannot be given the power of judicial review over EU acts, even though the ECJ has no such jurisdiction itself with regards to most CFSP issues (ibid, p.217). This means, that on the basis of accession, the ECtHR would be empowered to rule on the compatibility with the ECHR of certain acts, actions or omissions performed in the context of the CFSP, notably those whose legality the Court cannot review in light of fundamental issues (Opinion 2/13 ECJ, 2014). Therefore, the ECJ considered that the DAA fails to have regard to the specific characteristics of EU law with regard to the judicial review of acts, actions or omissions on the part of the EU in the area of CFSP.
These were the 'reasons' why the ECJ considered that the DAA is incompatible with the EU law. Since its publication, the opinion was widely criticized as

evidence of the ECJ's unwillingness to be bridled by another international court and its anxiety over losing its primacy within Europe's judicial space. Many academic experts generally acknowledge that the provisions of the DAA on attribution and responsibility are generally in line with the existing case law of the ECtHR and the work of the ILC on the topic of international responsibility. According to Prof. Polakiewicz, the negotiators had to strike a fair balance between accommodating "the specific characteristics of the Union and Union law" and preserving the essential features of the Convention system, such as the authority and prerogatives of the ECtHR, the equal treatment of High Contracting Parties and last but not least, the subsidiary nature of the protection mechanism (Polakiewicz, 2016). Moreover, many law practitioners considered that the ECJ did not only frustrate the prospects of enhancing the protection of human rights in Europe, but also it did this on highly dubious grounds, building a façade of spurious, if not bogus arguments, considering minor and immaterial threats to the autonomy and effectiveness of EU law as adversely affecting the constitutional basis of the Union (Krenn, 2015). Behind this seems to be the ECJ's selfish concern for its own power and 'unexciting' fear from the ECtHR in the battle of supremacy over EU law.

ISSUE OF SUPREMACY BETWEEN LUXEMBOURG COURT AND STRASBOURG COURT

The ECHR and the Strasbourg jurisprudence have always been an important source of inspiration for the ECJ in the area of fundamental rights protection. The ECHR as an instrument of international law did not directly bind the EU, and yet, in practice the approach of Luxembourg Court has some quite close to that by way of increasing its acceptance and reference to the Strasbourg case law (Timmermans, 2014). Although, the ECJ has cited the importance for respect of fundamental rights, it never explicitly mentioned the ECHR although indirectly it could be concluded that it referred to the Convention system. And, reciprocally, the Strasbourg Court has also sometimes referred to an evolution of the Luxembourg Court case law as an argument to further develop its own interpretation of the Convention.

If we observe other agreements which were subject of opinion by the ECJ, it must be elaborated that the DAA does not envisage a transfer of the *acquis communautaire* to third States. On the contrary, the situation is such that the EU is to join an established treaty regime, which will lead to a degree of adaptation on the part of the EU (Lock 2011, p.1033). The EU will thus not be the sole dominant party at the negotiating table, so as already explained the first problems in this relationship appeared with the formal negotiations for EU accession to the ECHR what would further means that the Union will become subject to the jurisdiction of the Strasbourg Court and it will imply that the ECJ becomes subordinated to that jurisdiction. Thus, the battle over supremacy has begun due to the fact that the Luxembourg Court observed the Strasboug Court as a threat to its dominant role. Just to be clear the external control by the ECtHR means that the Court must take relevant domestic law into account when deciding upon alleged violation of ECHR provisions. Just as other international courts, the ECtHR regards the domestic law of the parties of ECHR as part of the facts and this has been reflected in several

judgments (ibid, p.1035). However, De Schutter rightly pointed out that there seem to be instances where the ECtHR cannot merely accept the domestic law of the respondent party before it as facts. There are situations where the ECtHR's determination of a violation necessarily forces it to assess provisions of domestic law such as the right to effective remedy prescribed in Article 13 ECHR (De Schutter, 2010). Furthermore, many experts raised a question in line of the autonomy of the EU law. It refers to situations where, hypothetically, the ECtHR finds a piece of secondary law to have violated the ECHR and would such a finding be compatible with the autonomy of EU law especially if we consider that ECJ has monopoly on declaring compatibility of EU law? As a response to this question, the answer is in Article 46 ECHR which states that the High Contracting Parties undertake to abide by the final judgment of ECtHR in any case to which they are parties.

FURTHER STEPS AND FUTURE MEASURES IN EU ACCESSION TO THE ECHR

From the moment when the ECJ delivered its negative opinion on the DAA rejecting it on the basis that under the terms would risk undermining the very essence of the EU's constitutional system it was clear that the future steps should be carefully considered before implemented.

Some experts and law practitioners recognize that they did not expect such a turn in the process of the accession and provide a great deal of criticism. Others, however, having recalled earlier case-law of the Court observe that the ECJ has always been an eminently strict preserver of EU autonomy. Therefore, such a position of the Court should be assessed as a natural sequel of its jurisprudence (Dauksiene&Grigonis 2016, p.99). However, some argue that the draft accession agreement was condemned to failure from its beginnings because it contained proposed solutions (options) which were clearly unacceptable for the ECJ.

Having in mind the current situation or *status quo* in the accession matters, it is quite hard to predict what will happen next and what steps should be taken in order to make modifications in the DAA. Prof. Polakiewicz argues that in the next DAA, the formal amendments to the text should be kept to a minimum, while using whenever possible the EU's internal rules to codify provisions whose purpose is to ensure that EU Member States comply with EU law when implementing the accession agreement. Furthermore, he suggests in particular not to use the so-called 'disconnection clauses' and to avoid including provisions on internal EU matters into an international treaty to which non-EU Member States will become parties and which will ultimately be interpreted by the ECtHR (Polakiewicz, 2016). In this context it is important to stress that some issues from the DAA which at some point were subject to objection by the ECJ or matter of different interpretation, now can be resolved by using reservations. In fact, the DAA allows reservations of general character in situations when particular ECHR provision is not in accordance with the EU law.

First steps in amending the DAA from 2013 should begin with ensuring Article 53 ECHR does not give authorization for Member States to have higher human rights than the EU Charter, where the EU has fully harmonized the law. Further, it should

ensure that any use of Protocol 16 ECHR by national courts cannot undermine the EU preliminary ruling system, presumably by ruling out the use of Protocol 16 where EU law issues are involved. In this connotation it is important to emphasize that ECtHR will have jurisdiction only regarding to the protection of human rights, whilst Member States cannot bring disputes connected to EU before Strasbourg Court (Peers, 2015). According to Morano-Foadi and Andreadakis there are many obstacles to be overcome and there needs to be strong political will, motivation and commitment to finalize the accession. It is not clear yet whether priority will be given to the amendment of the DAA. Whether a new revision of the Treaties will be sought or whether a combination of these two approaches will be deemed most appropriate (Morano-Foadi & Andreadakis, 2016). Hence, one is for sure and that is the fact that there is a need of more pragmatic approach in the next phase regarding the destiny of accession.

Maybe some of these issues can be resolved by including technicalities in the next DAA, by making reservations, but some of it must be re-negotiated which means that all 47 signatories to the ECHR will be included and finally, any kind of settlement that will be in a form of new DAA must satisfy the criteria post by ECJ. This means it will be quite impossible and challenging to meet the requirements of ECJ which will result in a positive opinion regarding the new DAA. All of this hypothetical situations leave to consider the accession as a matter of utopia and not a close reality.

CONCLUSION

The publication of Opinion 2/13 by the ECJ shook the ground under the feet of everybody who was under the impression that the Court will find the DAA compatible with EU law and will approve the accession. Honestly, no one believed in this final scenario. The initial reaction by both academic and judiciary reflected an atmosphere of disappointment from the negotiation outcome. While some still believed that the added value of EU accession to the ECHR would grant individuals better protection of their fundamental rights, others were more skeptical expressing their views that unfortunately it became necessary to oppose the EU's accession under the mentioned terms. However, the future steps in accession should be pointed in managing the difficult balancing between the task of preserving the autonomy of the EU legal order and practical or political demands for urged accession. Thus, I believe that the accession is an important endeavor worth pursuing. This chapter for accession should and must be closed successfully, so the Luxembourg and Strasbourg Court could write new pages in respect of protection of fundamental rights arising both from EU law and Convention system.

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CREATING A MODEL OF PROFESSIONAL SUPERVISION AND CONTROL OF THE PRIVATE SECURITY SECTOR TO ENHANCE THE OFFICIAL CONTROL BY THE POLICE

Csaba Szabó PhD police major
szabo.csaba@uni-nke.hu
National University of Public Service, Faculty of Law Enforcement

Abstract
In this work, the professional supervision and control system of the private security sector is examined and the challenges facing the current system of the official control exercised by the Police in association with this discipline in Hungary are identified. The study gives a comprehensive analysis of the current structure and professional organisation of police administration discipline relating to the private security sector and included in the system of the police tasks. The research also identifies and systematises current challenges for the police administration system in terms of outlining the structural proposals for the vision of the domain in order to facilitate more effective official control and to develop professional-based control.

Keywords: police administration, private security sector, professional supervision, official control, law enforcement, police.

INTRODUCTION

The response actions taken both on the domestic and international scenes to resolve external and internal challenges facing the private security sector and to improve its effectiveness did not produce measurable results that would have contributed to strengthening the prestige of the profession. The applicability of responses given to challenges can trigger the efficiency in the professional sphere, which could greatly push forward the management of problems and issues identified on-the-go. Effective and efficient responses to these issues need to be formulated both for the legislature and the profession, primarily under the current organisational structure of the authorities. It is essential to identify and then to exclude from the system the problems affecting the private security sector that affect productivity and hinder the effectiveness of the profession. The purpose of identifying problems is to determine the relationships between the problems discovered, to examine and compare the phenomena outlined, and to evaluate the results obtained.
Domestic and international researches on the private security sector have identified a number of important problems that need to be addressed and resolved for the

industry.[181] Among others, the lack of constitutionality and cooperation with law enforcement agencies, the prevention of crime and the strengthening of the law enforcement role, the problem of certain dimensions of private security, the issues of individual responsibility, the lack of knowledge and relevant professional experience, the enhancement of the effectiveness of the business model, and the clumsiness of handling the challenges facing the private security sector. Also, the private security trends of the past ten years were subject of researches, the results of which have highlighted the fact that with regard to the private security sector there is a high degree of stagnation in both the professional and organisational culture and in the field of identifying and resolving the problem. Significant changes can be observed in the area of security technology, but this is not enough for the complete reconstruction of the private security field.[182]

The onset of new types of security challenges affecting the European Union and, in this context, the transformation and widening of the concept of security require the diversification of responses to security challenges, since the mere use of law enforcement tools does not enable the given state to address threats emerging in the security system. Research studies highlight the need to develop and restructure the private security sector in the foreseeable future, as the private security sector also plays a major role in addressing new types of security challenges.

It is necessary to restructure and develop the core capabilities of the private security sector, such as *the training system, the effectiveness of regulatory control, and the preparedness of person and property guards, the transformation of the law enforcement administration system and the development of tools to support self-defence*. In the absence of the capabilities outlined, the private security sector cannot provide effective responses in order to prevent new types of security challenges or effectively address the emergency situations that have emerged.

The present study, *from among the capabilities outlined above*, analyses the effectiveness of the system of tasks relating to regulatory control exercised by the police providing regulatory control and professional oversight of the professional activities of designers and installers of systems of person and property protection, private investigation and property protection in the private security sector. The research aims to reveal and demonstrate the strengths and weaknesses of the system and, through them, to propose solutions for the development of regulatory control of the private security sector and to develop a profession-based control structure.

In the course of my investigations, I sought answers for *two* groups of issues:

- *Do the problems that have been identified in relation to the system of regulatory control of the private security sector justify the establishment of a profession-based control organisation?*

[181] Anna Richards & Henry Smith: *Addressing the role of private security companies within security sector reform programmes.* Saferword, London, 2012. – pp. 12-15.

[182] Charles Nemeth: *Private Security and the Law*. Butterworth-Heinemann, Oxford, 2012. – pp. 213-215.

- *What guidelines the profession-based control model should represent in terms of its effectiveness as opposed to the regulatory control?*

To answer the questions, I used the method combining the *literature research* and the *analysis of legal regulations*.

THE CURRENT SYSTEM OF PRIVATE SECURITY SECTOR IN HUNGARY IN TERMS OF REGULATORY CONTROL AND PROFESSIONAL SUPERVISION

More than a decade ago, to improve the efficiency of public order and public safety and the effectiveness of crime prevention, the state envisaged that the professional branch of person and property protection should help the activities of state law enforcement agencies. To this end, national and private security mechanisms were strengthened, which have provided legitimacy and credibility to the unordered and unregulated system of the domestic private security sector.

In order to ensure the development and organisational efficiency of the private security sector, it is essential to have the professional development that ensures and, at the same time, guarantees to the society and the users of private security services that the enforcement of the rights relating to the personality and the demand for inviolability of property interests of those affected during the exercise of the services is provided at a high level.

In order to achieve these goals, there is a need for joint development of the private security sector in several areas. There is a substantial expectation from both the private security profession and the public sector with regard to the development of certain capabilities of the domestic private security sector *(such as logistics, information and communication tools, policing-type schemes, coercive means, self-defence capacity enhancement, effective and structured regulatory control system)* and the provision of necessary legislative powers to effectively address new types of security challenges. *The most important challenges for the private security sector are the availability of human, technical and legal resources, as well as law enforcement and civilian tools and capabilities that can effectively contribute to the safe formulation, organisation and execution of public and private mandates generated in the context of the challenges.*[183] Given all these aspects, it is appropriate to define the achievement of regulatory objectives concerning the professional field and to restructure *the set of rules of the regulatory control system.*

On the basis of the legislature's wording laid down in the Act on the protection of persons and property, the regulatory control of the activity covered by this act is carried out by the police, including *the lawful execution of the services, compliance with the liability insurance requirement, the authenticity of the data registered by the police, the data contained in the police-certified ledger (hereinafter referred to as "ledger"), and investigation of any changes in the grounds for activity licensing*.[184]

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[183] Engaging the Private Sector To Promote Homeland Security: Law Enforcement-Private Security Partnerships. U.S. Department of Justice. Washington, 2003. – pp. 11-12.

[184] *Police Records and Regulatory Control*. Act CXXXIII of 2005 *on Security Services and the Activities of Private Investigators.* Section 8 (5) In: Magyar Közlöny (Hungarian Official Journal), 2005, issue 155, – pp. 8982-8998.

In the Act, the legislator lays down the system of tasks included in the police control activities. The concept of regulatory control is laid down as follows using the professional approach that differs from the text concerning the regulatory control:

Regulatory control is part of public administrative activity. The peculiarity of the control is that it covers all clients and can be made subject to explicit legal authorisation. The procedure is a legally regulated activity. Its primary objective is *prevention*, and the secondary objective is to eliminate experienced *infringements*. Regulatory control is the external control of public administration bodies, which is an activity outside the organisational system. In the course of regulatory control, the authority has public authority powers. The scope and tools of regulatory control are defined by law. Based on the results of the regulatory control it is necessary to initiate the procedure, therefore it is not part of the regulatory control. *Within the limits of its powers, the authority verifies compliance with the provisions of the law and compliance with the provisions contained in the enforceable decision.* The police carry out mandatory regulatory inspections *once a year.*

The purpose of the control structure currently used by the police is primarily regulated by the interests determined by the state. *These interests relate to the enforcement primarily of general interest towards the strengthening of public order and public safety, and secondly of owners' demands towards protection provided by the services of the private security sector.* In terms of general interest, the control covers an activity or behaviour that is regulated by legal rules (such as laws, government decrees, municipal regulations) and mandatory state (official) regulations. The control carried out in the owner's interest mainly covers the entity's organisation or its activity as a whole. The legislation in force in the field does not identify the interests of the private security sector and, consequently, the legislator did not consider the interests of the profession during the legislative process. It is necessary to reconsider and reorganize the structure of the oversight system of the field in order to establish a system of control based on a professional basis in addition to (or instead of) the regulatory control.

Another identifiable problem of the currently applied oversight system *(related to the subject of the professional control)* is that the personnel of the police executing the regulatory control only performs the control according to the system of the law, while having no insight and experience about the challenges facing the private security sector and their handling from the professional, practical and applicational points of view. If the system of regulatory control and professional oversight continues to be vested within the powers of the police by the legislator, it will be justified – *considering the identified challenges* – to integrate the profession-based control framework into the police methodology of regulatory control.

TRANSFORMATION OF THE OVERSIGHT AND CONTROL SYSTEM OF THE PRIVATE SECURITY SECTOR TO CONTRIBUTE A MODEL OF SUSTAINABLE CONTROL

The fact-finding explorations of problems relating to the analysis of the private security sector's oversight and control system have highlighted the system-level legislative and practical issues the solution of which can trigger the revision of legal

and ethical standards in the professional field. I would like to present a further examination of the private security sector's oversight and control system through the analysis of certain elements of a possible model. In the model, the partial elements of both types of control carried out by the police will be handled together be it regulatory control or professional control that supports the future structure.[185]
With regard to the issues of the profession-based control of private security sector, it is necessary to examine the features that ensure the effectiveness of control, such as *compliance with regulations, schedulability, completeness, regularity, continuity, rationality, independence, objectivity and reasonableness, efficiency, and risk-orientation.*

Types of Controls

Based on Requirement Systems:

- *regulation compliance check:* it is aimed at determining whether the operation or activity of the examined business organisation or organisational unit is properly regulated or whether the relevant regulations are enforced;

- *performance monitoring:* examination of the economics, efficiency and effectiveness of the operation and use of available resources in a limited part of the activities performed by the business organisation;

Based on the Client's Interests:

- *Internal control:* the control is carried out by a person or persons who have an employment or contractual relationship with the controlled entity;

- *External control:* the control is carried out on behalf of a body which is third party in terms of the control, based on an internal or external contract;

Based on the Control Scale:

- *Comprehensive control:* a control of an organisation, a complete organisational unit, or an entire activity that involves the interdependent examination, analysis and evaluation of key tasks in order to comprehensively judge the situation and status of the body and operation controlled;

- *Thematic inspection:* an inspection of the same content carried out at one or more organisations or organisational units at the same or almost the same

[185] Ian Loader, Adam White: *How can we better align private security with the public interest? Towards a civilizing model of regulation.* In: Regulation & Governance 11:2. 2017. - pp. 166-171.

time, which is directed to the exploration and identification of an important factual situation that has come to the fore;

- *Targeted inspection:* an inspection directed at some limited ad hoc issue, a task, or a sub-area, which is usually conducted at an organisational unit

Of the control models outlined, *in the current system of regulatory oversight*, only the *internal control* model was not incorporated into the supervisory system of the Hungarian private security field. In the next chapter of the study, the role of internal control will be examined in order to facilitate the effective operation of private security companies.

THE ROLE OF INTERNAL CONTROL IN THE OPERATING SYSTEM OF PRIVATE SECURITY ENTERPRISES

Internal or organisational control as a primary control option *(to boost the effectiveness of regulatory control and the economic performance)* is not used by economic operators engaged in the private security sector. The biggest advantage of internal control is that the basics of the risk management rules of the given company can be identified and applied. Internal control is also the best tool for detecting gaps within the organisation. These gaps can be divided into two areas. One area are the gaps identified in the administrative system, the focus of the other area are the gaps connected with security operations and human factors.[186] In addition, it may be a challenge for private security companies with limited resources to implement well-designed controls.[187]

In the case of private security companies, challenges relating to the internal control can be identified which when being addressed will help to eliminate the problems encountered during the regulatory control of businesses.

- *Segregation of Tasks:*

  - In larger organisations, the tasks of each function are usually shared between or among different employees. In companies with limited human resources, it is not uncommon for a single employee to have sole responsibility for operating a process system. Inadequately segregated tasks involve a higher risk of error in terms of all three aspects! *task performance, efficiency and problem identification.* An important aspect is that, in order to achieve effective organisational dynamics, we assign different individuals to perform certain professional tasks. These include the licensing and management of private security contracts, the recording of individual transactions, the implementation of supervision of forces

[186] Rebecca DeWinter-Schmitt: *Steps to Implement the Private Security Company Quality and Risk Management Standard.* (https://www.linkedin.com/pulse/steps-implement-private-security-company-quality-risk-rebecca download time: 2018.01.09.)

[187] Clifford D. Shearing, Philip C. Stenning: *Modern Private Security: Its Growth and Implications*. In: Crime and Justice, 1981, issue 3. – pp. 193-196.

and assets related to professional tasks, and the presentation of professional reports. It is essential that all employees have a specific and accountable job description. In many cases, relocating specific tasks in progress to other appropriate individuals can significantly reduce the extent of risks and the risk of possible errors.

- *Professional Guidelines and Procedures for Conducting Control:*

    - Effective policies and procedures can help align professional goals and develop good practice and can also support management in drawing conclusions from experiences of regulatory control. It can be stated that each private security company operates based on a different structure, so the following examples relate to common professional processes that are essential to enforce the documents required to carry out the control, as well as to identify potential problems:

- *The importance of creating an effective control environment*
- *Determining the management of risk assessment*
- *Dynamics of control activities*
- *Communications activities*
- *Analysis and evaluation*
- *Oversight and review*

The role and significance of internal control is decisive for the professional success of private security companies. Establishing and maintaining a stable internal control system provides a sound basis for the smooth implementation of control by the authority. However, the inadequate design of the control structure may have an impact on the future development of the control area. The extent of regulatory consensus also influences the fundamental nature of control, which in turn affects the willingness of a private security company to cooperate.

CONCLUSIONS

In the earlier phase of the study, references have already been made to the fact that the special field of the private security sector requires the establishment of a profession-based control to complement the regulatory control. In addition, it should be borne in mind that the double-check of private security companies, sole proprietors and employed persons within a given year is not justified, as the legal bases relating to the field, after the legislative review, can properly provide the opportunity for cooperation between the organisations carrying out the two types of control. As we could see, the legislator's viewpoint has provided for the possibility of creating a profession-based control in the field of private investigators. Considering the legislative guidelines and having drawn up a professional control model, the study has examined whether the rationale of professional control in the field of design and installation of person and property guarding and property

protection systems is justified to eliminate the identified and analysed challenges and to enforce economic interests of the professional field. The study puts forward suggestions for basic outlining of the model of profession-based control of the private security sector in Hungary, complemented by an analysis of the internal control structure of enterprises within the system of their functioning.

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HOW *STRATEGIC* ARE EU'S *STRATEGIC PARTNERSHIPS*? – CASE STUDY ON THE EU-CHINA RELATIONS

Ana Krstinovska
Senior Research Fellow at the Center for Research and Policy Making,
PhD Candidate at the Faculty of Law, University "Sts. Cyril and Methodius"
University - Skopje

Abstract
The EU has been using the instrument of strategic partnership since 1998 to define its relations with a number of countries and organizations, such as USA, Russia, China, Japan, Brazil, India, Mexico, NATO, the African Union etc. One definition of a strategic partner would be "*key global player which has a pivotal role in solving global challenges ... and which is centrally important to enhance effective multilateralism globally*" (Renard, 2011, 5). Given that EU's strategic partners have different political and economic clout and sometimes share different values and pursue different interests, this paper uses the example of PR China to analyze to which extent the actual relationships match the theoretic concept of strategic partnerships. The analytical framework of power and interdependence (Keohane, Nye, 1987) will be applied to examine why China ranks among EU's strategic partners and how the complexity and occasional frictions of their mutual relationship may affect this type of foreign policy instrument.

INTRODUCTION

The concept of EU strategic partnership

The term '*strategic partner'* was first used to describe EU's relationship with Russia in the conclusions of the European Council in December 1998. Today this category includes 10 countries (USA, Canada, Russia, China, Japan, South Korea, Brazil, India, South Africa and Mexico), as well as some groups of countries and international organizations, such as NATO, the UN and the African Union. Although there are multiple and profound differences among them in terms of socio-economic development, governance, political system, culture, ideology etc., in EU's foreign policy they are all labelled '*strategic partners'*.

Although so far the EU has not come up with a clear definition of the concept, strategic partner can be defined as a "*key global player which has a pivotal role in solving global challenges – in the sense that the EU cannot hope to solve these issues without the positive contribution of that partner – and which is centrally*

important to enhance effective multilateralism globally"[188]. The EU deploys different strategies with different strategic partners according to the degree of normative convergence and the baseline of the partnerships[189]. Thus, it differentiates between its '*established partners'* that share the same goals and values – the USA, Canada and Japan; partners able to exert influence on global issues – Mexico, Brazil, India and South Africa; partnerships driven by common interest – Russia; enduring and mutually beneficial partnerships - China[190].
The paper at hand aims to analyze the EU-China strategic partnership in order to provide in-depth insights into the relationship between the two, to examine why despite the political, ideological, cultural and other differences China ranks among EU's strategic partners and how the complexity and occasional frictions of their mutual relationship affect this type of foreign policy instrument. For this purpose, the analytical framework of power and interdependence will be applied. First, the paper will examine the development of EU-China diplomatic and contractual relations and the viewpoint of both sides on the concept of strategic partnership. Second, it will shed some light on the current balance of power and the degree of interdependence between the two. Third it will focus on the most salient differences, especially in terms of values and interests, and how they impact the relationship. Finally, it will provide some conclusions that can be generalized for the concept of strategic partnership.

Power and interdependence

The theoretical framework of power and interdependence has been to a large extent based on the writings of Keohane and Nye in 1987[191] and 2001[192]. According to them, '*interdependence'* is defined as *'mutual dependence'* and is based on the reciprocal effects between countries. Interdependence is not evenly distributed across all issue areas but rather asymmetrical, which means that some actors are more powerful in some areas and less in others. More dependent actors are generally more vulnerable and stand to lose more if the mutual relationship is suspended or interrupted. That is why they are more easily influenced by the less dependent actors into doing actions that they would probably not do.

In today's world, power has to be considered beyond the narrow margins of hard power and military capabilities[193]. Since economic cooperation is the essence of EU-China's strategic partnership, the paper at hand will focus on the power that a

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[188] Renard, Thomas. *The Treachary of Strategies: A Call for True EU Strategic Partnerships.* Egmont Paper 45 (2011). p.5. http://www.egmontinstitute.be/paperegm/ep45.pdf
[189] Jiang, Shixue. "China's leadership change and its implications for China-EU relations". *EU-China Observer* No.1 (2013). pp.21-27. http://www.coleurope.eu/website/study/eu-international-relations-and-diplomacy-studies/research-activities/eu-china-observer
[190] European Parliament. *EU Strategic Partnerships with third countries.* Library Briefing by Carmen-Cristina Cîrlig. (2012). http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2012/120354/LDM_BRI(2012)120354_REV1_EN.pdf
[191] Keohane, Robert, Nye, Joseph. "Power and Interdependence Revisited". *International. Organization.* Vol. 41, No. 4 (1987). pp.725-753.
[192] Keohane, Robert, Nye, Joseph. *Power and Interdependence*. Boston. Longman 3rd ed. (2001).
[193] Baldwin, David. A., "Power Analysis and World Politics: New Trends versus Old Tendencies". *Theories of International Relations*. Surrey. Ashgate (2008). pp.511-545

certain country possesses thanks to the leverage of its trade and investment policies, market size, technological innovation and level of debt that it possesses or owes. Economic power needs to be conceived in the context of a country's international status and political capacity. In addition, it should not be seen as a constant, but rather as a variable that can change throughout time and can yield results only in certain circumstances or issue areas.

EU-CHINA STRATEGIC PARTNERSHIP

Development of EU-China bilateral relations

From a historical perspective, developing Chinese relations with Europe has never been primary Chinese objective and China has always prioritized its relations with the US and Asian countries. However, the increasing trade volume with the EU, as well as Deng Xiaoping's idea of a multipolar world, contributed to a twist in the Chinese foreign policy which started to pay greater attention to the EU. On the other hand, Europe's increasing interest in China started to emerge along with China's economic opening and strengthening.

After the establishment of diplomatic relations in 1975, the EU-China trade and economic cooperation was framed in the first Trade and Economic Cooperation Agreement (TECA) in 1978. The dynamic relationship developed so quickly that it became necessary to further strengthen it with a new TECA signed in 1985. This agreement laid down the foundations for a solid cooperation which started in the area of trade and further developed into a broad partnership covering a wide range of issues. By the late 1990s this agreement already became outdated and was supplanted by a new architecture of EU-China relations which combined a wide range of soft law instruments and binding agreements. In 2003, the 6th EU-China summit promoted the relationship to the level of a strategic partnership. Currently, EU-China bilateral relations are developing within 3 main pillars: High-Level Strategic Dialogue, High-Level Economic and Trade Dialogue and the most recent People to People Dialogue, launched at the 14th EU-China summit in 2012. Moreover, the two parties have engaged in a wide range of sectorial dialogues and although trade and economic cooperation remains the most important driver of the relationship, today there is almost no area where they do not cooperate.

The widening and deepening of the bilateral relations emphasized the need to replace the TECA with another hard law framework agreement which could cover the scope and breadth of the cooperation. Therefore, at the 9th EU-China summit in 2006, the two sides agreed to launch negotiations for a Partnership and Cooperation Agreement (PCA). PCA negotiations started in 2007 in two parallel tracks: political cooperation and trade and economic cooperation. After several years of negotiations, only ¼ of the chapters in the area of trade and economic cooperation were concluded. The last Steering Committee held in September 2011 ended with a conclusion that the positions remained far apart on many issues and no further meetings have been scheduled since. Instead, in 2013 investments were singled out as an issue where both sides are most willing to further their cooperation and negotiations to reach a Bilateral Investment Agreement (BIA) were initiated, with the ambitious objective to reach a deal by 2020.

Strategic partnerships: meaningful concept or empty shell?

The European Security Strategy (ESS) in 2003 was the first EU document to lay down a criterion, although somewhat vague, regarding its choice of strategic partners: "*all those who share our goals and values, and are prepared to act in their support*"[194]. The core values enshrined in the EU treaties include human rights, democracy and rule of law. Although it is questionable to which extent China, a country with a different political system, ideology and cultural background, adheres to these values, it has been EU's strategic partner since 2003, ranking even among the top 3 partners, together with the USA and Russia (Renard, 2011,17).

China's concept of strategic partnerships is not any clearer than the EU's. It includes both the EU and a number of its member states, such as bigger ones Germany, France, the UK and Italy, but also Ireland, as well as EU's candidate country – Serbia, the African continent and some of its countries. According to the role these partnerships play in Chinese foreign policy, it has '*strategic partnerships for peace and prosperity*', '*strategic cooperative partnerships', 'mutually beneficial strategic partnerships', 'constructive partnerships*', to name but a few (Jiang, 2013, 23).

EU-China strategic partnership was established based on the prospects for both of them to develop into global powers. However, the years that followed the establishment of the partnership revealed that maybe both sides nurtured some unrealistic expectations from each other. On one hand, China realized that the EU cannot, at least in near future, become the type of '*pole'* China was expecting it to be, for several reasons. The EU has never sought to counter US global influence; to the contrary, it has always considered the trans-Atlantic relations a priority. It did not seek to develop its own military capabilities, but relied mostly on NATO and focused on promoting itself as a soft power instead. It has constantly tried to leverage its trade agenda and economic clout to impose political conditionality on other countries, oftentimes including China. It still finds it difficult to speak with one voice in many international fora, thus weakening significantly its position on various issues.

According to a survey conducted in China, when asked about which relationship is the most influential in China's foreign relations, only 8% of the population rank the relationship with the EU as number one, 20% rank Chinese relationship with Russia and Japan respectively, while the majority (77%) regard the G2 - China-US axis as the most influential; most of the time Chinese dissatisfaction with the relationship stems from the fact that the EU is seen as an American follower with no independent political stance whose attitude towards China is imprinted with an outdated view, prejudice and past mistakes[195].

On the other hand, the EU expected that China's entry into the World Trade Organization would speed up its further economic opening, leading to the creation

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[194] European Council. *A secure Europe in a Better World*. Brussels. 2003. p.14. http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf

[195] Dong, Lisheng. "Chinese scholars' perceptions of China-EU relations and elements which influence their perceptions". *Foreign Affairs Review* No.5 (2011). p.85. http://www.cesruc.org/uploads/soft/130221/1-130221103647.pdf

of level-playing field, increased market access for European companies in China and reduced trade deficit; that following the economic reform, China would pursue a political reform and its political system would become more '*Westernized';* that its global engagement would become more aligned with the EU's priorities in terms of human rights protection, peace and security. But China, guided by its own interests, has not lived up to these expectations, contributing to increased disappointment and impatience on the side of the EU.

ECONOMIC INTERDEPENDENCE OR POWER SEE-SAW?

The key motivation behind EU-China's strategic partnership is arguably the economic dimension. Notwithstanding the driver behind them or their impact, developments in China have far-reaching consequences, not only on a regional, but also on a global level. China plays an important role in maintaining regional security and this in turn affects EU's economic interests and growth, since EU's exports and investment in Asia in general depend on the stability and prosperity of the region. Chinese quick-paced and export-driven economic development promoted the EU into China's 1st destination for exports. China and EU's daily trade exceeds one billion Euros and China has become the fastest growing market for EU's exports, second in size after the US. All this showcases the extremely high level of economic interdependence between the two and the rather balanced distribution of power which means that none of them can harm the relationship without harming its own economic interests.

The European sovereign debt crisis not only revealed but also increased the awareness about the profound interdependence between the European and Chinese economies. If the EU is in a recession, its consumption power diminishes and it will buy less from China, which will seriously affect the Chinese economy and growth prospects. The decrease in the internal consumption in the EU during 2008, due to the global financial and the European economic and sovereign debt crisis, had a huge impact on Chinese exports and left several million Chinese migrant workers jobless[196]. Therefore, it was certainly in the interest of China to help its biggest market recover.

"*Good friends are there to help when someone is in trouble*" is what the Chinese former Premier Wen told his counterpart Papandreou in 2011. Indeed, since the beginning of the crisis in 2008, China has continuously reaffirmed its willingness to stand by its European partners. It has been purchasing EU government bonds and has increased its direct investments to EU member-states, especially the '*weaker'* ones. Moreover, it bought 30% of the bonds issued by the European Financial Stability Facility (EFSF). But, one has to acknowledge that while this has certainly been helpful for the EU, it also helped China diversify its huge amount of foreign reserves and thus reduce its dependence on the dollar and the US monetary policy.

China has also increased its contribution to the IMF by 43 billion US dollars to help the EU. However, it has also used the situation to influence the global balance of power. Through the unprecedented involvement of the IMF in the rescue programs

[196] Hanso, Hannes. "Partners and Rivals: The EU and China", in *Estonian Foreign Policy Yearbook* (2011). pp.103-130. http://www.evi.ee/lib/valispol2011.pdf

in Greece, Portugal and Spain, China sought to change the current IMF setting by contributing more and asking for more weight and voting rights in return. In October 2010, during a historic summit, the G20 made a decision to reform the IMF by granting 6% more voting power to emerging economies. The big '*loser'* was Europe who had to give up two seats on the executive board, while the big '*winner'* was China who climbed up from the 6th to the 3rd place among the most powerful members.

PROTECTING INTERESTS VS. DEFENDING VALUES

EU's policy on China has always included the idea to support Chinese transition towards a '*more open and plural society*', based on democracy, rule of law and respect for human rights. This ambition can be found in all Commission communications, starting from the first one in 1995 up to the last one in 2019. On the other hand, China's policy has never paid much attention to the European values, it contravenes and sometimes even undermines them. As it can be deduced from all China's EU policy papers (2003, 2014 and 2018), these values that the EU promotes as universal have never been a Chinese ambition.

According to Fox and Godement, "*the EU's heroic ambition to act as a catalyst for change in China completely ignores the country's economic and political strength and disregards its determination to resist foreign influence"* [197]. In principle, China is not against the protection of human rights. Since 2004, there has been a provision in its constitution which states that the State should respect and protect human rights. But there seems to be a different interpretation of the '*universality'* of human rights and China does not accept the European (or the Western) vision as being universal. The EU holds the view that political and economic rights go hand in hand. However, from the Chinese perspective, economic and social rights take precedence over political and civil rights. Jing Men explains this with the fact that the two sides find themselves on different stages of development:

> *The highly developed economy as a consequence of several hundred years of state building and capitalist development allows the EU to focus more on political freedom, and to attach great importance to the civil rights of its citizens. In contrast, China has only become independent at the end of the 1940s and still targets at solving economic problems so that all the Chinese can have enough to eat and wear. As a result, China stresses more development rights of its citizens.* [198]

China gives precedence to the principles of sovereignty and non-interference over human rights. This idea is deeply rooted in Chinese foreign policy given its 19th century colonial past and foreign occupation. Ever since, China has been reluctant to accept or support any kind of interference in any country in the world. It fears that human rights may be used as an excuse to justify the interference in another

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[197] Fox, John, Godemont, Francois. *A Power audit of EU-China relations.* European Council of Foreign Relations (2009). p.1. http://ecfr.3cdn.net/532cd91d0b5c9699ad_ozm6b9bz4.pdf

[198] Men, Jing. *EU-China Relations: Problems and promises.* Jean Monnet/Robert Schuman Paper series. Vol.08, No.13 (2008). p.7. http://aei.pitt.edu/9060/1/MenEUchinaLong08edi.pdf

country's domestic affairs in order to pursue hidden (economic or political) interests. Thus, 20 years later after it signed, under EU's pressure, the International Covenant on Civil and Political Rights, China has still not ratified it. Moreover, it has not signed the protocols to the Covenant, especially the one abolishing the capital punishment.

With regards to democracy, China has often been criticized for its non-democratic practices. It does not agree that democracy is the best political system that can be applied in all circumstances to different countries and thus is reluctant to bind itself to such a commitment. However, in some respects Chinese rhetoric is increasingly converging with EU's ideas. Democracy is no longer taboo, as long as it takes into account the '*Chinese characteristics'*. Many Chinese scholars insist on the fact that China should follow its own path in building a democracy without being obliged to copy the European or any other system, a socialist democracy able to "*uphold more effectively China's stability and development and promote the fundamental interests of the Chinese people*"[199]. Furthermore, Chinese leaders, although not democratically elected, can count on the output legitimacy: their results enjoy much higher approval rates and support than the democratically elected leaders in most Western countries and Japan, especially when it comes to the economic achievements[200].

Probably the key reason behind the lack of normative pressure on the EU's side is the lack of a unified position among member-states. After the initial enthusiasm, EU's fervor to pursue its human rights and democracy endeavors towards China at any cost slowly started to fade away. Within the UN, as a reaction to the Tiananmen incident, ever since 1990, EU member-states tabled or sponsored resolutions criticizing China on its human rights record. In 1996 France and Germany opposed this practice and declared themselves in favor of a '*constructive engagement*' with China, supposedly for commercial interests. That left Denmark alone at the mercy of China after it tabled a critical resolution the next year and since 1998, according to the deal brokered by the UK, no member-state was to table a resolution, but they would be against a no-action motion. This was a big diplomatic victory for China because it meant that all the human rights engagement would be channeled through the EU-China Human Rights Dialogue initiated in 1995, which turned out to be a talk shop behind closed doors and without any meaningful impact. Moreover, the last China's EU policy paper published in 2018 attempts to put an end to EU's hopes to make any progress in this area by omitting any reference to the EU-China Human Rights Dialogue and using a stern language which marks non-negotiable Chinese red-lines.

On the other side, the last Resolution adopted by the European Parliament and the last Communication by the European Commission seem to be recentering the EU's China debate on a normative tone, asking the Council to take a more critical stance to ensure global protection of EU's values, including the protection of human rights on Chinese territory. That attitude has been translated in the joint statement of the

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[199] Song, Zhe. "Achievements and future of China-EU relations". *EU-China Observer*, Issue 2 (2009). pp.6-9. http://www.coleurope.eu/sites/default/files/research-paper/eu_china_observer_2_2009.pdf

[200]Jacques, Martin. *When China Rules the World: the end of the Western world and the birth of a new global order*. 2nd ed. New York. Penguin Books (2012). p.278

last EU-China summit in April 2019 when, threatened with EU's refusal to even publish a joint statement, China significantly softened its position. It acknowledged the importance of the international rules-based order in the context of the WTO reform in order to reduce its industrial subsidies, the need to put an end to forced technology transfer, provide greater market access for EU companies and respect the initial deadline of 2020 for concluding the BIA that the 2 sides have been negotiating for a decade. In addition, it accepted the formulation of the clause on human rights as being universal, indivisible and interdependent.

If we compare China to most of the other EU strategic partners, it is obvious that the relationship is based on a very high degree of interdependence and rather balanced distribution of power, especially in the economic areas. Each and every member-state has some kind of economic cooperation with China and seeks to gain as much as possible from the relationship. In doing so, most of them are only motivated by their national interests and put the EU's core values second. The last example was Italy which is the first EU founding member to have signed a Memorandum of Understanding on the Belt and Road Initiative in March 2019, in spite of the opposition of the EU's institutions and member states like France and Germany.

National leaders when talking to Beijing seldom make reference to the European priorities and leave the European Commission to be the '*bad guy'*. In the meantime, according to Fox and Godemont "*China has learned to exploit the divisions among EU Member States. It treats its relationship with the EU as a game of chess, with 27 opponents crowding the other side of the board and squabbling about which piece to move*" (Fox, Godement, 2009, 3). However, the recently adopted EU-wide investment screening mechanism (November 2018) has the potential to be a game-changer and create proper conditions to protect the European interests in one area - investments, to start with. Although not officially, but tacitly aimed at Chinese investments, the purpose of the screening mechanism is to protect the EU from potentially harmful foreign investments in sensitive areas and limit the influence of foreign states through their state-owned enterprises. It would be interesting to pursue this research avenue in order to analyse the impact that this new mechanism may have on the EU-China strategic partnership and the ongoing BIA negotiations.

CONCLUSIONS

In the effort to project its values on the global level, the EU strives to make China look more like itself. While doing so, it often forgets how profoundly different in terms of political systems and values the two of them are and that China does not share EU's '*universal'* values of human rights and democracy. Since China and the EU are highly interdependent and the distribution of power among the two is rather balanced, the EU does not have much leverage to impose its views through political conditionality which usually works well for smaller and more dependent countries, but not for strategic partners, like China. The fact that EU's insistence on human rights and democracy is weakening confirms that when it comes to China, EU's or member states interests are so important that they oftentimes take precedence over values. China is convinced that its current model is best fit to its development needs. Although it is ready to make some slow adjustments and improvements to present itself as a constructive partner, it is not ready to blindly accept anything that

may not be in line with the '*Chinese characteristics'*.

China has shown willingness and readiness to help the EU overcome the financial and sovereign-debt crisis. The logic behind its help was not '*altruistic'*, but rather guided by the Chinese ambition to become a more powerful player globally and by the heightened awareness of the economic interdependence between the two. EU and China's views diverge on many issues because of differences in history, culture, tradition, political system and level of economic development. But, despite all the frictions, they share many common interests and are interdependent to a point where if any side attempted to harm the other, it would certainly backfire.

In that context, while the concept of strategic partnership is rather vague and lacks clear criteria, it can serve well the purpose of developing common interests and smoothening mutual frictions. Going from the worst to the best case scenario, it can provide the much needed platform for mutual dialogue, contribute to strengthen mutual trust, overcome bilateral issues and lead to joint commitments with broader, even global impact.

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THE ROUTINE ACTIVITIES APPROACH ON CO-OFFENDING

Ivona Shushak, MA of law
University 'St. Kliment Ohridski"- Bitola
Faculty of Law, Teaching assistant
Faculty of Security - Skopje, PhD student
susak.ivona@gmail.com

Kostadina Klechkaroska, MSc in security science
University "St. Kliment Ohridski" - Bitola
Faculty of Security - Skopje, PhD student
kostadinakleckaroska@gmail.com

Abstract
Scholars over the years have examined a number of risk factors associated with delinquent behaviours. Traditional criminological theories emphasize offender motivation, assuming that the willingness to engage in crime is sufficient for crime to occur. Opportunity theories—including routine activities theory focus on how variations in criminal opportunity affect the occurrence of crime events. Cohen and Felson, explaining the routine activity theory, noted that there are three necessary elements for a crime event to occur: a motivated offender, a suitable target, and the lack of a capable guardian. They theorized that these elements must converge in time and space for crime to be possible.
The literature shows that crime is substantially a matter of co-offending. In adolescent ages, about half of crime incidents occur in groups, usually of two or three offenders. Allowing for multiple counting when multiple offenders are present, approximately two-thirds of youth crime participations are in groups. This number is subject to measurement discussion, but the point is that we cannot look at crime only as a feature of individuals. Moreover, many solo offenders are involved with others just before or after their offense. This does not deny individual decision making or individual variations, but puts individuality into a larger context. Co-offending poses a significant number of practical requirements. A group must assemble for such offenses to occur, and such assemblage is not automatic. Nor is an assembled group necessarily located in a convenient setting for carrying out crime. Indeed, co-offending cannot occur without situational features; thus, it depends on time and space, as well as circumstances and routines.
Drawing on the routine activities approach on co-offending, we are going to explain and emphasize the importance of these convergence settings, which strongly facilitate co-offenders to find each other and strongly enhance offending rates.

Key words: co-offending, theories, routine activity theory, situational convergence settings.

INTRODUCTION

The study of crime and criminality has been and continues to be one of the most widely researched fields in academia and in the political arena in relation to policy making. Whether it be psychological explanations or social explanations of crime, the study of criminology, as Sutherland defines, has taken on the role to explain how laws are made, the act of breaking these laws as well as the enforcement of these laws. Although various theories have been developed for each of these fields of study, it seems that the breaking of such laws, in other words, criminality and deviant behavior, has become one of the most thoroughly researched fields.
Routine Activity Theory is a criminological theory that studies social structure and how criminal behavior intertwines the legal behavior of our daily lives. Cohen and Felson have concentrated on the angle of the peculiar circumstances and prerequisites of how offenders commit their crimes rather than the usual attempts of other theories that concentrate on the characteristics of the offender themselves.[201] This theory posits that most criminal events become actualized once potential offenders, suitable targets and the absence of capable guardians converge in space and time.
The literature shows that crime is substantially a matter of co-offending. In adolescent ages, about half of crime incidents occur in groups, usually of two or three offenders. Allowing for multiple counting when multiple offenders are present, approximately two-thirds of youth crime participations are in groups. Co-offending departs from solo-offending through more than simply the addition of one or more offenders. The shift to co-offending transforms the nature of delinquency into a social act requiring cooperation and making group processes possible. However, even with willing co-offenders, cooperation is not a given. Co-offending poses a significant number of practical requirements. A group must assemble for such offenses to occur, and such assemblage is not automatic. Nor is an assembled group necessarily located in a convenient setting for carrying out crime. Indeed, co-offending cannot occur without situational features; thus, it depends on time and space, as well as circumstances and routines.
Drawing on the routine activities approach on co-offending, we are going to explain and emphasize the importance of these convergence settings, which strongly facilitate co-offenders to find each other and strongly enhance offending rates.

ROUTINE ACTIVITIES APPROACH

Routine activity theory, first formulated by Lawrence E. Cohen and Marcus Felson (1979) and later developed by Felson, is one of the most widely cited and influential theoretical constructs in the field of criminology and in crime science more broadly. In contrast to theories of criminality, which are centered on the figure of the criminal and the psychological, biological, or social factors that motivated the

[201] Cohen and Felson noted: "Unlike many criminological inquiries, we do not examine why individuals or groups are inclined criminally, but rather we take criminal inclination as given and examine the manner in which the spatio-temporal organization of social activities helps people to translate their criminal inclinations into action."(Hollis-Peel,M.,Reynald,D. Bavel,M. Elffers,H., Welsh,B.;(2011), *Guardianship for crime prevention: a critical review of the literature*. Crime, Law and Social Change, Springer Verlag, p.55)

criminal act, the focus of routine activity is the study of crime as an event, highlighting its relation to space and time and emphasizing its ecological nature and the implications thereof.[202]
Routine activity theory explains the criminal event through three essential elements that converge in space and time in the course of daily activities: (a) a potential offender with the capacity to commit a crime; (b) a suitable target; and finally (c) the absence of guardians capable of protecting targets. Routine activity theory suggests that if all three elements- a suitable target, lack of a suitable guardian, and a likely motivated offender- are available somewhere, then the chances for crime increase and conversely, if one of these elements is absent then chances for crime decrease. [203]

A **suitable target** of crime was any person or object likely to be taken or attacked by the offender. Anything can be a target such as a person, an object or a place which can be attractive and fruitful for criminals. [204] An object may be very attractive when it is visible and its value is high and easy to reach. In other words, a suitable target is something which provides instant profit to offenders. The word target was selected to avoid the moral implications of the word victim and to treat persons and property exactly the same-as objects with a position in space and time. Each victim of personal attack was treated as a body in the physical world, thus ignoring all issues of socioeconomic or racial motivation for attacking someone, all issues of personal hatred, indeed, anything going on inside the head of offender or victim. Any such concern would have redirected the minds of the readers back to conventional criminology and distracted them from the point that criminal incidents are physical acts.[205]

The second element is **proficient guardian absence**. Guardianship is defined as the physical or symbolic presence of an individual (or group of individuals) that acts (either intentionally or unintentionally) to deter a potential criminal event. This follows Felson's description of guardianship as any person who "serves by simple presence to prevent crime and by absence to make crime more likely''.[206] The concept of the capable guardian, present or absent, has been subject to updates practically since its initial formulation, with scholars now generally conceptualizing it using measures that include social guardianship, focusing on the presence and actions of individuals to provide protection. Earlier research also considered physical measures, such as target hardening indicators including employing locks or carrying weapons, as guardianship.[207]

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[202] Miro, F. (2014), *Routine Activity Theory*, The Encyclopedia of Theoretical Criminology- First Edition. Edited by J.Mitchell Miller, Blackwell Publishing Ltd.

[203] Argun, U., Dağlar, M. (2016). *Examination of Routine Activities Theory by the property crime*. International Journal of Human Sciences, 13(1), p.1189

[204] This might be a woman walking home alone at night, an overpass just begging to be tagged by a gang, or a purse or wallet left on a chair in a restaurant as its owner leaves to use the bathroom. The target is an easy one, one that would not be difficult for the motivated offender to approach.

[205] Clarke, R., Felson, M.,(2015), *Routine activity and Rational choice*, Advance in Criminological Theory, Volume 5, Routledge, p.2

[206] Hollis-Peel,M.,Reynald,D. Bavel,M. Elffers,H., Welsh,B.;(2011), *Guardianship for crime prevention: a critical review of the literature*. Crime, Law and Social Change, Springer Verlag, p.56

[207] McNeeley, S., (2015), *Lifestyle-Routine Activities and Crime Events*, Journal of Contemporary Criminal Justice, Vol. 31(1) , p.34

The last element is the **likely offender**. When an appropriate target is undefended by a proficient guardian there is a chance that a crime will take place. Consequently, the final component in this picture is that a likely offender has to be present for commission of crime. In other words, once a potential offender seizes the correct target without any guardians present as well as at the most appropriate time and place, he/she will commit a crime.[208]

The likely offender may be anyone with a motive to commit a crime and with the capacity to do so. Although in their initial formulation Cohen and Felson used the term "motivated offender", in later works, they avoided the term "motivated" in referring to the offender, as what they truly considered relevant was not disposition or motivation to commit a crime but rather the physical factors that made it possible for a person to be involved in crime. What this approach contributed was an articulation of the need to divert attention away from the offender in order to understand the crime, given that the focus had been exclusively on him or her. Nevertheless, although it was necessary to pay attention to other aspects of crime in order to understand and prevent it, this never meant leaving aside the "point of view" of the offender, given that, as we shall see, the very definition of the target as "suitable" is made through the understanding of the purposes and capacities of the aggressor in relation to intrinsic characteristics of the potential targets of crime.[209]

THE ROUTINE ACTIVITIES APPROACH ON CO-OFFENDING

It has long been recognized that it is impossible to understand delinquency without understanding co-offending[210]. The literature shows that crime is substantially a matter of co-offending, especially in adolescent ages, when about half of crime incidents occur in groups, usually of two or three offenders.

Much research has investigated the correlates and consequences of co-offending, and some of them emphasize that co-offending cannot occur without situational features; thus, it depends on time and space, as well as circumstances and routines. Everyday life brings offenders together with one another under particular criminogenic circumstances. For both individual actors and small groups of co-offenders, assemblage involves several processes, including (but not limited) to routines and convergences, proximity to crime opportunities, and foraging for crime targets.[211]

Felson concentrates on actual types of co-offending in which at least two offenders are directly and simultaneously cooperating. Drawing on the routine activities approach, combined with a social learning perspective on co-offending, Felson develops a theory that emphasizes the importance of meeting places for offenders,

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[208] Argun, U., Dağlar, M. (2016). *Examination of Routine Activities Theory by the property crime*. International Journal of Human Sciences, 13(1), p.1190

[209] Miro, F. (2014), *Routine Activity Theory*, The Encyclopedia of Theoretical Criminology- First Edition. Edited by J.Mitchell Miller, Blackwell Publishing Ltd.

[210] Co-offending is the commission of a crime by more than one person. It is often called ''group crime'', although that term is somewhat misleading, as the vast majority of co-offences are committed by only two offenders. (Carringtton, P., (2014), *Co-offending*, In: Bruinsma G., Weisburd D. (eds) Encyclopedia of Criminology and Criminal Justice. Springer, New York, NY, p.548)

[211] Andersen, M, Felson, M,.(2010), *Situational Crime Prevention and Co-Offending*, Crime pattern and analysis, Volume 3, Number 1, p.5

or as he names it “convergence settings.” Facilities and places that have the capacity to host a range of crime opportunities while fostering a large, regenerating pool of potential accomplices are defined as offender convergence settings.[212] According to him, these places strongly facilitate co-offenders to find each other and strongly enhance offending rates. A basic assumption in Felson’s theory is that “access to accomplices is inherently criminogenic”. Several arguments are provided for this stance. First of all, when potential offenders get together there is an increased chance that they will persuade each other to break the law in the near future. Second, offenders may learn a lot of practical things from each other. They may provide each other with information about potential targets and their locations, about the best way to approach them, and dispose of stolen goods. And third, access to accomplices is needed when an offender wants actual assistance and help in carrying out an offense. By getting into contact with other potential offenders, one may find some necessary extra manpower or someone with specialized skills or knowledge. [213] **In other words, if offenders routines brings them into frequent contact with other motivated offender while in the presence of suitable target, group offending will naturally result.** [214]

However, as Tremblay observed, finding a co-offender does not appear to be simply a matter of bodily convergences but complicated mating process.[215] Drawing on routine activities theories, Felson states that to find one another, likely co-offenders must be able to converge in time and space without outside interference, and have enough time to prepare for criminal cooperation.[216] These three requirements imply that “convergence settings” need to be stable and predictable sources of potential co-offenders. In practice, a small number of places apply: places like street segments, bars, houses, and neighborhood facilities, often only during particular hours.[217] This relative rarity implies that they are important determinants of crime in a certain area, making them potentially interesting targets for intervention.[218]

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[212] Bichler, G., Malm, A.,Enriquez, J., (2014), *Magnetic Facilities:Identifying the Convergence Settings of Juvenile Delinquent*, Crime & Delinquency, Vol. 60(7), SAGE Publication, p.973

[213] Weerman F.M. (2014), *Theories of Co-offending*. In: Bruinsma G., Weisburd D. (eds) Encyclopedia of Criminology and Criminal Justice. Springer, New York, NY, p.5176

[214] McGloin, J., Povitsky Stickle, W.,(2011), *Influence or Convenience? Disentangling Peer Influence and Co-offending for Chronic Offenders*, Journal of Research in Crime and Delinquency 48(3), Sage Pub, p.424

[215] Schafer,D., Rodrigues,N., Decker,S., (2013), *The role of neighbordhood context in youth co-offending*, CRIMINOLOGY, Volume 52 Number 1, p.119

[216] For co-offending three necessary conditions have to be met. The first condition for co-offending is that an offender is willing to co-offend. In other words, the offender has to perceive the possibility to co-offend as ‘profitable enough’. The second condition is that one or more potential co-offender is present or easy to contact. One cannot co-offend when no other offender is around. The third condition is that the co-offender has to be attractive to co-offend with.

Apart from the effects of delinquent relationships of the wider criminal network, the presence of potential co-offenders is also influenced by the accessibility of others offenders and the regularity with which other persons wiling to break the law are met. Distant criminal acquaintances or delinquent friends who live at the other side of the country are not very useful. On the other hand, fixed meeting places and meeting times make the availability of potential co-offenders almost certain. *Therefore, regular meeting places and times stimulates the presence of potential co-offenders. (*Weerman, F., (2003*), Co-offending as social exchange –Explaining the Characteristics of Co-offending,* British Journal of Criminology 43/2, *p.408)*

[217] Convergent setting is a proprietary or proximal place that facilitates the meeting of potential offenders who might not know each other. Unlike meeting comfort spaces, offenders usually have little or no control over these places, and the situation often provides limited privacy to offenders. Importantly, convergent settings have important legitimate uses and typically serve mostly non offenders. Offenders make use of the legitimate functions

So far, we have emphasized some aspects of co-offending. That is, we have discussed how the size, composition, timing, and location of group activities affect nearby crime. We do not mean to imply, however, that co-offending situations obliterate individual actors and decision-makers in the crime process. First, individuals often choose to commit crimes with others for practical reasons – to better carry out the crime. Second, group dynamics and "convergence settings" affect individuals in the crime-making process. **The more offenders present, the more crime ideas, the more targets to be considered, the more dares.**

The central point is that co-offending processes, including assemblage processes and the decision-making process previously discussed, enrich our understanding of how crime occurs. This enriched understanding widens the situational prevention measures that could reduce crime to include consideration for co-offending processes.

To disrupt the crime partner regeneration process, researchers suggests modifying or removing particular behavioral settings so those searching for co-offenders have trouble doing so or lack adequate time to coordinate subsequent criminal activity. Thus, fewer offender convergence settings will exist and criminal cooperation will decline. The task for scholars and practitioners is to identify offender convergence settings, along with any environmental or situational modifications to remove them or at least make them less criminogenic.

CONCLUSION

The literature shows that crime is substantially a matter of co-offending. In adolescent ages, about half of crime incidents occur in groups, usually of two or three offenders.

Co-offending departs from solo-offending through more than simply the addition of one or more offenders, indeed, co-offending cannot occur without situational features, it depends on time and space, as well as circumstances and routines.

Drawing on the routine activities approach, this paper emphasized the importance of meeting places for offenders, named "convergence settings". These places strongly facilitate co-offenders to find each other and strongly enhance offending rates. When potential offenders get together there is an increased chance that they will persuade each other to break the law in the near future. Offenders may learn a lot of practical things from each other, especially about potential targets and their locations and the best way to approach them. **In other words, if offenders routines brings them into frequent contact with other motivated offender while in the presence of suitable target, group offending will naturally result.**

Clearly, interfering with offender group processes deserves serious consideration as a set of crime reduction techniques. This can be accomplished through at least four mechanisms:

1. Reducing the number of offender convergence settings,
2. Making crime targets less accessible to these convergence settings,

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of these places for their own ends.(Agustina,J., Felson, M.(2015), *Routine activities, Delinquency and Youth Convergences,* The Handbook of Criminological Theory, Wiley, p.149)

[218] Weerman F.M. (2014), *Theories of Co-offending*. In: Bruinsma G., Weisburd D. (eds) Encyclopedia of Criminology and Criminal Justice. Springer, New York, NY, p.5177

3. Increasing supervision of these settings,

4. Reducing the presence or dominance of such settings during high risk times.

All of these techniques make it more difficult for co-offenders to converge, helping to reduce co-offending and perhaps solo-offending that occurs very soon after the group converges. Situational measures to reduce or constrain offender convergence settings can undermine the formation of co-offending groups, or impair their access to crime targets. More generally, situational attention to offender convergence settings can impair efficient foraging for crime targets.

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MIGRANT SMUGGLING IN LEGAL FRAMEWORK OF REPUBLIC OF SERBIA – A PENAL ACT BETWEEN CRIMINAL OFFENCE AND MISDEMEANOR

Gordana Grujičić
researcher, Group 484
gordana.grujicic@grupa484.org.rs

Abstract
The new Law on Foreigners of the Republic of Serbia, which came into force on 3th October 2018, prescribes misdemeanor responsibility for helping or attempting to help a foreign national to illegally enter the Republic of Serbia, transit through the territory of the Republic of Serbia or stay on the territory of the Republic of Serbia (Article 14 Paragraph 2). This misdemeanor offence corresponds to the form of criminal offence of "people smuggling", a incrimination provided in Criminal Code of the Republic of Serbia (Article 350 Paragraph 2).
This paper analyzes the degree of similarities of the listed punishable deeds, critically emphasizing the potential implications in practice, in particular the possible violation of *ne bis in idem* principle. The author refers, in certain extent, to the criteria formulated by the European Court of Human Rights related to the application of the principle, and practice of national courts.

Keywords: misdemeanor, criminal offence, smuggling, *ne bis in idem*, Republic of Serbia, European Court of Human Rights.

INTRODUCTION

In recent years, the issue of combating smuggling of migrants (as one of the four pillars of the EU agenda on migration[219]) has become one of the Union's strategic priorities. On the other hand, in the Republic of Serbia ("RS"), as a candidate country, smuggling of migrants is also becoming one of the priority topics that has a significant impact on the state of security and the rule of law. Within the first phase of harmonization of the national legislation with the EU *acquis* in the field of legal and irregular migration, a new Law on Foreigners[220] was adopted.
It came into force on 3rd October 2018 and *inter alia*, prescribes misdemeanor responsibility for an offense which corresponds to the form of a criminal offense of "people smuggling", incrimination provided in the Criminal Code of the RS. This has not been the first time that a perpetrator of an unlawful act can at the same time be punished for a criminal offense and a misdemeanor. Nevertheless, what is particularly problematic in this case is the legal nature of the offense and the degree of public interest it guards. The Protocol against the Smuggling of Migrants by

[219] European Commission. 2015. *A European Agenda on Migration*. COM (2015) 240 final.
[220] *Official Gazette of RS*, no. 24/2018.

Land, Sea and Air together with the Convention against Transnational Organized Crime[221] ("Protocol'') as a crucial international legal instrument which regulates the offense smuggling of migrants, points out that a conduct of smuggling represents one of the criminal activities of cross border character which includes other illegal activities as human trafficking, money laundering and others.[222]
Considering that a relatively short period of time has passed since the beginning of the implementation of the new Law on Foreigners, evaluation whether and in what way the provision of Art. 14 para. 3 applies, and whether there are dilemmas on how to correctly apply the legal qualifications of these two offenses at the same unlawful act, will be discussed in the future. This paper will try to analyze the level of factual interweaving of the basic form of criminal offense (Art. 350 para. 2, Criminal Code) and misdemeanor and the potential negative implications, especially the violation of *ne bis in idem* principle.

FACILITATION OF ENTRY, TRANSIT OR STAY OF IRREGULAR MIGRANTS IN THE NATIONAL FRAMEWORK

In penal law of the RS, the tort action of facilitating unauthorized or illegal entry in Serbia, stay or transit through Serbia to foreign nationals is defined as a criminal offense in the Criminal Code[223] and as a misdemeanor in the Law on Foreigners.[224]

The Criminal Code

Article 350 of the Criminal Code in its definition includes two offenses: an incrimination of illegal entry and smuggling of people. The conduct of smuggling is criminalized as an act of enabling illegal crossing of the state border or illegal stay or transit through Serbia with intent to acquire a benefit for himself or another person (Art. 350, para. 2). If the offense is committed by a group, by abuse of authority or in a manner endangering the lives and health of persons whose illicit crossing of the Serbian border, stay or transit is being facilitated or if a larger number of persons is being smuggled, there will be a qualified form of an offense (Art. 350, para 3.), or most serious form if the offense was committed by an organized criminal group (Art. 350, para 4). For each of these actions imprisonment is envisaged, whereas depending on the form of the offense and the degree of threat, the scope of the sentence differs[225].
In this regard, the criminal offense of smuggling of people includes two constituent elements: the act of the offense and the intention to acquire a benefit and additional qualified elements: if the basic form of the offense is committed by group, by abuse of authority, or in a manner that endangers the lives or health of persons whose

[221] The Law on Ratification of the UN Convention against Transnational Organized Crime and supplementary protocols, *Official Gazette of SRJ – International Agreements*, no. 6/2001.
[222] UNODC. 2010. *Toolkit to Combat Smuggling of Migrants- Tool 1 Understanding the smuggling of migrants*. Vienna: UNODC. https://www.unodc.org/documents/human-trafficking/SOM_Toolkit_E-book_english_Combined.pdf .
[223] *Official Gazette of RS*, no. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.
[224] *Official Gazette of RS*, no.24/2018.
[225] For the act from Art. 350 para. 2 –imprisonment of one to eight years; Art.350 para 3. – imprisonment of two to twelve years; Art. 350 para 4. – imprisonment of three to fifteen years.

illegal border crossing of Serbia, stay or transit is being facilitated, if a large number of persons is being smuggled, or if criminality is committed by an organized criminal group.

The act of illegal crossing of the state border or illegal stay or transit represents a violation of the provisions governing entry, residence and movement of foreigners prescribed by the Law on Foreigners and the Law on Border Control.[226] On the other hand, the act of transit, as defined in the Law on Foreigners (passing through the territory of the RS), by itself does not represent an unlawful act. According to the developed judicial practice in criminal proceedings, in order for a transit to be considered as a form of smuggling conduct it needs to represent an act of enabling irregular migrants "passing through any part of the road within the territory of the RS at which the act of criminal offense is undertaken with the aim of transiting through the territory of Serbia"[227]. According to the position of the Supreme Court of Cassation, factual determination of the normative concept of transit needs to include "objective and subjective elements of the offense, which means relation of transit together with description of psychological relation of the perpetrator in the sense that he/she knows that he/she is smuggling people in transit"[228].

As for the second constituent element, in accordance with the legal formulation and judicial practice, it implies the existence of an intent to acquire benefit, whereby for the determination of a criminal offense the benefit does not to be attained. With linguistic reasoning it can be concluded that the benefit cannot be only of material but of any other nature as well.

The Law on Foreigners

On the other hand, the new Law on Foreigners defines as a misdemeanor an offense that is identical to the acts of the criminal offense of smuggling of people (identical in relation to the facts it assumes). Article 14, para. 2 prescribes misdemeanor responsibility for aiding or attempting to aid a foreign national to illegally enter the RS, transit through the territory of the RS or illegally stay in the territory of the RS. The legal concepts of illegal entry, transit through the territory of Serbia and illegal residence in Serbia as forms of misdemeanor, corresponds to the acts of the basic form of the offense of smuggling people. 'Aiding' or 'assisting' in taking these actions can factually be linked to 'enabling' within the meaning of criminal offense according to Article 350 para. 2. However, unlike provisions of the Criminal Code, 'aiding' is closely defined and implies an act that "does not include aid to save life, prevent injury, provide emergency medical assistance, provide humanitarian assistance, or for humanitarian reasons, without any intention to prevent or delay forced removal" (Art. 14 para. 3).

Violation of Art. 14 para. 2 entails cumulative sanctions: a prison sentence of up to 60 days and fine of 50,000 to 150,000 RSD (Art. 121 para. 3), whereby the

[226] For illegal crossing of the state border: Art. 12 para 1., the Law on Foreigners and Art. 71. para 1. in relation to Art. 12. para 2. of the Law on Border Control (Official Gazette of RS, no. 24/2018) and illegal stay: Art. 3. para 1. point, in relation to Art. 74. para 1. of the Law on Foreigners

[227] Judgment of the Supreme Court of Cassation, KZZ 502/2018 from 26. April 2018, Belgrade.

[228] *Positions of the criminal department of the Supreme Court of Cassation about controversial legal issues in relation to which the consent was not reached with representatives of the appellate courts*, Belgrade 28 June 2016,3.

envisaged duration of the prison sentence represents the maximum that can be prescribed for a misdemeanor (Art. 3 of the Law on Misdemeanors[229]).

The level of factual overlapping of the criminal offense from Art 350 para. 2 of the Criminal Code and the misdemeanor from Art. 121 para. 3 of the Law on Foreigners

The difference in legal definitions of these two punishable acts is reflected in the element of 'intention to acquire a benefit' which is excluded for misdemeanor responsibility. The potential *ratio* of the legislator for sanctioning procurement of illegal entry, transit or enabling irregular stay without requiring the financial or other benefit element, would be to apply justice response in a wider range of circumstances than is the case with criminal practice. However, the definition of the criminal offense itself sets quite extensively the element of benefit, stipulating that intention to gain 'any benefit' not only material would be sufficient for determining the existence of the criminal offense and by this leaves great discretionary space for competent authorities.[230] Nevertheless, the intention to acquire such a widely perceived benefit is a constituent element of the criminal offense and needs to be determined and proven in each case. In a situation when a prosecutor cannot prove the existence of a perpetrator's intention the initiated criminal proceedings will be terminated in favor of the defendant or the accused.

When analyzing the element of intent, it is also important to have in mind that 'enabling' in relation to the criminal offense needs to be taken with intention to achieve any benefit, and that 'aiding' on the other hand, is a willingly taken action that also assumes certain motives. We have already mentioned that legal formulation of the notion of benefit leaves great decretory space for competent authorities as it can be interpreted to mean any benefit. Thus, subjective facts under which the action of offense has been taken can easily be qualified as an intention to gain benefit or motives to aid or assist irregular migrants. In order to avoid incorrect interpretations and thus a potential infringement of the principle of legal certainty it is important to closely regulate the element of benefit within the criminal offense of smuggling of people *de lege ferenda*.

Additionally, determining the intention always logically presupposes the existence of direct premeditation as a form of guilt (Bajović 2015, 40-46). Meaning that perpetrator of the criminal offense which envisages intention as the constituent element could hardly be held responsible if the act of the offense was committed from negligence. In those circumstances, especially when the perpetrator claims that he/she was unaware that his/her actions enabled the transport or accommodation of irregular migrants and that they constitute an unlawful criminal act (for example when irregular migrants are caught at border crossings hiding in the cargo of the vehicle and the driver claims he/she was genuinely unaware of their presence, or when a taxi driver is caught transporting irregular migrants in the taxi, whereas taxi

[229] *Official Gazette of RS*, no. 32/13 of 8 April 2013 and 94/16 of 24 November 2016.

[230] ''Benefit can also be of non-material nature.'' Source: Stojanović, Zoran. 2016. *Legal Commentary of Criminal Code of the RS*. Belgrade: Official Gazette. 971.

service is conducted in accordance with the law) the questions is whether he/she can be held accountable according to the Art. 121 para 3 of the Law on Foreigners.
According to the Law on Misdemeanors the negligence of the offender shall be sufficient for misdemeanor liability unless the provision that envisages the concrete misdemeanor specifies that he/she shall be punished only if the offense is committed with premeditation (Art. 20 para 1), which is not the case for the act prescribed in the Art. 121. para 3 of the Law on Foreigners.
For assessment of the psychological relation of the perpetrator towards the act of enabling or aiding a foreign national to illegally cross the state border or transit or illegally stay in the RS and expected level of their *due diligence*, it is important to take into consideration the scope of responsibilities that natural and legal persons have regarding treatment of foreign nationals prescribed by other laws (the Law on Foreigners, the Law on Border Control, the Law on Transportation of Passengers in the Road Traffic[231]). Thus, the Law on Foreigners presupposes duty for those providing accommodation services to foreigners for payment, as well for those that receive foreigners for visit, to register the foreigner's temporary residence address with the police directorate in the prescribed time; the obligation for carriers when transporting a foreigner to border crossing to make sure that he/she is in possession of a valid travel or other document containing a visa or residence permit. The Law on Transportation of Passengers in the Road Traffic also regulates responsibilities when providing taxi services. Violation of each of these obligations entails misdemeanor responsibility for separate offenses.
Moreover, analyzing the offense from Art. 121. para 3 of the Law on Foreigners in the scope of general misdemeanor law it is important to note that the act of aiding/assisting as such represents a form of complicity undertaken with premeditation[232]. Whoever aids a perpetrator will be punished as if he/she has committed the offense himself/herself. The act of aiding as a form of complicity "must always refer to a certain person to whom assistance is provided and that accomplices know which offense that person is doing" (Đorđević 2013, 41-42). Taking into consideration that illegal entry and illegal stay as such represent separate misdemeanor offenses, one can argue what was the legislators' rationale when prescribing additional misdemeanor for an action that is already punishable on the basis of the legal concept of complicity. Thus, especially having in mind the difference in the type and scope of sentences for the perpetrator of the offense from Art. 121 para. 3 compared to the accomplice of the offense from Art. 121 para. 1 and Art. 122. para. 1 of the Law on Foreigners[233].

[231] *Official Gazette of RS*, no. 68/2015, 41/2018, 44/2018 – other law and 83/2018.
[232] *Ibid.,* art. 25
[233] These provisions prescribe misdemeanor responsibility for offenses of illegal entry and illegal stay and envisages fine in the amount of 5.000 to 150.000 RSD.

ACTIONS TAKEN AFTER AN INTERCEPTION OF SMUGGLING CONDUCT

The practice of basic and higher courts in the criminal proceeding initiated against smugglers[234] illustrates the forms of facilitating illegal entry, transit or illegal stay in Serbia. The most represented *modus operandi* include, *inter alia*: enabling transport of irregular migrants through Serbia (by using private vehicles or as taxi service), guiding and escorting them when crossing the green border outside the border crossings, providing accommodation for irregular migrants in hostels and private properties in order to achieve certain benefit, etc. Smuggling conduct is usually organized in loose 'networks' with the participation of a number of actors in a range of roles: coordinators/organizers, transporters, recruiters, guides, drivers, messengers, etc.

In accordance with the provisions of the Law on Police,[235] after an interception of a smuggling operation, the police *inter alia* applies other powers and measures that involve detection and resolution of misdemeanor offenses and criminal acts, detection and arrest of perpetrators of misdemeanor offenses and criminal offenses, providing evidence etc. Based on the observations and collected information, the police then determine whether the reasonable doubt exists that a criminal offense or misdemeanor has been committed and that conditions for initiating appropriate judicial proceedings have been met. According to the prescribed authorities, the police can act in a manner to simultaneously file criminal and misdemeanor charges against one person regarding the same unlawful event, which is the case in practice with the torts whose elements are overlapping (Bovan 2014, 62-65).

In principle, the Criminal Code allows parallel and criminal and misdemeanor proceedings to take place, since Art. 63 para. 3 "prescribes that "a prison sentence or a fine which the offender has served or paid for a misdemeanor shall be credited to the sentence pronounced for a criminal offense whose elements comprise also the elements of a misdemeanor".

It often happens in practice (or at least when it comes to cases related to smuggling of people) that the police immediately after obtaining knowledge informs the competent prosecutor in order to consult about the existence of the constituent elements for further criminal prosecution of smugglers. In this regard, it is reasonable to expect that in the process of assessment under which legal qualification to classify facts of the event (or what charges to file), not only the police but also the prosecutor will play an important role.

In criminal practice, the existence of an intention to obtain benefits is most often proven on the basis of statements of smuggled migrants and in more complex cases, on the basis of special investigation techniques. However, for the investigating authorities, proving the existence of intent may represent a particular challenge. Why? Namely, statements of smuggled migrants are taken immediately after the interception, without the possibility of adequate preparations for the interview, primary psychological and legal preparations. Special investigation techniques only

[234] During 2017 and 2018 Group 484 conducted a research on the position of smuggled migrants in proceedings related to smuggling offence. The findings of the research will be published in the coming period.

[235] *Official Gazette of RS*, no. 6/2016, 24/2018 and 87/2018.

apply in the limited number of cases when legal conditions are met. In this regard, it is reasonable to assume situations where, due to unclear or contradictory statements of intercepted smuggled migrants or inability to apply specific investigation techniques in each case, it will affect a possibility to prove the existence of such an intention. The possibility to determine the misdemeanor responsibility of the perpetrator will then be considered.

If the police simultaneously file criminal and misdemeanor charges for smuggling conduct it will probably lead to issuing a judgment in misdemeanor proceedings. Not only because by its very nature, the procedure is significantly shorter than the criminal, but the complexity of the offense usually entails additional time for the fact-finding mission to take place. Now the question is what implications a misdemeanor conviction could have if a subsequent criminal proceeding for the act from Art. 350 para 2. is initiated, especially from the perspective of *ne bis in idem* principle?

The European Court of Human Rights (ECtHR) practice and protection of *ne bis in idem* in proceedings related to smuggling conduct

Art. 4 para. 1 of the Protocol 7 of the European Convention on Human Rights envisages that “no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offense for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

Throughout its practice, the ECtHR defined a set of criteria within the framework of which it requires that a *ne bis in idem* principle should be taken into consideration. Depending on the case, the court's approach in assessing whether a particular domestic procedure is considered ‘criminal procedure’ differs in terms of the scope of the criteria it takes into consideration[236].

The most commonly used criteria for evaluating whether or not there was a ‘criminal procedure’ are the so-called ‘Engel criteria’, which include: 1) legal classification of the offense under the national law, 2) the very nature of the offense and 3) the degree of severity of the penalty that the person concerned risks incurring. Whereas, the second and third criteria are alternative and not necessarily cumulative (*Tomasović v. Croatia*, no. 53785/09, 18 October 2011, § 20).

If we applied the mentioned criteria to the potential situation of conviction that has already acquired the force of *res judicata* under Art. 121 para. 3 of the Law on Foreigners and subsequently initiated criminal proceedings, we could come to the conclusion that both sets of proceedings are to be regarded as criminal for the purposes of Art. 4 of Protocol No. 7 to the Convention.

Regarding the first criterion, while the offense prescribed in art 121. para 3 is a misdemeanor by legal classification, it does represent a criminal offense in the meaning of the Court. It is prescribed by the Law on Foreigners which generally protects public order and thus “the values and interest that normally fall within the sphere of protection of the criminal law” (*Milenković v. Serbia*, no. 50124/13, 1 June 2016, § 35). Then, as for the evaluation of the criminal nature of the offense it

[236] On practice of the ECtHR relating standards for assessment of *ne bis in idem* principal see: Bovan 2014, 65-67; and Kolarić, D., Marković, S. 2017, 265-271.

is important to have in mind the degree of seriousness (*Ezeh and Connors v. the United Kingdom*, nos. 39665/98 and 40086/98, 9 October 2003, § 104) of the offense proclaimed in The Protocol. As to the degree of severity of the measure and referring to the position of the Court taken in the case *Milenković v. Serbia* that maximum potential penalty for the misdemeanor of sixty days involves the loss of liberty and as such is in its nature criminal.

Moreover, during the assessment of the potential violation of the right not to be prosecuted twice for the same offense, the Court also takes into consideration the identity of factual circumstances of the event (idem). It evaluates "whether the new proceedings arose from facts which were substantially the same as those which had been the subject of the final conviction" (*Zolotukhin v. Russia*, no. 14939/03, 10 February 2009, § 82). As it was elaborated in the previous section, in the case of smuggling conduct, facts constituting the two offenses can be regarded as substantially the same.

***Ne bis in idem* and possible implications in regard to smuggling conduct – position of the Constitutional Court of the RS**

Prohibition of a retrial for a same criminal offense as an element of the principle of legal certainty, represents a constitutional concept prescribed in Art. 34. para 4. as "no person may be prosecuted or sentenced for a criminal offense for which he/she has been acquitted or convicted by a final judgment, for which the charges have been rejected or criminal proceedings dismissed by the final judgment, nor may the court ruling be altered to the detriment of a person charged with criminal offense by extraordinary legal remedy. The same prohibitions shall be applicable to all other proceedings conducted for any other act punishable by the law." In the context of the relation between criminal and misdemeanor law, the Constitutional Court "accepts the possibility that a person's conviction in the 'other criminal offense' proceedings may constitute a procedural obstruction to prosecute him/her in criminal proceedings in connection with the same life event" if certain conditions are met[237].

The criteria within which the court evaluates potential violation of Art. 34 para. 4 are "firstly, whether both proceedings were conducted against the applicant for an act which, by its very nature, constitutes a criminal offense, or whether the penalties by their nature were punitive; secondly, whether the acts for which the applicant is prosecuted the same (*idem*); thirdly, whether there was duplication of proceedings (*bis*)"[238].

Additionally, the Constitutional Court is of the position that "the lack of a clear distinction between criminal and misdemeanor offenses in the Serbian legislation must not lead to the situation that in the case-law the adjudicated matter in the misdemeanor procedure is an obstacle to the persecution of perpetrators of criminal offenses". This will be especially significant in cases when smuggling is conducted in a manner that engenders the rights and freedoms of smuggled migrants. The criminal judicial practice has already shown that judicial authorities have not

[237] Judgment of the Constitutional Court of the RS Už 1285/2012 from 26 March 2014.

[238] *Ibid.*, Už-1256/2015 from 21 June 2018.

devoted appropriate attention to the issue of protection of smuggled migrants and their vulnerability, both in terms of considering the existence of qualified circumstances when filing an indictment and determining the level of punishment. Thus, it would be particularly important to make sure that the protection of *ne bis in idem* principle does not imply amnesty for those who have endangered the rights and freedoms of smuggled migrants.[239]

CONCLUSION

The current legal definitions of the criminal and misdemeanor offense of smuggling of people engender legal uncertainty incompatible with a fundamental right, namely the right not to be prosecuted twice for the same offense. Analyses of the legal and factual elements of these overlapping offenses show that they can easily be regarded as substantially the same.

On the other hand, there is a distress that the extensive interpretation of the *ne bis in idem* principle in practice could lead to a situation where an imposed sentence for smuggling conduct is disproportional to the severity of the protected good. Thus, it would be contrary to the general and special prevention that punishment is ought to achieve and could lead to a violation of the principle of fairness.

There had still not been cases before the Constitutional Court, and the ECtHR, in which the issue of violation of Art. 34, para. 4 of the Constitution (or Article 4 of Protocol No. 7 to the Convention) was raised regarding the initially conducted misdemeanor, and subsequently criminal procedure for the conduct of smuggling. Nevertheless, the analyzed case-law additionally implies the potential violation of the *ne bis in idem* principle in practice.

Thus, it is necessary to *de lege ferenda* more closely regulate constituent elements, i.e. ‘intent to acquire benefit’ in the criminal offense and ‘aiding’ in the misdemeanor. Additionally, it is required to consider the possibility of adopting an opinion or biding position of the judiciary that will clarify what unlawful behaviors in smuggling conduct are considered ‘minor’ offenses and thus need to be sanctioned in the framework of Art. 121. para 3 of the Law on Foreigners. On the basis of legal clarifications of these offenses it is important to secure unhindered and coherent application by the police, prosecutors and other judicial authorities.

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[239] On the protection of the principal of fairness see: Bovan 2014, 62-74, and Župančić 2011, 171-178.

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CONSIDERATIONS CONCERNING THE FUNCTIONALITY OF THE POLITICAL SYSTEM OF THE REPUBLIC OF MACEDONIA

Emilija Stefanovska, MA in Political Sciences
Faculty of Law, "St. Clement of Ohrid University – Bitola, Republic of Macedonia
emmasteff1@yahoo.com

Abstract
The process of name issue negotiations and agreement between the republics of Macedonia and Greece that took place in 2018/2019 and carrying out many governmental policies in a longer period of time have manifested many weaknesses of the political system of the Republic of Macedonia. The weaknesses resulted in permanent obstacles in functioning of the governmental bodies, disrespect of the rule of law, antagonisms among the political parties, intra-ethnic and interethnic antagonisms, etc. This imposes the need to analyze the functionality of the political system of the Republic of Macedonia. In this respect a subject of analysis will be the relations between the Assembly and the Government of the Republic of Macedonia, the Government and the President of the Republic, the Government and the judiciary stipulated in the Constitution and other laws dealing with these political relations. This paper will comparatively reflect the counterpart relations in the political systems in the world - parliamentary, presidential and convent that were applied in the constitution of the Macedonian political system. As well, the analysis will be extended to some legal formulations in the above acts pertaining to the functioning of the state authorities. In its final section the paper will pave the way towards some alternatives in these relations and set of rules regulating them.

Key words: Political system of RM, Government, President, Assembly, judiciary.

INTRODUTORY NOTES

The Republic of Macedonia transformed its one-party political system into a multi-party one in 1991 replacing its previous Convent political system with the Parliamentarian one but combined with some traits of the Presidential and Convent political systems. This transformation has raised some controversies in respect to the effectiveness of the system and the political science analysis in this paper will be focused to that goal. In this respect a subject of analysis will be the political relations among the state authorities in the Republic of North Macedonia, through comparisons with the counterpart institutions in countries with parliamentarian, presidential, semi-presidential and convent political systems.

POLITICAL SYSTEM IN THE REPUBLIC OF NORTH MACEDONIA

CONSTITUTION AND FUNCTIONS AND RESPONSIBILITIES OF THE STATE AUTHORITIES IN SOCIAL AREAS

Legislative power

Legislative power is represented by the **Assembly** of the Republic of North Macedonia.

The Assembly of the Republic of North Macedonia is a representative organ of the citizens consisted of 120 – 140 representatives elected by popular vote with a mandate of four years (Constitution 1991, Art. 61). Since the system is the multi-party one the Assembly is consisted of representatives of many political parties. In the Assembly the party representatives are divided to the ruling parties that gain the right to establish the Government and opposition parties with the minority representatives in the Assembly.

Its functions and responsibilities in the social areas are:

-it adopts and amends the Constitution;

-it adopts laws and gives authentic interpretation of them;

-it determines the public taxes and fees;

-it adopts the budget and the balance of payments of the Republic;

-it ratifies international agreements;

- it makes decisions on highest state level such as decisions for war and peace;

-it makes decisions concerning any changes of borders;

-it makes decisions on association and disassociation of alliance or community with other states, etc. (Constitution of the Republic of Macedonia 1991, Art. 68)

Executive power

Executive power is bicephalous - shared by the Head of the State or the **President** of Republic of North Macedonia, and the **Government** of the Republic of North Macedonia.

President of the Republic

A candidate who has received a majority of votes from the total number of voters is elected President of the Republic (Constitution of the Republic of Macedonia 1991, Article 81) providing 40% of the total number of voters give their presidential vote (Constitution of the Republic of Macedonia 1991, Amend. XXXI).

The President of the Republic is the Supreme Commander of the Armed Forces of the Republic of Macedonia (Constitution of the Republic of Macedonia 1991, Article 79). The President's duties of the Republic of Macedonia are to:

-nominate the mandator to constitute the Government of the Republic of Macedonia

-appoint and dismiss by decree ambassadors and MPs of the Republic of Macedonia abroad

- accept the credentials and letters of recall of foreign diplomatic representatives

- propose two judges in the Constitutional Court of the Republic of Macedonia

- propose two members in the Republican Judicial Council

-appoint three members to the Council for Security of the Republic of Macedonia
-propose the members of the Council for International Relations
-appoint and dismiss other holders of state and public functions established by the Constitution and the law
-grant decorations and honors in accordance with law
-grant pardons in accordance with the law
-perform other duties determined by the Constitution (Constitution of the Republic of Macedonia 1991, Art. 84).
International agreements on behalf of the Republic of Macedonia are concluded by the President of the Republic. (Law on Conclusion, Ratification and Execution of International Agreements 1998, Art. 3).
The President of the Republic of Macedonia shall initiate a procedure for conducting negotiations for concluding international agreements upon a decision made by means of a Referendum, on its own initiative, in accordance with the Act of the Assembly of the Republic of Macedonia and by the proposal of the Government of the Republic of Macedonia (Law on Conclusion, Ratification and Execution of International Agreements 1998, Art.5).

Government
The Government of the Republic of Macedonia is the holder of the executive power. The Government performs its rights and duties on the basis and within the framework of the Constitution and laws (Constitution of the Republic of Macedonia 1991, Art. 88). The government consists of a President and Ministers. The President and Ministers cannot be MPs in the Assembly
The way of election of the Government is the following. The President of the Republic of Macedonia is obliged, within ten days of the constitution of the Assembly, to entrust the mandate for the composition of the Government to the candidate of the party or parties that have a majority in the Assembly. The Prime Minister is submitting a program and proposing the composition of the Government within 20 days from the date of the mandate of the Assembly. The Government, on the proposal of the mandator and on the basis of the program, elects the Assembly by a majority of votes from the total number of Representatives (Constitution of the Republic of Macedonia 1991, Art. 90).
The Government of the Republic of Macedonia
- determines the policy of carrying out the laws and other regulations of the Assembly and is responsible for their execution;
- proposes laws, the budget of the Republic and other regulations adopted by the Assembly;
- proposes a spatial plan for the Republic;
- proposes decisions on the reserves of the Republic and takes care of their execution;
- adopts bylaws and other acts for the execution of laws;
- lays down principles for internal organization and for the work of the ministries and other administrative bodies, directs and supervises their work;
- provides appraisals of drafts of laws and other acts that are submitted to the Assembly by other authorized bodies.

- decides on the recognition of states and governments;
- establishes diplomatic and consular relations with other states;
- makes decisions for opening diplomatic and consular offices abroad;
- proposes the appointment of ambassadors and representatives of the Republic of Macedonia abroad and appoints chiefs of consular offices;
- proposes the Public Prosecutor;
- appoints and dismisses holders of public and other functions determined by the Constitution and by law;
- performs other duties determined by the Constitution and law." (Constitution of the Republic of Macedonia 1991, Art. 91).

International agreements on behalf of the Republic of Macedonia can be concluded by the Government of the Republic of Macedonia, which will regulate issues in the field of economy, finance, science, culture, education and sports, traffic, communications, urbanism, construction and environmental protection, agriculture , forestry, water economy, health, energy, justice, labor and social policy, human rights, diplomatic-consular relations, as well as the area of defense and security of the state, except for issues linking with the border of the Republic of Macedonia, association with alliances or communities with other states, or for withdrawing from such alliances and communities and other international agreements that, according to international law, are concluded by heads of state. (Law on Conclusion, Ratification and Execution of International Agreements 1998, Art. 3).

The Government shall initiate a procedure for conducting negotiations and concluding an international agreement on its own initiative, upon a written request by the President of the Republic, upon the Act of the Assembly of Macedonia and upon a proposal of the State Administration Authority in whose jurisdiction are the issues to be regulated with international agreement. (Law on Conclusion, Ratification and Execution of International Agreements 1998, Art.5).

The Ministry of Foreign Affairs gives an opinion on the proposal to initiate a procedure for concluding an international agreement and the content of the draft of the treaty from an international legal point of view. (Law on Conclusion, Ratification and Execution of International Agreements 1998, Art.9).

Judicial Power

Constitutional Court

The Constitutional Court of the Republic of Macedonia is a body of the Republic that protects the Constitution and legality (Constitution of the Republic of Macedonia 1991, Art. 108). The Constitutional Court consists of 9 judges. The Assembly elects the Constitutional Court with a majority of votes from the total number of Representatives. The term of office of judges is 9 years without the right of re-election. Judges of the Constitutional Court are elected from prominent lawyers. (Constitution of the Republic of Macedonia 1991, Art. 109).

The Constitutional Court of the Republic of Macedonia:

- Decides on the conformity of laws with the Constitution;
-Decides on the conformity of other regulations and collective agreements with the Constitution and laws;

-Protects the freedoms and rights of both humans and citizens regarding the freedom of conviction, conscience, thought and public expression of thought, political association and action and the prohibition of discrimination of citizens on grounds of sex, race, religion, social and political affiliation.
- Deals with the conflict of competencies between the holders of the legislative, executive and judicial powers.
-Decides on the conflict of competencies between the authorities of the Republic and the local self-government units.
- Decides on the responsibility of the President of the Republic.
-Decides on the constitutionality of programs and statutes of political parties and citizen associations.
-Decides on other issues determined by the Constitution." (Constitution of the Republic of Macedonia 1991, Art. 110).
The Constitutional Court will abolish or revoke a law if it finds that it is not in accordance with the Constitution. The Constitutional Court will abolish or revoke another regulation or general act, collective agreement, statute or program of a political party or association if it finds that they are not in accordance with the Constitution or the law. The decisions of the Constitutional Court are final and executive. (Constitution of the Republic of Macedonia 1991, Art. 112).

Judiciary
The judicial power is vested in the courts. Their task is to apply the law (Law on Courts 2006, Art. 3). There are 3 instance hierarchical system of courts in the Republic.
The Supreme Court of the Republic of Macedonia is the highest court in the Republic, providing uniformity in the implementation of the laws by the courts. (Constitution 1991, Article 101)
The Republican Judicial Council is composed of seven members. The Assembly elects the members of the Council from the ranks of outstanding members of the legal profession for a term of six years with the right to one reelection (Constitution 1991, Article 104).
The Republican Judicial Council
- proposes to the Assembly the election and discharge of judges and determines proposals for the discharge of a judge's office in cases laid down in the Constitution;
- assesses the competence and ethics of judges in the performance of their office (Constitution 1991, Art. 105)

CONCLUSION
From the above survey dealing with functions and responsibilities of the state authorities in the Republic of North Macedonia can be seen that there is a strict separation of powers among the state authorities. Separation of powers should provide both cooperation among the state authorities but as well as control mechanisms in the governance with the state or in the process of making decisions and their implementation. The executive branch is in charge to prepare, propose and execute the acts and other state regulation, the legislative branch is in charge to pass

the laws and other regulation and the judicial branch is in charge to apply the law. The characteristic of the North Macedonian political system is that the executive branch is bicephalous consisted of the head of state or the President of the Republic and the Government where the most of the rights and responsibilities concerning the functioning of the system in the various social fields such as economy, environmental protection, health care, social care, education etc. belong to the Government. The President has minor rights and responsibilities in national defence, conclusion of international agreements, and suspending veto of the laws. The legislative function is vested in the Assembly or the Parliament. The Judicial function is divided between the three instance courts that apply the law and the Constitutional Court that decides on the conformity of the laws and other regulation passed by the legislative and executive bodies with the Constitution. This separation of powers is functionally set to provide both cooperation and control among the state authorities in their governance with the state issues.

CHECKS AND BALANCES AMONG THE STATE AUTHORITIES IN THE REPUBLIC OF NORTH MACEDONIA

The checks and balances are a system for separation of powers, more precisely a system of shared power. It is there to make sure that no one group or branch of government can have exclusive control. Each of the three branches (legislative, executive and judicial) have their own powers to check the action of the other branches. This counterbalancing among the state authorities make them more responsible, control mechanisms make corrections to the ineffective decisions and enhance the level of effectiveness or functionality of the system. There are the following checks and balances in the political system of the Republic of North Macedonia.

Assembly Ruling – opposition parties. The first check that exists in any pluralist multi-party system is that between the ruling and opposition parties in the Parliament or Assembly in the case of the Republic of North Macedonia. The process of legislation is in domain of the Assembly that is consisted of representatives of both the ruling and the opposition parties where the former prevail. The opposition parties have the opportunity to check the activities of the ruling parties in several ways:

a) First it is to vote at plenary sessions about the laws and other acts passed by the Assembly

b) Second it is their participation in the commissions of the Assembly which are constituted of representatives belonging to both ruling and opposition parties in ratio to their total number in the Assembly (Rule of Procedures of the Assembly of RM 2002, Art. 114)

c)Third it is the right of the opposition parties to initiate an interpellation or the matter of confidence related to the Government as a whole, consisted of ruling parties' representatives, particular minister or any other official entrusted by the ruling parties in the Assembly (Rule of Procedures of the Assembly of RM 2002, Art. 42).

d)Fourth it is the right of both ruling and opposition parties, but with the special emphasis to the latter to set enquires pertaining to the policies and their repercussion

carried out by the Government consisted of ministers elected by the ruling parties' representatives in the Assembly (Rule of Procedures of the Assembly of RM 2002, Art. 35).
e)Fifth is to submit amendments to the laws and other acts that are going to be passed in the Assembly. More precisely, amendments can be submitted by each of the representatives in the Assembly, commissions and other stakeholders. It means that any representative of the opposition may submit amendments whose number to each particular issue of the agenda is not limited. (Rule of Procedures of the Assembly of RM 2002, Art. 165).

Assembly - President

Laws are declared by promulgation. The promulgation declaring a law is signed by the President of the Republic and the President of the Assembly. The President of the Republic may decide not to sign the promulgation declaring a law or this is the President's VETO for a short period of time. The Assembly reconsiders the law and the President of the Republic is then obliged to sign the promulgation in so far as it is adopted by a majority vote of the total number of Representatives. The President is obliged to sign a promulgation if the law has been adopted by a two-thirds majority vote of the total number of Representatives in accordance with the Constitution.
The President is held accountable for any violation of the Constitution in exercising his/her rights and duties. The procedure for determining the President of the Republic's answerability is initiated by the Assembly with a two-thirds majority vote of all Representatives. (Constitution 1991, Art. 87)

President-Constitutional Court

It is the Constitutional Court that decides on the answerability of the President by a two-thirds majority vote of all judges. If the Constitutional Court considers the president answerable for a violation, his/her mandate is terminated by the force of the Constitution (Constitution 1991, Art. 87)
The Constitutional Court can assess the conformity with the law of any activity performed or regulation passed by the President of the Republic (Constitution 1991, Art.110)

President-Government

The President of the RM is bound within 10 days from the constitution of the Assembly to entrust the mandate to compose the Government to the candidate of the party or parties that have majority in the Assembly.

Assembly-Government

"The Government and each of its members are responsible for their work before the Assembly. The Assembly may pass a no-confidence motion against the Government. A decision for the vote of no confidence of the Government shall be adopted by a majority of the votes of the total number of Members of Parliament. If a mistrust is passed to the Government, the Government is obliged to resign"

(Constitution 1991, Art. 92). The Government on the other hand has no right to dissolve the Assembly. "

Assembly-citizens

There is an opportunity for 150 000 electors to submit initiative for referendum where the the Assembly is bound to organize a referendum and if it is successful, the Assembly is obligated to act upon the brought decision. (Constitution 1991, Article 73).

CONCLUSIONS

The new political system in then the Republic of Macedonia was introduced in 1991 following the transformation from monopartism or one-party political system into pluralist or multi-party political system that was a dramatic political change. The new political system represented a mixture of three types of political systems – Parliamentarian, Presidential and Convent. Thus the political system of the Republic of North Macedonia has the following characteristics:

Parliamentarian political system' characteristics

The Government carries our the national policies in almost all social spheres and the Assembly (Parliament) exerts control on the activities of the Government

There is a bicephalous executive power where the authorities are divided between the Head of State or the President and the Government but where the Government has much more functions and responsibilities than the President

Assembly may dissolve the Government

Convent political system's characteristics

The Assembly has the right to elect all other state bodies in the system – the Government, whole judiciary

The Government can not dissolve the Assembly

Presidential political system's characteristics

The election of the President by popular vote

The control of the regulation passed both by legislative and executive bodies by the Constitutional Court /in USA by the Supreme Court/

The above survey shows that the political system of the North Macedonia has many checks and balances or control mechanisms both within the legislative and executive authorities and among all of them – executive, legislative and judicial authorities, but some of them are not politically well designed and some of them are legally incomplete. A big inconsistency is that the Assembly /Parliament/ may dissolve the Government but the Government can not dissolve the Assembly. This provides the situation of irresponsible Assembly (Todorovski, 2007, pg. 293). In addition, there is not a mechanism to change the composition of the Assembly during its mandate like in UK in case of deep misunderstanding between the ruling parties and the opposition over some major issues (Kekenovski 2013, pg. 73) that can lead to ineffectiveness of the system even deadlock. Another issue is the election of the President. He/she is elected by popular vote. That is characteristic for Presidential /USA/ or semi-presidential system /France/. There the functions and

responsibilities of the Presidents are very large. In USA the President is the one with highest executive functions where all activities of the national executive departments are under his final assessment and the secretaries of these departments are subordinated to him it means that he actively follows and intervenes in the activities of the overall national executive body (Kekenovski 2013, pg. 187). In the semi-presidential system according to the Constitution of France of 1958, the main place is taken by the President of the Republic, then the President of the Government that can be observed only in the unity of action and structure. The Government can exercise its function only within the Council of Ministers chaired by the President of the Republic (Kekenovski, 2013, pg.273). In these cases the election of the presidents by all citizens due to the basic principle of democracy provide them a strong political position as executives against the legislative bodies. On contrary, in the Parliamentarian political systems, where the heads of state are characterized by minor functions and responsibilities they are not elected by popular vote because they are either hereditary, like the monarch in UK or elected in the Parliament like the President in Germany (Kekenovski 2013, pg. 121). As well, the obligation of the President to entrust the mandate to the majority party/parties in case when he does not want to obey this duty is without political alternative - a result of which may be a deadlock of the system. Another conflict of interests may appear in case of conclusion of international agreements. They can be concluded by the President and by the Government. But the President has exclusivity in matters with the utmost political interest such as association into alliances or communities with other states, or withdrawing from such alliances and communities and other international agreements which may cause harm to the state if the President is not willing to do that against the will of the majority in the Assembly (Parliament). Another is the situation when the President ignoring his constitutional duty refuses to promulgate laws in case of their second adoption by the Assembly or when passed by 2/3 majority of the Assembly representatives that can lead to deadlock of the system. The last in this context is the right of the representatives in the Assembly to propose unlimited amendments to the laws that as well can lead to a deadlock or stalemate of the system

Generally, these flaws can lead to lower level of effectiveness of the system or sometimes even to deadlocks that can not be solved by internal political mechanisms and which can cause high political damages or even deadlocks in the political processing of the state with enormous negative repercussions either within the country or towards its accession into NATO and EU.

SOLUTIONS TOWARDS BETTER EFFECTIVENESS OF THE SYSTEM

The effectiveness of the political system of the Republic of North Macedonia will be raised and deadlocks eliminated among all through the following solutions:

First, introducing dissolution of the Assembly upon the requirement of the Government. This will raise the level of responsibility of the Assembly representatives in the decision making process. As well, it will produce an opportunity the Government to change the composition of the Assembly and their party ratio through new election in case of deep cleavages and deadlocks between the ruling and opposition party representatives.

Second, election of the president of the Republic, as a head of state in the Parliament. This will save time, political and social energy and funds for costly electoral campaigns, reduce the political antagonisms among the various strata of population characteristic for elections and will focus the President to resolution of real problems facing the Parliament.
Third, it should be introduced the possibility some other political subject such as the President of the Assembly to entrust the mandate to the majority party/parties in case when the President ignores this duty.
Fourth, it should be introduced the possibility the Government to be alternative in conclusion of international agreements concerning association in alliances or withdrawing from them if the President refuses to participate in that process by consent of the Assembly
Fifth, it should be introduced another political subject such as the President of the Assembly to be the sole promulgator of the laws in case of their second adoption by the Assembly or when passed by 2/3 majority of the Assembly in case the President ignores his duty.
Sixth, there should be limited opportunity for the representatives in the Assembly to propose amendments to the laws and other regulation

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EUROPEAN UNION STRATEGY FOR DANUBE REGION AND ITS POSSIBLE IMPACT ON CONSTRUCTION PROCEDURE LIBERALIZATION IN SERBIA

Dušan Milošević LL.M.
Beneficiary of the Initial Training on the Judicial Academy of the Republic of Serbia
PhD Candidate at the Faculty of Law University of Belgrade
dmilosevic037@gmail.com

Abstract
European Union Strategy for Danube Region is one of the EU Macro Regional Strategies, which involves EU Member States, as well as other countries. In this regard, it proclaims certain goals and priorities that have to be operated through concrete actions, but all them must be related to the Danube Region. *Inter alia*, aforementioned Macro Regional Strategy mentions construction too. Generally, it is very complex issue, since all of Countries have different regimes in terms of construction, which could be, even more, differentiated considering level and form of decentralization within each Country. On the other side, every investor would like to know, in advance, relevant rules and restrictions related to the construction, but these information are changeable, not so transparent and very difficult for understanding by foreigners, although they could be publicly available in certain sense. Therefore, some kind of preliminary information related to the construction near to Danube River coasts could be far more accessible for investors, because they have enormous tourist, infrastructure and economic potential. In this regard, one can start from Serbian perspective, while these findings could serve across entire Danube Region and wider.

Key Words: Danube Region, EU, Serbia, Danube River, constructing, Plans, Location Information

INTRODUCTION

European Union Strategy for Danube Region (hereinafter: EUSDR) is one of the EU Macro Regional Strategies (hereinafter: MRS). Generally, these are documents that seek to establish comprehensive frameworks for multi-objective cooperation and coordination of cross-cutting policies involving numerous actors within one territory defined as Macro Region (Ganzle, *et al*. 2018, 2). Basically, Macro Regions consist geographically associated countries (Braun, and Laszlo, Kovacs 2011, 79), but aforementioned concept is based on natural or landscape systems too (Duhr 2011, 6). In this regard, MRS aim to overcome existing institutional barriers to regional cooperation in international context (Ganzle, *et al*. 2018, 9) and to establish equal partnership with numerous countries as well as with other regional

and local entities (Braun, and Laszlo, Kovacs 2011, 84). Thereby, MRS are characterized by the "Three NOs" concept due to which they have to align with existing financing and institutional framework (Toptsidou 2013, 40). Explicitly, aforementioned concept refers, only, to the EU, since it is prescribed that there will not be new funds, legislation and structures on EU level. So, accent is on better use of existing resources, but EUSDR does not exclude additional funds provided by national, regional, local or, even, private entities, as well as modification of current legal framework on national, regional or local level in order to achieve proclaimed goals.

STRUCTURE AND CHARACTERISTICS OF EUSDR

EUSDR involves different countries, either EU Member States, Candidates or, even, Non-EU Countries (Mocanu, and Sebe, and Andreica 2011, 14). From formal point of view, it is genus term for two interrelated documents. First is Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, which is main strategic document and, *per se*, synonym for EUSDR. In this regard, one could define above mentioned document as EUSDR in narrow sense. Second is Action Plan that presents accompanying document with purpose to operate concrete priorities related to the Danube Region, i.e. pass "from words to actions" as it is officially stated in aforementioned document. From the structural point of view, EUSDR is based on four Pillars that present key issues, such as: connecting, protecting the environment, building prosperity, strengthening the Danube Region. Aforementioned key issues are further elaborated through numerous Priority Areas, which are basic areas that could be improved by EUSDR through Activities and Projects. Also, there are differences between Activities and Projects, since the first are issues that require intervention by Country or other relevant entity in order to achieve goals within Priority Area, while the second present concretization of all above mentioned structural elements of EUSDR. On the other side, they have some common characteristics. Namely, Activities and Projects both should address to identify priorities, as well as need to be supported by relevant partners all around Danube Region. Nevertheless, they have to be realistic, coherent and complementary with an impact on significant part of Danube Region.

Inter alia, construction is mentioned within the EUSDR` s Activities related to the environment, tourism, administration, etc. Thus, aforementioned issue could contribute to the connecting, strengthening and prosperity of Danube Region. However, it is both interesting and complex. Surely, Danube River coasts have enormous tourist, infrastructure and economic potential, but on the other side one would face with numerous obstacles. For instance, some Countries within above mentioned Macro Region are members of the EU, while others are not,[240] but all of them, pretty much, have different regime in terms of construction, which could be, even more, differentiated considering level and form of decentralization within each

[240] Concretely, EUSDR involves following Countries: Germany, Austria, Slovak Republic, Czech Republic, Hungary, Slovenia, Romania, Bulgaria, Croatia, Serbia, Bosnia and Herzegovina, Montenegro, Republic of Moldova and Ukraine.

Country. Of course, every investor would like to know, in advance, relevant rules and restrictions related to the construction, but these information are changeable, not so transparent and very difficult for understanding by foreigners, although they would be publicly available in certain sense. So, aforementioned preliminary information related to the construction near to Danube River coasts could be far more accessible for investors, which would, definitely, contribute to the prosperity of Danube Region. In this regard, one can start from Serbian perspective, while these findings could serve across entire Danube Region and wider.

CONSTRUCTING IN SERBIA - ANALYSIS OF RELEVANT LAW

General level

Overall territory of the Republic of Serbia, as well as Danube River coast and its surroundings are under several regimes related to the construction. Some parts present Protected Areas, such as National Park Djerdap, Special Natural Reserve Gornje Podunavlje and Special Natural Reserve Koviljsko-petrovaradinski rit.[241] Generally, these are areas with prominent geological, biological, ecosystem and/or landscape diversity. Moreover, they could connect with similar areas in neighboring countries according to the appropriate international agreement. Anyhow, Protected Areas are classified in three categories. In this regard, First category has international, national or exceptional importance, Second category is with regional or great importance, while Third has local character. Furthermore, there are three levels of Protection Regimes in terms of Protected Areas, which directly affect on construction issues. Namely, First Protection Regime forbids construction at all, while other two restrict construction, only, for some concrete types of objects. Of course, other parts of Serbian territory, including Danube River coast and its surroundings, are not under some kind of specific construction regime, but they are regulated by relevant rules too.[242]

One should start from Plans, which consist textual part and graphic presentation. According to the Serbian Positive Law, they are classified as Spatial Plans and Urban Plans, while all of them are time limited maximum on 25 years. So, it means that they should be replaced with new ones, at least, after the exception of aforementioned period, although they could be replaced even before the expiration of period for they were adopted if is needed. Surely, Plans must be harmonized, since they are based upon the principle of hierarchy. At the top is Spatial Plan of the Republic of Serbia (hereinafter: SPRS) as the basic and highest plan in Serbia, while it is followed by: Regional Spatial Plans (hereinafter: RSP), Spatial Plans for Special Purpose Areas (hereinafter: SPSPA), Spatial Plans of Local-Self Government Units (hereinafter: SPLSGU) and category of Urban Plans, such as: General Urban Plan (hereinafter: GUP), General Regulation Plan (hereinafter: GRP) and Detailed Regulation Plan (hereinafter: DRP).

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[241] More about surface, boundaries and regime of National Park Djerdap, Special Natural Reserve Gornje Podunavlje and Special Natural Reserve Koviljsko-petrovaradinski rit find at Law on National Parks, Ordinance on Protection of Special Natural Reserve Gornje Podunavlje and Ordinance on Protection of Special Natural Reserve Koviljsko-petrovaradinski rit.

[242] Additionally, construction is restricted or, even, forbidden around public roads or railway infrastructure.

Also, further classification could be made. Firstly, SPRS and RSP are abstract and ultimately strategic documents, while the other ones are much more concrete, since they contain concrete rules in terms of Organization and Construction with adequate graphic presentation. Secondly, they could be differed according to the territorial criterion. In this regard, SPRS refers to the overall territory of Serbia, while other ones are related to the narrow territorial units, but there are certain differences among them too. For instance, RSPs are made for some spatial units with administrative, functional, geographical and statistical character, but, mostly, include territory of one or more Administrative District (hereinafter: AD).[243] On the other side, SPLSGUs are related to the Local Self Government Units within Serbia, such as: Municipalities, Cities and City of Belgrade.[244] So, every Municipality or City, as well as City of Belgrade, create their own SPLSGU and Urban Plans too. Thereby, there is additional diversification between Local Self Government Units in terms of Urban Plans, because Cities and City of Belgrade adopt GUP, while Municipalities adopt GRP. Also, GRPs are adopting for the constructing areas in Populating Places (hereinafter: PP) within the framework of the GUP, which are reserved, only, for the Cities and City of Belgrade. Hence, DRPs are the most narrow and concrete plans, since they refer to the parts of PP including, even, informal PPs. On the other side, SPSPAs are specific in comparison with the other above mentioned Plans. Primarily, they are related to the territorial areas that require a special regime due to values of nature, culture, history, ambient, exploitation of minerals, tourism or hydropower potentials, projects that are significant according to the proclamation of Government. Also, they consist concrete Organizational and Constructional rules, which is specific for the SPLSGU and Urban Plans,[245] but not for the SPRS and RSP as the, ultimately, abstract ones.

Micro aspect

Key focus will be on micro plan, particularly on so-called "first step" that consists usual questions, needs, expectations and dilemmas of every potential investor related to the construction on concrete location. Initially, it should address to the relevant institution in order to obtain Location Information (hereinafter: LI). From the procedural point of view, this is not obligatory phase, since it is an informative document that consists prior review of the data on the possibilities of construction according to the relevant Plans (Čukić, and Vasiljević 2017, 45). So, there is no obligation to obtain LI for further construction procedure before the relevant institution. However, it is emphasized that LI is necessary for the constructing of auxiliary buildings, garages and some energy stations. Yet, it is unknown why aforementioned buildings had been signified in relevant legislation, since LI has role to inform potential investors, generally, about possibilities for constructing on

[243] AD is not Locally Decentralized Territorial Unit, since it presents regional center of State Administration established in order to perform some activities beyond headquarter of relevant institutions of State Administration according to the principle of so-called Administrative Dislocation. More about: Tomić 2009, 153-4.

[244] More about Local Self Government in Serbia: Stanković 2015, 107-48: Dimitrijević, and Vučetić 2011, 231-64.

[245] Article 55 of Law on Law on Nature Protection states that SPSPA or Urban Plan related to the Protected Areas must comply with the concrete Act on Protected Area, as well as with Management Plan on Protected Area.

concrete location, which *per se* includes information regarding type of buildings too, as well as other relevant data such as level, surface, etc.

Various institutions are issuing the LIs, because they are related to the Location Conditions that present basis for preparation of concrete project documentation, which is further necessary for Constructing Permit. In this regard, LI could be issued by relevant Ministry on Central State level, relevant Secretariat within the level of Autonomous Regional Province or City/Municipal Administration on Local Self Government level depending to the type of building. Thereby, possibilities and restrictions within the LI are related to the cadastral lot. Namely, it is basic and the lowest cadastral territorial unit in Serbia, which represents the part of the land in concrete cadastral municipality that is signed by number and determined by the borders. Furthermore, position and shape of every cadastral lot is presented on Plans, while the relevant data on property rights are available in Cadastral Immobility Register (Stamenković 1995, 251). However, LI is available for every interested person, regardless on issues of ownership or other property rights on concrete cadastral lot.

LI is document that consists data related to relevant Plan, location zone, type of land, regulatory and construction lines, Construction rights, conditions for the connection to infrastructure, need for the creation of DRP or Urban Project, cadastral lot and its capability to fulfill necessary conditions for construction lot, engineering-geological conditions, etc. From the formal point of view, it is, clearly, stated that LI is not Administrative Decision, such as e.g. Constructing Permit. According to the Serbian Positive Law, Administrative Decision is individual legal act by which certain authority directly applies relevant regulation in order to decide on rights, obligations or legal interests of the concrete subject. So, it is an authoritative legal act with decisive character that arrange concrete situation by direct application of relevant law (Tomić 2017, 147-52). On the other side, LI, just, informs potential investor or every other person about possibilities and expectations regarding the construction on concrete location. However, it is difficult to determine its legal character within the Serbian Positive Law, but the closest ones are Letter of Guarantee and Certificate. Generally, Letter of Guarantee is written act that obliges relevant institution to issue appropriate Administrative Decision in accordance to the already existing Letter of Guarantee. So, it is binding opinion regarding afterward decision that should be obtained in concrete case according to the relevant law and presented facts (Tomić, and Milovanović, and Cucić 2017, 40). Thus, relevant institution is, generally, obliged to issue Administrative Decision according to the existing Letter of Guarantee. On the other side, LI does not, explicitly, present the basis for issuing of Constructing Permit, which means that relevant institution can, freely, neglect LI in case of issuing appropriate Administrative Decision. Situation is far more confusing, because LI is base of submitting the application for the Decision on Approval of Construction Work (hereinafter: DACW) that is Administrative Decision by its character, like Constructing Permit too. Thereby, differences between two aforementioned Administrative Decisions are related to the type of objects and relevant documentation, since issuing of Construction Permit is conditioned by adequate projects, while DACW, just, requires adequate technical documentation and refers, only, on particular type of

buildings. In this regard, LI can be determined as Letter of Guarantee, because DACW would be issued in accordance to the above mentioned document. However, LI might be characterized as Certificate, which is document about the facts according to the official records of relevant institution. So, it is document that contains adequate statement regarding some facts, such as event, feature, state, etc. from the official records (Tomić 2017, 251), which would be obtained upon the previously submitted application. Generally, institution has to issue Certificate momentarily or at least in following eight days after the submission of adequate application, otherwise institution`s failure to act could be challenged by legal remedy-appeal. Also, LI has to be obtained in period of eight days, at least, after the submission of adequate application, and aforementioned aspect is identical both for Certificate and LI. Thus, if one determines LI as Certificate, than institution`s failure to obtain LI could be challenged by appeal too, even though that it is not, explicitly, mentioned. However, parallel could not be drawn between facts define within the Certificate with the data from the LI, since the first one are connected to the some subjective categories, while the second one are unique, impersonal and objective.
In essence, data within LI is Information of Public Interest. According to the Serbian Positive Law, it presents every information created and possessed by the relevant authorities that is contained in appropriate document, and everyone has legitimate interest and right to know it (Milenković 2010, 55). However, relevant institutions are allowed to charge necessary cost for making a copy of document that contains Information of Public Interest. Therefore, it is prescribed in terms of LI too, since one has to pay appropriate fee for issuing of aforementioned document. Furthermore, LI is connected with more administrative costs, since copy of plan for concrete cadastral lot must be attached to the appropriate application for LI. So, one has to acquire, previously, aforementioned document from the other relevant institution, as well as to pay adequate fee for above mentioned service too.

CONCLUDING REMARKS

Definitely, Danube Region has magnificent tourist, infrastructure and economic potential that could be utilized more and better, particularly in terms of construction. Namely, it involves different countries, since some of them are EU Member States, while others are Candidates or, even, outside from EU Integrations. Of course, Countries have different regimes related to the construction, but situation could be, even more, complex taking into account level and form of decentralization in each Country. On the other side, potential investor would like to know, in advance, preliminary information related to the rules and restrictions for constructing on concrete location. From Serbian point of view, one should address to the relevant institution in order to obtain LI, which presents informative document that contain data on the possibilities for constructing in accordance to the relevant Plans. However, there are many controversies and difficulties related to the LI, such as legal character, various issuers, formalities, costs, etc. So, potential investor will face with numerous obstacles, even, to be informed about rules and restrictions for constructing on concrete location.

In this regard, EUSDR could be used as trigger in order to aforementioned data became much more available, transparent and free, at least, in Serbia. So, solution is creation of electronic platform that would consist graphic presentation and textual part. Namely, graphic presentation would be a map of Danube River coasts and its, closer or farther, surroundings in which have to be differentiated Protected Areas that forbids constructing and other areas which, generally, allows constructing. On the other side, areas where constructing is not forbidden should be divided on cadastral lots as basic location units. Finally, textual part would refer on each cadastral lot and consist data that is, actually, contained in LI, more precisely information related to the possibilities for constructing on concrete location, such as type of buildings, level, surface, etc. Surely, crucial partners would be national authorities on all levels. From Serbian point of view, these are Central State, Autonomous Regional Provinces and units of Local Self Government, since they should provide relevant data related to the constructing possibilities, as well as to waive incomes by appropriate fees. Surely, national authorities would lose incomes, but proposed "liberalization" would be great benefit for all. Thus, above mentioned data would became much more available for wider range of possible investors, while they would be relieved of superfluous administrative formalities, waste of time, energy and funds. Also, aforementioned idea could be widespread in all Countries within Danube Region and all other Macro Regions with certain, more or less, modifications depending on the availability of relevant constructing data. Definitely, it would contribute to the prosperity of Danube Region and achievement of proclaimed goals within EUSDR.

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EU'S CHANGING CONDITIONALITY – THE LATER IT IS, THE HARDER IT GETS, KOSOVO AS A TEST CASE

Lorik Pustina, PhD candidate
University of Szeged – Faculty of Law and Political Science

Abstract
The main motors of European integration according to the inter-governmentalist readings were traditionally the national Governments. Nonetheless, nowadays we see an increased influence of the European Commission, European External Action Service, and to a further extent the European Parliament, with the new potential wave of enlargement with Macedonia and Montenegro, and other Western Balkan countries. The paper will discuss the approach used by the European Union and analyze the conditionality used with Kosovo where obvious differences occur. As a conclusion I will try to explain, how EU is fueling the anti-EU sentiment vis-à-vis the potential candidate member states in imposing reforms but should take into consideration the collective nation-state context when applying them. #EUintegration #intergovernmentalism #reforms

INTRODUCTION

The European Union in the 2003 Thessaloniki Summit has openly expressed its adamant position on the future of the Western Balkans countries – its path lies in the EU family, once the preconditions are fulfilled. Since, the Union accession became "the only game in town" – gaining influence over the political processes in the WB countries, gave the EU an uncontested hierarchal influence over domestic changes, nonetheless without giving a concise membership prospect but rather relying on conditional membership.

All member states unanimously just one year before the Big Bang (the biggest EU enlargement yet) yielded their commitment to help the WB countries in completing the necessary preconditions for EU accession, i.e. once named the Copenhagen Criteria, and after added as the Copenhagen Criteria plus.

Since 2004, and thereafter, the European Union has shown its languishment in possible future enlargements. The accession of 10 countries from the Eastern Europe and the former Soviet and Soviet satellite countries freed from communism has brought a different momentum in the European Union integration process.

Where it has been that in the beginning that the criteria for joining were economical (the European Coal and Steel Community), political (the Big Bang), strategical (Bulgaria and Romania), nowadays the Copenhagen plus criterions are hard to measure, and leave a space for a free interpretation by the EU institutions and Member States, being that based on the overall geopolitical direction or the trending temporary issues that affect national politics of those Member States.

Starting with the intergovernmentalist approach of the European Union integration theory, and continuing with the readings and observation of Featherstone, Borzel,

Bieber, Sedelmeier, Schimmelfenning and other authors dealing with the European integration and Europeanization theory, this paper will discuss the standards that the European Union uses vis-à-vis the countries from the Western Balkans, in particular with Kosovo as a more unique case in terms of entering into contractual relationship and using creative methods in applying the famous "carrots" and "sticks" model or also known as the conditionality approach (Steunenberg, Dimitrova 2007) model. Further the paper will elaborate on the comparative study on the external incentives model (Schimmelfennig, Sedelmeier 2017) and its impact on the Europeanization of the countries from the CEE (Central and Eastern Europe) versus the countries from the SEE (South East Europe).
In addition to it, the paper will focus on the definition of the minimalist state in the European integration context and its distinction between the minimalist and the weak or failed state the correlation of the EU policy in state building versus integration for the minimalist states, transcending the findings into Kosovo's case.
As a general conclusion, the paper will hypothesize that the EU conditionality has changed over the years. Now it relies on state building exercises where the conditionality is stronger and more effective for candidates than for members, yet it is vaguer and to an extent one might call it deceptive. Further it will try to clarify that in the rigidity of application of the conditionality mechanisms without having a clear measurable benchmark of fulfillment, EU often loses momentums, because of political or other members states agendas in a larger picture as was the case of Kosovo – and get stuck in between the state building and the integration process.

KOSOVO AND THE EU

The relationship between the European Union and Kosovo is status "complicated". Despite the robust engagement of the Union since 1999 within the UNMIK administration, and later with the EUSR and EULEX, its role was taken ahead simply because the UN backed by the US stated clearly after the status negotiations with Serbia that Kosovo is now a European problem.
However, the solution to the "problem", remains a great challenge for the Union because five of its member states do not recognize Kosovo's declaration of independence from 2008, primarily because of fear of fueling their internal secessionist movements.[246]
In this constellation, the EU despite its internal divisions has largely been involved in the economic reconstruction of Kosovo as well as has provided aid to building a stable, peaceful and democratic society in line with the EU requirements for membership – thus reflecting on the 2003 Thessaloniki Summit pledge about the clear European perspective of the Western Balkans countries, including Kosovo.
Here, the principle of conditionality and reward in Kosovo is largely seen as a declarative one, rather than a tangible promise.
The conditionality as seen in the external incentives model (Schimmelfenning, Sedelmeier 2017) in giving rewards that are measurable and concrete, apart from signing the Stabilization and Association Agreement with Kosovo in 2015, have surfaced a big inconsistence in the EU decision making mechanism.

[246] Spain, Romania, Cyprus, Slovakia and Greece have refused to recognize Kosovo as an independent state so far.

Kosovars was promised a visa free travel as the last remaining WB country isolated from the Schengen Area, and the process best illustrates the gap in the inconsistency of those decision-making mechanisms.
The EU has echoed the last precondition for the visa liberalization to be the border demarcation with Montenegro – a process which has caused a turmoil within the political scene in Kosovo, causing early parliamentary elections, while the repugnance in the statements is illustrated as follows:
During a visit to Kosovo in March 2017, after meeting the Prime Minister Isa Mustafa, Mogherini issued a statement - "it's time to vote for the ratification of the agreement. That would release the visa liberalization for the Kosovo people".[247]
After years of tear-gas sessions and violent protests by the political opposition parties, finally the vote on the treaty ratifying the agreement took place.
Following the ratification of the Border Demarcation Agreement between Kosovo and Montenegro, High Representative/Vice-President Federica Mogherini, Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos and Commissioner for European Neighborhood Policy and Enlargement Negotiations Johannes Hahn have issued this statement: "…*The European Union expects all sides in Kosovo to continue the hard work and successful efforts to achieve visa-free travel for the people of Kosovo and in the interest of the region"*[248]*,* leaving the country once more despite the tremendous pressure, outside of the visa free movement zone, mainly due to the internal political circumstances in the EU member states, i.e. the increased influence of the right oriented populist, anti-migration parties, many of the MS's have in silence opposed to the deal been given to Kosovo (Austria, France, Holland).
In this context, Frederica Mogherinis tweet from 21 March 2018 "Good news from Pristina: ratifying agreement on border demarcation with Montenegro, Kosovo heads towards visa free to EU for its people" remained just a mere PR stunt.
Unlike ex. Bosnia, constrained in exercising its state functions because of many vague sub state level institutions, the Kosovo case is something entirely different – the limited scope of functions being exercised have come directly from the EU i.e. UNMIK – where we would find a clear conflict of the state building vs. integration paradigm.
In the past the veto that the United Nations SRSG and later the EUSR have retained in exercising during their functions have limited the capabilities of the Kosovo institutions to exercise its basic state functions.
UNMIK has had the power to dissolve the Assembly and the Government single-handedly[249], while the EUSR in the pot independence period has had the power to

[247] Radio Free Europe: EU's Mogherini Urges Kosovo to Ratify Montenegro Border Agreement, March 04, 2017. Accessed on 27.03.2019. Find at: https://www.rferl.org/a/kosovo-montenegro-eu-mogherini-urges-ratify-border-deal/28350401.html
[248] Joint statement on the ratification of the Border Demarcation Agreement between Kosovo and Montenegro, 21 March 2018. Accessed on 27.03.209. Find at: https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/joint-statement-ratification-border-demarcation-agreement-between-kosovo-and-montenegro_en
[249] "CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF-GOVERNMENT IN KOSOVO" – signed on March 15, 2001, Chapter 8: Powers and Responsibilities reserved to the SRSG Find at: http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf

veto any decision that the Assembly or the Government reverting action to point 0. While nowadays, Kosovo's engagement with the European Union is big. The public perception despite the fact which will be elaborated further with the visa liberalization promise, remains in favor of the EU institutions and accession.
Kosovo population, among the Western Balkans ones, proves to be the most optimistic, though in fact it has the most distant and unclear membership perspective. According to the Regional Cooperation council barometer in 2018, 63 percent of Kosovo citizens believe that the country will adhere into the Union by 2025, 43 percent of which have an optimistic view that the country will be a member even by 2020. On the same barometer, 84 percent of the population do think that Kosovo membership is a good thing for the country and its citizens.[250]
To all fairness, in the current political dimension, Kosovo is still regarded as a minimalist state. Francis Fukuyama notes that state strength refers to the ability of states to enforce their policies, whereas Kosovo government still doesn't exercise authority over the full territory of the Republic, undermined by the Serbian majority populated municipalities in the North. In this context, the European Union finds itself in a "zero-sum" result, where the appetites of both parties need to be fed, in a delicate game play.
When talking about the minority rights, as one of the pillars stipulated in the Copenhagen Criteria, contrary to Weller's argument that in Kosovo, the veto mechanisms are too limited for Serbs or other minorities to block the decision-making process (Weller 2009), the reality to be different. In this sense, the principle of, we will call it, the super-double majority, was introduced where the Constitution of Kosovo sets forth that the Constitution's amendment "shall require for its adoption the approval of two-thirds (2/3) of all deputies of the Assembly, including two-thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo."[251] . This meant that no amendment of the Constitution shall be possible without the vote of the Serbian representatives in the Assembly. As a result, the lack of state strength does not derive from the inability of the state to take decisions, but from its incomplete control of the state territory (Soós 2015). The limited state strength is a function of the rejection of the state by many Kosovo Serbs. The state thus lacks authority in Northern Kosovo and, in several southern Serb populated regions, the strength of the state is curtailed.

Kosovo and the Rule of Law as the main precondition for accession and visa liberalization – the difficult symbiosis with the EU

Taking upon the advice of the US and other influential UNSC member states, the European Union, after the declaration of independence in Kosovo has continuously taken up the leading role in aiding Kosovo towards a building a democratic and solid society, boosting economic development, enhancing rule of law and ultimately prepare Kosovo for its future membership in the EU family. This has been the case

[250] Regional Cooperation Council: Balkan Public Barometer, find at: https://www.rcc.int/seeds/results/2/balkan-opinion-barometer
[251] Kosovo Constitution 2008, Article 144, par. 2

with EULEX.
On 4 February 2008, the Council adopted a Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo. (Council Joint Action 2009/445/CFSP, 11.6.2009)
EULEX is the largest civilian crisis-management mission under the EU Common Security and Defense Policy and the first fully integrated rule of law mission of the EU that balances executive functions with highly ambitious rule of law sector and capacity reforms.
But, the hybrid nature of its functioning affected by the 5 non recognizing EU member states, has added uncertainty and confusion to the judicial branch in Kosovo. Moreover, the composition of the EULEX staff members coming from different backgrounds, being that technical or cultural aspect, different legal practices, yet operating under the Kosovo Law, the Penal Code and the Penal Procedure Code has just inflated ambiguity and lack of trust by the local population that something might even change.
No relationship can be established between the invitation made by the Kosovo authorities and EULEX's mandate under the joint action. This is further reinforced by the fact that EULEX was placed under the "status neutrality" of Resolution 1244, which is evidently in contradiction to the wording and spirit of the Ahtisaari Plan, the Declaration of Independence and the Constitution of Kosovo, all of which clearly assert the independence and sovereignty of Kosovo. Having accepted to operate under Resolution 1244 and within the UN framework of "status neutrality", EULEX, by implication, has renounced all documents listed by Kosovo authorities as a legal basis for its mandate in Kosovo. (Muharremi, 2010)
The legal ambiguity does not end here. Since, EULEX is not bound by the Constitution of Kosovo, nor its mandate derives from the latter, but in contrary relies on the Resolution 1244 of the UN Security Council. However, many of its operational tasks, do conflict with the legal knot that the EU has tied itself in vis-à-vis Kosovo.
Since neither the Constitution nor the Ahtisaari Plan recognize the United Nation Mission in Kosovo (UNMIK) Special Representative of the Secretary General (SRSG) to be a legitimate public authority, any appointment by the UNMIK SRSG of EULEX judges, who are meant to serve within the judicial system of the Republic of Kosovo, would have to be considered unconstitutional. Consequently, every decision rendered by a EULEX judge or by a judicial tribunal where a EULEX judge participates, provided such EULEX judge has been appointed under the authority of the UNMIK SRSG under Resolution 1244, is challengeable before the Kosovo Constitutional Court. (aa, 377)
In theory, it is impossible for EULEX to accomplish its mandate under such circumstances, i.e. pretending to operate formally under the status-neutral framework of Resolution 1244 while at the same time co-operating de-facto in justice and other legal matters with the authorities of the Republic of Kosovo. It would be sufficient for a single ruling from the Kosovo Constitutional Court by which a decision made by a EULEX judge is declared unconstitutional to destroy the card house built by the EU by deploying EULEX under such legal uncertainties. (aa, 378)

Nevertheless, the current state of play shows that, despite the uncertainty, EULEX is continuing its operations in Kosovo, albeit still not seriously challenged.
EULEX judges have delivered 620 verdicts, including 460 verdicts in criminal cases, including corruption, organized crime, money laundering, war crimes, and human trafficking, and 146 verdicts in civil cases. (EULEX 2017.)
Contrary to what the figures show, there is a substantial consensus among the public and analysts in Kosovo, and even some EU officials that EULEX has largely failed to address politicized or serious crime. (Radin, 2014)
As good as it may sound, EULEX has not delivered what was expected. The costly mission of the European Union member states countries, has so far opened several investigations into alleged corruption cases against, what they call them today as, "big fishes" such as the former Minister of Infrastructure, Fatmir Limaj, mayors, judges and prosecutors, as well as the head of Central Bank of Kosovo. But, none of these cases ended with a conviction nor yielded results.
For this, it has been regarded that EULEX has proven craven, passive and fearful of taking on Kosovo's elite. (Capussela, 2015)
Moreover, EULEX itself for a long time has been plagued by corruption accusations and internal investigation and disciplinary hearings. A whistleblower, British prosecutor working in EULEX, in 2014 has gone public claiming she had evidence of senior EULEX staff members being engaged into corruptive activities, namely the president of the EULEX judges, the Italian Francesco Florit and chief prosecutor Jaroslava Novotna.
The investigation into the case conducted by a special envoy of Frederica Mogherini, the High Representative for EU Foreign Policy and Security, concluded years after these allegations were raised. The result was: the organization has serious flaws, however, no evidence of such corruptive activities have been found. (Jacqué, 2015)
Criticizing the mandate of EULEX, the report stipulates that oversight is poor. In the beginning no real statistics were kept on judicial work, which doubtless hindered the development of a working culture rooted in strict standards akin to that found in many member states and international courts. (aa, 16)
During the monitoring of the work of the judiciary, the Kosovo Institute for Justice (IKD), it has been concluded that the performance of the EULEX judiciary hasn't been as nearly efficient or up to the expectations of the Kosovo citizens. (Betim Musliu, Director of IDK, 2016)
As a result of the monitoring it was clearly seen that, contrary to the expectations for EULEX judges and prosecutors to adopt and implement the European best practices in the Kosovo system in order to enforce the "learn by doing" process, these judges have often in their actions been below the standard – taking unlawful decisions that have jeopardized the legal security of the citizens of the Republic of Kosovo.
To sum up, taking upon the experiences from the past, the European Union with EULEX tried to find a creative model on ow to approach Kosovo, and with that to reform the Rule of Law in the country – the weakest link in the state consolidation exercise.
It has not only failed to do so, but moreover, it has entered into a dead-end. The

Europeanization strive to reform and align the rule of law mechanisms with those of the EU conditions, coped with vague promises and appraisals, have only added to the inefficiency of the mission, and with that the failure of the Europeanization process.

If we take into consideration the interpretations of Europeanization that take more general concepts which consider it to include, "… processes of (a) construction (b) diffusion (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies" (Featherstone, 2010), then from the Kosovo case we see an entirely different approach used, especially when we think of the relationship ambiguity prevailing over the two.

CONCLUSION - WHERE WILL IT LEAD?

In Kosovo, conditionality has been entirely irrelevant as an EU state-building tool. As the EU does not offer a clear membership perspective to Kosovo, based on the opposition of some members to Kosovo's independence, it lacks the leverage to reward compliance, and delays in the EU accession process cannot be attributed to Kosovo not fulfilling EU conditions. The gap between Kosovo and the other cases was apparent in the context of EU visa liberalization. The EU offered lifting visa requirements for the countries of the Western Balkans if they engaged in a number of reforms, including border controls, passports and asylum laws. Kosovo was jointly offered this prospect since 2012, however, the requirements did add up, proved track record on the fight against corruption and the border demarcation ratification with Montenegro.

Bieber in this context explains how the type of state building consists of direct intervention in the structure and construction of the state, through the creation of new institutions, the imposition of laws and other acts which are conventionally reserved for domestic actors. The case of Kosovo entails all three forms, that of a direct intervention, coercion and close monitoring of state builders and the "long-distance" state building where EU uses conditionality as a state building mechanism. (Bieber 2011)

However, as we have seen judging from the EULEX deployment, as well as the incentives offered by the EU in exchange of "public appraisal" without a clear and tangible action, did not lure the political elite to engage in costly endeavors.

Recent developments in the remaining candidate countries – Serbia, Albania, Bosnia-Herzegovina, Croatia, and also Turkey – raise doubts about EU enlargement policy's impact on democratization processes. So far, profound democratic reforms have proved to be problematic in this region. Even pro-democratic governments have rejected the EU's policy recommendations, risking serious economic and political consequences. Interestingly, these conflict-prone countries comply inconsistently with, rather than flatly refusing to fulfill, membership criteria.

Enlargement historically stems from the pressure of countries that aspire to join, not from an expansionist ambition on the EU's side (Bohmelt, Freyburg 2017), however the clarity of conditionality is clouded by 'enlargement fatigue' within the EU.

At a conceptual level, a profound dilemma in the enlargement of the European Union especially when it comes to Kosovo, and to an extent Macedonia and Serbia, remains in the definition of the standards parallel to the Copenhagen Criteria that the EU adds in perpetuity, and where do the reforms stop – i.e. how they can be measured to be in line with the European Union standards.

The EU does not have a single, coherent state-building strategy in the Western Balkans but does have a range of policies and delivery mechanisms implemented across a variety of countries which, when taken in the round, seek the creation of functioning liberal democracies capable of joining the EU and undertaking the obligations of membership. (Taylor 2013); however, the reliance on conditionality as a state-building mechanism has been deemed 'largely ineffective' because of 'the lack of commitment of political elites to EU integration and the persistence of status issues on the policy agenda

In sum, European Union needs to make rewarding in a timely fashion (Schimmelfenning, Sedelmeier 2017), show concrete results more, and less appraisal words, since as it was shown with the border demarcation ratification between Kosovo and Montenegro the EU officials did not live up to their promises. At the same time, there need

While Europeanization is a two ways approach, not just a mere downloading of EU legislation and transposing it to the domestic one (Radaelli 2004, Howell 2002, Borzel 2011), in local context, the Kosovar political elites should not freeride on the compliance of the other Western Balkans countries by mimicking their compliance behavior (Bohmelt and Freyburg 2017), but should tackle the lagging reforms in a serious and timely fashion.

The enlargement currently stands in “autopilot” now (Vachudova 2014), and the prospect of enlargement, especially vis-à-vis Kosovo is distant not only because the “creative” approach that EU uses as a result of the 5 non recognizing member states, but also because it is trying in the struggle to end the centurial dispute between Serbia and Kosovo, limit the state strength (Fukuyama 2004), undermining Kosovo’s sovereignty, thus losing popular and political support in the country. A statement by the president of Kosovo, Hashim Thaçi, echoed in the Kosovar media, reflects on the inception of the anti-EU sentiment. “… the delay on the decision for visa liberalization for Kosovo, is a serious provocation by the EU and comes as a result of the incompetence and the lack of political will by the leadership in Brussels… its EU sponsored madness”[252], he wrote in 2015. Now up to this day, Kosovars still are the most isolated country in Europe.

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