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

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PREFACE

As Dean of the Faculty of Law at "St. Kliment Ohridski" University - Bitola, I must emphasize that it is a special honor and pleasure that finally realized the fourth international scientific conference organized by our faculty, as an opportunity for our affirmation in the international arena, for establishing contacts with our colleagues from home and abroad, contacts with various higher education and research institutions, as well as making a serious contribution to the scientific thought both in the Republic of North Macedonia and in a wider context, especially in the time of coronavirus pandemic. This is also reflected by the high interest shown by both home and foreign authors and participants, who applied for participation in our conference, as evidenced by the submitted articles.

The inspiration of the main topic for our conference arose from the need to define the essence of the concepts of the state and society in a multidisciplinary perspective, considering their internal and external processes, their actions, and relationship with the legal, political, economical, and security systems in the contemporary world.

According to Prof. Bob Jessop, "states are not the sort of abstract, formal objects which readily lend themselves to clear-cut, unambiguous definition". Rather, the state is a "messy concept", characterized by a paradoxical set of attributes: it is real and self-evident, but also illusory and "ambiguously defined", it is a historically contingent entity, but also, in the public imagination, a timeless, universal entity. The state is an abstraction, and care must be taken not to make something overly concrete of it. The same can be said for society. The state has emerged many times and in many forms throughout human history. Sometimes it has been lauded as the ideal expression of society, as in Plato's Republic. Historically, when intellectuals have attempted to discover the essential nature of the state and whether it has legitimacy, they have looked to the origins of that institution for answers. John Locke believed that a civilized and satisfying society could not exist without the government to adjudicate conflicts and to provide a legal context for the property. Only when the government ceased to fulfill its part of the social contract was the citizenry justified in rebelling against it. Otherwise, the state (or the government) and society were engaged in a cooperative endeavor.

The answer to the above debates, and related ones, may well lie in using words such as state and society in a clearly defined and precise manner. Therefore, one of the objectives of this conference was to penetrate deeply into the meaning of these words and link them with the development trends of states and societies in various aspects.

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

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

Prof. Dr.sc. Goran Ilik
Dean,
Faculty of Law – Kicevo
Bitola, 2021

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A SIGNS OF ISLAMIC STATE'S TERRORISM REACH AND INFLUENCE AMONG DIFFERENT GROUPS

Nenad Taneski, PhD
Military academy „General Mihailo Apostolski"- Skopje
nenoreal@yahoo.com

Sasha Smileski, MA
Military academy „General Mihailo Apostolski"- Skopje,
ssmileski@gmail.com

Metodija Dojchinovski, PhD
Military academy „General Mihailo Apostolski"- Skopje,
m_dojcinovski@yahoo.com

Abstract
In this paper are showed the Islamic State adherents group's which they are recognized since 2014, those groups have recognized the Islamic State caliphate and pledged loyalty to Abu Bakr al-Baghdadi[1]. Groups in Yemen, Egypt, Algeria, Saudi Arabia, Libya, Afghanistan, and Nigeria have used the Arabic word „wilayah" (state/province) to describe themselves as constituent members of a broader IS-led caliphate. The implications of such pledges of loyalty to the Islamic State on groups' objectives, tactics, and leadership structures appear to vary and may evolve.
Those terrorist groups, followers of IS, use violent protests, assassinations, terrorist attacks in public places, air traffic, etc. to undermine the integrity of the countries where they operate and to overthrow legitimate governments. There are also isolated cases that seem to do the same thing, but they are again encouraged and driven by the ideology of IS.

Key words: caliphate, ideology, operations, terrorist organization, international security.

[1] leader and the first Caliph of the ISIS.

INTRODUCTION

While the eruption of the civil war in Syria and Islamic State of Iraq's (ISI) expansion of operations into that country undoubtedly energized the organization's base, its recovery and expansion was clearly well underway prior to 2011. In early 2011, with the Arab Spring in full flow, ISI continued the process of expansion and professionalization that it had begun in late 2009. It significantly escalated its military operations in Iraq, both geographically, incorporating southern Shi'ite areas and the Kurdish north, and in terms of scale, carrying out 20-30 attacks in multiple provinces, often with in the space of an hour. For example, suspected ISI militants carried out 22 seemingly coordinated bombings in Baghdad and 12 other locations across Iraq on 15 August 2011. These intense and wide ranging attacks aimed not only to inflict material damage on the government but to diminish the morale of Iraq's security forces.

In July 2012, ISI initiated a 12-month campaign entitled „Breaking the Walls" with the principal objective of freeing its imprisoned members. ISI launched eight major attacks on Iraqi prisons over the following year. The September 2012 attack on Tikrit's Tasfirat Prison liberated 47 senior ISI leaders from death row.[2] The campaign's finale was an assault on Abu Ghraib prison on 21 July 2013 that enabled approximately 500 prisoners to escape.

ISI also placed an increased focus on collecting and exploiting vast amounts of intelligence, which was hugely valuable as leverage over local authorities. This gave the group extensive influence across much of Sunni Iraq and was advanced further when what was then Islamic State of Iraq and Syria (ISIS) launched a second 12-month plan, Operation Soldier's Harvest (July 2013-July 2014). This campaign aimed to undermine the capacity and confidence of security forces through targeted attacks and intimidation. It entailed a 150% increase in „close-quarters assassinations" of security personnel and threats directed at individual commanders, soldiers, and police, including the bombing of their homes, drive-by shootings against their checkpoints and personal vehicles, and similar targeted attacks.

ISI and its antecedents had maintained links in Syria since 2003, when recruitment networks, facilitated by Syrian intelligence, funneled fighters from the Arab world into Iraq through Syria. By 2007, the U.S. government claimed

[2] Tim Arango and Eric Schmitt, „Escaped Inmates from Iraq Fuel Syrian Insurgency", *The New York Times*, 2014, <http://www.nytimes.com/2014/02/13/world/middleeast/escaped-inmates-from-iraq-fuel-syria-insurgency.html>.

that „85-90%" of foreign fighters in Iraq had come via Syria.[3] Therefore, the emergence of a popular revolution in Syria in early 2011 attracted the attention of Abu Bakr al-Baghdadi, who sent his Ninawa operations chief, Abu Muhammad al-Jowlani, to Syria to establish an ISI front.[4]

ISIS's July 2013 killing of a senior Free Syrian Army commander in Latakia was the first sign of the inevitable. Six months later, in January 2014, a coalition of moderate groups launched operations against ISIS across northern Syria, eventually forcing their withdrawal east towards Raqqa in March 2014. By that time, ISIS's refusal to submit to independent opposition courts and to al-Qaedaappointed mediators had pushed Zawahiri to announce in February that „ISIS is not a branch of the al-Qaeda group, we have no organizational relationship with it, and the group is not responsible for its actions."[5] Nonetheless, from 2013 onwards, ISIS's unrivaled information operations and exploitation of social media brought a renewed energy toward its cause of controlling territory and establishing an Islamic state.

Although the emergence of an anti-ISIS front in northern Syria caused the group to lose considerable territory in early 2014, the setback was temporary. Having consolidated its capital in Raqqa, ISIS forces in Iraq exploited conditions in the Sunni heartland of Anbar to march into Fallujah and parts of Ramadi in January 2014. This marked ISIS's renewed venture into overt territorial control in Iraq and set the stage for its gradual expansion in Anbar, particularly along the Syrian border. ISIS then began a concerted counter-attack against opposition groups in Syria's eastern Deir Ezzor governorate in April 2014, focused along the Euphrates and Khabur rivers. ISIS's operations in Iraq and Syria were becoming increasingly interrelated, with funds, fighters, and weapons crossing borders more frequently. It was under this emerging reality that ISIS led the rapid seizure of Mosul on 10 June 2014, thereby inflaming the wider Sunni armed uprising across Iraq.

To underline their accomplishments and goals, as well as to attract a wider following, ISIS issued a series of coordinated media releases marking the start of Ramadan. The most significant of these was an audio recording, released on 29 June 2014 in five languages that announced the establishment

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[3] Peter Neumann, „Suspects into Collaborators", *London Review of Books* 36, no. 7, 2014, 19-21.

[4] Zeina Karam and Qassim Abdul-Zahra, „Al Qaeda's Nusra Front Leader Stays in Syria Shadows", Associated Press, 2013, <http://www.thenational.ae/world/middle-east/al-qaedas-nusra-front leader-stays-in-syrias-shadows>.

[5] „On the Relationship of Al-Qaeda and the Islamic State in Iraq and al-Sham", *Al-Fajr Media*, 2014, <http://jihadology.net/2014/02/02/as-saḥab-media-presents-a-newstatement-from-al-qaidah-on-the relationship-of-qaidat-al-jihad-and-the-islamic-state-of-iraqand-al-sham>.

of the caliphate. On the same day the group published videos titled „Breaking the Borders" and „The End of Sykes-Picot" that showed the physical destruction of a land barrier demarcating the Syria-Iraq border and a militant touring a captured Iraqi border post adjacent to Syria. A 1 July 2014 audio statement in which Baghdadi celebrated the caliphate's creation was followed by a 5 July 2014 video of his first public appearance as „Caliph."

THE ISLAMIC STATE GROUP IN EGYPT

The Islamic State's local affiliate in the northern Sinai Peninsula was formerly known as Ansar Bayt al Maqdis (Supporters of the Holy House or Partisans of Jerusalem). It emerged after the Egyptian revolution of 2011 and affiliated with the Islamic State in 2014. Estimates of its membership range from 500 to 1,000, and it is comprised of radicalized indigenous Bedouin Arabs, foreign fighters, and Palestinian militants. On social media, the group has displayed various pictures of its weaponry, specifically man-portable air defense systems (MANPADS) such as the 9K338 Igla-S and Kornet anti-tank guided missile (ATGM) systems. SP has claimed credit for destroying Metrojet Flight 9268, which exploded in mid-air over the Sinai Peninsula on 31 October 2015, killing all 224 passengers aboard. The Egyptian government has been circumspect over the cause of the crash, while several foreign governments, including the United States, have strongly suggested that the detonation of a hidden bomb most likely brought down the plane.

THE ISLAMIC STATE GROUP IN SAUDI ARABIA

IS leaders have threatened the kingdom's rulers and state clerics directly and called on the group's supporters there to attack Shia, Saudi security forces, and foreigners.[6] IS supporters have claimed responsibility for several attacks in the kingdom since 2014, including suicide bombing attacks

[6] OSC Report TRR2014111361251279, „ISIL Amir Al-Baghdadi Accepts Pledges of Allegiance, Announces 'Expansion' to Saudi Arabia, Yemen", Twitter in English, Arabic, 2014. https://books.google.mk/books?id=kT2zDwAAQBAJ&pg=PA61&lpg=PA61&dq=OSC+Report+TRR2014111361251279,+%E2%80%9EISIL+Amir+AlBaghdadi+Accepts+Pledges+of+Allegiance,+Announces+%E2%80%98Expansion%E2%80%99+to+Saudi+Arabia,+Yemen%E2%80%9D,+Twitter+in+English,+Arabic,+2014.&source=bl&ots=otMyjioBH&sig=ACfU3U0B4k8uYu5_9kk16hv8ssMN9faW7w&hl=mk&sa=X&ved=2ahUKEwiexviFq43wAhXFzqQKHY1cBN0Q6AEwAHoECAIQAw#v=onepage&q=OSC%20Report%20TRR2014111361251279%2C%20%E2%80%9EISIL%20Amir%20AlBaghdadi%20Accepts%20Pledges%20of%20Allegiance%2C%20Announces%20%E2%80%98Expansion%E2%80%99%20to%20Saudi%20Arabia%2C%20Yemen%E2%80%9D%2C%20Twitter%20in%20English%2C%20Arabic%2C%202014.&f=false

on Shia mosques in different parts of the country and attacks targeting Saudi security forces. In June 2015, an IS-affiliated Saudi suicide bomber blew himself up in a Kuwaiti mosque, killing more than two dozen people and wounding hundreds. Saudi officials have arrested more than 1,600 suspected IS supporters (including more than 400 in July 2015) and claim to have foiled several planned attacks.[7]U.S. diplomatic facilities closed temporarily in March 2015 in connection with threat information, and U.S. officials continue to warn of the potential for attacks on U.S. persons and facilities in the kingdom, along with other Western and Saudi targets.

The Islamic State arguably poses a unique political threat to Saudi Arabia in addition to the tangible security threats demonstrated by a series of deadly attacks inside the kingdom since late 2014. IS leaders claim to have established a caliphate to which all pious Sunni Muslims owe allegiance, directly challenging the legitimacy of Saudi leaders who have long claimed a unique role as Sunni leaders and supporters of particular Salafist interpretations of Sunni Islam. IS critiques of Saudi leaders may have resonance among some Saudis who have volunteered to fight for or contributed on behalf of Muslims in several conflicts involving other Muslims over the last three decades. Saudi leaders argue that it is the Islamic State that lacks legitimacy, and some Saudi observers compare the group's ideology to that of other violent, deviant groups from the past and present.

THE ISLAMIC STATE GROUP IN LIBYA

Supporters of the Islamic State in Libya have announced three affiliated wilayah (provinces) corresponding to the country's three historic regions—Wilayah Tarabalus in the west, Wilayah Barqa in the east, and Wilayah Fezzan in the southwest. Detailed open source estimates about current IS size and organization in Libya are lacking. U.S. military officials estimated the group's strength at approximately 3,500 fighters in late 2015, but in early 2016, unnamed U.S. officials estimated that figure had grown to as many as 6,000, among a much larger community of Libyan Salafi-jihadist activists and militia members. In February 2016, the U.S. intelligence community described the IS presence in Libya as „one of its most developed branches outside of Syria and Iraq," and said the group was „well positioned to expand territory under its control in 2016."[8]

[7] Ahmed Al Omran, „Saudi Arabia Arrests 431 People With Suspected Islamic State Links", *Wall Street Journal*, 2015.

[8] DNI Clapper, Statement for the Record, Worldwide Threat Assessment of the U.S. Intelligence Community, Senate Armed Services Committee, 2016.

Since late 2014, IS supporters have taken control of Muammar al Qadhafi's hometown—the central coastal city of Sirte—and committed a series of atrocities against Christians and Libyan Muslim opponents. They also have launched attacks against forces from Misrata and neighboring towns in an effort to push westward and southward. Clashes with groups to the east have damaged vital national oil infrastructure, and as of February 2016, IS fighters continue to press for control over national oil assets in the area. IS backers sought to impose their control on the eastern city of Darnah, but have faced resistance from other armed Islamist groups that do not share their beliefs or recognize the authority of IS leader and self-styled caliph, Abu Bakr al Baghdadi.

Statements made by U.S. officials in 2016 suggest that U.S. security concerns about the IS Libya presence have intensified, and U.S. action against IS targets might proceed even if political consensus among Libyans remains elusive In January 2016, Chairman of the Joint Chiefs of Staff General Joseph Dunford said „it's fair to say that we're looking to take decisive military action against ISIL in conjunction with the political process" in Libya, and, „The president has made clear that we have the authority to use military force." In November 2015, the U.S. military conducted an airstrike thought to have killed the Iraqi leader of IS operations in Libya, the first such U.S. strike on IS operatives outside of Syria and Iraq.

THE ISLAMIC STATE GROUP IN NIGERIA

This northeast Nigeria-based Sunni insurgent terrorist group widely known by the name Boko Haram („western education is forbidden") and formerly known as Jama'a Ahl as-Sunna Li-da'wa wa-al Jihad („People Committed to the Propagation of the Prophet's Teachings and Jihad") pledged allegiance to the Islamic State in March 2015. More than 15,000 deaths have been attributed to the group in the past five years (more than 6,000 in 2015 alone), and more than 1.6million people have been displaced by relatedviolence, which increasingly spread into neighboring Cameroon, Chad and Niger (an area collectively known as the Lake Chad Basin) in 2015. The group threatens civilian, state and international targets, including Western citizens, in the region; in 2011 it bombed the United Nations building in Nigeria's capital, Abuja. The State Department designated Boko Haram and a splinter faction, Ansaru, as Foreign Terrorist Organizations in 2013. Counterterrorism cooperation with Nigeria has been constrained by various factors. U.S. counterterrorism assistance to the Lake Chad Basin countries has grown substantially since 2014 (now totaling more than $400 million in Boko

Haram-focused support, in addition to intelligence sharing). The region is a priority area for U.S. Counterterrorism Partnership Fund (CTPF) programs.

THE ISLAMIC STATE GROUP IN AFGHANISTAN AND PAKISTAN

The June 2015 semi-annual Defense Department report on Afghanistan stability states that the United States and the Afghan government are closely watching the Islamic State's attempt to expand its reach in Afghanistan and Pakistan.[9] The Islamic State presence in Afghanistan and Pakistan appears to consist of individuals of more mainstream insurgent groups, particularly the Afghan Taliban, „rebranding" themselves as members of „The Islamic State of Khorasan Province," or Wilayah Khorasan. This group differs from the so called Khorasan Group identified by U.S. officials as being an Al Qaeda affiliated cell seeking to conduct transnational terrorist attacks. It does not appear that Islamic State leadership has sent substantial numbers of fighters from Iraq and Syria into Afghanistan or Pakistan. According to the report, „[the Islamic State's] presence and influence in Afghanistan remains in the exploratory stage." There also reportedly is growing competition and conflict between the Taliban and Islamic State fighters. Still, the emerging Islamic State presence in Afghanistan is a growing factor in U.S.-Afghan discussions on the joint response to a deteriorating security situation in Afghanistan overall, according to official readouts from 2015 high-level U.S.-Afghanistan exchanges.[10]

THE ISLAMIC STATE GROUP IN YEMEN

In Yemen, militants who claim allegiance to the Islamic State have taken advantage of ongoing war to repeatedly bomb mosques known for attracting worshippers of Zaydi Islam, an offshoot of Shia Islam (with legal traditions and religious practices which are similar to Sunni Islam). Islamic State terrorists have targeted supporters of the Houthi Movement, a predominately Zaydi armed militia and political group that aims to rule wide swaths of northern Yemen and restore the „Imamate," or Zaydi-led monarchical rule that intermittently governed northern Yemen from 893 AD to 1962. The Houthis are currently at war with a coalition of predominately Sunni Arab states led by Saudi Arabia, and the Islamic State may see this war as an opportunity to increase sectarian hatred in Yemen. Though wracked by

[9] U.S. Department of Defense, Report on Enhancing Security and Stability in Afghanistan, 2015.

[10] Josh Lederman, „Obama finalizes slowdown of U.S. troop withdrawal with Afghan leader", AP, 2015

war, Yemen has not traditionally had the same kind of sectarian animosity as other Arab states such Iraq and Lebanon.

CONCLUSION

IS intention is developing a support base capable of provoking domestic instability before attempting to establish an actual operational presence. This process takes time, of course, making it unlikely that IS will seek to do more than encourage localized instability in neighboring states in the near future. However, IS doesn't succeed in consolidating its „state" in Syria and Iraq. The intention consolidating its „state" in their wilayah in Yemen, Egypt, Algeria, Saudi Arabia, Libya, Afghanistan, and Nigeria are not feasible today, but still a burning idea in a minds of leaders waiting for a fertile conditions. In the Philippines, the Bangsamoro Islamic Freedom Fighters and a splinter faction of the Abu Sayyaf Group led by Isnilon Hapilon both announced their allegiance to IS. In Indonesia, the imprisoned former Jamaah Islamiyya leader Abu Bakar Bashir pledged his allegiance to IS after allegedly facilitating the transfer of finances to the organization.

Confrontation between the Islamic State organization and its adherents on the one hand and the other countries on the other may be protracted, costly, violent, and challenging. For example an Islamic State group online publication in India has called for its supporters to spread the coronavirus. The group claims that devout Muslims will not be sickened, because „no disease can harm even a hair of a believer." It is the latest in an effort by the Islamic State group and its followers to take advantage of the pandemic and general civic instability in the West. The group's transnational appeal and its supporters' violent fanaticism pose considerable risks to international security and appear likely to continue to force policymakers in the other countries to address complex questions regarding the use of military force, privacy and civil liberties, intelligence sharing, immigration, identity, religious liberty, diplomatic negotiation, and national strategic priorities.

This paper shows how no country in the world is excluded and 100% safe from terrorist attacks by IS. Whether through joint groups or psychological warfare over the internet using hash tags calling for violence by killing civilians, destroying state and public infrastructure, spreading the coronavirus, IS reaches into every society. In most terrorist attacks in Europe in recent years, the perpetrators of these attacks have stated that they were driven by the ideology of IS, although they have never been in direct contact with IS. And they were encouraged to commit the crime through the propaganda that IS spreads on the Internet.

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(DIS)FUNCTIONALITY OF CIVILIAN SUPERVISION OF THE COMMUNICATION INTERCEPTION IN THE REPUBLIC OF NORTH MACEDONIA

Associate Professor D-r Ice Ilijevski
Faculty of Law – Kicevo,
University St. Kliment Ohridski – Bitola
iilijevski@hotmail.com

Abstract
The civil surveillance is a special and additional form of surveillance over the work of the security intelligence services that needs to be conducted by the public/ the civil sector. In the Republic of North Macedonia this type of surveillance is represented by the Council for Civilian Supervision.
In this paper we will give an overview and presentation of the current state of functioning of the Council for Civilian Supervision, we will analyze the competencies and the supervision functions it has according to the law. A special emphasis will be placed on the shortcomings and the weaknesses of the position in the system and the need for upgrading and improvement to prevent possible misuses.

Key words: surveillance, control, Council for Civilian Supervision, security-intelligence services.

INTRODUCTORY REMARKS

The security-intelligence services that are part of the state executive must not be outside the system of control and supervision and respect for the generally accepted principle of the rule of law. The nature of the work of such services is often highly secretive, and the imperative of secrecy can be abused and lead to illegal and unauthorized actions, inefficiency, and abuse of power or use for political purposes. In order to avoid direct or indirect interference with human rights and freedoms, it is necessary to conduct appropriate control and supervision.

First, let's make a distinction between the terms control and supervision. Even though many consider them for synonyms there are differences between the control and the supervision. The control can be defined as a process n which the values of the planned and the achieved results are determined and compared in order to be taken adequate measures and

prevent possible differences, with the intention of achieving the set goals as efficiently as possible. Unlike the control, the supervision has broader meaning and includes a broader social action (International IDEA Policy Paper, 2020). The supervision is a broad term that includes ex ante screening, ongoing monitoring, and ex post auditing, as well as evaluation and research. However, the supervision can be seen as a broader and longer process. In that sense, control is an integral part of supervision. A supervision without control is possible and achievable, but insufficiently effective.

The supervision over the work of the security-intelligence services is an integral and separate part of the supervision over the state administration due to the specific nature and character of the work of these services. There is no single (universal) model of supervision in the world that would be applied everywhere, but each country according to the specifics of the system introduces supervision that should be in harmony with the standards, the values and the good practice. The supervision must be in accordance with the principles of democracy, through public compliance, transparency and accountability.

Given the fact that the public is always interested in the work of the security and intelligence services, there is a need for greater transparency of the entities that exercise control/oversight (Common minimum standards, DCAF, 2021) in order to reduce the public suspicion in these organizations and increase the public confidence in them.

LEGAL AND INSTITUTIONAL SET-UP

The independence of the supervisory bodies should be established by law and applied in practice (Surveillance by intelligence services, FRA 2018: 12).

In this section, although quite exploited, we must mention the report and the recommendations (Recommendations, 2015) of the group of senior experts on systemic rule of law issues related to the interception of communications, led by Reinhard Priebe. They clearly noted the shortcomings of the control and oversight of the security system and the directions that had to be taken. Specific recommendations were translated into the "Urgent Reform Priorities" (European Commission, 2015) for the Republic of North Macedonia.

With the reforms of the communications interception system in 2018, a new Law on Interception of Communications was adopted, which allows interception of communications in order to detect and prosecute perpetrators of crimes, as well as to protect the interests of security and defense of the state. The law also introduced specific safeguards such as control and oversight of the interception of communications.

Also, the Law on Operational-Technical Agency was adopted, which established a new body (Operational-Technical Agency - OTA) which will act as an intermediary between the authorized bodies for interception of communications and telecommunications operators in order to avoid concentration of power in one body and to ensure that the interception of the communications will be based solely on law and appropriate court decisions. OTA is designed as a buffer zone between the authorized authorities to use interceptions and the operators, and thus performs the function of expert oversight in the communications monitoring system. The law also regulates the competencies, the management of the OTA, the professional supervision and its financing.

With the establishment of the model of reform of the security-intelligence system in the Republic of Northern Macedonia in place of the Security and Counterintelligence Directorate, a new National Security Agency is established outside the Ministry of Interior as an independent body of the state administration with legal status. It can secretly collect data and information through: interception of communications; monitoring and recording of telephone and other electronic communications with special technical devices and equipment, without the mediation of OTA and the operators; use of secret collaborators; persons with concealed identity; supervision of postal and other shipments, monitoring, etc.

Interception of communications is established as a special investigative measure in the Law on Criminal Procedure. These measures are regulated in Chapter XIX, where the law states that special investigative measures may be taken - including the monitoring and recording of telephone and other electronic communications - when necessary to provide data and evidence for the conduct of criminal proceedings which cannot be collected otherwise.

The reforms have increased the number of bodies, in addition to the Assembly, that oversee the interception of communications. Their areas of oversight are shown in the table: (Nikolov, 2019: 31)

Table 1. *Supervisory bodies for implementation of the measures for interception of communications*

Supervisory bodies	Legality	Effectiveness	Efficiency
Assembly	☑	☑	
Civic oversight Council	☑		
Directorate for Security of Classified Information	☑		
Personal Data Protection Agency	☑		
Ombudsman	☑		

COUNCIL FOR CIVILIAN SUPERVISION- FORM OR NEED

The Law on Interception of Communications introduces for the first time in the Republic of Northern Macedonia a new supervisory body from the civil sector to determine the legality of the implementation of the measures for interception of communications or the Council for Civil Supervision.

This model of supervision was inspired by the Republic of Croatia, where there is a Council for Civilian Oversight (Vjece za gragjanski nadzor), but with much greater powers to oversee the work of the security and intelligence services. The Croatian Council is empowered to monitor and assess the legality of the work of the security services and the application of covert data collection measures. They may also call for interviews with directors and members of the security and intelligence services for the purposes of surveillance.

In the Republic of North Macedonia, the Council for Civilian Supervision is an independent and autonomous body within the exercise of its competence. In accordance with the law, it has adopted Rules of Procedure for its work, which regulates the issues of the manner of work.

Table 2. *Overview of the Council for Civilian Supervision*[11]

Council's Composition	It is composed of President and six members elected by the Assembly of Republic of North
Council's Term	The President and the members are elected for a term of three years without a right to be re-elected.
Council's Bodies	The Bodies of the Council are: President, Vice-President, members and secretary.
Council's Work	The Council makes decisions for the performance of its function which are adopted by a majority vote of the total number of members of the Council. The Council acts on documents that have a mark of secrecy in a manner prescribed by law and other regulations governing that area.
Council's Reports	The Council submits to the Assembly of the Republic of North Macedonia an annual report on the work of the Council. The report is reviewed at a session of the Assembly. If necessary and at the request of the Assembly, the Council submits additional reports.
Council's actions on its own initiative	The supervision on its own initiative of the work of the OTA and the authorized bodies, the Council performs with prior notice to the same. This supervision compares the data from the anonymized copies of the orders for the needs of supervision and control, for the period of the last three months. Minutes are compiled for the conducted supervision.
Council's actions on complaints	The Council receives complaints from citizens that can be submitted in writing through the archives of the Assembly, by mail or otherwise with a special form. After receiving the complaint, the Council at a session reviews it and undertakes further activities in accordance with the Law.

[11] The table is developed on the basis of the Law on Interception of Communications and the Rules of Procedure of the Council for Civilian Supervision

The public in the Council's Work	The Council can inform the public about certain issues within the competence of the Council by holding a press conference or a press release through the website of the Council.

However, the Council has no mechanism for reviewing specific and individual cases of interception of communications. They can only receive anonymous statistics, without invoking the identities of those whose communications are intercepted. Therefore, they can not answer whether there was abuse in a particular case which makes the possibility of filing complaints meaningless. This approach may further undermine public confidence in oversight mechanisms, as a specialized oversight body would not be able to assess an individual's case and circumstances (Rethinking Democratic Oversight, EUROTHINK, 2021).

ACTION OF THE COUNCIL FOR CIVILIAN SUPERVISION

The council has the opportunity to exercise supervision in two ways, on its own initiative or on a complaint submitted by a citizen (Law on Interception of Communications, 2018).

The Council, on its own initiative, supervises the work of the OTA and the authorized bodies, with prior notice to them. This surveillance compares the data from the anonymised samples (The anonymisation is a process in which all the identifying elements listed in the order, including personal and other data are removed in a way that ensures that the personal data subject can no longer be identified or directly, nor indirectly) of the orders for the needs of supervision and control, for the period of the last three months. What the Council can conclude from such oversight is limited and comes down only to determining the number of orders for interception of communications, the duration of the measure and the identification number.

The action of the Council after receiving a complaint comes down to submitting a request to the competent committee of the Assembly to conduct oversight in accordance with the law in order to ensure whether the telephone number of the citizen is or has been illegally monitored in the last three months. In the notification from the Parliamentary Committee to the Council in order to preserve the confidentiality of the measures for interception of communications, it is stated only whether in the specific case an abuse has been ascertained or, no abuse has been ascertained. Also, after the received complaint, the Council is obliged to supervise the OTA and the authorized bodies. This provision in the law, on the one hand, doubles the work with the Parliamentary Committee to which the complaint is submitted, but on the other hand leaves the possibility for independent supervision of the Council.

Table 3. *Data on the purpose of communications surveillance (Lembovska, 2020:46)*

Available data for the purpose of the supervision	Commission	Council
FROM THE OPERATOR		
logs for the time and date of the beginning of the measure for interception of communications	☑	
logs for the time and date of completion of the communication supervising measure	☑	
activation confirmation logs	☑	
logs for the total number of positive confirmations made in a certain period of time	☑	
identification data for the number, user or other identification data		
FROM OTA		
the anonymous court order and the anonymous temporary written order	☑	☑
logs for the number of the anonymous court order	☑	
logs for the start and end time of the implementation of the communication monitoring measure	☑	
logs for the total number of implemented measures for interception of communications for a certain period of time	☑	
identification data for the number, user or other identification data		
FROM THE AUTHORIZED BODIES		
the anonymous court order and the anonymous temporary written order	☑	☑

documents relating to the beginning and end of the implementation of the measure for interception of communications	☑	
identification data for the number, user or other identification data		

From the table we can conclude that the Parliamentary Commission on Oversight of Communications Interception has access to much more data than the Council for Civil Oversight.

CHALLENGES AND OBSTACLES DURING THE WORK

In the past period from the election until today, the Council has faced several challenges in its work. The first obstacle in the work of the Council was its incomplete election, ie in January 2019 four members were elected, and the other three were elected in May 2019. Regarding the provision of working conditions, the Council received only premises in the Assembly of the Republic of Northern Macedonia, and the other material and technical conditions have not yet been provided. In order to solve the problem and find a way to provide conditions and material means for the work of the Council, legal amendments to the Law on Interception of Communications were proposed. These amendments entered the Parliamentary procedure, but were not adopted and the Council was left without conditions and means for uninterrupted work.

Also, in order to find a solution to provide conditions for functioning and work, the Council held meetings and held meetings with representatives of several relevant entities in the country to whom was explained in detail the situation in which the Council is and the inability to work. Everyone has expressed concern about the non-functionality of this body and that they will strive to find a solution so that the Council can act (Annual report, 2020). The inability of the Council to conduct oversight also resulted from the receipt of security certificates by the President and the members whose procedure lasted longer than the legal deadline. The council did not even have its own official website to communicate with the public.

In June 2020, the President and two members resigned due to the non-functioning of this body. After the resignations, the Council ceased to function because in accordance with the Rules of Procedure, the President convenes and chairs the sessions and proposes and determines the agenda.

The latest report of the European Commission (North Macedonia Report, 2020) and the report of the State Department (Country Reports on Human Rights Practices, 2020) note serious remarks about the non-functionality of the Council and the need to provide resources for its smooth operation.

CONCLUSION

In the Republic of North Macedonia there are conditions for conducting control and supervision over the application of measures for interception of communications, but there are also a number of shortcomings, omissions and weaknesses in the practical application of control and surveillance mechanisms. The Council for Civilian Supervision has not been provided with tools through which it will be able to fulfill the purpose of its establishment, and with the additional administrative and technical obstacles this body still cannot become functional.

The current inefficiency in the work of the institutions and bodies that exercise control and supervision can be removed by introducing a new independent and professional body (Agency) (Ilijevski, 2016: 67-71) which would be a higher instance of control and oversight mechanism, as well as a body that will perform parallel control and supervision and will not allow encroachment on the human freedoms and rights of citizens guaranteed by the Constitution, laws and ratified international agreements. The establishment and operation of the Agency would ensure the principle of the rule of law and would strengthen the professional capacity and public confidence in the organs and bodies of the security system and their members.

A comparative experience from which good practices can be drawn is the model of civilian supervision in the Netherlands. There is Intelligence and Security Services Audit Commission (CTIVD - Review Committee) established in 2002. As of 2018, there are two departments in the Commission: the Supervision Department and the Complaints Review Department. The oversight department reviews the legality of the tasks performed by the General Intelligence and Security Service and the Military Intelligence and Security Service, while the grievance redressed unit deals with complaints of alleged misconduct by members of the security and intelligence services.

The commission has four members, one of whom is the chairman. The members are appointed by the King for a period of six years following a previous specific procedure involving: the State Council, the President of the Supreme Court, the Ombudsman, Parliament and the Ministers of General Affairs, Defense and Interior. Of great importance for the work of the Commission is the Secretariat which provides support to the Commission and its departments, and consists of: one secretary, nine auditors, one ICT advisor, one data specialist, one cyber security specialist, one IT architect and two part-time secretaries.

The CTIVD has far-reaching powers to conduct its legal tasks. It has direct access to all relevant information and systems of the AIVD and the MIVD. The staff of these services are obliged to answer any questions put to them by the CTIVD. The Review Committee may also hold hearings with staff

under oath. The Review Committee may also access certain places. In addition, it can assign work to experts if this is necessary to perform the work properly.

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THE IMPACT OF EUROPEAN INTEGRATION PROCESSES ON THE CONVERGENCE OF LEGAL CULTURE AND LEGAL AWARENESS IN THE WESTERN BALKAN COUNTRIES

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

Abstract
All Western Balkan countries (WBCs) are interested to became a members of the European Union (EU). One of the basic preconditions for that is the rule of law and advancement of human rights and freedoms, whose standards should be harmonized with the European legislation. In that direction, the convergence of the legal culture and legal awareness in the WBCs is necessary, which are still influenced by their own traditions from the past and by the former legal and political order in which they existed.
In that direction is the basic paradigm of this paper - to determine whether and to what extent the European integration processes of the WBCs contribute to changing the legal awareness and legal culture of their citizens and other relevant stakeholders in society, in the direction of accepting new value orientations and norms of behavior, which will lead to the promotion of human rights and freedoms and the standards of justice and security, as a basic precondition for a truly just and humane society.

Key words: Western Balkan countries, European integration processes, convergence of legal culture and legal awareness

INTRODUCTION

The EU observe the WBCs' integration process as "... a strategic investment in peace, democracy, prosperity, security and stability in Europe" (Western Balkan Summit Berlin 2021). At the same time, the WBCs have repeatedly declared "... their commitment to European values and principles and to implementing the necessary reforms ... for democracy, fundamental rights and values and the rule of law, and for sustaining efforts in the combat

against corruption and organized crime, support for good governance, human rights... enhanced civil society and independent and pluralistic media ... " (Brdo Declaration 2021, paragraph 2). Impressive goals from both sides, which confirm their mutual interests. They are still missing the formal conclusion of their "marriage", so that they can continue to live "happily ever after".

But if both - the EU and the WBCs agree on common goals and values, why is that act dragging on ?! The answer lies precisely in the insufficient and slow implementation of basic European standards in Balkan societies. Their political elites adopt numerous so-called "Laws with European flag", hoping to accelerate European integration. But the quantum of laws in these countries is inversely proportional to their practical application. Occurrences of clientelism, social polarization (party, economic, national, religious), captivity of the state and society from the centers of power, intertwining of public and private interests, corruption at all levels, social and economic regression, deficient judicial-prosecutor independence, limited action of the civil sector and in general - devastation of human rights and freedoms; give little hope for change.

The main reason for considering Enlargement a successful EU policy is its ability to transform a country and its society. (Civil Society Forum of the Western Balkans 2019, p. 8). This is a really pretentious goal, but such legal transfers are contradictory because the cultural specificity of the recipient system inevitably transforms the borrowed institution (Legrand, P. 1997, p. 111). It is very likely that this is exactly what is happening in the WBCs, when the "European" laws during their application are "Balkanized" (in a negative sense of the word) and cannot achieve the purpose for which they were adopted. Therefore, in order to achieve European standards, not only legal changes are enough, but changes in the value and cultural code of each of us and society as a whole, ie the formation of an appropriate legal awareness and culture, through which all social entities will accept the rule of law as a necessary condition for the creation of a righteous society. Only in that way the legal-value impulses from the European integrations will lead to a positive impact on the quality of life of the citizens in the WBCs.

THE IMPACT OF LEGAL AWARENESS AND CULTURE ON LEGAL TRANSFERS

Socio-legal engineering or "transfer of law" from one legal order to another is not an unknown phenomenon in human history. It is even more present in the modern tendencies of normative globalization, which brings the different legal systems closer. But the success of any transplanted legal norm or institution and of the reforms they have to produce often does not have the

desired effects and depends on the legal system and culture of the recipient country (Michaels, R. 2011, p. 3). Only legal culture can give meaning to the transplanted law, so that it can promote justice for all members of society, in accordance with the social, cultural, political and economic realities of the country. To achieve the desired level of legal culture, it is necessary for most members of society to believe and obey the laws. The legitimacy of the legal order stems from the principle of inclusiveness, ie from the idea that everyone is equally accountable to the law and that everyone has equal access to effective and efficient mechanisms for addressing their needs.

Vice versa, in societies where people do not believe in a formal legal system to solve their problems, they will seek access to other mechanisms outside of it, such as corruption and clenteliism. All the reforms, which promote formal "beautification", without identifying the patronage schemes through which politics, economy and crime are intertwined, are only formal and can not contribute to the real improvement of social life.

INTERACTION OF EUROPEAN LEGAL CULTURES AS A FOUNDATION OF EUROPEAN LAW

In legal theory, the question is often asked - can we talk about "European legal culture", considering the conglomeration of traditions, customs, cultures and development paths of different European regions ?! And whether and to what extent such a culture can contribute to greater unification of the various European legislations ?! Instead of a single European legal culture, it is more logical to speak of an "interaction of European legal cultures", based on the following common principles:

- Personalism or orientation towards the individual, ie the degree to which individual freedom and social duty and responsibility are freed, as two sides of the same postulate;
- Legalism, which means not only the monopoly of the legislator to create and change laws, but also to base them on social relations, the validity and acceptance of which should guarantee the individual greater legal certainty;
- Intellectualism or acceptance of the recommendations of scientific thought in explaining legal phenomena;
- Multiculturalism or the need to encourage the recognition and appreciation of diverse cultures during the unification of law in a particular environment;
- Prognosticism or predictability means that the government carries out its actions on the basis of laws, with which the citizens are familiar and therefore feel confident in planning their short-term and long-term goals

• Egalitarism or equal treatment of citizens by the judiciary and other state institutions in the law enforcement, ie a ban on different treatment due to prejudice or corruption.

These cultural-sociological postulates are the basis on which today's "Europeanization" of national legislations is based. The union is the only construction that is not based on the strength of a common military or police force, but solely on the power of the rule of law - it is a community based on the rule of law (Reading, V. 2013). The rule of law means not only formal law, but also justice based on the commitment of all social entities to work and act with integrity and independence, to have the capacity to fulfill their tasks and to be responsible for their work. These fundamental principles of the rule of law were accepted by all EU member states under the 1997 Amsterdam Treaty.

DOES THE EUROPEAN INTEGRATION PROCESSES AFFECT THE RULE OF LAW CULTURE IN WESTERN BALKAN COUNTRIES?!

It is undeniable that WBCs belong to Europe, not only geographically but also culturally and legally. But despite the efforts to implement European values in their legal systems and in all social life; they face serious challenges related to the rule of law; although this is precisely the basic criterion of European enlargement policy (Ross, S. R. 2008, p. 3). The Berlin Process also affirmed that "... more than ever, the rule of law is at the heart of the enlargement process, including fundamental judicial reform, tackling organized crime and corruption, and ensuring full respect for fundamental rights" (European Parliament, 2016).

For the real success of such reforms it is necessary to gradually internalize the European cultural-legal values and their harmonization with the specific context of political, cultural, social and human interactions in the WBCs, for their citizens to realize that they are aimed at improving life in these societies and for greater accountability of those called upon to implement reforms. If the citizens see that the law is not respected and that someone constantly violates the legal norms and goes unpunished, then the others also have prejudices, mistrust, arbitrariness or apathy towards such an legal order.

Unfortunately, this dominates in the WBCs. Although they are taking steps to strengthen the rule of law, the effects are minimal, indicating that their centres of power are not yet ready for reforms that would limit their power. They still perceive the law as an instrument to meet their needs and as a means of social engineering with the rest of the citizens. That is why Transparency International calls the laws in these countries "tailor-made laws", tailored to the interests of certain individuals or groups (Transparency International 2020, p. 4). Alignment of laws with the European acquis is often only a superficial "beautification" in the context of the WBCs' accession agenda to the EU. It

can not deceive our European partners, who understand that in societies that have long been built on the principles of patronage and clientelism, change is difficult. They demand fundamental reforms and greater commitment to the rule of law, the economy, tackling corruption and organized crime, and the visible functioning of democratic institutions and public administration, but above all changing the habits and ways of thinking of all social entities. Credible progress in the area of rule of law remains a significant challenge, often correlated with a lack of political will (European Commission 2020, p. 4). Moreover, the political systems in the WBCs can not function either, due to the strong political polarization, the limited space for democratic control function of the opposition and its frequent boycotts of elections and parliament. The absence of a culture of political dialogue and compromise has made society more heterogeneous than ever before. That's why Freedom House tagged all WBCs as "transitional or hybrid regimes" (Freedom House World Scores 2020). In the same context, all relevant EC reports on the progress of WBCs for EU membership for the period 2018-2021 indicate several key segments, where there is a deficit of real reforms and which are the reason for the stagnation of their European integration processes.

Judicial dependence is a precondition for biased justice and for increasing public distrust in this area. Its holders, through clientelistic designation, are more or less still under the control of the centers of power, which from the beginning are trapped in a network of mutual interests and are prevented from properly enforcing the law, which is reflected in the quality of justice. According to Balkan Barometer survey, although trust in the courts in 2020 has improved by 5% compared to 2019, still 61% of respondents do not trust the courts and consider themselves dependent on political influence, and only less than 1/3 positively evaluate their work, which is among the lowest of all other institutions. Opinions on the independence of the judiciary from political influence have deteriorated the most in North Macedonia (NMK) (from 50% in 2019 to 75% in 2020), while they have improved the most in Montenegro (from 82% in 2019 to 60% in 2020). (Balkan Barometer 2021).

• Albania has tried to overcome this through the process of review (temporary re-evaluation) of all judges and prosecutors, which started in 2018 under the auspices of an international monitoring operation, which led to 62% of negatively assessed judges being dismissed or voluntarily left their function. In 2019, a Special Structure for Fighting Corruption and Organized Crime was established, and in December of the same year, a Chief Special Prosecutor was appointed and a National Bureau of Investigation was established. All this has contributed EC to indicate Albania as a moderately prepared country in judicial reform. However, a number of actions are limited, encouraging a culture of impunity at higher levels of the state.

- Bosnia and Herzegovina (B&H) is setting up a High Judicial and Prosecutorial Council with the help of the EU, but due to obstructions by political actors and the poor functioning of the judicial system, the EC has assessed that the country has made no progress in judicial reform.
- Although Kosovo has made some progress with the adoption of the Rule of Law Strategy and Action Plan, as well as with the implementation of the Law on Disciplinary Responsibility of Judges and Prosecutors, the introduction of a new code of ethics and enhanced disciplinary procedures in the judiciary, the independence of the judiciary and undermines unnecessary political influence, dependence, inefficiency, and high levels of corruption, leaving the administration of justice slow, inefficient and vulnerable to political influence.
- Despite the adoption of the structural preconditions for the independence of the judiciary (legal framework, judicial councils and academia), the latest EC report on the NMK states that it is moderately prepared in the area of the judiciary. Unfortunately, the Special Public Prosecutor's Office set up to investigate allegations of corruption stemming from wiretapped material ended in disgrace, after a final verdict found that the first man in the Prosecutor's Office was involved in a serious corruption scandal.
- Montenegro shows a downward trend in judicial reform. In contrast to the 2019 EC report, when the country was assessed as moderately prepared to apply European standards in the field of justice, the 2020 EC report rated the grades worse and stated that it was stagnating with reforms in this area. That is why the above-mentioned data of Balkan Barometar is surprising that in this country the distrust in the judiciary is decreasing (from 82% in 2019 to 60% in 2020).
- The current legal framework in Serbia does not provide sufficient safeguards against potential political influence over the judiciary and records need to be established for effective investigations, prosecutions and final verdicts in serious and organized crime cases, especially for financial investigations leading to the freezing and confiscation of criminal incomes. (European Commission 2020).

Systemic corruption and organized crime are an endemic problem in the WBCs, due to the patronage of power centers and the loyalty they create towards their “clients”, which fosters a culture of impunity in society. Despite efforts to improve relevant laws and institutions, the effectiveness of prosecuting these cases has been derogated from political influence over the judiciary, resulting in biased judges and prosecutors, superficial investigations, lengthy delays and acquittals, or lower penalties for defendants (Transparency International 2020). The majority of citizens (59%) in WBCs believe that the fight against corruption is not successful and that it is a result of the

vulnerability of institutions to corruption and the lack of political will to do so. The most corrupt sectors are political parties (78% of respondents), law enforcement institutions (judiciary with 76%, customs with 75% and health institutions with 74%) (Balkan Barometer 2021).

- The latest EC report estimates that NMK and Albania have made good progress in the fight against corruption (NMK due to the consolidation of files on the investigation, prosecution and trial of high-level corruption cases and due to the more active role of the State Commission for Prevention of Corruption; Albania due to the scrutiny of senior officials, primarily judges) (European Commission 2020). This assessment of the EC is surprising given that according to Transparency International both countries are in high positions (NMK, together with B&H are in 35th place, and Albania in 36th place) according to the level of corruption in the public sector (Transparency International CPI 2020).
- In contrast, according to the EC, Serbia, Kosovo and Montenegro are characterized by limited progress in the fight against corruption and organized crime;
- B&H stated that it had not made any progress in this area due to non-compliance with legislation throughout its territory (the so-called "two schools under one roof syndrome") and weak institutional cooperation and coordination.

The situation is similar in the WBCs and in the area of organized crime. International criminal networks continue to operate along the Balkan route, which is still a key corridor for heroin and illegal weapons into the EU. It is inversely proportional to the ineffectiveness of criminal proceedings and increases the risk of infiltration of criminal structures into the political and economic system. With the exception of Albania, which according to the EC shows good progress, all other countries show limited progress, while B&H is said to have made no progress in the fight against organized crime (European Commission 2020).

Clientelism and partisanship in public sector employment (to some extent in the private sector), leads to an overlap between public and private interests and an increase in public administration, which seriously burdens the state budgets of the WBCs, which is inversely proportional to its (non-)) efficiency. The majority of citizens in the WBCs are convinced that parties (rather than education, qualifications and labor) guarantee success in employment and promotion (Balkan Barometer 2021). In that regard, Albania, Serbia, NMK and Montenegro are assessed as moderately prepared countries in terms of public administration reforms. But all of them need strong political will to effectively depoliticize the public service, optimize the state administration and establish managerial responsibility.

- Serbia is advised to recruit staff, based on merit and reduce the excessive number of senior executives.
- NMK is in the process of revising the Law on Administrative Servants and the Law on Public Employees, as well as the adoption of a new Law on Top Management Service. It should improve human resource management and contribute to merit-based recruitment, promotion and dismissal, especially in senior management positions. However, the State Commission for the Prevention of Corruption of the NMK found numerous cases of political influence in public sector employment and the appointment of members of supervisory and management boards.
- Some progress has also been made in B&H with the adoption of the Public Administration Reform Action Plan, as well as public finance management strategies at all levels of government, but the responsibility for a professional and depoliticized civil service remains. Political influence on the appointment and dismissal of public officials and civil servants has been noted in Kosovo (European Commission 2020).

Deficit in the protection of fundamental freedoms and rights - from the right to vote to freedom of expression and equality before the law, all WBCs without exception, according to Freedom House make them "partly free countries", with a slight difference in their ranking (Freedom House 2020). Especially worrying is the situation with the media, which are subject to political interference, financial insecurity and the resulting clientelistic links with their financiers and other centers of power, which creates a negative selection between the media on "pro" and "counter" government or opposition policies; and there are acts of intimidation and violence against journalists. Because of this, the WBCs are among the worst representatives of press freedom in Europe (Reporters without Borders 2021). According to the EC, with the exception of the NMK where there is limited progress and there is generally media freedom (which is debatable given the Reporters without Borders report, according to which the NMK is ranked 90th), freedom of expression and critical media coverage in all other WBCs has no progress regarding media freedom.

- Verbal attacks, denigration campaigns and acts of intimidation against journalists have been reported in Albania and reported attacks on journalists haven't resulted in verdicts.
- At B&H, authorities reacted poorly to political pressure, intimidation and threats against journalists.
- In Kosovo, although there is a pluralism of views, the lack of financial self-sustainability makes the media (especially the public service broadcaster) vulnerable to political pressures and influences.
- In Montenegro, although media legislation was being revised, in 2020 numerous arrests and prosecutions were made against editors of online portals

and citizens for content they posted or shared online, disproportionately restricting freedom of expression.

- In Serbia, cases of threats, intimidation and violence against journalists are still a source of serious concern (European Commission 2020).

According to Balkan Barometar in 2020, most of the citizens in Albania stated that the media are free from political influence (40%), and the least in Kosovo (24%, compared to 39% in 2019, which is the largest decline of all WBCs) (Balkan Barometer 2021). Regarding freedom of assembly, in Republika Srpska, as part of B&H, civil activists were subjected to intimidation and prosecution. Although there is a Law and the Commission for Prevention and Protection against Discrimination in the NMK, the treatment of detained and convicted persons and the frequent imposition of long-term detention measures are still a concern for the EC. The EC considers that civil society organizations have an important role to play in the reform processes in the NMK, especially in the protection of human rights and fundamental freedoms, and especially for the most vulnerable categories. They achieve this through the Government-Civil Society Cooperation Council and the Open Government Partnership Council. But the Government needs to finalize the Strategy for Cooperation with the Civil Society 2021-2023, together with a real action plan for implementation of the measures envisaged in the Strategy (European Commission 2020). Due to this, CSOs enjoy the highest support in NMK (53%), compared to other WBCs (of which, the lowest is in Kosovo - only 41%) (Balkan Barometer 2021). However, all WBCs need more effort to ensure a timely, meaningful and transparent civil society consultation process.

Such data are an indication that there is a discrepancy between the "European integration" legal basis of the WBCs and its practical implementation, which seriously derogates from efforts to improve the democratic and legal capacity of these countries.

CONCLUSIONS AND RECOMMENDATIONS

The EU's commitment to WBCs integration is accompanied by efforts to make citizens more inclusive in the reform process, so that they can see and accept their utilitarianism. Reciprocal convergence between government and society can help raise the level of legal awareness and legal culture in these countries and for true respect for the law.

Artificially transposing the "European universal concept of the rule of law" into WWCs, without the support of all stakeholders, can not produce long-term sustainable reforms and, instead of affirmation, can corrode the rule of law. Expectations of a magical institutional and legislative "lever" that will immediately move change for the better and quickly solve problems that have accumulated for decades are unrealistic. Everyone has to accept the undeniable

fact that it takes time and depends on several complex long-term processes, which include:

- Departization of the judiciary, the state apparatus and the whole society, by eliminating nepotism, chronism and patronage-clientelistic attitude, especially in the process of recruiting employees, which will enable greater professionalism and responsibility of the judiciary and public administration, and thus improved pronouncing justice and better services for the citizens. The recommendations and experiences of the European Court of Human Rights and the European Court of Justice should be more practiced in that direction. Judicial institutions need to apply new rules for re-evaluation, appointments, promotions, disciplinary procedures and dismissals, as well as a credible system of property inspections and conflicts of interest of holders of judicial office. For easier access to justice for all citizens, especially for marginalized and vulnerable groups, to establish centers for free legal aid, as part of the justice system;
- Anti-corruption strategy without compromises does not only mean strengthening institutional capacity and laws, but also proactive investigations, prosecutions and adjudications in such cases, especially when it comes to high-ranking suspects, stricter sanctions for perpetrators and the application of additional measures, such as: confiscation and sale of illegally acquired property, loss of the right to public office and greater transparency and involvement of the non-governmental sector. This requires greater coordination of key institutions in the anti-corruption chain, such as customs, police, other inspection services, the prosecution and the judiciary, and the establishment of monitoring and evaluation of their work, which will raise the level of responsibility and help to institutionalize their effectiveness in the fight against corruption. At the same time to stop the practice of favoring "our" companies in receiving budget-financed projects, especially in the area of public procurement; as one of the sources for the spread of corruption. Greater checks and reforms in the financing of political parties, improvement of tax controls in the economic sector and prevention of the shadow economy are necessary;
- Popularization of reforms, especially those related to European integration, ie a comprehensive structural dialogue on reform priorities and greater involvement of the citizens themselves and the NGO sector in the policy-making process, together with the legislature and the executive;
- Greater political will for supporting fundamental rights, including gender equality, civil society, democratic activism, protection of minorities, the fight against discrimination, hate speech and guaranteeing the independence of the media from all influences, through faster resolution of all related issues with threats and violence against journalists. It is essential to continue to support media pluralism, professionalism, impartial reporting and

investigative journalism, as well as the timely detection and sanctioning of all kinds of misinformation;

- Strengthening the democratic institutions, especially the representative bodies of the citizens, for which it is necessary to improve the political culture in the mutual relations between the government and the opposition, especially for the basic issues that affect all citizens, regardless of their political affiliation. To this end, elections should be free and fair, so that all citizens can effectively realize their voting rights. The government should enable the opposition to realize its role, and the engagement of the opposition in the democratic processes to be constructive, instead of obstructive.

Of course, in addition to the above recommendations, we can give a number of others, which will be aimed at improving the lives of citizens in the WBCs. Their success must have no alternative or compromise, either on the part of the EU or the WBCs themselves. Only with visible progress in the rule of law and socio-economic reforms, as well as adherence to European values, rules and standards, the Balkan aspirants for EU membership will be able to expect support in the European integration processes (Brdo Declaration 2021, paragraph 4).

ABREVIATION

WBCs – Western Balkan Countries
NMK – Republic of North Macedonia
B&H – Bosnia and Herzegovina
EU – European Union
EC – European Commission

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CONTRAVENTIONS IN TIMES OF EMERGENCY

Violeta Stratan
Lecturer, West University of Timişoara, Law School
violeta.stratan@e-uvt.ro

Abstract
In Romania, the Covid 19 pandemic proved to be a challenge not only for the public health system or the national economy, but also for the legal system, especially in terms of the rules issued to prevent the spread of the virus. Once the state of emergency instituted, its legal framework - Emergency Ordinance no. 1/1999 concerning the regime of the state of siege and the regime of the state of emergency – was amended by Emergency Ordinance no. 34/2020 and several military ordinances and administrative acts, all providing measures with a huge impact on personal freedoms. Infringements of such measures could amount to contraventions. The Constitutional Court ruled that some of these provisions were unconstitutional, due to their lack of clarity, vagueness, and unpredictability. The decision, while emphasizing the importance of the rule of law standards in the field of contraventions, frayed the ability of the law enforcement authorities to properly address the crisis.

Keywords: state of emergency, contraventions, judicial review, legality, predictability, proportionality

INTRODUCTION

No doubt, emergencies raise unique challenges for governments, because of their unpredictability and potential for loss of human lives and economic recession. In such situations, it is important that governments' responses to the emergency involve coordination among their central and local administration authorities, as well as collaboration between the private and public sector. Exceptional circumstances threatening the normal existence of society allow governments to take derogatory measures concerning human rights, i.e. exceptional limitations of those rights, much more severe than those acceptable in periods of normality. The limitations of human rights thus justified must serve the unique purpose of restoring the state of normality as

soon as possible. Moreover, they need to abide by the rule of law and meet the requirements of legality, necessity, proportionality, and non-discrimination.

GENERALIA

The situation engendered by the Covid-19 pandemic has forced governments across the world to resort to drastic measures in order to slow down the spread of the virus and prevent a public health crisis. These emergency measures have affected all aspects of societal life and profoundly impacted people's personal freedoms and individual rights, as enshrined in the European Convention on Human Rights (ECHR) or the International Covenant on Civil and Political Rights (ICCPR). If certain human rights can be suspended in situations of emergency, the conventions enshrining them contain dedicated emergency clauses that give governments additional flexibility to address crises. Article 15 is one such clause that allows Council of Europe member states to temporarily diverge from their ordinary convention obligations to resolve an emergency, provided certain conditions are met: (1) the derogation must be in time of war or other public emergency threatening the life of the nation; (2) the measures taken in response to that war or public emergency must not go beyond the extent strictly required by the exigencies of the situation; and (3) the measures must not be inconsistent with the state's other obligations under international law.

The United Nations also emphasized the need for the limitations on human rights occasioned by the medical crisis emergency measures to meet the following requirements: "Legality: The restriction must be "provided by law". This means that the limitation must be contained in a national law of general application, which is in force at the time the limitation is applied. The law must not be arbitrary or unreasonable, and it must be clear and accessible to the public. Necessity. The restriction must be necessary for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need. Proportionality. The restriction must be proportionate to the interest at stake, i.e. it must be appropriate to achieve its protective function; and it must be the least intrusive option among those that might achieve the desired result. Non-discrimination. No restriction shall discriminate contrary to the provisions of international human rights law. All limitations should be interpreted strictly and in favour of the right at issue. No limitation can be applied in an arbitrary manner. The authorities have the burden of justifying restrictions upon rights" [Emergency Measures and Covid-19: Guidance, https://www.ohchr.org].

Legal literature contemporary to Covid-19 pandemic proposed a four-step test to be applied to emergency regulations in order to safeguard liberty. The four-step test has been given a significant acronym – SLIP – given that, if they don't meet the four conditions, emergency regulations tend to slip away from their purpose and into illiberal places The first step of the test subjects them to scrutiny, especially by Parliament: the reasoning underlying each regulation ought to be questioned and debated, in order to ensure that the way in which the police are enforcing them is properly understood and consistent. Second, emergency regulations must be lawful in the sense that they must be made within the confines of the primary legislation which allowed them to be made. Third, they must be impermanent, strictly time limited. Finally, they must be proportionate, because any law interfering with rights should not go further than it's strictly necessary to fulfil its purpose. [Adam Wagner, *Can we make good laws during a bad pandemic?,* Prospect Magazine, April 16, 2020].

However, even before the coronavirus outbreak, the state of emergency was seen as a suspension of the rule of law, for the constitutional principles underlying and distinguishing it, as well as the requirements and mechanisms of judicial review seem to be set aside. French jurists pointed out that if the rule of law can be defined as the balance between the respect for fundamental rights and the protection of law and order, the state of emergency is the imbalance claimed in the name of safeguarding law and order [Dominique Rousseau, *L'état d'urgence, un État vide de droit(s)*, in «Revue Projet», 2006/2 n° 291, https://www.cairn.info/revue-projet-2006-2-page-19.htm].

This imbalance becomes obvious when looking back at some of the measures governments were entitled to take during the last year pandemic: lockdown, self-isolating after contact with infected persons, institutionalized quarantine, interdiction to leave one's domicile, interdiction to leave town, interdiction to meet indoors and outdoors, to assemble in groups larger than a certain number of persons, suspension of entertainment activities (sports, theatres, cinemas), etc. Thus, freedom of movement, freedom of expression, freedom of peaceful assembly, to name just a few, were strictly restricted.

What happens if governments are unwilling or unable to comply with the abovementioned requirements related to the rule of law? Are there any safeguards against the discretionary use of the state of emergency by the governments? *Prima facie*, any check upon the declaration of emergency and the related regulations seems to be a rather impossible mission, because the purpose of instituting a state of emergency is to allow exactly what the rule of law prohibits: violations of the free exercise of freedoms and the weakening of guarantees against such violations. Prohibitions and restrictions can no

longer be reviewed in the light of the ordinary laws, in the light of the "common law" of freedoms, but in the light of the "lawfulness" of the exception justifying them. In other words, the basis of control change: while in ordinary, normal times, judges would seriously punish such violations of fundamental rights, in times of emergency they might be tempted to state that some violations are justified by the exceptional circumstances. While, in theory, judicial review remains an important asset, in practice it tends to become inoperative [D. Rousseau, *op. cit.*].

CONTRAVENTIONS IN TIMES OF EMERGENCY: THE ROMANIAN CONSTITUTIONAL COURT'S TEST

However, this is, in our opinion, the worst-case scenario. The Coronavirus pandemic led the Romanian government on the same path as other governments around the Globe: that leading towards the state of emergency, established with a view to protect the health and well-being of its population. Unfortunately, shortcomings occurred, and people trust in authorities was severely tested, due to the lack of clarity of the emergency regulations and the miscarriages of justice likely to follow when enforcing them. The purpose of our paper is to describe what happened to contraventions in times of emergency and the way in which judicial review performed by the Romanian Constitutional Court intervened as a safeguard against injustice.

First, some terminological precisions are necessary. In the Romanian legislation, contraventions are defined as unlawful acts committed with guilt, described and punished by the law *lato sensu* (that is, by Act of Parliament, government ordinance, government decision or, as the case may be, by departmental or municipal by-laws). The social values protected by the legislation on contraventions are similar to those protected by the criminal law, the criterion distinguishing contraventions from crimes being a quantitative one; contraventions are less serious than crimes and the liability associated to them is of an administrative nature.

On March 16, 2020, the President of Romania issued a decree establishing the state of emergency (Decree no. 195/2020) and less than a month later, on April 14, another one extending the state of emergency (Decree no. 240/2020). By doing this, the President exercised the prerogatives conferred upon him by our Constitution. Both decrees - approved by the Parliament - contained an article expressly enshrining the human rights covered by the derogating measures. Since, according to the Constitution, the President has no legislative powers and "the exercise of certain rights or freedoms may only be restricted by law", the adoption of the two decrees

raised questions regarding their ability to restrict the exercise of fundamental rights and freedoms. The answer given by jurists was affirmative: in fact, the President only institutes the state of emergency, which has to be submitted to the Parliament for approval. Furthermore, in implementing the legal provisions concerning the state of emergency - the general framework for the limitations to the exercise of fundamental rights and freedoms - presidential decrees and military ordinances may establish which rights and freedoms and to what extent will be subject to restriction *in concreto*. [C.L. Popescu, *Restrângerea exercițiului drepturilor și libertăților fundamentale prin decretele instituind sau prelungind starea de urgență sau de asediu și prin ordonanțele militare*, https://drept.unibuc.ro/Nr.-1-2020-s1021-ro.htm].

The law governing the regime of the state of emergency in Romania is the Emergency Government Ordinance (hereinafter abbreviated EGO) no. 1/1999. Mention needs to be made that at the time this government ordinance was adopted, the Romanian constitutional provisions were different, allowing for the emergency measures to be regulated by secondary legislation. The state of emergency is hereby defined as "the set of exceptional political, economic and public order measures applicable throughout the country or in certain communities only, established in one of the following situations: a) the existence of serious dangers for the national security or the functioning of constitutional democracy; b) the imminent occurrence of calamities rendering necessary the prevention, limitation or elimination of the disasters' consequences". In accordance with the same normative text, the presidential decree instituting the state of emergency must set forth the immediate emergency measures to be taken, the fundamental rights and freedoms whose exercise is to be restricted, the military and civil authorities responsible for the implementation of the emergency provisions.

The decrees adopted by President Klaus Iohannis enumerated the following the human rights and freedoms to be covered by the derogatory measures, whose declared purpose was to prevent the Covid-19 spread and to manage the consequences of the pandemic: the freedom of movement, the right to respect for private and family life; inviolability of the domicile, the right to education, the freedom of assembly, the right of private property, the right to strike, the economic freedom. The emergency measures were to be laid down military ordinances and orders.

Less than two weeks after the first decree was adopted, an emergency government ordinance came in force, namely the EGO no. 34/2020 for the amendment and completion of EGO no. 1/1999. This ordinance was received with great circumspection by jurists and was soon declared unconstitutional

by the Romanian Constitutional Court. It marked not only the faith of contraventions relating to the emergency situation, but also that of the population's trust in the authorities and in their ability to manage the crisis. Here are some of the reasons why.

The first article of the EGO no. 34/2020 amended article 28 of the EGO no. 1/1999, which was to be to read as follows: "(1) **Failure to comply with the provisions of art. 9 herein constitutes a contravention** and shall be punished with a fine amounting from 2,000 lei to 20,000 lei, for natural persons, and from 10,000 lei to 70,000 lei, for legal entities. (2) In addition to the main penalty provided in paragraph (1), one or more of the following complementary sanctions may be applied, depending on the nature and gravity of the contravention: a) confiscation of the goods intended, used or resulting from the contravention; b) prohibition of access to the premises, by seal of the competent authorities; c) suspension of the activity; d) demolition of works; e) restoration of arrangements".

It is important to note that before this amendment, the limits of the fines provided in the same article were much lesser, ranging from 100 lei to 5.000 lei for natural persons, and from 1.000 lei to 70.000 lei, for legal entities.

In accordance with **art. 9 of EGO no. 1/1999**, "leaders of public authorities and of other legal persons, as well as natural persons shall comply with and implement all the measures established in this emergency ordinance, in the related normative acts, as well as in the military ordinances or orders specific to the state of emergency".

The Ombudsman contested the constitutionality of the EGO no. 34/2020 as a whole and of three articles of the EGO no. 1/1999, among which art. 9 and 28. Examining the unconstitutionality critiques, the Romanian Constitutional Court stated as follows.

From an extrinsic perspective, the adoption of the EGO no. 34/2020 infringes the constitutional rules providing that emergency ordinances cannot affect the rights, freedoms and duties guaranteed by the Constitution. Indeed, the contested regulation amended the rules governing the contraventions relating to the state of emergency, by adding complementary sanctions such as the confiscation of the goods destined, used or resulting from the contravention, or the temporary suspension of the activity. Sanctions applicable to contraventions are known to represent a form of legal constraint targeting the patrimony of the offender, with a preventive and educational purpose. In its case-law, the Court has found that the confiscation is not only a limitation of one's property right, but a measure infringing "the very existence of the property right" (…) As for the complementary sanction of

temporary suspension of activity, it is also likely to affect the economic freedom of professionals, with serious consequences for their property. Thus, considering the legal nature of the sanctions added and the effects they might have on the offenders' patrimony, the Court concluded that the provisions of the EGO no. 34/2020 "implicitly affect both the right of property enshrined in art.44 of the Constitution and the economic freedom guaranteed by art.45 of the Constitution". Therefore, it ruled that the criticised regulation was unconstitutional because it violated the constitutional provisions establishing the limits of the Government's competence to issue emergency ordinances.

From the perspective of the intrinsic unconstitutionality critiques blamed on articles 9 and 28 of the EGO no. 1/1999, quoted *supra*, the Court reminded that in the Romanian legislation, the legal framework applicable to contraventions is represented by the Government Ordinance no. 2/2001. This secondary legislation lays down both the main sanctions applicable to contraventions (warning, fine, community service) and the complementary sanctions, allowing for new sanctions to be established by special laws. The application of these sanctions is governed by the principles of legality, proportionality and *non bis in idem.* Under the proportionality principle, the sanctions applied to the offender must be dosed according to the nature and gravity of the incriminated act, in strict compliance with the law, upon certain individualization criteria (such as the manner and means by which the contravention has been committed, the purpose pursued and the consequence produced, the personal circumstances of the offender).

The Constitutional Court invoked its case-law on the quality of the law: it is the obligation of the legislator to enact clear, precise, and predictable rules. Transposed in the field of contraventions, this obligation must result in laws clearly describing the incriminated act, either in the very content of the incriminating rule or by reference to another rule relating to it. Only a precise rule allows individuals to control their behaviour, whose consequences they must be able to foresee in order to avoid liability. The first paragraph of art. 9 of the EGO no. 1/1999 fails to identify the elements of the acts incriminated as contraventions. It establishes an obligation of a general character incumbent indistinctly upon leaders of public authorities and of other legal persons and upon natural persons - the obligation to comply with all the measures established in it, in the other related normative acts as well as in the military ordinances or orders issued in relation to the state of emergency. Regarded *ut singuli* the rule has no drafting shortcomings in terms of clarity. However, the confusion, unclarity and unpredictability blamed on it result from the corroboration with the referenced rule - its own art. 28 (1) - providing that the

failure to comply with the provisions of art. 9 constitutes a contravention. The wording "all the measures established in this emergency ordinance, in the related normative acts, as well as in the military ordinances or orders issued in relation to the state of emergency" cannot be considered a legal cross-reference. It contradicts the legislative technique principles according to which when a referenced rule complements a referencing rule, in order to avoid repetition, the referencing rule shall indicate both the article it refers to and the normative act containing it.

As already mentioned, the contested ordinance represents the general legislative framework of the state of emergency. Thus, the legal cross-reference technique would have been perfectly justifiable, given the difficulty to define all the acts or omissions incriminated under the umbrella of contraventions to emergency regulations. Nevertheless, the legislator has used it improperly, in the opinion of the constitutional judges. The referenced rule became a referencing rule, vaguely relating to other regulations which were neither described nor easily identifiable. As an example, it might be enough to notice that more than twelve military ordinances have been issued in between March and April 2020, on the basis of the Decree no. 195/2020 corroborated with EGO no. 1/1999.

By asserting that "the failure to comply with the provisions of art. 9 constitutes a contravention", art. 28 (1) qualifies as such the failure to comply with all the regulations established in the EGO no. 1/1999, in the related normative acts and in the military ordinances and orders adopted in relation to the state of emergency, without describing or identifying the acts or omissions likely to entail liability. Implicitly, in the absence of any legislative description, the task of ascertaining the commission of contraventions is left at the free discretion of the police officers reporting them. Furthermore, in the absence of a clear representation of the elements defining the contraventions, the judges themselves lack the necessary landmarks in the application and interpretation of the law. Moreover, the legal provisions in question seem to ignore the principle of proportionality, which imposes obligations incumbent both upon the legislator – to clearly define the act or omission incriminated as contravention, setting limits and criteria for individualization of the sanction – and upon the enforcement authorities and upon the courts, called upon to duly apply and individualize sanctions. Not only the provisions of the amended article 28 fail to define *in concreto* the acts entailing contraventional liability, but also, they establish the same fine for all such acts, regardless of their nature or gravity. As for the complementary sanctions, as long as the incriminated act is not circumscribed by the legislator, it is obvious that neither its nature nor

its or gravity can be used to determine the proper complementary sanction to be applied.

In conclusion, the Court found that "the provisions of the law subject to constitutional review, imposing a general obligation to comply with an indefinite number of rules, difficultly identifiable and establishing sanctions for contraventions they do not describe, violate the principles of legality and proportionality. (…) do not meet the requirements of clarity, precision and predictability and are thus incompatible with the constitutional principles of the supremacy of the Constitution (…) and of the proportionality of the limitations of fundamental rights and freedoms. For the same reasons, the Court notes that the same provisions are likely to affect, by their lack of precision, the constitutional guarantees associated to the right to a fair trial and the right to defence". [Romanian Constitutional Court, Decision no. 152/6 May 2020, https://www.ccr.ro]

In accordance with the Romanian Constitution, the legal provisions that are declared unconstitutional cease to produce legal effects 45 days after the decision of the Constitutional Court is published in the Official Journal, if the legislator fails to harmonize them with the constitutional provisions. During this term, the unconstitutional provisions are suspended *de iure*. Consequently, in between May 30 and June 26, 2020, the provisions of art. 28, as amended by the EGO no. 34/2020, have been suspended and, since no modification was undertaken by the legislator, starting with June 27, 2020, they have ceased to produce any legal effect. Article 28 came back to the wording prior to the amendment.

CONCLUSIONS

While warmly welcoming it, Romanian jurists analysed the consequences of the Constitutional Court's decision on the 300,000 fines applied based on the unconstitutional provisions. The impact of the decision on the judicial system was deemed to be considerable, on account of the huge number of complaints expected to be filed against the contravention reports drawn during the state of emergency. From the date of its publication, the decision had the effect of a decriminalizing law. As a result, the acts or omissions which have not been punished until the intervention of the decriminalization could no longer be punished and sanctions applied for decriminalized contraventions could no longer be enforced. These consequences were triggered by the superficial regulation of the regime of contraventions relating to the state of emergency. Despite being duly "indicted" in the Constitutional Court, the delegated legislator's superficiality

has increased the degree of distrust of the population in the Romanian authorities. Who seemed to ignore the fact that in the field of contraventions the accurate description of the incriminated behaviour is a "must". [Mircea Ursuța, *Efectele Deciziei Curții Constituționale din 6 mai 2020 în materia contravențiilor la regimul stării de urgență / The effects of the Constitutional Court Decision of 6 May 2020 in the field of contracventions,* www.universuljuridic.ro]

However, the decision of the Romanian Constitutional Court pointed out the fact that judicial review represents an efficient safeguard against such "slips" of the legislator. It was an important point. Because threats can continue for a long time...the fourth wave or the pandemic might not be the last one, chances are that we will never go back on our pre-coronavirus normality and states of emergency might be instituted again. That is why we must learn to guard our liberties and ensure that they are restricted only for as long as necessary and not a second more... and always in compliance with the rule of law.

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THE ROLE OF INTERNATIONAL FINANCIAL INSTITUTIONS IN RESPONSE TO THE COVID-19 CRISIS

Elizabeta Tosheva, PhD
University St. Kliment Ohridski – Bitola, Faculty of Law
elizabeta.tosheva@uklo.edu.mk

Ana Sekulovska Jovkovska PhD,
University of Tourism and Management - Skopje
a.jovkovska@utms.edu.mk

ABSTRACT

The COVID-19 crisis has disrupted the normal functioning of economic activities, causing unforeseen changes in the global economy, created mass unemployment, disrupted trade, resulted in shortages of food and medical supplies, and threatened the solvency of businesses and governments around the world. While some industries have been very vulnerable to the resulting economic downturn, financial institutions are playing a key role in helping economies and communities get through the current turmoil and prepare for a strong recovery. The purpose of this paper is to emphasizes the role of the international financial institutions, including the International Monetary Fund (IMF), World Bank, and specialized development banks in mobilizing significant levels of financial resources to support countries in response to the health and economic consequences of the COVID-19 pandemic, providing policy advice, financial support, capacity development, and debt relief for the poorest.

Keywords: Financial Institutions, Covid-19 crisis, Global Economy, IMF, World Bank

INTRODUCTION

The COVID-19 pandemic represents one of the most significant and devastating shocks to the global economy in modern history (*CRS, 2021*). The

effects of the COVID-19 pandemic stretch far and wide, affecting lives, livelihoods, communities, businesses, national economies and the global economy. The pandemic has roiled stock markets, created mass unemployment, disrupted trade, resulted in shortages of food and medical supplies, and threatened the solvency of businesses and governments around the world.

In April 2020, the International Monetary Fund (IMF) cautioned that COVID-19 will likely be the worst recession since the Great Depression, far worse than the recession following the global financial crisis of 2008-2009 (*Gopinath, 2020*). Cumulative per capita income losses over 2020-22, compared to pre-pandemic projections, are equivalent to 20 percent of 2019 per capita GDP in emerging markets and developing economies (excluding China), while in advanced economies the losses are expected to be relatively smaller, at 11 percent (*IMF, 2021*).

The World Food Program warns that without international action an additional 95 million people are expected to enter the ranks of the extreme poor in 2020, and 80 million more will be undernourished than before (*World Food Program, 2020*). The divergent recovery paths are likely to create significantly wider gaps in living standards between developing countries and others, compared to pre-pandemic expectations (*IMF, 2021*).

Governments have undertaken extraordinary fiscal and monetary measures to combat the crisis. Some measures include subsidizing salaries of closed businesses, providing (un)employment benefits, and subsidizing loans or providing grants so businesses can maintain their activities. However, low and middle-income countries that are constrained by limited financial resources and weak health systems are particularly vulnerable. The crisis affects government finances two-fold. Their expenditure requirements increase to provide the aforementioned measures, meanwhile their tax revenues are significantly decreased as the economic activity decreases. There is a large need for government funding, but financing alternatives are limited (*Rosado, 2020*).

Consequently, the world's poorest countries will be unable to cope with the corona crisis on their own. The international community and, in particular, the international financial institutions including the International Monetary Fund (IMF), the World Bank Group (WBG), and the regional Multilateral Development Banks (MDBs), took a leading role in providing financial

assistance to these nations in the short and medium term *(Berensmann, 2020).* They have responded quickly, deploying a number of instruments to provide a relatively high degree of liquidity to developing countries at short notice responding to the health and economic consequences of the COVID-19 pandemic (*CRS, 2020*).

In this context, we set out to analyze how financial institutions have responded during the crisis in support of the global economy providing policy advice, financial support, capacity development, and debt relief for the poorest and developing countries. Based on this analysis, it is clear that the initiatives have significantly enhanced the strength and resiliency of the financial system and banks and the economy as a whole. This, in turn, has enabled them to play a constructive role in providing financing, facilitating access to capital and supporting the functioning of key markets during the pandemic of the COVID-19 health crisis, which has helped to maintain economic stability and market confidence.

WHAT IS INTERNATIONAL MONETARY FUND (IMF) DOING TO HELP COUNTRIES DURING THE CORONAVIRUS CRISIS?

Created in the aftermath of World War II, the IMF's fundamental mission is to promote international monetary stability. To advance this goal, one of the key functions of the IMF is providing emergency loans to countries facing economic crises. The COVID-19 pandemic has resulted in an unprecedented demand for IMF financial assistance. The IMF has responded to the Covid -19 crisis with unprecedented speed and magnitude of financial assistance to member countries, especially to protect the most vulnerable and set the stage for inclusive and sustainable recovery. As IMF Managing Director Kristalina Georgieva noted "In this trying time, the IMF continues to support countries on the path to recovery by providing policy advice, financial support, capacity development, and debt relief for the poorest."[12]

Until today, more than 100 of the IMF's 189-member countries have requested IMF programs. IMF stands deployed the entirety of its lending

[12] Remarks by IMF Managing Director Kristalina Georgieva During the G20 Finance Ministers and Central Bank Governors Meeting, International Monetary Fund, April 15, 2020.

capacity (approximately $1 trillion) in response to the pandemic and resulting economic crises.[13]

The IMF has several financing options for deploying resources in response to the COVID-19 pandemic. The Fund can provide rapid one-off assistance to countries responding to a health disaster, grant debt relief for the poorest and most vulnerable countries to help address public health disasters, increase the size of current IMF loans, and approve new IMF loans (*Rediker & Crebo-Rediker, 2020*).

The Fund's actions are focused on the following tracks:[14]

- **Emergency financing** – The IMF is responding to an unprecedented number of requests for emergency financing. The Fund has temporarily doubled the access to its emergency facilities - Rapid Credit Facility (RCF)[15] and Rapid Financing Instrument (RFI)[16] - allowing it to meet increased demand for financial assistance from member counties during the crisis. Emergency financing has been approved by the IMF's Executive Board at record speed – to 85 countries.[17]
- **Grants for debt relief** – The IMF has extended debt service relief through the Catastrophe Containment and Relief Trust (CCRT)[18] to 29 of its poorest and most vulnerable member countries on their IMF obligations, covering these countries' eligible debt falling due to the IMF for the period between April 2020 and mid-October 2021. This debt relief helps the benefitting countries channel more of their limited financial resources towards vital emergency medical and other relief efforts while these members combat the impact of the COVID-19 pandemic.

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[13] IMF Managing Director Kristalina Georgieva's Statement Following a G20 Ministerial Call on the Coronavirus Emergency, March 23, 2020. Some policy experts estimate the IMF's current maximum lending capacity is about $787 billion.

[14] See more at: https://www.imf.org/en/About/FAQ/imf-response-to-covid-19

[15] See more at: https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/08/Rapid-Credit-Facility

[16] See more at: https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/19/55/Rapid-Financing-Instrument

[17] IMF Lending Tracker:, https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker

[18] See more at https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/49/Catastrophe-Containment-and-Relief-Trust

- **Calls for bilateral debt relief –** The IMF Managing Director and the President of the World Bank recognized the heavy burden this crisis is having on Low Income Countries and, on March 25, 2020 (*International Monetary Fund and the World Bank, 2020*), called on bilateral creditors to suspend debt service payments from the poorest countries. The Debt Service Suspension Initiative (DSSI) means that G20[19] bilateral official creditors will, during this period, suspend debt service payments from the poorest countries (73 low- and lower middle-income countries) that request the suspension. It is a way to temporarily ease the financing constraints for these countries and free up limited resources to mitigate the human and economic impact of the COVID-19 crisis (*World Bank, 2021*).
- **Calls for a new Special Drawing Rights (SDR) allocation of $650 billion** – In April 2021, the International Monetary and Finance Committee (IMFC) called on the IMF to make a comprehensive proposal on a new SDR general allocation of US$650 billion to help meet the long-term global need to supplement reserves, while enhancing transparency and accountability in the reporting and the use of SDRs.[20]
- **Enhancing liquidity** – The IMF has approved the establishment of a Short-term Liquidity Line (SLL)[21] to further strengthen the global financial safety net. The facility is a revolving and renewable backstop for member countries with very strong policies and fundamentals in need of short-term moderate balance of payments support.
- **Adjusting existing lending arrangements** – The IMF increases existing lending programs to meet emerging new needs arising from coronavirus, enabling existing resources to be diverted to necessary medical supplies and equipment to prevent disruption.
- **Policy advice** - As the IMF monitors economic developments and the impact of the pandemic on a global, regional and national level, it

[19] The G-20 is a group of major advanced and emerging-market economies representing about 85% of global GDP.

[20] See more at: IMF PRESS RELEASE NO. 21/235 avaliablle at: https://www.imf.org/en/News/Articles/2021/07/30/pr21235-imf-governors-approve-a-historic-us-650-billion-sdr-allocation-of-special-drawing-rights

[21] See more at: https://www.imf.org/en/About/Factsheets/Sheets/2020/04/17/short-term-liquidity-line

recommends policies needed to overcome the crisis, protect the most vulnerable and set the way for economic recovery.

- **Capacity Development** - In response to the pandemic, the IMF provides real-time policy advice and capacity development to over 160 countries to address urgent issues such as cash management, financial supervision, cybersecurity and economic governance. In particular, the Fund works with tax administrations and budget offices in many countries to help them return to business and strengthen support for businesses and individuals, without compromising safeguards and accountability. IMF technical experts are also working with countries to review and update their debt management strategies. The IMF has set up online courses online for government officials and members of the general public with extended registration and completion deadlines.

In most IMF-supported programs, the IMF is not the only source of financing. IMF financing catalyzes external financing from the private and official sectors (the presence of an IMF-supported program reassures other creditors and encourages them to continue to lend). This, together with policy adjustment, enables the member country's economy to return to medium-term external viability.

WORLD BANK GROUP (WBG) - RELIEF, RESTRUCTUIRING AND RESILIENT RECOVERY

The COVID-19 crisis has taken drastic human lives, has devastating impact on the poor and vulnerable, and the economic and social impacts of the pandemic are notable globally. Millions of people will fall into extreme poverty, while millions of existing poor will experience even deeper deprivation – the first increase in global poverty since 1998 *(World Health Organization, 2020).*

The World Bank Group (WBG), which finances economic development projects in middle and low-income countries, among other activities, is mobilizing its resources to support 100 low and middle-income countries to fight the health, economic, and social impacts of COVID-19.[22] The WBG's objective is to assist countries to meet the dual challenge they now confront: addressing the health threat, and the social and economic impacts of the

[22] Remarks by World Bank Group President David Malpass on G20 Finance Ministers Conference Call on COVID-19, 23 March, 2020.

COVID-19 crisis, while maintaining a line of sight to their long-term development vision (*World Bank Group, 2020*).

WBG support focuses on helping countries address the crisis and transition to recovery through a combination of saving lives threatened by the pandemic; protecting the poor and vulnerable; securing foundations of the economy; and strengthening policies and institutions for resilience based on transparent, sustainable debt and investments *(Workd Bank Blogs, 2020).* Through a combination of new projects, restructuring and emergency components of existing projects, the World Bank Group's response is targeted in four key areas as follows:

1. **World Bank emergency support to health interventions for saving lives threatened by the virus.**

The World Bank has financed projects to help more than 100 countries meet their health emergency needs. This includes testing, tracking cases, treatment; purchase of medical supplies; training of medical staff with the collaboration with global partners, like Global Fund, the IMF, UNICEF, the WHO, and the WTO.

The Bank is supporting developing countries' access to vaccines, both through COVAX system and directly from manufacturers. With 20 billion USA$ financing is helping countries to purchase vaccines and set up systems for deployment. As of August 2021, WB have committed 4.6 billion USA$ for 54 countries.[23] WB also helped 140 developing countries assess their readiness for safe distribution.

2. **WBG social response for protecting poor and vulnerable people from the impact of the economic and social crisis triggered by the pandemic.**

The impacts of COVID-19 have pushed an estimated 100 million more people into extreme poverty, reversing hard-won gains in development. Twice as many people now face food insecurity, particularly in countries that were already fragile or affected by conflict.

[23] World bank press release: COVAX and World Bank to Accelerate Vaccine Access for Developing Countries, 26 July, 2021 available at: https://www.worldbank.org/en/news/press-release/2021/07/26/covax-and-world-bank-to-accelerate-vaccine-access-for-developing-countries

Social protection is critical when people lose incomes and livelihoods. Before the pandemic, only 1 in 5 people in the poorest countries had access to this support. World Bank financing is helping countries scale up social protection to address the crisis and build resilience for the long term.

International Development Agency (IDA) is committed to providing early response support for food insecurity and to increasing emergency safety nets and providing livelihood support.

3. **WBG economic response for saving livelihoods, preserving jobs, and ensuring more sustainable business growth and job creation by helping firms and financial institutions survive the initial crisis shock, restructure and recapitalize to build resilience in recovery.**

The pandemic's impact on private enterprises has been severe. Across emerging markets, World Bank Group data shows nearly four in ten smaller firms have financial problems. Boosting the private sector is essential to containing the economic crisis and supporting recovery. In many countries, sustaining inclusive growth and job creation will be tied to reforms and economic transformation.

In low and middle-income countries, companies are facing acute financial difficulties caused by the pandemic and many of them need help to stay in business and preserve jobs. IFC's 8.4 billion USA$ Fast-Track COVID-19 Facility launched in March 2020 to provide liquidity to existing clients. By June 2021, 5.8 billion USA$ was committed, nearly half of it for the poorest countries and fragile and conflict-affected states. Much of IFC's funding is going to micro, small, and medium enterprises, a big source of employment in developing countries, as well as to women entrepreneurs. MIGA's 6.5 billion USA$ COVID-19 Response Program has helped investors and lenders mitigate the impact of the crisis in emerging markets and developing economies (*IFC Annual Report, 2021*).

4. **Focused WBG support for strengthening policies, institutions and investments for resilient, inclusive and sustainable recovery by Rebuilding Better.**

As they look to recover, developing countries will continue to need macroeconomic support, but also reforms that strengthen growth prospects. The World Bank's knowledge products offer insights that can help lay the foundation for long-term recovery, through approaches that help countries

build more resilient infrastructure, prepare for natural disasters, and adapt to a rapidly changing climate.

Over 15 months, through June 2021, the World Bank Group is making available up to $157,1 billion in financing tailored to the health, economic and social shocks countries are facing, including $50 billion of IDA resources on grant and highly concessional terms (*World Bank Breef, 2021*) (*See Table 1*). More than half of the financing comes from the International Development Association (IDA), the Bank's fund for the world's poorest countries, and is on grant or highly concessional terms. This financing is part of the Bank's commitment to helping low and middle-income countries acquire and distribute vaccines and strengthen their health systems.

Table 1. World Bank Group Commitments

World Bank Group Commitments	IBRD	IDA	IFC	Long-term finance (own account)	Mobilization	Short-term finance	MIGA	Recipient-executed trust funds (RETF)	**TOTAL (excluding short-term finance, mobilization, and RETF)**	**TOTAL (including short-term finance, mobilization and RETF)**
(in U.S. billions) ending June 21*	45,6	53,3	42,7	17,4	14,9	10,4	7,6	7,9	**123.9**	**157.1**

Source: World Bank Press Release: WASHINGTON, July 19, 2021available at: https://www.worldbank.org/en/news/press-release/2021/07/19/world-bank-group-s-157-billion-pandemic-surge-is-largest-crisis-response-in-its-history

World Bank financing to governments includes:

• Commitments of $53.3 billion from IDA's fund for the poorest countries;

• Commitments of $45.6 billion from IBRD, to middle and low-income countries.

IFC and MIGA private sector financing includes:

• $42.7 billion from IFC, to private companies and financial institutions;

• $7.6 billion in gross issuance of MIGA guarantees (*World Bank Press Release, 2021*).

Operating across the three stages of Relief, Restructuring and Resilient Recovery, four thematic pillars form a basis for a selective WBG crisis response. The relief stage involves emergency response to the health threat posed by COVID-19 and its immediate social, economic and financial impacts. As countries bring the pandemic under control and start re-opening their economies, the subsequent restructuring stage focuses on strengthening health systems for pandemic readiness; restoring human capital; and restructuring, debt resolution and recapitalization of firms and financial institutions. The resilient recovery stage entails taking advantage of new opportunities to build a more sustainable, inclusive and resilient future in a world transformed by the pandemic. (*Figure 1*).

Figure 1. WBG COVID-19 Crisis Response

WBG COVID-19 CRISIS RESPONSE			
Eliminate Extreme Poverty and Promote Shared Prosperity in a Sustainable Manner			
Capital Package Commitments IDA19 Commitments & Special Themes			
PARTNERSHIPS			
UN Agencies IMF & MDBs Private Sector Vaccine Partnerships Civil Society			
Macroeconomic Stability and Strong Fiscal Framework Flexibility and Adaptive Learning Bridging the Digital Divide			
WBG COVID-19 Crisis Response	**Relief Stage**	**Restructuring Stage**	**Resilient Recovery Stage**
Pillar 1 Saving Lives	Public Health Emergency Pandemic-ready	Restructuring Health Systems	Pandemic-ready Health Systems
Pillar 2 Protecting the Poor & Vulnerable	Social Emergency	Restoring Human Capital	Building Equity and Inclusion
Pillar 3 Ensuring Sustainable Business Growth & Job Creation	Economic Emergency	Firm Restructuring & Debt Resolution	Green Business Growth & Job Creation
Pillar 4 Strengthening Policies, Institutions and Investments for Rebuilding Better	Maintain Line of Sight to Long-term Goals	Policy and Institutional Reforms	Investments to Rebuild Better

WBG FINANCIAL CAPACITY
IDA Hybrid Model IBRD Financial Stability Framework IFC Financial Model MIGA Financial Model

Source: World Bank Group. COVID-19 Crisis Response Approach Paper. Saving Lives, Scaling-up Impact and Getting Back on Track, June, 2020, available at: https://documents1.worldbank.org/curated/en/136631594937150795/pdf/World-Bank-Group-COVID-19-Crisis-Response-Approach-Paper-Saving-Lives-Scaling-up-Impact-and-Getting-Back-on-Track.pdf

The IMF and the World Bank have called for a debt standstill for low-income countries, during which those countries could suspend debt service payments and instead devote their funds to reducing the consequences of the pandemic (*International Monetary Fund and the World Bank, 2020*). Some policy experts and policymakers in developing countries are calling for additional debt relief given the severity of the crisis for low-income countries.

In addition to the World Bank, which has a near-global membership and operates in many sectors in developing countries worldwide, a number of smaller and more specialized MDBs are also mobilizing resources in response to the COVID-19 pandemic. Asian Development Bank, the African Development Bank, the Inter-American Development Bank, and the European Bank for Reconstruction and Development. Together with the World Bank, these organizations are the five major MDBs. Specialized MDBs are launching a robust response to the crisis, including reprogramming existing projects, establishing and funding with existing resources lending facilities dedicated to the COVID-19 response, and streamlining approval procedures (*CRS, 2020*).

World Bank Support for North Macedonia in Managing and Mitigating the Impact of COVID-19

The World Bank approved EUR 90 million (USA$ 98.5 million equivalent) of financing to support North Macedonia's efforts to prevent, detect and respond to the threat posed by COVID-19, strengthen national systems for public health preparedness, and help mitigate some of the social consequences of the pandemic.

The Emergency COVID-19 Response Project aimed to provide immediate support to limit the local transmission of the virus by strengthening disease surveillance systems and public health laboratories through the procurement of diagnostic kits, reagents, personal protective equipment and training on relevant protocols. Support is provided for limited renovations to create additional Intensive Care Unit beds, for medical waste management and

disposal systems, and to mobilize additional health system capacity through financing the salaries of trained and well-equipped frontline health workers who were not envisioned in the state budget.[24]

CONCLUSIONS AND RECOMMENDATIONS

When it comes to tackling the consequences of the COVID-19 pandemic, the international community bears joint responsibility for the world's poorest countries and should make particular use of short-term financial support to ensure that these nations do not lose the development gains they have made so far.

The World Bank Group is mounting an unprecedented response to the pandemic, drawing on countries' depth and global breadth, a range of flexible financing mechanisms, deep multisector knowledge and expertise, and wide-reaching convening power. Since the start of the pandemic, the World Bank Group supported countries to address the health emergency, strengthen health systems, protect the poor and vulnerable, support businesses, create jobs, and jump-start a green, resilient, and inclusive recovery. Policymakers are discussing a number of policy actions to further bolster the International Financial Institutions' (IFI) response to the COVID-19 pandemic. Examples include changing IFI policies to allow more flexibility in providing financial assistance, pursuing policies at the IMF to increase member states' foreign reserves, and providing debt relief to low-income countries.

International cooperation is vital to minimize the duration of the crisis and ensure a resilient recovery. Areas, where collective action is needed, include: Guaranteeing adequate health supplies: through cooperation on the production, purchase, and fair distribution of effective therapeutics and vaccines, including across borders; Avoiding further interruptions in the global trade system: countries should do their best to keep global supply chains open, accelerate efforts to reform the World Trade Organization and seek a comprehensive agreement on international corporate taxation, including digital services and ensuring that developing countries can finance critical spending needs and meet debt sustainability challenges. Ongoing support remains necessary, but there is a pressing need to act to avoid a legacy of vulnerabilities while

[24]See more at: https://www.worldbank.org/en/news/press-release/2020/04/30/world-bank-supports-north-macedonia-in-managing-and-mitigating-the-impact-of-covid-19-coronavirus

avoiding a broad tightening of financial conditions. There is no path to sustainable, long-term growth without continuous progress in reducing poverty and inequality.

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QUALIFIED FORMS OF THE CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS IN THE LEGISLATION AND CASE-LAW OF THE REPUBLIC OF SERBIA[25]

Milan Žarković, Ph.D.
milan.zarkovic@kpu.edu.rs

Marija Tasić, MsC
marija.tasic@kpu.edu.rs

University of Criminal Investigation and Police Studies, Belgrade, Serbia

Abstract

The criminal justice response of the Republic of Serbia to the phenomenon of trafficking in human beings was built with reliance on the solutions in the ratified international legal documents. Frequent changes in certain solutions accompanied this, including those that highlight the circumstances that qualify the more serious form of the criminal offense of trafficking in human beings defined in 2003. Some inconsistencies can still be observed regarding the existing normative response of the Republic of Serbia and the recommended solutions regarding the qualifying circumstances and criminal sanctions present in international legal documents. In addition, there is clear incoherence with the normative response to qualifying circumstances and sanctions regarding other "related", criminal offenses defined by the Criminal Code of the Republic of Serbia.

The paper will also consider the case-law of the Republic of Serbia in the period of 2017-2020, related to the identification and prosecution of qualified forms of the criminal offense of trafficking in human beings defined by article 388 of the Criminal Code.

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INTRODUCTION

By signing and ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, adopted by United Nations General Assembly in 2000, supplementing the UN Convention against Transnational Organized Crime - known as "Palermo Protocol" (The Law on Ratification of the UN Convention against Transnational Organized Crime and Additional Protocols, *"Official Gazzette of the FRY*" - *International Treaties*, no. 6/2001), the Republic of Serbia has expressed its readiness to enable a more efficient combating of trafficking in human beings, as one of the most severe forms of human rights violations, by building an adequate basis and legal framework. Besides provisions of the "Palermo Protocol", the incrimination introduced into the national legislation by the Law on Amendments and Additions to the Criminal Code of the Republic of Serbia (*"Official Gazette of the RS"*, no. 39/2003), considered certain guidelines from the Recommended Principles and Guidelines on Human Rights and Human Trafficking (Office of the High Commissioner for Human Rights, 2002: 7).

The determination to persevere in finding an adequate normative response and improving the practice of combating trafficking in human beings was confirmed by the signing and ratification of the Council of Europe Convention on Action against Trafficking in Human Beings adopted in Warsaw on May 16, 2005 (The law on ratification of the Council Europe Convention on Action against Trafficking in Human Beings, *"Official Gazette of the RS - International Treaties"*, no. 19/09), as well as amandments of the Criminal Code (*"Official Gazzette of the RS"*, no. 72/2009, *"Official Gazzette of the RS"*, no. 24/2018, *"Official Gazzette of the RS"*, no. 121/2012), the Criminal Procedure Code (*"Official Gazzette of the RS"*, no. 58/04, 85/05, 85/05 – other law, 115/05, 49/07, 122/08, 20/09 – other law, 72/09 i 76/10, and *"Official Gazzette of the RS"*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - decision of the CC and 62/2021 – decision of the CC), the Law on Seizore and Confiscation of the Proceeds from Crime (*"Official Gazzette of the RS"*, no. 97/08, and *"Official Gazzette of the RS"*, no. 32/2013, 94/2016 and 35/2019), the Law on the Protection Programme for Participants in Criminal Proceedings (*"Official Gazzette of the RS"*, no. 85/2005), the Law on Foreigners (*"Official Gazzette of the RS"*, no.

24/2018 and 31/2019), the Law on Asylum and Temporary Protection (*"Official Gazzette of the RS"*, no. 24/2018), and etc.

BASIC AND QUALIFIED FORMS OF THE CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS IN THE LAW ON AMENDMENTS AND ADDITIONS TO THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA ADOPTED IN 2003

Chapter XII of CC of the RS/2003, entitled "Crimes against the Dignity of Personality and Morals", article 111b, paragraph 1, provided the criminal liability for anyone who by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another: recruits, transports, transfers, sells, buys, acts as intermediary in sale with intent to gain some benefit, exploit such person's labour, commission of offences, prostitution, mendacity, pornography, removal of body parts for transplantation or service in armed conflicts. The legislator envisaged a punishment with imprisonment of one to ten years for mentioned actions.

The same punishment was also envisaged in paragraph 4 when the offense specified in paragraph 1 of this article was committed against a person under the age of 14, even if the perpetrator did not use force, threat, or any of the other mentioned methods of perpetration.

Paragraph 2 prescribed a larger number of alternatively given qualifying circumstances which implied more severe punishment (imprisonment of at least three years), if the offense specified in paragraph 1 of the article was committed against several persons, by kidnapping, while discharging of the official duties, within a criminal organization, in particularly cruel or particularly humiliating manner or a serious bodily injury has occurred.

The most severe form, which envisaged the possibility of the most severe punishment of the perpetrator (imprisonment of at least five years), was related to cases in which the offense specified in paragraph 1 was committed against a minor, i.e. to cases that resulted in the death of the injured party.

Envisagement of "gaining some benefit" as one purpose which may be achieved by conducting the alternatively set acts of perpetration results from an insufficient understanding of the essence of the crime of trafficking in human beings and the need of making differences between the crime of trafficking in human beings and smuggling of persons (migrants).

In addition, by classifying trafficking in human beings within the chapter of crimes against the dignity of personality and morals, along with a criminal offense of sexual abuse (article 102a), rape (article 103), various forms of prohibited sexual intercourse, or unnatural fornication (by coercion, with a helpless person or person under the age of 14, by abuse of position – articles 104-107), lewd acts (article 108), seduction (article 109), unnatural fornication (article 110), pimping or procuring of unnatural fornication (article. 111), exploitation of minors for pornography (article 111a), only certain, the most common forms of exploitation of victims, were emphasized. These are not the only legally prescribed forms of exploitation which represent serious violations of human rights.

THE CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS IN THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA ADOPTED IN 2005

The observed deviations from the principles proclaimed by international conventions reasoned the improvement of the normative definition of the criminal offense of trafficking in human beings in the Criminal Code of the Republic of Serbia (*"Official Gazzette of the RS"*, no. 85/2005, 88/2005 and 107/2005). Those changes were made within the Chapter 34, which covers crimes against humanity and other right guaranteed by international law.[26] Besides sanctioning new methods of perpetration (retaining identity papers or giving or accepting money or other benefits), and new forms of exploitation of victims (forced labor, other types of sexual exploitation, enslaving another person, or placing a person in a similar position), the special minimum of the basic form of the criminal offense of trafficking in human beings has been increased from one to two years of imprisonment. Finally, the legislative solution referred to persons under the age of 14 (article 111b, paragraph 4 of the CC of the RS) has been changed, respecting the Palermo Protocol, so the Criminal Code/2005 defined minors as persons under the age of 18 (Žarković & Tasić, 2020).

Paragraph 3 of article 388 provided a qualified form and a more severe punishment (imprisonment of at least three years) if the offense specified in

[26] Meanwhile, trafficking in minors for adoption was singled out as a separate criminal offense in the Article 389, while the offense of illegal crossing of the state border and human trafficking (article 350) was moved into the Chapter 31 (crimes public peace and order).

paragraph 1 of this article was committed against a minor. The qualified form of the offense of trafficking in human beings prescribed in paragraph 4 was related to the cases when the offense specified in paragraphs 1 and 3 resulted in grave bodily injury of a person. For this qualified form, the legislator prescribed imprisonment of three to fifteen years. If the offense specified in paragraphs 1 and 3 of this article resulted in the death of one or more persons, the perpetrator could be punished by imprisonment of at least ten years (paragraph 5). The imprisonment of at least five years was prescribed if the perpetrator was habitually engaged in offenses specified in paragraphs 1 and 3, or if an organized group committed the offense.

Although clear improvements in the normative response to trafficking in human beings were made, the new legal solutions were not in line with the consistent fulfillment of the obligation undertaken by ratification of international legal instruments under which each State Party Each Party shall adopt such legislative and other measures as may be necessary to ensure that the offenses of traffickers are punishable by effective, proportionate and dissuasive sanctions. This also applies to the obligation of the State Parties to ensure that the following circumstances are regarded as aggravating in the penalty's determination for the offense of trafficking in human beings: the offence deliberately or by gross negligence endangered the life of the victim; the offense was committed against a child; the offense was committed by a public official in performing her/his duties; the offence was committed within the framework of a criminal organization. Unlike the legal solution in article 111b, the new provisions failed to prescribe qualified forms when the offense of trafficking in human beings was committed in a particularly cruel or particularly humiliating manner, while discharging of the official duties, or within a criminal organization. The same applies when the offense was committed against several persons or by kidnapping.

It is also clear that the legal solutions in article 388 referred to certain aggravating circumstances (grave bodily injury) are not expedient from the aspect of criminal justice policy, but also contrary to the elementary logic of prescribing more severe punishments for more serious forms of criminal offenses. Although the legislator increased the special minimum of the basic form of trafficking offense from one to two years, in paragraph 3, the legislator acted differently, by reducing the special minimum when the offense was committed against a minor (from five to three years). This solution was not an

appropriate response to the trend of increasing victimization of minors (both children - under 14 years of age, and minors - aged 14 to 18 years).

Prescribing a punishment with imprisonment of three to fifteen years for a more serious form of offense, which is qualified by grave bodily injury, is acceptable in the case of the adult victims because the set special minimum and special maximum allow more severe punishment. However, when the offense resulting in grave bodily injury was committed against a minor, the legal framework of prescribed punishments is set outside any logic. With a special minimum defined at the level identical to the one which exists when the basic form of the offense is committed against a minor by using force, threat, or any of other mentioned methods of perpetrations, by defining a special maximum of fifteen years, the legislator actually provided a milder punishment for a more severe form of offense. This is because the legislator did not prescribe a special maximum when the offense committed against a minor did not result in grave bodily injury, so a general maximum of twenty years could be applied.

QUALIFIED FORMS OF THE CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS IN THE VALID CRIMINAL CODE OF THE REPUBLIC OF SERBIA

By adopting the Law on Amendments and Additions to the Criminal Code on August 31, 2009 (*"Official Gazzette of the RS"*, no. 72/2009), the state authorities of the Republic of Serbia confirmed the determination to more efficient combating of trafficking in human beings.

With the increase of the special minimum and special maximum of the punishment provided for the basic form of the offense, and thus for the case when the offense is committed against a minor without the use of force, threat, or any other mentioned methods of perpetration - punishment with imprisonment of two to ten years was replaced with imprisonment of three to twelve years (article 388, paragraph 1 and paragraph 2). The changes related to qualified forms are reflected primarily in the increase of the special minimum from at least three to at least five years when the offense specified in paragraph 1 is committed against a minor (the perpetrator shall be punished with imprisonment of a minimum of five years). The same applies to the form of the criminal offense of trafficking in human beings specified in paragraph 4 in which is singled out as aggravated circumstance occurrence of grave

bodily injury of the person against whom the perpetrator conducted offense specified in paragraphs 1 and 2 of this article (the perpetrator shall be punished with imprisonment of five years to fifteen years). The circumstance that the group committed the offense is also singled out as a more severe form of the offense (paragraph 6) in which case the perpetrator shall be punished with imprisonment of a minimum of five years. Further, the more severe punishment is prescribed when the offense is committed by an organized group (paragraph 7), in which case the perpetrator shall be punished with imprisonment of a minimum of ten years.

Viewed from the aspect of criminal law and prevention of the crime of trafficking in human beings, the changes of the national criminal law referred to article 388, paragraphs 8, 9, and 10 are of particular significance because they represent the direct and effective implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. They provide criminal responsibility for anyone who knows or should know that the person is a victim of trafficking and abuse its position or allow to another to abuse its position for the exploitation envisaged in paragraph 1 of this article. The perpetrator of this form of offense shall be punished with imprisonment of six months to five years (article 388, paragraph 8). If the offence specified in paragraph 8 of this article is committed against a person for whom a perpetrator knew or could have known to be a minor, the perpetrator shall be punished with imprisonment of one to eight year (article 388, paragraph 9) (Žarković et al., 2014).

There is no doubt that the provision in paragraph 10 of article 388 will enable more efficient persecution of traffickers, but also prevention of trafficking because it stipulates that endorsement of persons to exploitation or establishing slavery or similar relation to it specified in paragraph 1 of this article, shall not affect the existence of crime specified in paragraphs 1, 2 and 6 of this article. Unfortunately, there are still vague provisions regarding several qualifying circumstances (committing an offense against several persons, by kidnapping, in a particularly cruel or particularly humiliating manner, while discharging of the official duties), as well as when the offense is committed against minors or resulted in grave bodily injury of the victim.

The obvious omission regarding the special regime for protecting minor victims of trafficking who suffered grave bodily injuries was, unfortunately, only fragmentarily corrected by adopting the Law on

Amendments and Additions to the Criminal Code of the Republic of Serbia in 2012 ("*Official Gazzette of the RS*", no. 121/2012). It is envisaged that when the offense specified in paragraphs 1 and 2 of this article resulted in grave bodily injury, the perpetrator shall be punished with imprisonment of five to fifteen years, while when grave bodily injury of a minor had resulted from the offense referred to in paragraph 3 of this article, the perpetrator shall be punished with imprisonment of at least five years. In this way, only the illogicality regarding the threatened maximum has been removed for cases of minor victims who have suffered serious bodily injury, and according to whom the perpetrator used force, threats, or any other methods of perpetration provided for in paragraph 1 of the article 388. It is illogical that the same sanction exists for this qualified form and for the case when the minor victim did not suffer a grave bodily injury. The basis thus set for punishing the perpetrator also does not include the cases specified in paragraph 2 of article 388, i.e. when the perpetrator did not use force, threat, or any other mentioned methods of perpetration against a minor.

Significant efforts of national legislation in finding solutions to more adequately punish the perpetrators of a criminal offense, including offense of trafficking in human beings, are visible in amendments and additions of the provisions setting limits on mitigation of the penalty. Besides the existing tightening of limits for mitigation of penalty, the legislator excluded the possibility of mitigation of penalty for certain criminal offenses, including the offense of trafficking in human beings (article 57, paragraph 2).

THE CASE-LAW OF THE HIGHER COURTS IN THE REPUBLIC OF SERBIA REGARDING THE OFFENSE OF TRAFFICKING IN HUMAN BEINGS

The analysis of case-law covered a sample of 26 judgments of the Higher Courts in Serbia handed down in 2016, 2017, 2018, 2019, and 2020 against 36 adult perpetrators of certain forms of the criminal offense of trafficking in human beings under article 388 of the Criminal Code (31 male and 5 female).[27] The largest number of judgments regarded to some of the

[27] In the observed period, the trial courts established the criminal responsibility of 61 adult perpetrators. Unfortunately, the judgments collected by the NGO ASTRA, as part of their activities in the prevention and combating of trafficking in human beings, do not cover all cases that were adjudicated during the observed period. Besides this limitation, the used

qualified forms of the mentioned criminal offense (17 convicting verdicts against 23 adult perpetrators - 19 males and 4 females).

In addition, we analyzed 9 judgments handed down in the same period against 13 adult perpetrators (12 male and 1 female) of one of the two basic forms of trafficking in human beings (article 388, paragraph 1 and paragraph 2).

Among six judgments, in which 10 adult defendants (9 men and one woman) were convicted for committing the basic form of trafficking under article 388, paragraph 1, against adults who were exploited through forced prostitution (in one case the victim was male), three of them were punished with imprisonment at the level of a special minimum. More precisely, the two defendants who committed the offense of trafficking were sentenced to exactly 2 years of imprisonment, when the special minimum penalty was at the level of two years. The court sentenced the third defendant to two years and six months of imprisonment.[28]

Handing down of judgments in which the perpetrators were sentenced to imprisonments at the level of a special minimum is also observed in the judgment of the Higher Court in Belgrade (K 642/14) which imposed a sentence at the level of a special minimum of 3 years of imprisonment to an adult female defendant, and the judgment of the Higher Court in Novi Sad (K 219/14) which imposed sentences slightly longer than the special minimum to the two defendants - 3 years and 9 months of imprisonment.

In a criminal case that ended by concluding plea agreements between the public prosecutor and the defendants, the Higher Court in Novi Sad (SPK 51/20 and SPK 52/20) sentenced one defendant to 3 years and 3 months, and the other defendant to 4 years of imprisonment.

Judgment of the High Court in Smederevo (K 62/16) sentenced the defendant to 5 years of imprisonment, while the judgment of the High Court in Belgrade (K 679/13) sentenced the defendant who forced two male victims into prostitution to a cumulative sentence of 6 years of imprisonment (for each offense, a court sentenced the defendant to 3 years and six months of imprisonment).

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sample is still very representative, and it is at the level of 59% of the total number of convicted perpetrators (61).

[28] Although this judgment (Higher Court in Kragujevac - K 25/17) covers 3 perpetrators, this did not serve as a basis for the accusation and the adjudication of the case as a more serious form of offense, i.e. which is committed by the group.

As evidence of insufficient understanding of the necessity of imposing stricter sentences for the criminal offense of trafficking in human beings, especially when is committed against a minor, we emphasize two verdicts handed down in cases where defendants committed this offense against a minor, without using force or some other mentioned methods of perpetration (this offense is envisaged under the article 388, paragraph 2, and the prescribed penalty is imprisonment of 3 to 12 years of imprisonment). In the first case, a court sentenced the defendant to imprisonment at a special minimum of three years. This is despite the statement of the court that the judgment is handed down on the occasion of the offense in which the defendant "threatened the minor victim that he will attack his body" in order to force him to commit two offenses of aggravated theft. Here, the minor tore two gold chains from the neck of two elderly women (Higher Court in Jagodina, K. No. 51/17).[29] The judgment of the High Court in Valjevo (K 3/19) was also handed down under article 388, paragraph 2, which envisages the basic form of the offense of trafficking in human beings. This, although the judgment of the court, also states that the defendant "abused his authority, dependency relationship and difficult financial circumstances of his minor son and stepdaughter" in order to exploit them through begging, which represents methods of perpetration prescribed under article 388, paragraph 1. Also, under article 388, paragraph 3, the perpetrator shall be responsible for a more severe form of trafficking offense, because the offense is committed against the minor victim. By mentioned judgment, the court first determined two sentences at the level of a special minimum for the basic form of offense (3 years of imprisonment) and then imposed a cumulative sentence of 4 years and 6 months of imprisonment.[30]

[29] Previously, by the indictment filed by the Higher Public Prosecutor's Office (Kto. No. 12/17), the case was qualified under article 388, paragraph 2, as a basic form of trafficking offense committed against a minor, without using force, threat, or any other specified methods of perpetration, not as a qualified form of the offense under the paragraph 3 of the same article, which prescribes a sentence of imprisonment of minimum five years.

[30] Unfortunately, the case law in the Republic of Serbia shows it is not uncommon to change the indictment filed for a certain form of trafficking offense which was committed in order to exploit victim through forced prostitution, into the criminal offense of mediation in prostitution, followed by concluding plea agreements between the public prosecutor and the defendants. In one such case, deciding on the constitutional complaint of the injured party, and on the occasion of the decision of the Higher Court in Belgrade, passed on September 15, 2016 (K. 4219/10), the Constitutional Court in its decision (No. Už-1526/2017) emphasized

A positive example of the adequate, i.e. proactive approach of the state authorities, proper accusation and sentencing for the offense of trafficking in human beings, is the judgment of the Higher Court in Novi Sad (K-149/16), in which the defendant committed trafficking through recruiting of a minor victim, without using force, threat or any other mentioned methods of perpetration, even without direct personal contact (against a 17-year-old girl who responded by phone to a job advertisement published in a daily newspaper). The Court sentenced him to 3 years of imprisonment, which is also at the level of a special minimum.

The analysis also included 8 convicting judgments against 13 adult perpetrators (9 men and 4 women) of the qualified form of the criminal offense of trafficking in human beings under article 388, paragraph 3. These are cases in which the offense is committed against a minor without using force, threat, or some other specified methods of perpetration, for which is a prescribed sentence of imprisonment of a minimum of 5 years. Since the legislator did not set a special maximum, the upper limit of sentence that could be imposed is at the level of general maximum (20 years of imprisonment). Based on the conducted analysis, it can be concluded that most defendants (9 of them) of this qualified form of trafficking were sentenced to imprisonment at the level of a special minimum. Imprisonments above the special minimum were imposed on two female defendants who committed the offense of trafficking in 2006 when the legislator set a special minimum for this form of the offense at the level of three years of imprisonment (Judgment of the Higher Court in Nis, K.br. 7/16). In the second judgment, the court sentenced the first co-defendant to 9 years of imprisonment, and the second one to 6 years (Higher Court in Zrenjanin, 5K.22/18).

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that: “authorized state bodies - the Higher Public Prosecutor's Office in Belgrade and the Higher Court in Belgrade did not fulfill their positive procedural obligations regarding the prohibition of all forms of trafficking in human beings guaranteed under article 26, paragraph 2 of the Constitution of the Republic of Serbia, which dictates conducting an effective and fair procedure, which would enable issuing a relevant court judgment." Inter alia, the mentioned state authorities ignored the fact that, as stated in the original indictment filed by the Higher Court in Belgrade against V. S., D. B., and IP (Kt. 1113/10), a group has committed the offense against a minor victim (therefore, two qualifying circumstances were pointed out in accusations) and that the criminal proceeding regarding the offense of trafficking in human beings under article 388, paragraph 6, referred to in paragraph 1 and 3 of the same article, lasted almost six years.

Imposing imprisonment in a duration very close to the limit of the special minimum is also predominantly present in the judgments handed down to perpetrators who habitually engages in offenses of trafficking in human beings, which is envisaged under article 388, paragraph 6, as a qualified form of trafficking, with imprisonment of at least five years. Four of the five imposed sentences do not exceed imprisonment of 6 years. The court sentenced one defendant to imprisonment of 5 years, and the second one to 5 years and 3 months. In two judgments, the court imposed sentences at the level of 6 years of imprisonment. Only in one verdict (Higher Court in Novi Sad, K 106/18) imposed sentence exceeded the level of a special minimum - the court punished the perpetrator with imprisonment of 9 years, for committing trafficking offense against several victims, who were sexually exploited (some of them were minors). Even this sentence is significantly below the general maximum of 20 years, which could have been imposed on the perpetrator of the offense under article 388, paragraph 6.

In the only analyzed judgment handed down on the occasion when the criminal offense of trafficking in human beings was committed by a group (article 388, paragraph 6), the court punished one perpetrator with imprisonment of 12 years, and two co-perpetrators who were members of the group with imprisonment of 10 years each (Judgment of the High Court in Šabac, K. no. 14/17).

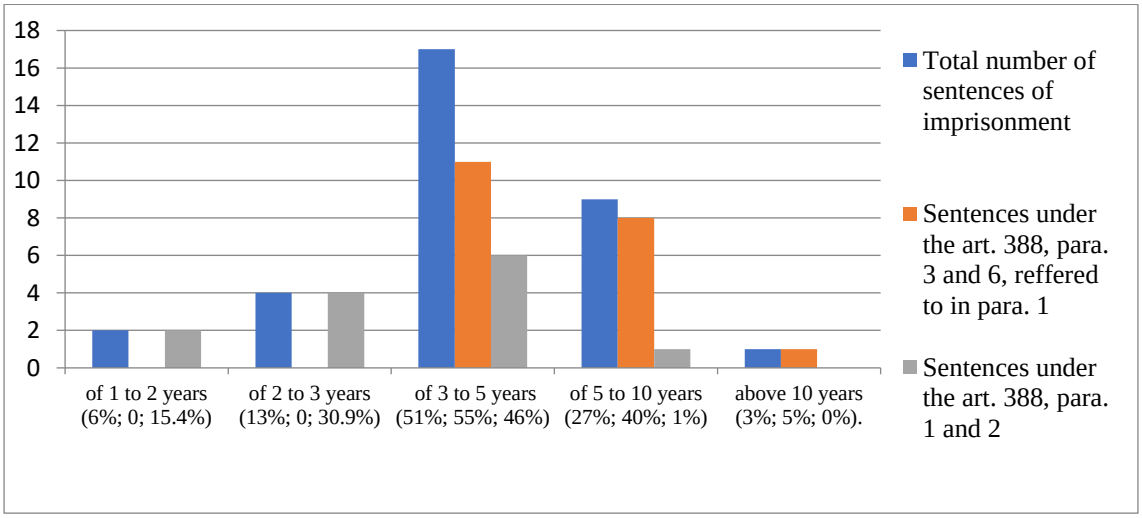
In three cases, perpetrators were clients who committed trafficking offenses envisaged under article 388, paragraph 9. This form of offense establishes criminal responsibility for anyone who knows or should know that the person is a victim of trafficking and abuse its position or allow to another to abuse its position for the exploitation envisaged in paragraph 1 of this article and commit this offense against a person for whom the perpetrator knew or could have known to be a minor. This is a qualifying circumstance that is a basis for imposing a more severe sentence than the one when the offense is committed against adult victim.[31] In two cases, the courts imposed sentences at the level of a special minimum (judgments of the Higher Court in Nis, SPK No. 39/20 - K No. 95/20 and the Higher Court in Negotin, Spk. 1/2018). In addition, the High Court in Negotin determined the sentence will be enforced in the residential premises of the convicted person. In one case, the court

[31] The prescribed punishment of imprisonment for this form of offense is at the level of 1 to 8 years.

determined punishment of the perpetrator with imprisonment of 1 year and six months and concurrently determined that it shall not be enforced provided the convicted person does not commit a new offense during a probation period of 4 years (judgment of the High Court in Novi Sad, K-192/15).

Observed through the prism of the sentences imposed for one of the two basic forms of human trafficking for which prescribed sentences are at the level of 3 to 12 years of imprisonment (article 388, paragraphs 1 and 2), i.e. for certain qualified forms of trafficking (article 388, paragraphs 3 and 6, referred to in paragraph 1) for which prescribed sentences are at the level of minimum 5 years (Figure 1), the following conclusions can be drawn.

Figure 1. *Review of the imposed sentences of imprisonment for basic and qualified forms of the offense of trafficking in human beings*



Among the 13 convicting judgments regarding the basic forms of this offense, the most widespread sentences were those ranging from 3 to 5 years of imprisonment (including 5 years), more precisely 6 of them (46%). The share of judgments with other sentences is lower. Other imposed sentences were: 4 sentences with imprisonment of 2 to 3 years (including 3 years) - 30.9%; 2 sentences with imprisonment of 1 to 2 years (including 2 years) - 15.4%; 1 sentence with imprisonment of 5 to 10 years (more precisely 6 years) - 7.7%.

Also, among the 20 convicting judgments regarding certain qualified forms of trafficking, the most common sentences were those ranging from 3 to 5 years of imprisonment (including 5 years), i.e. more precisely 11 of them

(55%). The share of other imposed sentences is lower: 8 sentences with imprisonment of 5 to 10 years (40%), and one sentence for over 10 years of imprisonment (5%).

CONCLUSION

The crime of trafficking in human beings is a serious crime against humanity and other right guaranteed by international law. Therefore, it is not surprising that article 23, paragraph 1 of the Council of Europe Convention on Action against Trafficking in Human Beings emphasizes the obligation of each State Party to adopt such legislative and other measures as may be necessary to ensure that the criminal offenses established in accordance with articles 18 to 21 are punishable by effective, proportionate, and dissuasive sanctions.

It could be remarked that the legal solutions present in the valid national criminal legislation of the Republic of Serbia regarding the criminal offense of trafficking in human beings are largely in accordance with the recommended principles of investigation and prosecution of trafficking in human beings. However, it is important to note that the current criminal legislation of the Republic of Serbia still does not provide stricter sanctions for those forms of the offense of trafficking in human beings in which offense is committed while discharging the official duties, by kidnapping, in particularly cruel or particularly humiliating manner, by taking advantage of victim's mental illness, mental retardation or other mental disorder, against several persons, but also when offense resulted in pregnancy, grievous bodily harm or serious health impairment, or other serious harm (Žarković et al., 2011).

Regarding the case-law in the Republic of Serbia referred to the cases of trafficking in human beings, several conclusions may be drawn. In most cases, the court sentenced the perpetrators to imprisonment for a period that is at or close to a special minimum. The penal policy in cases of committing the basic form of trafficking in human beings against minors is of particular concern. Even when the offense of trafficking is qualified as a more serious form, because it was committed against a minor, sentences of imprisonment are at the level of a special minimum of 5 years, although it is possible to impose a sentence of imprisonment within the general maximum of 20 years. Only in one case, the sentence of imprisonment significantly exceeded the limit of the special minimum–the court sentenced two perpetrators to imprisonment of 9 and 6 years. Sometimes, qualifying circumstances related

to the minor victim, or the used methods of perpetration against minors (force, threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, and others) were realized, but the cases were not qualified as a more serious form of trafficking in human beings. There is an impression that in cases of minor victims to whom the perpetrator did not use force, threat, or other mentioned methods of perpetration, their age was not recognized as a qualifying circumstance, which resulted in the imposition of the imprisonment close to the special minimum prescribed for the basic form of trafficking offense.

It is interesting to note that analysis of case law showed that sentences of imprisonment above the special minimum were imposed when the offense of trafficking was committed by the group (3 or more perpetrators), as well as when the offense was committed against several persons.

Finally, the court needs to use the possibility of imposing sentences of imprisonment which are closer to the general maximum (20 years), especially when the victims are minors. This stand is evidenced because most of the minors were in difficult financial or family circumstances or came from marginalized categories. Although perpetrators sometimes did not act as a group or the offense was not committed against several victims, they were aware of the difficult circumstances of minor victims and consciously used the most perfidious methods, such as the abuse of parenting or guardianship, for their recruitment and exploitation. For that reason, it is quite justified to punish them with more severe sentences.

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INEQUALITIES IN WESTERN BALKAN COUNTRIES AND CHALLENGES IN POST- PANDEMIC PERIOD[32]

Ana Vuković, PhD, Research Associate
Institute of Social Sciences, Belgrade, avukovic@idn.org.rs
Predrag Jovanović, PhD, Principal Research Fellow
Institute of Social Sciences, Belgrade, avepedja@gmail.com
Ivana Ostojić, Ms Econ Sc, Special Consultant
Institute of Social Sciences, Belgrade, ivanaostojic27@yahoo.com

Abstract
In the decade that preceded Covid-19 pandemic income inequality and poverty risk in the Western Balkan countries were reduced. Part of the paper will include an analysis of the basic causes of social inequalities as well as the relationship between society and the state in that context. High economic inequalities and poor governance go hand in hand which is particularly evident in transitional countries with underdeveloped institutions, weak rule of low and control of corruption. Western Balkan countries entered the pandemic crises with huge gap to the OECD countries in terms of rule of law and control of corruption, as indicators of good governance. Since governance is recognized as one of major factors for overcoming economic crises as well as for reduction of inequalities, Western Balkan countries have to make significant efforts to achieve good governance standards.

Key words: *income inequality, social inequalities, education, governance, rule of law, control of corruption, state capture*

INTRODUCTION

In the past 13 years, the world was faced deep crises, starting with financial and economic crises in 2008 that exposed the depth and significance of existing imbalances and accelerated the process of redistribution of global

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economic and geopolitical power (Nikolić and Petrović, 2011: 213), to the recent pandemic, while the human negative impact on climate was evident for a longer period. That called for changes in approach to human development in the future. In the UNDP Human Development Report 2020, the new term was introduced: "Anthropocene, the age of humans, which reflected the unprecedented planetary change in scope, scale and speed, driven by human activity posing risks to people and all forms of life" (UNDP, 2020). But the risks do not affect everyone in the same way thus increasing risks of inequalities in human development.

In Human Development Index the two capabilities - living a healthy life and having an education - were of critical importance, while income was considered as a means. However, although income couldn't be considered as an indicator that directly reflects human wellbeing, it could be interpreted as an instrument that enables the development of human capital aspects such are health and education. In other words, higher income provides more potential for upgrading human capital and citizens' quality of life.

In this paper, we will provide insight into income inequalities in the five Western Balkan countries: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia, in the period 2011-2019, since income inequality determines, to the large extent, possibilities of different income groups to overcome the key challenges of the modern world. Furthermore, causes of certain non-income inequalities such as social inequalities considering education, political power, and decision-making, etc. will be elaborated as well as manners in which they could be overcome. At the end, we will consider an issue of governance as a factor with strong influence on inequalities in Western Balkan countries.

INCOME INEQUALITIES

Serbia belongs to the Western Balkan region and shares aspiration to EU membership with its neighbors. Four of the countries: Montenegro, Serbia, North Macedonia, and Albania have "candidate" status, while Bosnia and Herzegovina have the status of "potential candidate". All of them are transitional economies sharing the same legacy being part of one country, with exception of Albania. We covered the period 2011-2019, a decade before the pandemic started to get insight into conditions that preceded the biggest challenge the world is faced within the last few decades.

Serbia had bad experience with high inflation or hyperinflation during the 1990s and at the beginning of 2000s (Petrović, Filipović and Nikolić,

2016:30). Before the start of the transition process in 90-is, levels of inequalities in the Western Balkan region were low by international standards. Although they then increased significantly in the early years of the transition process, they remain moderate by comparison with other parts of the world (UNDP, 2016).

Trends in income inequalities in the EBRD region that covers 34 countries, including those from Western Balkan, provide a broader picture of changes that occurred in the past three decades. In 2016 the incomes of the top quintile, in the EBRD region, were 19 times those of the bottom quintile, up from 13 in 1996 and around 7 in 1989 (EBRD, 2017).

Since all five countries from the Western Balkan region need to meet EU standards in the economic and social sphere, besides other, as a precondition for joining the EU, it is important to see how inequalities and poverty changed in the past decade in these countries as well as how these indicators levels were related to the EU averages.

All of the five countries that we are dealing with in this research: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia are considered by the UNDP as middle-income countries (UNDP, 2016). Their legacy of former socialist/communist countries contributed to a lower level of inequalities. Thus moderate increases in the region's income inequalities during the transition period were both inevitable and desirable as breaking with state-imposed social leveling ("uranilovka"). In the past decade, the level of inequalities varied among the five countries of the Western Balkan region, as we can see in Table 1.

Table 1. Income distribution

Country	2011	2012	2013	2014	2015	2016	2017	2018	2019
Montenegro	:	:	8,54	7,27	7,48	7,38	7,57	7,37	6,72
North Macedonia	:	10,20	8,37	7,22	6,62	6,63	6,38	6,16	5,56
Albania	:	:	:	:	:	:	7,47	6,98	6,38
Serbia	:	:	8,59	9,41	10,70	11,02	9,38	8,58	6,46
European Union - 27 countries (from 2020)	4,99	4,98	5,05	5,22	5,22	5,16	5,03	5,05	4,99

Source: EUROSTAT, Sustainable Development Indicators
https://ec.europa.eu/eurostat/web/main/data/database

In Table 1 we used the ratio of total income received by the 20% of the

population with the highest income (the top quintile) to that received by the 20% of the population with the lowest income (the bottom quintile) as an indicator of inequalities. In the last decade (2011-2019), the EU indicator "20/20" was stable and at the level of approximately 5. However, two counties of the region (North Macedonia and Serbia) have a ratio above 10, Macedonia in 2012 (10,2) with a stable trend of reducing it after that and bringing it close to the EU average in 2019.

However, Serbia experienced firstly increase of the indicator "20/20" in the period 2013-2016 reaching the highest level in the region (11,02) followed by diminishing (2017-2019). That could be explained by Serbian government measures on reducing salaries in the public sector, banning new employment in the public sector as well as cutting the number of public officers in order to reduce public expenditures and to make fiscal consolidation starting in 2014. According to Government sources, the share of incomes in GDP dropped from 12% in 2014 to 9,8% in 2017. However, after reaching the goal of fiscal consolidation in 2017, the Government increased salaries in the public sector from 5% to 10%. As data in Table 1 shows, Governmental restrictive measures led to increasing inequalities. However, once the goal of fiscal consolidation was reached and measures ceased, the Government raised salaries in the public sector that shrinks income inequality.

In Table 2 we used the second indicator of inequalities - the ratio of growth rates of household income per capita among the least wealthy "bottom 40 percent" of the population, relative to the total population.

Table 2. Income share of the bottom 40 % of the population

Country	2012	2013	2014	2015	2016	2017	2018	2019
Montenegro	:	15,9	17,1	16,8	17,1	17,4	17,8	18,1
North Macedonia	15,4	16,6	17,8	18,5	18,5	18,8	19,1	19,7
Albania	:	:	:	:	:	17,1	17,8	18,4
Serbia	:	16,5	16,1	15,1	14,8	16,3	17,3	18,8
European Union - 27 countries (from 2020)	21,2	21,2	20,9	20,9	21,0	21,2	21,2	21,4

Source: EUROSTAT, Sustainable Development Indicators
https://ec.europa.eu/eurostat/web/main/data/database

Share of the "bottom 40" income was lowest in North Macedonia in 2012 compared to other countries in the region and it rose steadily to 2019

reaching the highest level in the region. This indicates that reducing inequality measured by the ratio of 20 top quintiles to the bottom 20 quintile was based mainly on the above-average increase of "bottom 40" income.

In Serbia, the period 2013 to 2019 could be divided into two sub-periods: the first one (2013-2016) when the share of income of those with "bottom 40" in the total income was decreasing and the second one when it started to increase. It could be interpreted that reduction of salaries in the public sector in the first period affected mostly "bottom 40", while abandoning the measure and replacing it with an increase of salaries by the Government, benefitted predominantly the same income category leading to decreased income inequality in 2019.

Both indicators of income inequalities improved over the last decade in all of the countries surveyed. Moreover, the indicators are at levels close to the EU values. Since decreasing of "20/20" indicator was going hand in hand with an increasing share of income of the "bottom 40", it could be concluded that lowering the inequalities gap relied on the increase of income of the poorer citizens.

The next question would be how the risk of poverty changed in the period 2011-2019 in the countries observed. Risk of poverty indicator is the proportion of people at risk of poverty receiving an equivalised disposable income below the risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income (after social transfers). As it could be seen in Table 3, the risk of poverty decreased in all observed countries reaching its minimum in 2019 thus bringing it closer to the EU level.

Table 3. People at risk of income poverty after social transfers, by citizenship

Country	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Montenegro	:	:	:	21,0	21,2	21,7	21,6	20,7	20,0	20,6
North Macedonia	25,7	25,1	24,8	22,5	20,3	19,7	20,1	20,1	19,9	20,0
Albania	:	:	:	:	:	:	:	21,9	21,6	21,2
Serbia	:	:	:	:	24,0	25,9	25,1	24,8	23,3	22,0
European Union - 27 countries (from 2020)	14,5	15,2	15,2	15,1	15,4	15,6	15,6	15,2	15,3	15,1

Source: EUROSTAT, Sustainable Development Indicators
https://ec.europa.eu/eurostat/web/main/data/database

Poverty reduction of the five countries in the observed period could be explained by: a) economic growth (Table 4) and b) reduction of income inequality. Data in Table 4 show that Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia have positive growth rates of GDP in most of the period, which created a base for poverty reduction. The highest rates of GDP rise were achieved in 2018 (with exception of North Macedonia) followed by solid growth next year thus creating a precondition for the best result in poverty reduction to be achieved in the last year of the observed period (2019). According to projections, the growth of the EU27 will be significantly lower in the future - 1.5% and 1.6%, respectively, in 2024 (Nikolić and Petrović, 2020: 159).

Table 4. Real gross domestic product: annual average growth rates

Country	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Montenegro	3,23	-2,72	3,55	1,78	3,39	2,95	4,72	5,08	4,06	-12,00
North Macedonia	2,34	-0,46	2,92	3,63	3,86	2,85	108	2,72	3,55	-4,52
Albania	2,55	1,42	1,00	1,77	2,22	3,31	3,80	4,07	2,21	-6,50
Serbia	2,33	-0,23	2,97	-1,21	2,12	3,44	2,40	4,40	4,35	-2,10
Bosnia and Herzegovina	0,96	-0,82	2,35	1,15	3,09	3,15	3,17	3,74	2,68	-4,50
European Union - 27 countries (from 2020)	1,87	-0,72	-0,03	1,59	2,33	2,01	2,80	2,12	1,55	-6,30

Source: UNCTAD, https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx

If we compare changes of values of income inequality indicators "20/20" and "bottom 40" on one side and the risk of poverty on the other (tables 1, 2, and 3), similar patterns could be noticed. For example, in Serbia income inequalities indicators and poverty reduction deteriorated till 2016 and then improved from 2017 thus confirming how poverty reduction depends on the reduction of income inequalities. Lessening inequalities enabled GDP growth to influence the rate of poverty. It could be concluded that the more income inequality is reduced, the higher the positive effect of economic growth on poverty reduction could be expected.

The five countries of the Western Balkan region experienced two

different periods regarding income inequalities. The pre-transition phase was characterized by near full employment, low-income differences, and broad coverage of social safety nets. However, in the transition period, income inequalities increased with later tendencies towards closing gaps compared to the EU, during the last decade.

SOCIAL INEQUALITIES IN BETWEEN SOCIETY-STATE RELATIONSHIP

The social crisis leads to the disturbance of the social order and most threatens the members of already endangered social groups, the poor and the marginalized. Social inequalities cannot be completely eradicated because they are present in every society regardless of the level of social development. In crisis circumstances, the basic values are endangered, which according to one of the most general definitions represent "relatively general, stable and hierarchically organized characteristics of individuals and groups that represent elements of social consciousness" (Pantić, 1996: 119-147).

In sociological researches, the analysis of the causes and consequences of social, class-layer inequalities included the main areas of social life: education, employment, housing, political system, remuneration and decision-making in work organizations, inequalities in vertical mobility of the population. In recent times, instead of researching social inequalities within the entire social structure, the causes and consequences of inequality of socially endangered (vulnerable) social categories, such as women, children, the elderly, people with disabilities, etc., are more often investigated.

Education is also one of the factors in maintaining social order. For example, in Serbia, in the process of modernization after 2000, education reform was introduced, but the knowledge so that it would be applicable was included in the "knowledge market" and placed in the framework of the by-sale relationship. In that way, the authenticity of the form and content of education reform was lost, and the establishment of knowledge was an important factor in human (social) development. As a means for the neocolonial occupation of educational institutions, ideal-type criteria of education were used, which are not applied even in all EU countries or are used in accordance with the degree to which they can be applied at all - especially considering the degree of socio-economic development in a given country. Thus, knowledge (education) as a social category and one of the parameters of social inequalities is reduced to a unit of goods, and access to members of lower social strata is disabled, i.e. poorer social groups. In

accordance with the neoliberal model of social reform, education has become a means of ideological legitimation of the new order and recruitment of cheap labor within the neocolonial apparatus of control and exploitation of a (semi)peripheral society (Vuković, 2020: 150-151). This process enabled the growth of social inequalities in access to education as one of the ways of vertical social mobility and social promotion, because it followed the, as observed in sociological research, closing of social structure for members of lower social strata (Antonić, 2013).

On the other hand, research has shown that special resistance to the negative impact of social crisis on the functioning of society and the state is provided by the family as a social group, but in a broader sense as a family system that allows continuity between individual and state. The role of the family in the crisis is outlined through one of the main family values, "a value that puts family integration, survival of the whole, cooperation and solidarity among members in the first place, as a condition for survival not only of the group, but of each individual." This value postulate that the family emits by the 'nature' of its group union gained strength and persuasiveness in times of crisis, uncertainty and 'risky life'. In such times, values that suggest to individuals, families and society the meaningfulness of submission to the collective, solidarity without asking when and at what price, authoritarianism as a way out of difficulties and developmental dilemmas gain meaningfulness and significance. In that social framework, traditionalism is strengthening, and in such a value system, the family occupies a high place, as the guardian of identity and integrity, of the individual, family, nation and state" (Milić, 2010: 239-240).

Changes in social values system and state systems, as well as various "transitional" forms that characterize societies and states that have experienced changes in political systems, economic models of functioning, cultural patterns, educational reforms, etc. in essence, they introduce reflections based on the advantages and weaknesses of these social structures and may show how to enable social development. Somewhere in between that need and intention are members of deprived social strata-classes who, according to the possibilities they have to ensure a decent life, are at the bottom of the social ladder due to the minimal possibilities for vertical social mobility and social promotion. In this case, too, according to the findings of the earliest sociological research, we turn to the family and social origin as the most important factor in the survival of the individual and the mitigation of social inequalities (Popović et al., 1987; Popović et al., 1991; Bolčić, Milić, 2002; Milić et al., 2010).

For example, to mitigate the consequences of social inequalities in the education and position of women, the state provided quotas and other affirmative action measures. These ways of overcoming social inequalities in access to various social areas are not a new invention, because, for example, in the former SFRY, the low representation of youth and women should have been regulated through the so-called Personnel Coordination Commission, whose task was to take into account the appropriate ethnic, gender, age, class and other representation in elected delegations and elected delegates (Vuković, 2019: 206). Considering that women are a historically deprived group in politics as well as in other important and powerful social positions, although the "critical mass" provided by the quota should ensure the representation of, in this case, women respondents, in qualitative sociological research about women in politics, agreed that should be clear criteria (competence, personal qualities, abilities, etc.) after which the choice of women in the parliament would no longer depend on the quota system (Vuković, 2009; Vuković, 2019).

Despite the fact that societies differ according to the degree of social development, societies that have been in a permanent crisis for several decades, expressed in serious and severe social inequalities, can serve as an indicator of how social inequalities deepen and in what form and degree they can be reduced. Experience of societies with a "decade-long crisis" also points out that polarization of social values in accordance with different types of social and state organization to enable the functioning of society-state relations in order to overcome social inequalities, is not the best response to the crisis. More often, crisis leads to the intertwining of different social values as a reaction and resistance in crisis circumstances. In this sense, the protection of the rights of socially vulnerable groups would mean, in the classical sense, a return to the values of solidarity and collectivism versus individualism or the introduction through new laws of the primacy of individual rights and freedoms of citizens, as opposed to the dominance of common rights, instead of job insecurity and economic success in the market, re-ensure job security and wages regardless of the market effect and social privileges as a need for system sustainability. Thus, for example, 'modern capitalism' has incorporated “several important social institutions that are essentially socialist in content and orientation, such as labor legislation, health and social security policy of all citizens, the role of the state in directing economic and social flows, in a word development welfare states" (Popović, 1991: 536-537).

The regulation of the social sphere is related to the type of state system, in terms of access to various forms of social protection, however, solving social issues is related to individual and collective attitude towards social

values, which are manifested through differences in social, educational and cultural capital. The harmonization of social needs and interests and state possibilities for their satisfaction is being tested when it comes to the position of socially endangered or marginalized categories of the population. Regulating and resolving these issues is inseparable from the economic possibilities of the state, i.e. from economic development, and connection with social values. Social inequalities arise as a consequence primarily of inequalities in the disposal of material and other social goods, that is, in their use. Despite the measures that can be taken by the state, inequalities in society are the result of the different position of the individual in the social structure, i.e. class-layer inequalities in which members of different social strata have unequal chances for employment, education, decision-making. These factors indicate that social origin (background) remains one of the basic and core factors of social inequality. Family and education remain functional and important elements for alleviating social inequalities caused by various social crises, including the current coronavirus pandemic. Only in the cooperation of the society-state relations can the consequences of crises and social disturbances be mitigated and human development ensured.

However, the present situation is characterized by the perception of a large proportion of citizens that their status and perspective, including income status, depends more on political connections than their human development potential (UNDP, 2016). That raises the issue of governance and its influence on income inequality.

GOVERNANCE AND INCOME INEQUALITY

In literature, there is a lot of evidence that high economic inequalities and poor governance often go hand in hand. Hanson (2013) argues that national economic inequalities reflect underlying horizontal and vertical pressures that rulers navigate to remain in power. Acemoglu et al. (2004) find that, when political power is unevenly distributed, those with power will use it to influence economic institutions to their own (economic) benefit. Furthermore, elites' growing influence can lead to lower growth rates of the national economy and to increase income inequalities between those who are close to them and the rest of the citizens. Sustainable Development Goal 16 targets that are particularly relevant for issues of both economic and income inequalities, as well as governance in the region, are:

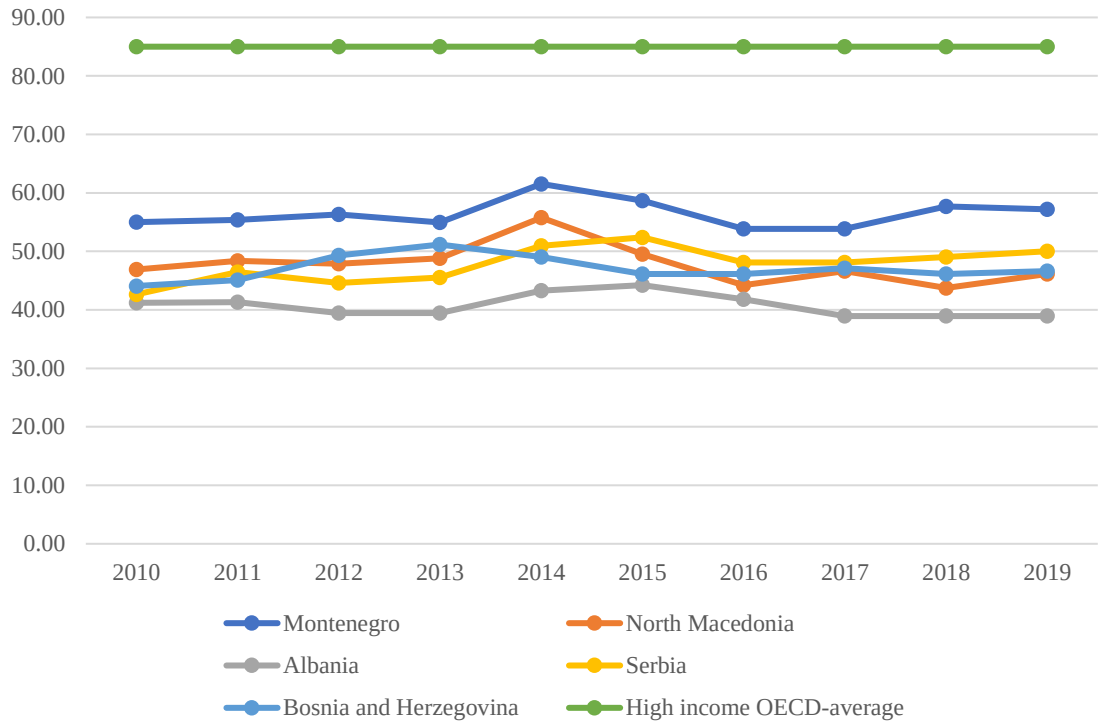
- Promote the rule of law at the national and international levels;
- Substantially reduce corruption and bribery in all its forms;

- Develop effective, accountable, and transparent institutions at all levels.

In this research, we will use two of the Worldwide Governance Indicators: 1) Rule of Law (RoL) and 2) Control of Corruption (CoC). The RoL indicator reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Citizens' uneven access to fundamental rights and selective approach in their protection is perceived as strong indicators of inequality in society. The CoC indicator reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests. Indicators are presented in form of rank where 0 is the lowest rank and 100 is the highest one.

In Graph 1, data show what progress in RoL each of the countries observed made in the last decade and how that relates to levels achieved by the OECD countries that already reached high standards in rule of law and corruption control. Comparison with advanced OECD countries helps to put light on how far are the selected transitional countries from international standards that should be met to join the EU.

Based on data in Graph 1, it could be concluded that the RoL indicator changed slightly in all five countries, during the decade. However, they significantly lag behind the OECD countries failing to reduce the gap. Regarding the Control of Corruption indicator, it could be concluded from Graph 2 that Serbia experienced significant deterioration, during the observed period. The indicator rank dropped from 46,45 in 2012 to 37,02 in 2019 that was the lowest level in the whole observed period.



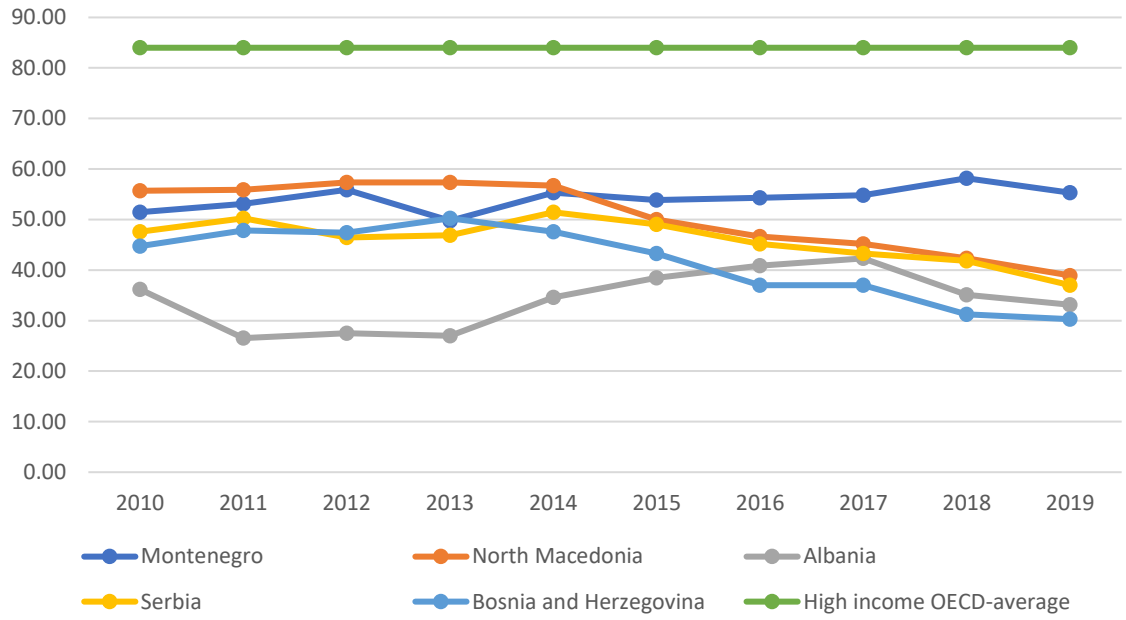
Graph 1: Rule of low

Source: World Bank, https://databank.worldbank.org/databases/rule-of-law

In 2019, the lowest rank of CoC had Bosnia and Herzegovina (30,29) with the largest drop of 40% from 50,24 in 2013. A huge decrease of CoC rank had North Macedonia. In 2019 its rank was 38,94 that is almost one-third behind the rank it had in 2012 (57,35). The second-lowest CoC rank in the region, in 2019, had Albania (33,17).

The only country of the region that had CoC rank above 50 during most of the observed period (except for 2013) was Montenegro. Moreover, Montenegro had the highest CoC rank in the region in 2019 (55,29). At the same time, in the region, Montenegro made the greatest progress in process of negotiation with the EU.

It could be concluded that the ranks of Control of Corruption indicator for four countries in the region were in the range between 30 and 37 which was one-third of the average CoC rank for the OECD countries. Moreover, during the past decade, all four countries experienced a significant worsening in terms of controlling corruption that negatively affected the equality of their citizens.



Graph 2: Control of Corruption

Source: World Bank, https://databank.worldbank.org/databases/control-of-corruption

The only exception to very negative tendencies in the region regarding corruption represented Montenegro that succeeded to retain a relatively good rank of 55 from 2012 to 2019, reaching a high of 58,17 in 2018.

In the period 2011-2019, all four countries had more favorable ranks of RoL indicator than that of CoC, similarly as in OECD countries. However, four of the five selected countries had RoL rank of 50 or less, while only Montenegro had a higher rank (57,21). Changes in RoL ranking of all five Western Balkan countries were slight during the last decade. It could be concluded that although significant worsening was avoided (as was the case with CoC), improvement was lacking too.

Rule of law is primarily related to the implementation of laws and other forms of regulation, i.e. how effective rules are implemented, in a fair manner with no ungrounded exemptions that would put agents in unequal positions. Institutions have a crucial role in the proper implementation of rules in a society. In many transition countries, governments tried to solve problems in governance and corruption by frequent changes of regulation.

For example, in Serbia, public procurement legislation was changed twice in the period 2015-2019 with the proclaimed aim to enable more free competition and to increase its intensity. However, in the same period, the average number of bids per tender dropped from 2,9 in 2015 to 2,2 in 2019

(PPO, 2019). However, surveys of bidders' opinions indicated their low and continuously decreasing credibility in the public procurement process. Bidders complained that more and more tenders were "agreed" in advance and public notices serve only to create an illusion of competition. Thus, more and more firms gave up participating in public procurement procedures that result in an increasing number of tenders with only one bid from 43% in 2015 to 55% in 2019 (PPO, 2019).

The negative influence of favoritism and biases in public procurement is not only the rule of law issue but the corruption one as well. Virtually unpredictable exchange rate, inflated prices for downgraded characteristics and quality of purchased goods and services enable the creation of surpluses that are divided between officials, at a central or local level, and the winning bidder (Petrović and Nikolić, 2018: 822). This Transparency International's Corruption Perception Index (CPI) for Serbia did not improve at all in the period 2015-2019. To avoid these weaknesses and to improve the Rule of Law, SIGMA recommends a set of measures in its document "Principles of Public Administration" (SIGMA, 2017):

- The organization of central government should follow adequate policies and regulations and provides for appropriate internal, political, judicial, social, and independent accountability,
- Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest,
- Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews,
- The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

In its paper dealing with curbing corruption in Western Balkan, Transparency International sets key preconditions for upgrading control of corruption (Transparency International, 2016). The first and most important is establishing control over political parties on power. All five countries we observe are considered in the report as "captured states" by ruling elites. At the same time, citizens seen political parties as to the most corrupt institutions, with almost three-quarters of citizens in the region considering them to be corrupt or extremely corrupt. Ruling political parties have enormous influence across almost all segments of public life, including the judiciary and regulatory institutions (Transparency International, 2016).

In its recent special report devoted to "state capture" in Western Balkans, Transparency International defined these phenomena as "efforts taken by private actors and public actors with private interests to redirect

public policy decisions away from the public interest, using corrupt means and clustering around certain state organs and functions" (Transparency International, 2020).

In other words, it is a political practice that is very much motivated by patronage and clientelistic networks focused on controlling the state for private profits. From February 2018 onwards, the European Commission (EC) explicitly mentions the existence of state capture in the region and gives a clear message to candidate countries: showing signs of state capture will compromise any chance of becoming an EU member. Moreover, the "state capture" issue found its place in the EU enlargement countries reports for all five countries. State capture in the region is characterized by being driven mainly by political parties and clientelistic networks that sustain them (Transparency International, 2020). Political power is used for control of different domains such as the judiciary and the legislature to provide financial gain to the elite.

Both TI reports recognized that anti-corruption laws in all five countries were adopted being to large extent in line with international standards. Furthermore, formally independent regulatory institutions exist. However, a key determinant of whether a given set of anti-corruption institutions and laws is likely to prove effective is the social and political foundations on which these institutions and laws rest. In the Western Balkans, these foundations are fragile, with social fragmentation and ethnic and religious divides creating a context in which favoritism and uneven application of the law is the norm rather than the exception (Transparency International, 2016).

Such practice resulted in a much higher perception of corruption in the Eastern Europe region compared to Western Europe and the EU. In 2019, the CPI score for the first group of countries was 35, while for the second one 66. It indicates how large is a gap between the two groups of countries regarding control of corruption and how much work is ahead of Western Balkan countries to achieve EU standards.

Progress in this field requires that election processes in Western Balkan countries should be improved in practice as well as control of financing of political parties. As an additional lever, progress in both processes is linked to advance in the EU membership status. Once an efficient control of ruling parties is established, it would be possible to create the political will for strengthening rule of law and curbing corruption as their key precondition.

CHALLENGES IN POST PANDEMIC PERIOD

Since the pandemic started in 2020, countries all around the world were faced with reduced production and consumption. To revive economies, a growing number of countries that were previously committed to green growth that balances economic prosperity with reducing the impact on the environment abandoned that policy. Environmental protection efforts were sacrificed to economic prosperity by both developed countries such as United States, Germany, Israel as well as Central and Eastern European countries such as Poland and Czech Republic (Schiller and Hellmann, 2021).

Unlike previous crises, COVID-19 hit a serious blow to the personal services sector. Wholesale and the retail sectors, tourism, as well as the arts and entertainment, are specifically affected by the free fall of demand (IMF, 2020). That means that the crisis hurt particularly hard those service sectors that employ a high share of women, atypical workers, and low-wage earners. As a result, it could be expected to see a strong uptick in rising income inequality trends in the aftermath of the pandemic.

Although the unemployment rate in OECD countries had fallen in 2020 compared with the peak of the negative impact of the financial and economic crisis in 2013, the recovery was uneven (Schiller and Hellmann, 2021). That could be illustrated in an example of the United States where employment rates recovered at a different pace for low-income workers (those who earn less than 27.000 USD annually) and high-income employees (with salaries above 60.000 annually), during the past year and a half period. According to Opportunity Insights, at the end of June 2021, the employment rate of high-income workers surpassed the pre-Covid level by 9,6%, while the employment rate of low-income employees lagged behind the pre-Covid level by 21% (Opportunity Insights, 2021).

The risk-of-poverty rate, which is the percentage of people whose equivalized disposable income is below the threshold of 50% of the national median equivalized disposable income, was higher in nearly half of the OECD countries before the COVID-19 crisis (2019) than at the height of the economic and financial crisis. This increase shows that not all groups in society have benefited equally from the upturn in labor markets.

The difference in poverty and employment patterns could be explained by two factors. The first one is the flexibilization of labor markets, which can be observed in almost all OECD countries, and that has led to an increase in atypical employment such as fixed-term work, part-time work, solo self-employment, and temporary work. Longer periods spent in these forms of

employment are more often associated with a higher risk of poverty for a household throughout a lifetime.

The second factor is related to the rapid pace of technological progress in recent years that has increased a gap in demand for jobs between high-skilled and low-skilled workers, while jobs for people with intermediate skills have disappeared (OECD, 2020). Future income and non-income inequalities will depend on changes in demand for jobs of different categories of workers on one side and the pace of economic recovery, on the other. As well as on possibilities of close social relations in the family, and other social networks to provide support for overcoming old empowered and new induced social inequalities.

CONCLUSIONS

In the decade that preceded the pandemic, income inequalities were lowest in the last observed year (2019) in all Western Balkan countries. The same pattern occurred in the rate of poverty as a result of economic development and decreasing income inequalities.

However, the pandemic crises slowed down economic growth rates as a result of a huge drop in consumption and production. The factor that was recognized as particularly important in transitional countries in terms of influence on inequalities is governance. Neither of the indicators that reflect the quality of governance: Rule of Law and Control of Corruption improved during the past decade. The RoL indicated stagnation while CoC deteriorated in four out of five observed countries. The outcome was significantly lagging behind the OECD countries as the ones with good governance.

Poor governance and in particular weakening of corruption control increases the risk of further deteriorating governance thus threatening economic recovery as well as the process of reducing inequalities in the post-pandemic period. To avoid this scenario, democracy should be strengthened in terms of establishing an efficient control of political parties, which would enable institutions to act in public interest in full capacity. In this context, the human need for an optimistic social scenario that the social crisis is at the same time a chance for improvement depends on several structural factors, and in countries with lower social development depends on the relationship between economic subsystem and social subsystem (family, social networks, access to education) and state, as well as their ability to respond to challenges together. Otherwise, present crises caused by pandemics may lead to increasing

autocracy with increasingly negative effects in the future regarding inequalities, quality of governance, and economic growth.

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RECONSIDERATION OF THE LEGAL ROMANIAN FRAMEWORK OF THE MEASURE OF JUDICIAL INTERDICTION

Senior Lect. Codruța Guzei-Mangu, PhD

Faculty of Law, West University of Timișoara, Romania - codruta.mangu@e-uvt.ro

Abstract

The reconsideration of the legal framework of the measure of placing under judicial interdiction a natural person, as a measure of protection of the natural person, ordered by the court, is necessarily required as a result of decision no. 601/16.07.2020 of the Constitutional Court of Romania regarding the constitutional challenge of art. 164 (1) of Romanian Civil Code concerning the legal provisions under which such a measure may be ordered by the court, respectively those regarding the lack of discernment of the natural person, likely to determine the impossibility of self-management of one's own interests, as a result of mental weakness or alienation. We therefore intend to analyze this decision having regard to the context that led to the constitutional challenge of the above mentioned legal provision, the reasons set out by the Romanian Constitutional Court in its decision and the normative changes that might be generated.

Key words: measure of placing under judicial interdiction, constitutional challenge, proportionality of the measure, guardianship, capacity of exercise one's rights

PRELIMINARY CONSIDERATIONS

The present paper will be structured in three parts. The first part will describe the institution of judicial interdiction as it was regulated by art. 164 para. (1) Romanian Civil Code, prior to its unconstitutionality. The second part focuses on the presentation of the reasons that led to the constitutional challenge of art. 164 para. (1) Romanian Civil Code, on the answer of the Constitutional Court of Romania on this matter and on the arguments of the Court when declaring the unconstitutionality of art. 164 para. (1) Romanian

Civil Code. Finally, with regard to the third part, we mention that, from the moment we set out to analyze this subject and until now, in response to the admission of the constitutional challenge by the Romanian Constitutional Court, was drafted a bill for amending and supplementing Law no. 287/2009 on the Civil Code, Law no. 134/2010 on the Code of Civil Procedure, as well as other normative acts. Thus, we will proceed to outline the new legal framework of the judicial interdiction, as it will be regulated by lines of the Civil Code amended as a result of the unconstitutionality of art. 164 para. (1) Civil Code.

THE LEGAL FRAMEWORK OF JUDICIAL INTERDICTION PRIOR TO THE DECLARATION OF UNCONSTITUTIONALITY OF ART. 164 PARA. (1) CIVIL CODE

Judicial interdiction is a measure of protection of the natural person who lacks the discernment necessary to take care of his own interests, due to alienation or mental weakness (Gh. Beleiu, Romanian civil law. Introduction to civil law. Subjects of civil law, ed. XI revised and added by M. Nicolae and P. Trușcă, 2007 Universul Juridic Publishing House, Bucharest, p. 378). The measure is intended to protect the person against the abuses of third parties and against his inability to self-manage. It also has the role of protecting third parties, who, in the absence of such, would face the problem of the ineffectiveness of contracts concluded with persons without discernment. (M. Nicolae (coordinator), V. Bîcu, G.-A. Ilie, R. Rizoiu, Civil law. Legal and Natural Persons, 2016, Universul Juridic Publishing House, Bucharest, p. 239).

From a legal point of view, as it results from art. 211 of Law 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, the expressions mental alienation or mental weakness are meant to describe a mental illness or a mental disability that has as a consequence the mental inability of the individual to act critically and predictively regarding the social and legal consequences that arise from its participation in civil legal relations.

The content of art. 164 para. (1) Civil Code, namely "The person who does not have the necessary discernment to take care of his interests, due to alienation or mental weakness, will be placed under judicial interdiction", sets out the conditions that must be met, cumulatively, for the measure of the judicial interdiction to be ordered, thus, the natural person who will be placed under judicial interdiction must be lacking discernment, the cause of lack of discernment must be alienation or mental weakness, the lack of discernment must prevent the natural person from self-management. It should also be

mentioned that the condition of alienation or mental weakness must be permanent (M. Nicolae (coordinator), V. Bîcu, G.-A. Ilie, R. Rizoiu, 2016, 241), persons with a temporary lack of discernment cannot be placed under judicial interdiction (I. Reghini, The Individual - Subject of Civil Law Relationships, in I. Reghini, Ș. Diaconescu, P. Vasilescu, Introduction to Civil Law, 2008, Sfera Juridică Publishing House, Cluj-Napoca, p. 148-149).
The persons who may be placed under judicial interdiction are persons with full capacity to exercise their civil rights and obligations and minors with restricted capacity to exercise, namely minors aged between 14 and 18 years.
Concerning the effects that the judicial interdiction generates, a first effect consists in the loss of the capacity to exercise one's rights and civil obligations. The direct and immediate consequence of this is the appointment by the court of a legal guardian for the person for whom the protection measure was ordered.

Being deprived of the capacity to exercise and being applied the same legal regime as a minor under 14 years of age, presumed to be without judgement, the appointed guardian is required to watch over the person and the goods of the one placed under the judicial interdiction, so that he can participate, in conditions of legal equality with other subjects of law, in legal relations. In order for the rights and freedoms of the person placed under the judicial interdiction to be respected and optimally exercised, in the situations expressly provided by law, the legal acts, contracts and measures that the guardian concludes in relation to the person and his goods must be authorized by the court and, depending on the case, approved by the family council. Thus, lacking the capacity to exercise, the judicial interdicted person no longer has the possibility to conclude civil legal acts alone, and he will be represented by the legal guardian appointed, who will conclude the acts in the name and on behalf of the protected person. As an exception, like minors under 14 years of age, the protected person will be able to conclude, alone and personally, legal acts of low value, current and enforceable at the time of their conclusion and legal acts of conservation, which are considered always profitable.

As a civil measure involving serious effects on the legal capacity of the person entitled, it can only be ordered by the court in a final civil ruling.
While substantive law provisions are governed by the Civil Code, procedural law provisions are governed by the Code of Civil Procedure.

Thus, according to art. 936 of the Code of Civil Procedure, competent to resolve the request for judicial interdiction is the Court of guardianship and family in the district where the person resides. The procedure for resolving the request includes two phases, namely the non-adversarial phase and the

adversarial phase. The first phase is intended to prepare the necessary data and evidence for the second phase, namely the one in which the analysis and decision on the application take place. The adversarial phase takes place in the form of an ordinary civil process, with some characteristics specific to this measure. The trial will take place with the mandatory participation of the public prosecutor, as defender and guarantor of the rights and freedoms of the person in relation to whom the judicial interdiction has been requested. Also, the court is held to listen to the person whose interdiction is requested, asking questions in order to find out about their mental condition and the degree of impairment of discernment, then corroborating the answers received with the data contained in the opinion of the specialized medical commission and with the other evidence gathered in the non-contradictory phase in order to reach a decision.

The effects of the decision will occur after it becomes final and the necessary publicity formalities will be completed. so that third parties know the legal status of the one placed under judicial interdiction (M. Nicolae (coordinator), V. Bîcu, G.-A. Ilie, R. Rizoiu, 2016, 245).

The measure of judicial interdiction ends as a result of the death (physically ascertained or declared in court) of the person against whom it was ordered or by lifting the interdiction, in case the causes that determined its taking no longer exist. An application for lifting the measure of judicial interdiction may be introduced by the same persons who could request for the measure to be taken and also by the legal guardian or even by the one who has been placed under judicial interdiction.

ABOUT THE CONSTITUTIONAL CHALLENGE OF ART. 164 PARA. 1 CIVIL CODE. CONTEXT, DECISION AND ARGUMENTS OF THE ROMANIAN CONSTITUTIONAL COURT

The Constitutional Court of R has ruled on the constitutional challenge by Decision no. 601/2020 (at https://www.ccr.ro/wp-content/uploads/2021/01/Decizie_601_2020.pdf) which was published in the Official Monitor of Romania on 27 January 2021.

For a clearer and more coherent presentation, we reiterate the legal provisions that were the subject of the constitutional challenge, namely art. 164 para. (1) of the Civil Code - "A person who lacks the necessary discernment to take care of his own interests, due to mental alienation or weakness, shall be placed under judicial interdiction".

In the justification of the exception, it is argued that the legal institution of judicial interdiction is based on a dichotomous distinction between persons with discernment and persons without discernment, indirectly rejecting the situation where persons have diminished discernment, partially, and not totally, abolished.

Thus, the judge who has to decide on an application for judicial interdiction of a natural person has the possibility to choose exclusively between two solutions, namely that of rejecting the request or admitting it and ordering the measure of placing under interdiction. The judge does not, therefore, have the possibility to establish an individualized measure, adapted to the needs of the person in question and corresponding to the degree to which the person's discernment is impaired.

The legal text in question does not allow for the court to rule in favour of an intermediary solution, one which supports the individual in need of protection, but only to the extent and in proportion of one's needs, and not one which is likely to prevent the person from participating personally in legal life, even though, in certain areas, is able to do so (C. T. Ungureanu, The Purpose of the Appointment of a Legal Guardian For a Future Protective Measure, in Accordance with the Civil Code, p. 36, available at https://www.ceeol.com/search/viewpdf?id=547150), or its possibility to reintegrate into society (A. Filote-Iovu, Brief Considerations Regarding Decision no. 601 of July 16, 2020 on Constitutional Challenge of the Provisions of art. 164 para. (1) of the Civil Code, available at https://www.juridice.ro/715038/scurte-consideratii-cu-privire-la-decizia-nr-601-din-16-iulie-2020-referitoare-la-exceptia-de-neconstitutionalitate-a-dispozitiilor-art-164-alin-1-din-codul-civil.html). Therefore, the judge's task is particularly difficult in those situations where the natural person is not in a total lack of discernment, which would require a judicial interdiction, but, for certain categories of legal relationships, some of which are essential and which could harm the person or its property, does not have the necessary discernment to be able to represent their own interests.

In this respect, another aspect of the justification for the constitutional challenge concerned the absence of the possibility for the magistrate to order an intermediary measure, such as a partial guardianship for the one who needs protection. In this context, the legal text in question is contrary to the provisions of art. 12 paragraph 2 of the Convention on the Rights of Persons with Disabilities (ratified by Law no. 221/2010 on the ratification of the Convention on the Rights of Persons with Disabilities, adopted in New York by the General Assembly of the United Nations on December 13, 2006, signed

by Romania on September 26 2007 and published in the Official Monitor of Romania, Part I, no. 792 of November 26, 2010), which provides for the right of persons with disabilities to the recognition of legal capacity on equal terms with others, in all areas and aspects of life. It is also pointed out that the provisions of article 164 para. (1) of the Civil Code establishes a substitutive regime, such a legal regime being prohibited by article 12 of the Convention on persons with disabilities, which requires its replacement by supportive regimes under which the individual is helped and assisted to make decisions independently.

It was also argued that this binary system, which includes persons with full discernment and those with totally abolished discernment, infringes the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights, with particular reference to article 8 on privacy and article 14 on the prohibition of discrimination, in relation to persons who do not fall into either of the two categories covered by that system, being in a separate category, but not covered by the legal provisions, that of persons with diminished discernment.

At the same time, the use of overly general, unclear and insufficiently defined terms such as 'to take care of' and 'interests' is also criticized from the point of view of the clarity and quality of the legal provision, invoking, in this regard, non-compliance with article 1 para. (5) of the Romanian Constitution, in its component referring to the quality of the law. Other texts of the fundamental law which the author of the constitutionality challenge considers that article 164 para. (1) of the Civil Code violates are art. 16 para. (1) on equality of rights, article 20 on international human rights treaties, article 21 on free access to justice, article 23 on individual freedom, article 26 on private, family and private life, article 37 on the right to be elected, article 41 on work and social protection of work, article 44 on the right to private property, article 48 on the family and article 50 on the protection of persons with disabilities.

Analyzing the constitutional challenge, the Constitutional Court decides in the sense of its admission by Decision no. 601/2020. The Court's decision-making process was mainly based on the considerations and reasons to be set out bellow.

Thus, the Court, in its analysis, takes into account the legal provisions alleged in the justification of the constitutional challenge by the petitioner, especially those of art. 50 of the Constitution and of art.12 of the Convention on the Rights of Persons with Disabilities, investigating whether art. 164 para. (1) Civil Code complies with the requirements set by them. The Court also

takes into consideration Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on the principles of legal protection of adults with disabilities, adopted on 23 February 1999, namely Principles 3 and 6 of this Recommendation. They state that national law should, as far as possible, recognize that there may be different degrees of incapacity and that incapacity may vary over time, and that "where a protection measure is necessary, it must be proportionate to the degree of capacity of the person concerned and adapted to the individual circumstances and needs". At the same time, Principle 14 of the same Recommendation speaks of the fact that the decision for the protection measure should be made for a limited duration and should also be subject to periodic review.

It is also important to note that, the Court mentions and takes into account the conceptual distinction made by the Convention on the Rights of Persons with Disabilities between the person's legal capacity and their mental capacity and that "perceived or actual limitations in mental capacity should not be used as a justification for denying legal capacity" (Article 12, as interpreted by the Committee on the Rights of Persons with Disabilities in General Comment No. 1/2014).

Thus, the Court holds that, in order for the rights of persons with disabilities to be respected and guaranteed, any protection measure must be proportionate to the person's degree of capacity, be adapted to the person's specific needs, take into account the person's wishes, be ordered only if other measures have not proved effective and sufficient, be decided for a limited and finite period in time and be subject to periodic review.

In the light of those considerations, the Court observes that the Civil Code works with absolute values and neglects intermediary values, thus leading to a situation in which any possible impairment of mental capacity results in the deprivation of the capacity of exercise, even if such a measure is not appropriate in the light of the concrete needs of the person concerned.

For this reason, the Court points out that the provisions of the Civil Code are in a "paradigmatic disharmony" (paragraph 36) with those of the Convention on the Rights of Persons with Disabilities, because while the latter operates with intermediate measures, focused on the support and assistance of the person, the Civil Code is based on a substitution regime and on absolute values, such as to exclude the possibility of measures that are proportionate and adapted to the concrete needs of the person.

With regard to the issue of the duration of this measure and the need for its regular review, the Court points out that even in these respects the criticized legal norm does not meet the requirements highlighted above and

indicates that the legislator must regulate as this form of protection to be arranged on intervals of time that must be “fixed, predetermined, easily quantifiable, flexible and without having an excessive duration, allowing the periodic review of the measure in an efficient and coherent way.” (Paragraph 40)

The importance of proportionate measures that can be adapted to the individual's particular needs is underlined by the Court by pointing to the case law of the European Court of Human Rights in the matter under consideration. In this regard, reference is made to the judgments of the European Court in A.N. v. Lithuania, ECHR, 2016, paragraph 123, Shtukaturov v. Russia, ECHR, 2006, paragraph 94. Also, with regard to the character as *ultima ratio* measure, which results in the loss of the capacity to exercise of the natural person, the Court refers to the judgment of Ivinović v. Croatia, ECHR, 2014, paragraph 44.

In this context, the Court points out that in the absence of the above guarantees, the person's lack of capacity to exercise his rights and obligations would mean "affecting one of the supreme values of the Romanian people, namely human dignity, which, according to the case law of the Constitutional Court, is the source of fundamental rights and freedoms, as well as the guarantees associated with them." (paragraph 44)

LEGISLATIVE AMENDMENT OF THE CIVIL CODE FOLLOWING THE ADMISSION OF THE CONSTITUTIONAL CHALLENGE

Following the admissibility of the constitutional challenge, the unconstitutional provisions shall cease to have effect within 45 days from the date of publication of the decision of admission of the challenge, if the Parliament or the Government do not bring the provisions declared unconstitutional in accordance with the provisions of the Constitution, during which period the provisions declared unconstitutional are suspended. Consequently, as the legislative amendments did not take place within the time limit set by law, the provisions of the aforementioned article ceased to apply.

At this moment, the Civil Code has not yet been amended in accordance with the recommendations of the Constitutional Court, but the essential step in this regard has been achieved by drafting the Draft Law for amending and supplementing Law No 287/2009 on the Civil Code, Law No 134/2010 on the Code of Civil Procedure (available at https://www.just.ro/proiectul-de-lege-pentru-modificarea-si-completarea-legii-nr-287-2009-privind-codul-civil-a-legii-nr-134-2010-privind-codul-de-

procedura-civila-precum-si-a-altor-acte-normative/), as well as other normative acts (hereinafter referred to as the Draft or Bill). It is important to mention that the Draft was not limited to the amendment of the provision of law declared unconstitutional, but the legislative amendment is quite comprehensive, in order to integrate the Court's recommendations and to adapt and correlate the new provisions in the field of protection measures of natural persons with those already existing and those that are influenced by it. In our presentation, we shall therefore limit ourselves to analyzing the provisions of the Draft concerning the new content of art. 164 para. (1) of the Civil Code and those which are new and innovative in terms of legislation.

In order to clearly highlight the legislative evolution in this matter and the way in which the recommendations of the Constitutional Court have been included, we will now present the content of article 164 of the Civil Code, as formulated in the Draft.

> Thus, according to art. 164 para. (1) Civil Code, as formulated in the Draft, a person who is unable to look after their own interests because of a temporary or permanent, partial or total impairment of mental faculties, established following a medical and psychosocial assessment, and who needs support in forming or expressing their will, may benefit from legal counselling or special legal guardianship, if this measure is necessary for the exercise of their civil capacity, on an equal footing with other persons.

Reading the content of this paragraph, the first thing we can notice is the abandonment in the new legal framework of the very name of the protective measure, namely "judicial interdiction", which is replaced by the two protective measures that can be requested for the person in need of support, namely judicial counselling and special legal guardianship. We also note that the legislative proposal no longer uses the terms with medical connotations of alienation and mental weakness, which have been replaced by the expression “deterioration of mental faculties”, which may be temporary or permanent, partial or total. Further, the text provides that protective measures may be ordered if the adult person, who cannot look after their own interests, needs support in forming or expressing their will in the legal relationships in which they enter. The paragraph concludes by emphasizing the idea that these measures will be taken so that the person concerned can enjoy his civil capacity on an equal footing with others, thus ensuring that the person concerned will not be subjected to discriminatory treatment, in accordance with the constitutional provisions and those of the Convention on the Rights of Persons with Disabilities in this matter.

Further, para. (2) of Article 164 of the Civil Code, as formulated in the Draft, provides that a "Person may benefit from judicial counselling if the deterioration of their mental faculties is partial and it is necessary to be assisted or counseled continuously in the exercise of their rights and freedoms."

It is easy to see that this paragraph contains, in fact, the legal provision that was claimed to be legislated when the constitutional challenge was formulated and the main reason why it was granted, namely it is the one that enshrines the intermediary measure of protection for persons whose discernment is only diminished and not totally abolished. Therefore, judicial counseling can be applied if the individual suffers from a partial impairment of mental faculties, a decrease in discernment, a mental state that does not completely incapacitate the person, but which causes the need of support in certain areas of legal and social life.

Judicial counselling, as well as special legal guardianship, responds to the recommendations of the Constitutional Court and international normative acts on the proportionality and adaptability of these protection systems to the particular needs of each person. These characteristics and their value are further enhanced by other normative provisions contained in the text of the Draft in art. 168 para. (4) Civil Code and art. 104 para. (3) and (4) of the Civil Code. Taking these into account, the court is offered the possibility to individualize the protection measure applied according to each case, being able to determine, depending on the degree of autonomy of the protected person, the degree of impairment of discernment, their specific needs, the circumstances in which it is found, the categories of documents for which it is necessary to be approved by the legal guardian or, as the case may be, for which he needs representation from the legal guardian. Moreover, the same text provides that the court has the prerogative to order that the protective measure refers only to the person of the one protected by this measure or only to his property. Further, if we read the following paragraph, we note that the legislator expressly states that in relation to legal acts for which the court has not indicated the need for approval or representation, the legal capacity of the protected person shall not be affected or diminished.

Next, para. 4 of Article 164 of the Civil Code, in the lines of the Draft, regulates the second measure of protection that may be ordered by the court for the person in need. Thus, a person may benefit from special legal guardianship if the deterioration of their mental faculties is total and it is necessary to be continuously represented in the exercise of their rights and freedoms. We find in this content that special legal guardianship is a protective measure that may be ordered by the court if the person's mental faculties are

completely impaired, discernment is totally abolished and the person is unable to self-manage, constantly needing of representation in order to exercise their rights and freedoms. This is the measure that will replace the one that, once the Civil Code is amended by this Bill, will have been the measure of judicial interdiction. It is a measure with more serious effects on the capacity of the person to exercise his rights and obligations, but, bearing in mind that their degree of autonomy is much reduced or even non-existent, such a measure is necessary to ensure that their rights and obligations are exercised under optimum conditions, in such a way as not to cause any harm.

The Draft also takes into account the international provisions in this field and the recommendations of the Court in this regard, namely the subsidiary nature of judicial counselling and special legal guardianship, or even that of *ultima ratio*, when we talk about the latter. Thus, these requirements are contained in paragraphs 3 and 5 of 164 of the Civil Code and in para. (5) of article 104 of the Civil Code, in the text of the Draft, which regulate the subsidiary nature of these systems of protection, which will be applicable only if adequate protection of the protected person cannot be ensured by deciding on curatorship, in the case of judicial counselling, or by curatorship or by placing the person under judicial counselling, in the case of special guardianship, or any other measures that could support the individual in the proper exercise of his rights and obligations.

The draft also includes the Court's recommendation on the issue of the duration of protective measures and the need to review them periodically and provides in article 168 of the Civil Code, in the formulation of the Draft, that the measure of legal counselling may not be provided for a period exceeding three years, and that of special guardianship for a period exceeding five years, with the possibility of extending the latter, in case of total and permanent deterioration of mental faculties, for a period not exceeding ten years. The review of the measure is provided for in para. 5 of this normative text, establishing that the guardian of the person must refer the matter to the court whenever he thinks that a reassessment of the situation is necessary and at least six months before the expiration of the duration for which the measure was ordered.

Also, in consideration of the values enshrined in international normative acts on persons with disabilities provisions and the recommendations of the Constitutional Court in this regard, the Draft, in Article 104 para. (3) of the Civil Code, also provides guarantees that the protection measures must be taken with respect for the rights and freedom of the person and their dignity, and that these protection systems must be

understood as support mechanisms for the individual, exclusively in their favour, in such a way as to preserve their autonomy and enable the person to act independently.

CONCLUSIONS

In our opinion a reform in this field was most needed in order to ensure that the measure of judicial interdiction, as it still appears in the Civil Code, to be transformed so that it fulfils its main purpose, namely that of protecting the person against whom the measure is ordered. We believe that the legal framework set out in the draft law is such as to provide adequate protection for persons who suffer from a lack of discernment and who need to be assisted in carrying out the legal relations in which they enter and it ensures the necessary guarantees, both in terms of the effects that the protective measures will have for the person in question and also because it is expressly stipulated that the measure of protection must be periodically reviewed in order to determine whether it should be further maintained or not. Thus, in our opinion the protective measures provided for in the draft are optimally regulated, respecting the parameters recommended by the Constitutional Court in the matter, thus being the optimal solution so that the protective measures are both useful and effective. We believe that they are designed in favour of the person for whom the protective measure is ordered and in such a manner as to offer support tailored to the person's needs and, depending on the degree of impairment of their mental faculties, to encourage them to manage independently in all social and legal matters in which they are capable of doing so, on an equal footing with other subjects of law, while respecting their dignity and their other fundamental rights and freedoms.

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THE RIGHT TO FREE SPEECH IN ROMANIAN CRIMINAL LAW, BETWEEN FREEDOM AND SANCTION

Paşca Ioana-Celina, Ph.D
West University of Timişoara, Faculty of Law
ioana.pasca@e-uvt.ro

Abstract
The present article analyzes, from both the perspective of the incriminations found in the Romanian Criminal Code and of the European Court of Human Rights, the limits of freedom of expression in the sphere of relations between individuals, legal entities and media as well as the limitations applicable to direct participants in criminal proceedings.
Romania is currently facing an exacerbated tendency to resolve conflicts between individuals through social networks, which generates the premise of harming the rights of others. Domestic disputes as well as those pending in the courts are sometimes reported in the written press, which thus proclaims a person's guilt before it has been established by a final decision of the court.
In 2006, the Romanian legislator decriminalized insult and slander. Subsequently, in 2014, it decriminalized the crime of pressuring the judiciary. Thus, the Romanian Criminal Code relinquishes the protection of human dignity through criminal law procedures by decriminalizing these offences, in the context in which the evolution of technology and, implicitly, the degree of information dissemination, should lead to an increase of legal means of protecting the reputation of the individual.

Keywords: Freedom of expression, honor, reputation, criminal sanctions, crimes against dignity.

INTRODUCTION

The right to freedom of expression, regulated in art. 10 of the European Convention on Human Rights, is not an absolute right. The right to freedom of

expression, like other rights, such as the right to privacy, guaranteed by art. 8 of the Convention, are equally protected by law and are not ranked according to hierarchy.

The right to free expression is rather a principle, which, under certain conditions, bears a number of exceptions. Exceptions to this principle may not, whether directly or indirectly, infringe any other human rights enshrined in the Convention. It is therefore for the national legislature, upon criminalising an act, to find a balance between the protection of the right to freedom of expression and other rights guaranteed by the Convention.

In Romania, the right to defend a person's reputation, as a part of private life, can be defended only before civil courts, which in turn will have to determine themselves, in order for the deed to be sanctioned, whether the act itself would fall within the scope of civil wrongdoing or wheter the conditions of tortious civil liability could be met.

The Romanian Criminal Code, in force since 2014[33], definitively renounces the chapter "Crimes against human dignity", but, unfortunately, it does not regulate any crimes that defends the dignity or reputation of a person in any other chapter.

The crimes of insult and slander have been decriminalized since 2006, without the Romanian legislator's attempt to adopt any normative act by which to incriminate offences in the press or denigration in the online media.

An attempt to criminalize crimes of opinion could be perceived in the regulation of the crime of pressuring justice, which was repealed[34] in the same year in which the Criminal Code became valid. The crime of pressuring the judiciary was a novelty for the Romanian legislation and was appreciated as necessary in order to ensure the fairness of judicial proceedings and, implicitly, to guarantee the principle of the presumption of innocence.

In recent years, technology has redefined the notion of "social conflict" and transposed social controversy into another format. Social networks have become privileged means of human interaction, tools that allow the dissemination of information to a significant number of people, similar to the number of readers of the written press. In this context, we take note of the effort of national courts to adapt the existing regulations to sanction the publication of untrue information on social networks in order to denigrate a number of individuals.

[33] The Romanian Criminal Code was adopted by means of Law no. 286/2009, published in the OJ, Part I no. 510 of 24 July 2009 and entered into force on 1 February 2014.

[34] Article 276 of the Romanian Criminal Code was repealed by means of Law no. 159/2014, published in the OJ, Part I no 887 of 5 December 2014.

FREEDOM OF EXPRESSION AND ITS LIMITS IN THE WRITTEN AND ONLINE PRESS

As we mentioned in the previous chapter, in the absence of criminal provisions that protect values such as the right to one's image and privacy, the analysis of the right to free expression and its limits rests exclusively with the civil courts.

The Romanian Civil Code enshrines and protects the right of every person to his own image and dignity through the provisions of art. 58 paragraph 1 ("*Everyone has the right to dignity, to his/her own image, to privacy as well as other such rights recognized by the law"*), art.72, paragraphs 1 and 2 ("*Every person has the right to have his/her own dignity respected. Any harm to the honor and reputation of a person, without his consent, is prohibited ...*") and art.252 ("*Every natural person has the right to the protection of the values intrinsic to the human being, such as ... dignity ...* ").

The national courts, when analyzing the interference with a person's right to privacy in order to protect their reputation and image, distinguish between natural persons, respectively legal entities and the media.

The distinction is not regulated by law, but it can be made as a result of a constant practice of the European Court of Human Rights and, implicitly, of national courts, which have ruled greater limits on the exercise of freedom of expression by journalists, who, in the interest of informing the public, can resort to a certain dose of exaggeration, even provocation. In the case of the written press, the court will balance the right of the article to respect the image and reputation with the public interest in freedom of expression, an interest in which journalists play an essential role.

In the content of their articles, journalists cannot formulate personal, untrue, insulting and defamatory assessments that do not form the object of a general, public interest, which is likely to harm a person's honor and dignity and to publicly accrediting an unfavorable image. The publication of an article and its maintenance on the website of a newspaper causes a continuing violation of the right to image and dignity, a prejudicial fact that gives rise to the right to claiming damages for emotional distress.

The indication or mentioning of the fact that the written article "is a pamphlet and should be treated as such" cannot in any circumstances justify the publication of untrue data and the use of vulgar, offensive language that exceeds the limits of a satirical writing which would only be aimed at the promotion of certain attitudes, political conceptions or negative aspects of life,

which are not found in the mentioned article. In fact, if the pamphlet contains untrue information, it is no longer a pamphlet, but a slander, an insult.

The use of offensive expressions in an article cannot be considered a stylistic process inherent in the genre of the pamphlet, as it can impermissibly damage a person's image and dignity, and thus cannot be justified in any way. The European Court of Human Rights has consistently held that the right of journalists to communicate information on matters of general interest is protected, provided that they act in good faith, based on real, "reliable and accurate" factual data (ECHR, Lindon, Otchakovskv-Laurens and July v. France, 2007 §45; ECHR, Brasilier v. France, 2006 §36; ECHR, Cicad v. Switzerland, 2016 §58). The Court also stipulates the obligation of journalists to verify the related information. It is therefore for the national courts to determine whether the permissible limits of the 'challenge' have been exceeded by using offensive expressions in a widely-read publication.

In another case, the European Court of Human Rights (ECHR, Lingens v. Austria 1986 § 46; ECHR, Dalban v. Romania, 1999 §48) points out that freedom in the written press also includes recourse to a certain amount of exaggeration, even of provocation, meaning that "it is inadmissible for a journalist not to be able to make critical value judgments solely under the condition of demonstrating the truth".

The court makes a distinction between facts and value judgments. If the materiality of the facts can be proved, the value judgment may be excessive (ECHR, Morice v. France, 2015 §126). In this case, the courts' discretion is limited to society' s interest in allowing the press to play its indispensable role as a "watchdog" and to exercise its ability to provide information on matters of general interest.

FREEDOM OF SPEECH. INDIVIDUALS VERSUS LEGAL ENTITIES

The European Court of Human Rights makes a clear distinction between the freedom of expression of individuals and that of journalists. Unfortunately, we do not find the same clear distinction in the practice of the Court or in the practice of national courts, in relation to the limits of admissible criticism between individuals and legal entities.

The Court considers that in the case of public persons, respectively of companies performing an activity of public interest, these limits are wider, the degree of tolerance being different than in the case of natural persons. A person who carries out an activity of public interest inevitably and consciously exposes himself to a careful control of the facts and gestures both by the media

and by the public (ECHR, News Verlags GmbH & Co.KG v. 2000 §54; ECHR, Verlagsgruppe News GmbH v. Austria, 2006 §36; ECHR, Von Hannover v. Germany, 2012 § 110).

From our point of view, the distinction between natural and legal persons whose reputation has been infringed must be made in terms of proving the non-pecuniary damage suffered by the violation of the right to one's reputation. The reputation of a natural person, and even more so, of a legal person, is difficult to assess in monetary terms.

When it comes to the infringement the moral values of a natural person, if it is proven by the use of offensive words or expressions, it is not necessary to prove a concrete damage, because it is essential to respect a person's dignity, honor, image; an infringement of these values automatically supposes a moral damage, which must be repaired if the damage is not excusable.

With regard to the proof of non-pecuniary damage in the case of natural persons, in the practice of national courts it was ruled that the proof of the wrongful act is sufficient, following that the damage and the causal relationship are presumed, the solution being determined by the subjective, internal nature of the non-pecuniary damage, its direct proof being practically impossible (Bucharest Tribunal, Decision no. 1017/2021).

Unlike the attainment of the moral values of a natural person, in the case of the professional reputation of a legal person there are no such reasons, so that it cannot be concluded that the existence of a certain injury does not have to be proved. As a result, the injured party must prove the concrete value that has been infringed, to bring forward precise, reasonable and verifiable elements, with regard to the alteration of the prestige of the company by the alleged wrongdoing. Only in this way can the causal link between the alleged act and the damage to that value be concluded.

In the same sense, the High Court of Cassation and Justice decided on Civil Decision no. 373/24.02.2016, which states that "the field of non-property rights granted to legal entities is restricted to those subjective rights that the legal entity may have according to law." As a result, it is not possible for the legal person to obtain moral damages for the infringement of any non-patrimonial right.

The possibility of granting non-pecuniary damage cannot be artificially extended from the natural person to the legal person, as the legal person cannot claim a mental or physical suffering caused.

The mere statement of the legal person that their professional reputation has been infringed, that their perception by the clients or acquaintances has changed, cannot lead to the conclusion that the alleged

injury has genuinely occurred. It is evident that it is not necessary to prove unequivocally the extent of the non-material damage suffered in the context in which, by allegations of serious gravity, a significant damage to a person's image and reputation has occurred, since the damage suffered as a result of defamatory information in the virtual space is difficult to quantify, it being impossible to distinguish and quantify the way in which the initial information has been retrieved and disseminated in the virtual environment.

However, in our view, the person alleging non-pecuniary damage should indicate, in concreto, the extent of the damage caused, the manner in which the defamatory allegations caused damage to their personal non-property rights, the manner in which these materialized or elements which would allow the ascertainment of the actual existence and extent of the damage caused, so that the court can assess the amount that would constitute a fair fulfillment for the moral damage caused.

FREEDOM OF EXPRESSION AND THE CRIMINAL CONSEQUENCES OF VIOLATING THIS RIGHT

The Romanian Criminal Code, valid since 2014, maintains its option not to protect human dignity through criminal law procedures, choosing to keep insults and slander decriminalized. In fact, the Romanian Criminal Code definitively relinquishes the chapter "crimes against human dignity" and does not provide in any other chapter a crime that protects the dignity or the reputation of any person.

Both crimes of insult and slander, incriminated in the Romanian criminal legislation by the Criminal Code of 1864 and that of 1936[35], or of 1968, have been the subject of several legislative disputes in recent years. Although the incrimination of these deeds that harm human dignity was appreciated as "a guarantee of the provisions enshrined in the Constitution of 1965" (Dongoroz 2003, 379), in the year 2006, by Law no. 278/2006 on amending and supplementing the Criminal Code, the crimes of insult and slander were abrogated.

Subsequently, the Constitutional Court, by Decision no. 62 of January 18, 2007, admitted the exception of unconstitutionality, finding that the provisions of art. I, point 56 of Law no. 278/2006 on amending and supplementing the Criminal Code are unconstitutional.

[35] Both the Criminal Code from 1864, and the Criminal Code from 1936 incriminated insult under the name of "injury".

In the motivation of its Decision, the Constitutional Court shows that the decriminalization of these crimes contradicts the provisions of art. 1 of the Romanian Constitution; what is even more, "a regulatory vacuum is created, contrary to the constitutional provision that guarantees human dignity as the supreme value" (Constitutional Court, Decision no. 62/2007). Consequently, the rights of the personality, i.e. a person's right to honor and reputation remain without a real and adequate protection.

The intervention of the Constitutional Court with regard to the law abrogating the crimes of insult and slander was interpreted very differently at the level of national courts, some courts deciding on convictions for insults and slander, while other courts, considering that these provisions are no longer valid, decided on acquittals in such cases.

Subsequently, the High Court of Cassation and Justice, examining the appeal in the interest of the law formulated by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, by Decision no. 8/2010 considers that the crimes of insult and slander are not in force, despite the intervention of the Constitutional Court. In this context, it appeared predictable that the new Criminal Code, in force since 2014, would reliquish the criminalization of insult and slander.

In our opinion, the decriminalization of these deeds violates the principle of free access to justice, but also the right to a fair trial, provided by art. 6 and 13 of the Convention, as free access to justice means not only the possibility to apply to the courts, but also the possibility to benefit from legal means worthy of protection of the violated right.

In recent years, we have witnessed media trials in Romania, in which the press has the role of accuser, judging both the defendant and the magistrates in very harsh terms. In this social context, the negative impact of these attempts to intimidate or undermine the authority of the judiciary cannot be neglected, while the European Court of Human Rights is showing a strong tendency to curb the excesses of show-justice, since "a disputed article could not in any case constitute a matter of general interest on which the public must be informed"(Udroiu and Predescu 2008, 239). The media-trials are often continued by Internet users, who express their point of view, more or less documented, on the subject reported by the journalist. The person referred to in the article is thus exposed to media lynching. The media exposure of the points of view is also done through social networks.

An attempt to curb these media lynchings was the criminalization of pressure on justice[36] in the chapter "Crimes against justice". Although a new crime for the Romanian legislation, it was abrogated in the same year in which the Criminal Code entered into force.

The Romanian legislator thus incriminated the act of making unrealistic statements, inconsistent with reality, intimidating, likely to create a state of pressure on the judge or on the criminal investigation bodies. In our opinion, regulation was necessary, all the more so since crimes against dignity were abrogated.

In the context of technology evolution, society was faced in recent years with actions of creating an account on social networks by using a pseudonym, a nickname or a different profile name to the account holder, with negative consequences, which are detrimental to the dignity of the real account holder. The information published on these social media accounts is, most of the time, untrue and has a harassing character. These actions were supported by the lack of national regulations recognizing the right of the individual to maintain control over his or her representation in the online environment and to criminalize digital identity theft. The digital identity belongs, we consider, in the category of personality rights provided by art. 58 of the Civil Code, which stipulates that "every person has the right to life, health, physical and mental integrity, dignity, self-image, respect for privacy, and other such rights recognized by law" .

By a recent decision, the High Court of Cassation and Justice - Panel for resolving legal issues - (Decision no. 4/2021) ruled that "*the act of creating and using an account on a social network open to the public, while using as username the name of another person and entering real personal data that allow its identification, meets the essential requirements of the crime of forgery provided in art. 325 Criminal Code*".

The intervention of the Court of Cassation and Justice is welcome in the context of the lack of incrimination of digital identity theft. However, the incrimination seems rather adapted to the need to sanction identity theft on the Internet, given the fact that the main social value protected in this case is the public trust in virtual data; only as a corollary does it also protect the right to privacy, despite the fact that, in most situations, what is actually primarily

[36] Article 276 of the Criminal Code incriminated *the act of an individual who, during an ongoing legal proceeding, makes false public statements regarding the perpetration, by the judge or by the criminal prosecution authorities, of an offense or of a serious disciplinary violation related to the investigation of the cause in question, in order to influence or intimidate*.

infringed upon by creating an account on a social network using untrue data is precisely the the infringement of a person's right to privacy.

CONCLUSIONS

From the perspective of the rights and freedoms protected by art. 10, whose limits have been established by the jurisprudence of the European Court, persons have the right to express opinions, ideas, opinions and criticisms, without these being likely to prejudice the moral values of a person.

Concomitently, the violation of the right to a person's image must benefit from adequate legal means to protect the infringed right. In our opinion, the protection of these rights cannot be done exclusively by the civil courts, the provision of criminal sanctions is also necessary.

The state has the obligation to legislate, to intervene in the relations between private individuals, so that the non-patrimonial rights of a person are protected (Tebieş 2019, 70). A person's reputation is difficult to assess in monetary terms, and the risk of civil courts ruling on manifestly disproportionate solutions as to the amount of non-pecuniary damage awarded is obvious. In the analysis of the amount of patrimonial reparation of the moral damage suffered, i.e. the damage of certain values without economic content and the protection of some non-patrimonial rights, the existence and extent of the damage are circumscribed to the condition of subjective assessment of the court.

On the other hand, the lack of criminal sanctions can be an encouraging factor for those who want to slander. Pecuniary risk is a risk that somebody can asume with relative ease if they want to discredit another person no matter the cost. Civil courts currently face a significant number of cases involving the violation of personal non-property rights. Judicial practice unequivocally proves that the current non-criminal regulations are insufficient and inefficient, and the regulation of criminal means to achieve this aim would be the only viable solution.

The right to privacy, the right to a person's image, the presumption of innocence can be seriously affected by the actions of a user of a social platform. In the face of systematic defamatory actions committed via social networks, the Romanian legal system has not been reformed, but rather has adapted to the need of ensuring the individual's right to privacy, image and also the right to maintain control over their representation in the virtual environment, as a digital person.

The decriminalization of crimes against dignity creates a legislative vacuum that cannot be overcome only by the means provided by civil law. The benefit of the doubt is ineffective when the state does not provide legal guarantees to suppress the media's violation of this principle.

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ALLIANCE AS THE BASIS OF SMALL COUNTRIES SECURITY POLICY

Hatidža Beriša
Slavko Ćurčić
berisa.hatidza@gmail.com
slavkocurcic@yahoo.com

Abstract
The authors start from the definition of small states, from the aspect of the diversity of criteria for their definition and the models they can develop for survival. Small countries have an interest in protecting themselves from the absolute domination of the great powers by treaties, by linking them to the application of international principles or by the international law. The focus of the work is to look at the model of alliance in order to protect the vital national interests of the state, especially for the states that are neutral as they try not to participate in the conflict with other states, specially from the military actions and then from other activities, which in certain historical periods are considered incompatible with neutrality.

Keywords: actor, security, vital interests, state, alliance, neutrality, conflicts

THE STATE AS AN ACTOR OF THE SOCIAL COMMUNITY

In the development of society, the state is the most important social organization. The modern state was developed in Europe between the 16th and 18th centuries, although the term state originated at the end of this century. In its development, it has always shown new forms, and we experience the need for the development of a modern state every day. The state is a social community and at the same time a political entity that has sovereignty, does not have any higher political power above it, has a population, territory, power and the ability to create relations with other states. According to the Encyclopaedia Britannica, "the state is a political organization of society or a political community, or rather, an institution of government"[37], and according to another, the state is a form of political community that differs from others

[37] The Encyclopaedia Britannica, Gleventh Editim, http:// www. arcive.org/

in that it is not incorporated into any other political associations, although it can do so if there is a need for that. It is, therefore, the supreme entity, because it is not included in any other person, although it can be subordinated to other forces (such as another state or empire)[38].

The modern state lives from the possibility of adaptation and development. The term "state" has three meanings. The first is to define the state as a totality of government institutions and officials. Second, the state in international relations means sovereign power over a certain population living in a certain territory. Third, a state is sometimes called a substructure of a country (as the United States consists of fifty states, and Germany of sixteen). Max Weber meant the state as an organization that has a monopoly on the legitimate use of physical force.

The modern state has shown significant civilizational results. It overcame confessional wars and, by establishing a central power, ensured internal social peace. The state rationalized its polics, so that it ensured its permanence, strength and spiritual connection. The permanence of the demand is hard borders that previous political communities did not know. Thus, the first state element was created, the state space, the state territory, which became the first condition for the formation of the state.

The territory thus determined, with a firm border, had to be defended by a single state force, which had to guarantee security to the people (who lived in that territory). Tight borders meant the end of nomadic politics. The state retained the use of force as its exclusive right. The task of the state was to ensure internal balance between different groups that can always become warring parties. This led to the pre-formulation of the notion of sovereignty. It becomes an exclusive feature of the state represented by the head of state who is the representative of the entire nation in democratic systems.

Thus, arose the second element of the state, a centralized state power. At the end of the 18th century, democratic revolutions highlighted the third element of the state, the state people. Both concepts, state and nation, regardless of the way they are united, are inseparable. All modern states are trying, with more or less success, to connect these two concepts.

NOMINAL SOVEREGINTY

The international order established after World War II emphasized the sanctity of international borders. In our time, a certain "geographical" area as

[38] Chandran Kukathas, http:// elassce. Austlil.edu/am/journals/UqlawJI/2014/21pdf

a component of state activity is increasingly losing its legal and practical significance and is increasingly losing its significance as a "place of action". The authority and legitimacy of nation-states have changed. Moreover, as global and regional institutions acquire an increasingly important role, the sovereignty and autonomy of the state diminish more and more. According to Claus Offe, a German contemporary sociologist of Marxist orientation, "there is a widespread feeling that sovereignty has become nominal, power is anonymous, and its place is vacant. In the new conditions, part of the power is transferred from the state level to the wider, that is, levels of regional and global organizations. It is absurd that the number of nation-states is directly increasing, but at the same time their power and influence are decreasing. There is more and more talk about the loss of sovereignty and the taking over of state functions by other actors. Sovereignty today is divided between national, international and sometimes regional authorities. The new rise of the European structure of the state is reflected in the common currency, the army and the work on a common constitution. Sovereignty today can be understood less as a territorially defined border, and more as a political bargaining of resources within a complex transnational network. The de-sovereignization and marginalization of the state under the notion of globalization does not apply to all states and people equally. In that process: "The political elite of the superstate is behaving in a contradictory way in their country and abroad. In its own country, it strengthens the state and maintains democracy in some elementary patterns, and on the side of a weak other state, it also installs its governing stations under the guise of introducing democracy and democratization of those countries.

In other countries, under the auspices of civil society institutions, parallel political organizations are being created that are supported, programmed or directed from outside and act, often in addition to, ie against, the interests of those countries.[39]

Multinational companies are eroding the sovereignty of states by the ability to move their capital - by investing and withdrawing capital. D. Held points out the extent to which globalization is carrying out the economic de-sovereignization of states: "Globalization is transforming national economies in such a way that the national economic space no longer coincides with

[39] Legitimnost, legalnost, civilno društvo, u: između autoritarizma i demokratije, book 2, Civilno društvo i politička kultura, Cedet, Beograd, 2004

national territorial borders."[40] The economic sovereignty of a state is threathend by a supranational organization to which it delegates part of its sovereignty by accepting the rules of the game. The economic sovereignty of a state is also threathend by transnational financial institutions (IMF, World Bank), multinational corporations, globalization of the world market, the development of information and communication technology (internet, satellite television) and global problems that the state itself is not able to solve (environmental problems, terrorism).

The increase in the power of the financial market, as well as the increase in trade, force governments to adjust and harmonize pro-market policy, tax policy, but often also to increase borrowing. There is irresponsibility of national elites in borrowing, because mandates pass, and debts remain and increase for future generations. The same is true for the elements of the state people, the citizens. Modern migration movements lead to the interference of certain "peoples of the state". People gradually became more mobile, either for their own needs or through national or international oversight.

A long time ago, after Marx in 1882, Nietzsche announced the death of the state, and politicians, lawyers and trade unionists accepted this idea, but interpreted it in a way that suited them. It is true that the traditional notion and type of state, as in the past and today, is questioned from different angles: internationalization of traditional tasks of the state and mutual contractual dependence of individual states, movements of supranational integration, creation of blocs, states and establishment of large economic spaces of action, emergence of communication spaces free from state control (internet) by anarchization of society, etc. Despite the significant limitation of the sovereignty of states in the process of globalization, "the state is still the main actor in international relations and the process of globalization. What distinguishes the state from other subjects of international relations is the territory, the fact that it occupies a certain part of the Earth. The people who make it up are called residents or citizens (population), and the center of decision-making in the state is the government.[41]

The survival of the state is unquestionable, not only as a means against anarchy, but also because pluralism of peaceful imposition binds systems. Aristotle's argument against Plato's idea of a single state is still valid, in a

[40] Held, D, Debate o globalizaciji, u Globalizaciji mit ili stvarnost, Sociološka hrestomatija priredio Vladimr Vuletić, Zavod za udzbenike I nastana sredstva, Beograd, 2003

[41] Dimitrijević, V, Stojanović R. Osnovi teorije međunarodnih odnosa, Službeni list SRJ, Beograd, 2006

figurative sense. "The state is by nature a multitude." According to many authors who deal with this topic, the state will still be one of the most important factors in the success of a society and a foreign policy actor on the international scene in the future. Certainly, it will not be the only factor of its success, but certainly one of the most important, because so far we have no alternative to it, as opposed to it. The only question is with which strategy of adjustment and expansion we will have to make it effective and expanding in the future. A nation-state is not dissapearing, its role is already being transformed. The state was and remains a need, both for its citizens and for the international order.

(IN) EQUALITY OF STATES

The Peace of Westphalia of 1648 laid the foundations of a modern community. There were various changes in the time during the established order, but it has been maintained to this day. In that historical period, the Holy Roman Empire was reorganized into a group of approximately 335 sovereign and independent states and states over which the Emperor retained only nominal authority. From then until its end in 1806, the assembly of the empire made decisions unanimously. The principle of legal equality of all sovereign states has been established, regardless of their power, significance and size. Each member state has acquired the sovereign right to maintain relations and conclude agreements with third countries. However, the Empire was not an organization of collective security that would guarantee the territorial integrity and political independence of all its members in cases of either external or internal attack.[42] The accompanying elements of the Peace Treaty were the balance of power and the maintenance of a fragile peace in Europe. Every sovereign state had the right, either alone or in association with others, to protect itself from the danger of the hegemony of a power that would jeopardize that balance of power and respect for the sovereign equality of states, sometimes severely disturbed, to the extent that it seemed to them the end has come. The reason for this violation can be found, even in the famous statement of the Athenian envoys addressed to the citizens of the small town of Melija, Thucydides states in his Peloponnesian war (431 BC), when they asked Melia to join Athens, that is, to practically surrender or be destroyed. The Athenians stated: "Justice (ie

[42] Beriša , Dzeletović M, Jonev K, "*Security risks of Globalization"*, Confernce proceedings of the international scientific conference „ Towards a beter future: The rule of democracy and polycentric developrment", Bitola, 11-12 may 2018, Makedonija, str. 189-198

international law) in this world applies only to those who are equally powerful. Because the powerful always do what they can, and the weak endure as much as they have to". Among the other things, in the time of Emperor Napoleon I, that equality did not really exist in continental Europe. The system and the principle of sovereign equality of all states wanted to abolish the Axis power in the Second World War with their "new order" and the Tripartite Pact from the 1940. The Atlantic Treaty of 1941 proclaimed opposite principles, that is, between states and peoples, and those principles were one of the reasons, although not the only one, the defeat of the Axis powers in the Second World War. Even during the Cold War and the block division of the world, the principle of sovereign equality of all states was not consistently respected, until the fall of the Berlin Wall. The principle of equality was not represented in military and political alliances, because in them, only one member was more powerful than all other communities. When the disintegration of the block division of Europe became inevitable, the representatives of all countries participating in the European Conference on Security and Cooperation in 1990 signed the "Paris Charter for a New Europe". That document announced and propagated a new era of democracy, peace and unity. The part which deals with friendly relations between the participating countries confirms the obligation to fully respect the principles from the Helsinki Final Act of 1975, noting that these principles will be applied equally and without reservations. However, the principles, in the first place, speak of sovereign equality and respect for the rights essential to sovereignty. The first paragraph of that principle reads: "The participating States shall mutually respect sovereign equality, in particular as well as all rights essential to and encompassed by sovereignty, including the special right of each State to the right to equality, territorial integrity, freedom and political independence. It will also respect the right of each of them to freely choose and develop their political, social, economic and cultural system, as well as the right to enact their own laws and other regulations. But, at the end of the previous century, the world has changed profoundly again, so that the Paris Charter today seems to be a predominantly utopian document. The bloody conflicts in the former Yugoslavia, Chechnya and the Middle East, as well as the events of September 11, 2001 in the United States, the intervention in Afghanistan, etc., contributed significantly to that. The United States may have contributed the most, especially since they remained one of the world's superpowers. The balance of power in the international community has disappeared. In that country, it is openly and constantly advocated, and for now it succeeds, that one type of rule applies to the United States and another

to the rest of the world. This was evident in completely open vocabulary and deeds during the administration of President Donald Trump, and especially in recent events, the intrusion of protesters into the Congress building and the statement on that occasion by newly elected President Joseph Biden and their closest associates.

SMALL "FORCES"

The theory of international relations in the last hundred years indicates a general trend of changes in the international order, which is reflected in: - reduction of the total leading, ie most powerful forces, - increase in the number of medium and small states and between the first and second groups, that is, between the most powerful forces and others.

It is usually indicated that in international communication, the state has two goals: to impose its interest (to make an impact) and to defend itself from other countries influence (independence, autonomy). Here we are interested in small and medium-sized countries. But, as is the case with many other political and social notions, it is not easy to give a general definition of what medium or small countries are in the international order. There is no generally accepted and satisfactory definition.[43] The application of the term small or medium for a country already implies the hierarchization of states, which deviates from the function of legal equality and equality of all sovereign subjects in international law.

A small country, in a significant period of state development, was considered any country that was not a great power. Through the evolution of international relations, the meaning of that term has changed, and new concepts are appearing in modern theories in order to describe the real power of a state. Terms such as small powers, middle powers, and, on the other hand, micro-state and mini-state, also appear as synonyms of small state.[44]

Each of these categories has certain specifics, advantages and limitations when it comes to foreign policy action. The difference is that a "small country" is defined as a country that has a greater opportunities to

[43] Mike Handel divides states into: mini states, weak states, medium powers, great powers, and superpowers. He also defines small and medium-sized countries negatively as "those countries are not great powers".

[44] Today, "micro" countries are mainly those countries whose population does not exceed 1.5 million, and for "small" countries it is arbitrarily proposed that it be countries with less than 15 million inhabitants. Some authors believe that instead of size, the division of states into "central" and "peripheral" countries is much more relevant, depending on their position in the geopolitical and economic system.

influence international relations in the future, than would be expected, given its characteristics. These are territorially and relatively small countries in terms of population, which, however, have the potential to act, which far outweighs these territorial demographic shortcomings. The notion of "small forces" shows the duality of their position. Unlike small countries, "small powers" have the potential to influence the international system. They gained opportunities there through alliances with superpowers or membership in international organizations, such as the EU and NATO.

"SMALL COUNTRIES"

Small countries have an interest in protecting themselves from the absolute domination of the great powers by treaties, by invoking the application of international principles or international law. In order to protect themselves from the sheer force of the more powerful, small countries apply various tactics and strategies. Small countries traditionally strive to create alliances with larger powers that will provide them with greater protection from the arbitrariness to which any, even international politics, is prone.

The first international organization to try to guarantee the territorial integrity of its members was the League of Nations. That international organization was dominated by great powers. Small countries, thus, could not be protected from the aggression of the country on the eve of World War II, although some of the smaller countries tried to protect their territory by neutrality. The creation of defensive alliances (Little Entente, the Balkan Alliance, etc.) did not give them success either.

The ideas of democracy, self-determination and equality of people and states became dominant after the Second World War, that is, after the collapse of fascist and nazi ideology. The benefit of the UN further guarantees the equality of all member states of the international community, as well as the right to self-determination of the people in the colonies. This was to be made possible by the UN Charter and the Security Council, as well as the entire UN mechanism. War has been declared an illegal means, except in cases of collective or individual defense. The Cold War and the rivalry between the two ideological oppositions of the bloc have largely limited the effectiveness of the UN.

However, the principles of principled equality of all member states have been implemented (at least formally) in bloc organizations such as NATO, ie the Warsaw Pact. On the other hand, the process of decolonization and the emergence of a new organization of states in the 1960s and later (such

as the Non-Aligned Movement) provided additional opportunities for smaller and medium-sized countries to group, to some extent, more effectively realize their own interests. Thus, a relatively small country, such as SFR Yugoslavia, was able to conduct a kind of world diplomacy in the non-aligned movement, which significantly strengthened its international reputation and position in relation to the great powers. With the end of the Cold War, many small countries in the Third World have ceased to be just little pawns on the chessboard in the global game of great powers. The complexity of today's international system, which, in addition to sovereign states, includes new participants, such as regional organizations and non-state actors, the complexity of areas and topics dealt with by states, give smaller and medium-sized countries more room to build a network of ties and alliances.

When analyzing the position of small and medium-sized countries, one should also keep in mind the specific situation in some regions (continents), which can be viewed as specific international subsystems. Thus, relations in Asia and the Middle East are most reminiscent of the classic "power relations" policy of 19th century Europe. South America, traditionally, has not had many interstate conflicts, classic wars, as opposed to frequent internal social conflicts and guerrilla warfare. Africa, more than any continent, is burdened with interests of military conflicts and the phenomenon of weak and failed states. In Europe, a regional subsystem has developed that most favors a more stable, prominent position of small and medium-sized states. The main advantage that small and medium-sized countries have within the EU is based on the fact that the EU is a transparent political and legal system, which operates on the basis of clearly defined rules and on the principles of compromised agreements and harmonization of the interests of all its members, regardless of differences in size between states.

From the beginning, the construction of the EU, ie the former communities, considered the relationship between large and small countries. The original "six" founders of the European Economic Community (EEC) consisted of three larger countries - FR Germany, France and Italy, two small countries - Belgium and the Netherlands and one very small, but a country - Luxembourg. This fact was also considered during the successive enlargements of the EU, both in terms of the formation of the main bodies of this integration, and in terms of the decision-making process. Differences in size are thus considered when determining the number of members of Parliament and in terms of the number of members of the European Commission. On the other hand, every country has had at the highest political level only one member of the European Council. The way of organization and

functioning of individual EU bodies is such that they balance the position and relations of larger and smaller member states in the EU, ie they provide a certain protection to smaller ones in relation to larger states.

On the other hand, some newer concepts developed in the United States and other Western countries, such as the possibility of "preventive attack", "humanitarian intervention", as well as the relativization of compliance with UN rules, indicate the still sensitive and exposed position of small and medium countries. who do not have the protection of major powers or regional military alliances.

THE ALLIANCE AS A MODEL

"Since it cannot shape its environment by force, a small country must rely on a series of strategies that suit its capabilities and characteristics."[45] In a relatively peaceful order, the power and influence of a country will not arise only from its bare strength, ie size, but also from other elements that can enable the state to realize its interest and influence outside its own borders, both on the ground as allies and partners. and wider.

Small countries have a specific foreign policy. Hey performs the following characteristics:

- insisting on the "moral aspects" of international relations, such as international law, principles, etc.
- focus on multilateral cooperation and multilateral organizations - taking neutral positions
- relying on great powers to protect and secure resources and vital national interests and
- focus on cooperation as to avoid conflict.
- a relatively narrow range of international topics that are important to them - the use of diplomatic and economic instruments, instead of military instruments

Francis Domingo claims that, in terms of military power, small states have limited ability if they rely on their own forces and are unable to conduct long-term defensive operations against external threats. He further states that small states have a limited range of interests and minimal influence on the balance of power in the international arena. On the other hand, strengthening

[45] The RMA Theory and Small States by Francis Domingo, page 47, link: https://www.researchgate.net/publication/274897244

internal power and providing external assistance are also two very important elements of a small country's strategy.[46]

Small states can develop the following categories of survival strategy in the system of international relations:

Membership in international organizations: As noted earlier, international organizations are key to the strategy of small states because of the promise of formal equality and collective security provided by organizations restraint of great power.

Independence: Using the diplomatic means of a small country to secure its national interests and appeal to the global opinion needed in situations where they face violence and conflict. Diplomacy combined with modest military power can enable small states to resist the ambitions and pretensions of great powers. According to Francis Dominic, one example of an independence strategy is neutrality.

Balancing: Balancing is defined as behavior in which a country seeks to offset risks by pursuing multiple policy options aimed at producing opposing effects, under high uncertainty and with a large stake.[47] According to Randall Schwelar, balancing is a type of relationship that aims to protect already acquired values, while an alliance, in addition to protection, aims to acquire new values.[48] Lela Chikovani defines balancing as behavior that seeks to prevent the pursuit of systemic imbalance, ie, when deterrence fails, it seeks to restore the disturbed balance.[49]

In any case, balancing poses a great risk to the country that applies it and its successful implementation depends on the interests of the great powers at a given moment. It is largely in the interest of the great powers to maintain balance in a certain region, because then they will succeed in the balancing strategy while otherwise the balancing strategy may end in a loss for the balancing country. So, this type of strategy can be successful on a case-by-case basis, but it should not be the primary commitment of a country.

Alliance: Joining an alliance, whether it is an alliance between small states or an alliance with a great power or forces, is one of the key strategies of small states. The idea that the distribution of resources and power between

[46] How to stop the bear: Strategy of Smal States by Lela Chikovani, page 19.
[47] Meeting the China Challenge (Washington, D.C. Eastwest Centar Washinton, 2005)by Evelyn Goh, page 2-3)
[48] http://www.reserchgate.net/publicational/245580359
[49] How to stop the bear: Strategy of Smal States by Lela Chikovani, page 25.

states is the key that determines the direction of the state's security policy is very widespread and accepted in international relations.[50]

According to Francis Domingo, states unite for two reasons: to prevent more powerful states from dominating a particular region or continent, and as protection against external threats.[51] These circumstances limit states to two possibilities of alliance. The first way is to join an alliance, in order for the state to protect itself from another state or coalition whose greater resources could become a threat. An example of this type of strategy could be the Baltic countries joining the North Atlantic Treaty Organization (NATO) in order to protect their national interests from the Russian Federation. With the collapse of the Soviet Union, these three countries (Estonia, Lithuania and Latvia) saw EU and NATO membership as a key strategy for the protection of their national interests, given their geostrategic position, the length of the border with the Russian Federation.

Another way is to conclude an agreement or pact with another, at that moment the most acceptable, great power. A good example of this strategy is Sri Lanka, a country that is positioned on a strategically important position in the Indian Ocean, located at the crossroads.[52] Realizing the full range of threats in the post-World War II period that emerged with India's growing expansionist desires as well as the potential threat and pressure from growing communism in the region, Sri Lanka signed an agreement with the United Kingdom, which enabled the British military presence in the country and thus secured itself from the growing threats in the region.

On the other hand, with its British military presence, Sri Lanka, which is setting itself up as a bastion of anti-communism in Asia, has provided military security to the British government, from the growing communist threat. Therefore, this is not about joining or creating a new alliance, but about an agreement between states that provides mutual security benefits.

According to the number of contracting parties, the alliance can be divided into bilateral and multilateral. According to the predominant content on political, economic and military. According to the purposes on: defensive, offensive and mixed, and according to the nature on secret and public.

[50] http:// dx.doi.org/10.5539/ass.vlln28p212, page 215.)
[51] The RMA Theory and Small states by Francis Domingo, page 49.
[52] http:// dx.doi.org/10.5539/ass.vlln28p212, page 214.)

NEUTRAL STATES

From the very beginning of international relations, there have been situations in which two or more states have been in series of conflicts, while other states have tried to avoid participating in these or any conflicts, based on their own interests.

Examples are numerous, starting from ancient Greece and the first testimony of Thucydides about the Greek polis who wanted to avoid participating in the conflicts between Athens and Sparta through the creation of the Holy Alliance and the establishment of the neutrality of Switzerland to today's examples of Austria, Finland and Serbia.

Most neutral countries opted for this status during the Second World War, ie at the beginning of the Cold War, and then there was the development of normative provisions which codified the neutral status of the state in international relations.

Permanent neutrality as a generally recognized status of the state became a part of international law through the provisions of the Congress of Vienna in 1815, when practically all European states at the time recognized the permanent neutrality of the Helvetic Conference, ie Switzerland. In this, Switzerland became a model for all future states that declared neutrality. The status of Switzerland as an internationally recognized permanently neutral state is generally treated in the literature as a traditional concept of permanent neutrality that lasted until the First World War.

In terms of international law, neutrality means non-participation of one state in the war with other states, that is, refraining from certain activities, first of all from the struggle itself, and then from some other activities which, in certain historical periods, are considered incompatible with neutrality. It refers to military conflicts and tensions, ie to basic situations of insecurity. The essential meaning of that non-cooperation is impartiality and reciprocity. Therefore, neutrality can be interrupted either by the neutral state itself or by one of the warring parties, which can be challenged or unprovoked.

Despite the fact that the passage of time has affected the obsolescence of the content, postulates and provisions of the Hague Convention 5- On the rights and obligations of neutral states in the event of war on land from 1907, this document still contains basic characteristics of the status of neutral states during war:

- The territory of neutral states is inviolable,
- The warring parties are prohibited from using the territories of neutral states for the transport of their troops and war equipment,

- It is forbidden to use the territory of a neutral state for troop mobilization

- Neutral states must not help the warring parties and must treat all warring parties equally, etc.

Also, a state that has declared itself neutral in relation to war must be impartial in relation to all warring parties, regardless of their own values and ideological affiliations. In this way, a system was established that all signatory states should have respected in the event of an international conflict (at least in theory).

Despite everything, all permanently neutral states have the right to self-defense, as well as the right to call on another state for help if their status is endangered. In that sense, the right to neutrality under arms is defined, that is, the right for a neutral state to separate other countries from potential aggression through its own military power. It should be added to these conditions that permanent neutrality can be recognized formally and informally, through an international agreement or without documented international recognition. A unilateral statement (for example, Iceland in 1918) or a government announcement that it will lead to political neutrality (Sweden, and more recently Ireland and Finland) is not enough to establish secret neutrality, although such a statement may, in fact, lead to the same results. Namely, if any state firmly advocates a policy of neutrality, and modern international law prohibits the start of war, there is a sufficient probability that that neutrality will be maintained.

The concept of neutrality was introduced into the political life of the Republic of Serbia for the first time by the Resolution on the Protection of Sovereignty, Territorial Integrity and the Constitutional Order of the Republic of Serbia, which was adopted by the National Assembly at the end of 2007. Article 6 of this resolution established that from that moment on, Serbia was "a military neutral country towards the existing military alliances."

Serbia has thus officially defined itself as a military neutral country towards the existing military alliances and established an elite new foreign policy orientation of the state. This orientation, it seems, is widely accepted by the fact that it has not been performed and explained in detail. This left enough room for different interpretations of military neutrality

. The policy of neutrality differs from another neutrality of the state and is conditioned by the situation

CONCLUSION

As the main actors in international relations, states have historically continuously imposed on each other for a prominent place in the hierarchy of world powers. For more than three centuries, world politics has largely been a chronology of preparations, conduct and recovery from interstate wars. Military power was equated with prestige and influence, and military conquest became a way to gain both economic and political supremacy.

In the new world order, there is an intense variability of the international and geopolitical position, economic and security policies and foreign policy orientations of certain countries, which are still the most important actors in the world order.

The world is therefore in constant change, but it has been, is and will remain multipolar, if all relevant elements of superpower are taken into account.

In international relations in the last hundred years, there is a general trend of changes in the international order, which is reflected in: reducing the total number of leading or most powerful countries: increasing the number of medium and small states and deepening differences in potentials (military, economic and other) groups, that is, between more powerful forces and others. It can be concluded that the "small powers" act as franchises of their allies - great powers or superpowers, and that in regional matters they act in accordance with it. At key moments, in which their security could possibly be at stake, they know they can count on the support and help of their powerful allies.

Sometimes less sovereignty means more security, and it can also mean more influence in the international system. An alliance with a hegemonic country can, in reality, increase the power of the small country in that alliance and thus give it more influence in regional matters than it should have. An alliance with the hegemon is the best way to transform a small country into a "small power". Morgenthau states that "small countries based their independence, either on the fact of balance of power (Belgium and the Balkan countries until the Second World War) or the existence of a protective force or lack of attractiveness for conquest ambitions." Also, one more thing can be added to these considerations: the foreign policy of small countries is mostly reactive, not proactive. These countries do not initiate global changes or important events, but most often react to them.

In addition to small and medium-sized states, neutral states also participate in the creation of international policy. These are states that in

international relations try to remain impartial in relation to the warring party, that is, not to take part in conflicts and to treat all parties in the same way. According to the general and understandable formula, the maxim of permanent or permanent neutrality, according to the current situation, can be described as follows: "My country will never start a war." They will never take part in the wars of other states, regardless of whether it is a "just" or an "unjust" war. But if someone attacks us, then we will defend ourselves and, in case of emergency, connect with other countries."

The key term related to statehood is sovereignty. However, it is obvious that the previously described processes are destroying the sovereignty of individual states, and that to a large extent the decision-making on key issues in the given circumstances is transferred to the regional communities of the state, while in some aspects coordinated global action is necessary. Precisely from the aspect of sovereignty, it is interesting to see what it means for a small country to be neutral at the beginning of the 21st century and what is meant by neutrality.

Without a defined and developed concept of neutrality and without improving cooperation in the security system in Europe, ie without harmonization of actions with EU member states and the region or without continued European integration, the current situation in which Serbia finds itself is not sustainable in the long run.[53]

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[53] According to former British diplomat and Prof. Timothy Les, the Western Balkans region could become a new multiethnic entity composed of "six states", closely linked to the EU called EUslavia, led by Belgrade, during the mandate of US President-elect Joseph Biden.

5. The Encyclopaedia Britannica, Gleventh Editim, http:// www. arcive.org/
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THE RIGHT OF CONVICTED PERSONS TO BE VISIT*

Darko Dimovski, LL.D.*
Ivan Milić, LL.D.*

Abstract
One of the ways of communication and contact of convicts with the outside world is realized through the right to visit. Other rights are exercised through the right to visit. It is a right that is important for other persons who are in a certain family or legal relationship with the convicted person. The authors in this paper deal with precisely this important right. A special part of the paper is dedicated to international documents in which the right to visit was regulated, as well as the practice of the European Court of Human Rights on this issue. The central part of the paper is dedicated to the analysis of domestic legislation both in terms of ordinary prisoners and in terms of special prisoners.

Keywords: visit, convicted person, international documents, practice, domestic law

INSTEAD OF AN INTRODUCTION

Convicted persons form one group of persons deprived of their liberty, because one person may be deprived of liberty for various reasons permitted by law. Convicted persons in the Republic of Serbia serve their prison sentences in a penitentiary or in the premises in which they live (in their house - apartment). Of course, only the court decides where the convicts will serve their prison sentences. It is indisputable that it is really a great privilege for a convict if he is allowed to serve his prison sentence in the premises where he lives - for the court to impose the so-called house arrest.

If the convict has to serve the prison sentence in the penitentiary, the competent court refers him to serve the sentence. The convict has a right that no one can take away from him while serving his sentence. He can also receive extended rights and benefits while serving a prison sentence.

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* Associate Professor, Faculty of Law, University of Niš, darko@prafak.ni.ac.rs
* Teaching Assistant,Faculty of Law, University of Novi Sad, i.milic@pf.uns.ac.rs

Bearing in mind that the convict is in the penitentiary, his communication and contact is reduced, above all, only with the convicted persons. Certainly, with the employees of the institution under the prescribed conditions. Of course, that communication and contact is limited to a certain number of convicted persons.

However, a convict in a penitentiary has the right to communicate and contact with the outside world. Thus, the convict has the opportunity to communicate and be in contact with people outside the prison walls. The convict exercises this right in certain ways, such as through telephone conversations, work engagements or visits. The right to visit is exercised inside or outside the penitentiary, depending on whether they are well-behaved convicts or the most dangerous convicts who are subject to special rules when serving a prison sentence.

INTERNATIONAL DOCUMENTS AND DECISIONS ON PRISONER VISITS

Relevant international organizations have regulated the right to visit them by adopting appropriate regulations. Thus, for example, the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations at the Congress on Crime Prevention and Treatment of Perpetrators in Geneva in 1955, provided that prisoners would be allowed to maintain contact with their family members and to distinguished friends, with the application of the necessary supervision. Maintaining contacts is reflected through visits and correspondence (Article 37). If prisoners, as it is prescribed in article 38, are nationals of a foreign country, they should be supported to liaise with their diplomatic and consular representatives (Papović Miladinović, 2017: 126).

Another international document which, among other things, prescribes rules regarding the maintenance of prisoners' contact with the outside world is the European Prison Rules. Namely, they stipulate that persons deprived of their liberty have the right to communicate, without restriction, by letters, telephone or otherwise with their family and other persons (Rule 24.1). At the same time, it is possible to limit communication and visits if required by the requirements of continuing the criminal investigation, maintaining order, safety and security, crime prevention and protection of victims. However, restrictions, even imposed by a judicial authority, must allow for a minimum level of contact (Rule 24.2). It is up to the states to establish with which domestic and international bodies and officials' prisoners can communicate without restriction (Rule 24.3). During the visit, conditions should be provided that allow prisoners to maintain and develop family relationships in the most normal way possible (Rule 24.4). Prison services have an obligation, as required by Rule 24.5, to assist prisoners in maintaining contact with the

outside world, while providing them with material assistance to make those contacts.[54]

In addition to the above documents, the United Nations Convention on the Rights of the Child should also be mentioned. It stipulates, in Article 3, that in all activities concerning children, whether undertaken by public or private social welfare institutions, courts, administrative bodies or legislative bodies, the best interests of the child shall be a primary consideration. This principle was also applied when regulating the manner of maintaining contacts of children who grow up without one or both parents. In this regard, we will mention Article 9, paragraph 3, which stipulates that children growing up without one or both parents will be allowed to maintain regular personal relationships and direct contacts with both parents, unless it is contrary to their best interests.[55]

It is also necessary to mention certain judgments of the European Court of Human Rights in Strasbourg, which may be important for considering the right to visit prisoners. We will therefore mention the judgment of Lavents v. Latvia.[56] An applicant named Lavents, a businessman by the way, was in custody due to machinations in the bank of which he was the director. He was prevented from contacting his wife and daughter while he was in the institution. The Court reiterates that, although any lawful detention by its nature implies a restriction on the private and family life of the person concerned, it is nevertheless necessary to respect family life in which the prison administration and other competent authorities help to maintain contact with the immediate family. As his wife and daughter were not allowed to visit him while he was in prison, the Court considers that the prohibition of family visits constitutes an interference with the applicant's right to respect for his family life, guaranteed by Article 8 § 1 of the Convention. Such interference does not lead to a violation of the Convention, if prescribed by law, pursues at least a legitimate aim under Article 8 § 2 and may be considered a measure necessary in a democratic society. Consequently, although restrictions on detainees' family visits may be justified by a number of factors - the risk of collusion or evasion, witness protection, the need to ensure the smooth conduct of investigations - it is also necessary that these restrictions be based on pressing societal needs and remain proportionate to legitimate aims. The competent national authorities must therefore show efforts to find a fair balance between the requirements of the investigation and the rights of detainees. In particular, the duration of the ban on family visits and its scope are factors that must be taken into account in order to determine the

[54] European Prison Rules, Council of Europe, Belgrade, 2006, pp. 19-20.
[55] Convention on the Rights of the Child, UNICEF, Belgrade, 2005, pp. 9-12.
[56] Lavents v. Lettonie, app. no. 58442/00

proportionality of this measure. In any case, an absolute ban on visits can only be justified in exceptional circumstances.

In the present case, the Court finds that the applicant's wife and daughter were not allowed to visit him for three separate periods, whereby the prohibition being absolute. The domestic authorities claimed that the applicant's wife had had a visitation permit in one case, but that she had not visited the applicant. In this connection, the Court notes that no document in the file corroborates this assertion. At the same time, before returning to prison, the applicant spent more than eleven months imprisoned in his home, where contacts with his family were unlimited. The court concluded that the applicant had not attempted to use this period of contact with his family members to organize any collusion or obstruct the investigation. In these circumstances, the Court is not persuaded that the application of such a strict measure was indeed essential to the achievement of the legitimate aims which it might pursue. This measure was therefore not necessary in a democratic society, as required by Article 8 § 2 of the Convention. Consequently, there has been a violation of Article 8 of the Convention.

On the other hand, in the case of Van Der Ven v. Netherlands[57] in which the Court ruled that the restriction of the right to contact with the family at the time of deprivation of liberty was legitimate and necessary to prevent the commission of criminal offenses, to obstruct an investigation or to protect other public interests. Namely, in the mentioned case, it was an applicant who was accused of a number of criminal acts, including murder, grievous bodily harm, rape, etc. He spent most of his pre-trial detention in an institution with maximum security, where he was sent to serve his prison sentence in an institution with the same level of security. The applicant argued that a large number of security measures in force, in particular the systematic search for tapes, but also the monitoring of his telephone conversations and correspondence, as well as the daily inspection of his cell, had left no room for privacy. He further complained about the conditions under which the visits of his family members had to take place: behind a glass partition without the possibility of physical contact, except for handling once a month in the case of his immediate family.

The Court reiterates that any detention, which is lawful within the meaning of Article 5 of the Convention, by its very nature implies a restriction on private and family life. Although it is an essential part of a prisoner's right to respect for family life, as emphasized in the case of Messina v. Italy (no. 2),[58] that the prison authorities assist him in maintaining contact with his family, the Court recognizes that when a certain measure of control is sought

[57] Van Der Ven v. Netherlands, app. no. 50901/99
[58] Messina v. Italy (no. 2) (dec.), app. no. 25498/94

over the prisoners' contacts with the outside world and is not in itself incompatible with the Convention. In the present case, the applicant had been subjected to a regime which entailed further restrictions on his private and family life than the regular Dutch prison regime. In addition to being examined daily by his cell, in addition to reading correspondence and monitoring telephone and visitor conversations, he was allowed to associate with only a limited number of prisoners, and was separated from visitors by a glass partition. There was an exception to this rule, which was reflected in the possibility of one open visit per month to members of his immediate family, whereby he was allowed to shake hands at the beginning and end of the visit.

There is no doubt that such conduct interfered with the applicant's right to respect for his private and family life within the meaning of Article 8 § 1 of the Convention. This brings us to the question of whether this interference was in accordance with the conditions of Article 8 § 2 of the Convention. The Court notes that the restrictions were based on appropriate normative frameworks, and accordingly finds no indication that the restrictions were not in accordance with the law. It also accepts that they pursued the legitimate aim of preventing disorder or crime within the meaning of Article 8 § 2 of the Convention. At the same time, the Court notes that the applicant was placed in an appropriate institution because the authorities thought that he was likely to try to escape. Although it is not for the Court to assess the accuracy of this allegation, it accepts that the authorities were entitled to consider that the applicant's escape would pose a serious risk to society. Within these restrictions, the applicant was able to receive visitors for one hour each week and to have contact and participate in group activities with other prisoners, albeit in limited numbers. In the circumstances of the present case the Court finds that the restrictions on the applicant's right to respect for his private and family life did not go beyond what was necessary in a democratic society to achieve legitimate aims. Accordingly, there has been no violation of Article 8 of the Convention.

In the practice of the Court, it is possible to find decisions that deal with visits of children to the parent. Thus, in the judgment in Sabou and Pircalab v. Romani[59] one of the applicants was convicted of defamation, with an additional measure reflected in the suspension of his parental rights while serving a prison sentence. In this connection the applicant complained of a violation of Article 8 of the Convention. The court pointed out in the judgment that it emphasized that the prohibition on existing parental rights imposed on the first applicant constituted an interference with his right to respect for family life. The question is whether the interference was in accordance with a legitimate aim. The government, on the other hand, stated that the purpose of such a measure is to preserve the safety, morals and education of minors.

[59] Sabou and Pircalab v. Romania, app. no. 46572/99

Based on that, the Court emphasized that it is crucial to determine what is in the best interests of the child, which leads us to the conclusion that these interests must be considered before all other issues. Only especially unworthy behavior, as it was emphasized, can be taken as a reason for depriving individuals of parental rights and in the best interest of the child. As in the specific case it was a criminal act of defamation, it had nothing to do with the issues of parental responsibility and at no time was any complaint filed due to lack of care for their children or abuse. Under domestic law, the ban on exercising parental rights is applied as an additional measure to any person serving a prison sentence, regardless of the crime committed, without considering the interests of the child. It follows from the above that this measure is a moral reprimand against the convicted person, rather than a measure that protects the child. In view of these circumstances, the Court considers that it has not been shown that the deprivation of parental rights of the first applicant, in absolute terms and in the application of the law, meets the most important requirements in the best interests of children and is therefore consistent with a legitimate aim for the protection of the health, morals and education of minors. Accordingly, there has been a violation of Article 8 of the Convention in respect of the first applicant.

ON THE RIGHTS OF PRISONERS TO VISIT IN DOMESTIC LAW

In the Republic of Serbia, there are more than thirty penitentiaries in which the sentence of imprisonment imposed on a defendant in criminal proceedings is served, but there are also other persons who have been deprived of liberty on various legal grounds. This does not mean that all persons deprived of their liberty are in the same legal position, but their position is different.[60]

Although the Law on Execution of Criminal Sanctions[61] is the basic source, which regulates the rights and obligations of persons deprived of their liberty, this does not mean that there are no other special regulations that apply to individual persons deprived of liberty. In this regard, there are special

[60] According to the report of the Council of Europe entitled Council of Europe Annual Penal Statistics, there were 11,077 prisoners in the Republic of Serbia at the end of January 2020, compared to 10,871 a year earlier. In this regard, it is important to note that the penitentiary system is overloaded, because in 100 vacancies, there are 107 convicts (Aebi, Tiago, 2021: 10). According to the latest published data from February 2008, there are an average of 9,500 persons deprived of their liberty in institutions for the execution of institutional sanctions, as follows: 6,100 convicted, 2,150 detained, 450 under mandatory treatment, 300 punished in misdemeanor proceedings, 170 under execution. to the Correctional Facility, 50 detained juveniles, and 200 convicted and 80 detained women (Annual report on the work of the Administration for the Execution of Institutional Sanctions for 2007, 2008: 9).

[61] Law on Execution of Criminal Sanctions, Official Gazette of RS, no. 55/2014 and 35/2019

regulations that apply to persons serving a sentence of juvenile imprisonment, there are special regulations when it comes to the execution of detention, security measures, mandatory psychiatric treatment and custody in a health institution, etc. This leads us to the conclusion that, depending on the reason for deprivation of liberty, the rights of persons during deprivation of liberty also depend.

There are two categories of convicts in penitentiaries in the Republic of Serbia. The first category of convicted persons is the one to which only the Law on Execution of Criminal Sanctions applies (these are the so-called ordinary convicts), while the second category is subject to the law which is Lex specialis - the Law on Execution of Imprisonment for Organized Crime[62] (it is about the so-called special or most dangerous convicts).

THE RIGHT TO VISIT ACCORDING TO THE LAW ON THE EXECUTION OF CRIMINAL SANCTIONS

The Law on the Execution of Criminal Sanctions (hereinafter LECS), but also the bylaws that are based on it, are, logically, the most important regulations that contain provisions on visits by convicted persons. Regarding the right to visit ordinary convicts, several types of visits can be distinguished, which differ primarily in terms of who has the right to visit a convict, how often, where the visit takes place, how long it lasts. It is also very important whether the convict visits, or the convict visits. So, the so-called. ordinary convicts, the Law on Execution of Criminal Sanctions applies, as well as bylaws adopted on the basis of it. Certainly, other legal acts are also important for the convicted person. Also, it should be pointed out that there is individualization among ordinary convicts, which means that they are divided into certain groups, on which their legal position in the penitentiary depends.

This part of the paper will discuss the right of convicts to receive visits while serving a prison sentence. In this regard, we will see who, when and how often can visit the convict.

The right of a convict to visit by a family member is very important to him. In this way, the convict maintains contact with family members. It is also a way for the convict to find out what is happening in the outside world (the world above the prison walls). The visit is also important for the family members of the convict, because it is one of the ways to contact the convict. Although we say that this is an important right for a convict, it means almost nothing for those convicts who do not have a family, who have cut off contact with their families or convicts who do not want family members to visit them.

[62] Law on Execution of Imprisonment for Organized Crime, Official Gazette of RS, no. 72/2009 and 101/2010

According to the article 45 of Rulebook on House Rules of Penitentiary Institutions and District Prisonst the convict has the right to visit his spouse, children, parents, adoptive parents, adoptive parents and other relatives in the direct line and in the collateral line up to the fourth degree of blood and in-laws, as well as foster parents, foster parents and guardians twice a month. Therefore, the regulations determine the circle of persons who are considered a family member. However, the director of the institution may also approve visits of other persons to the convict.

The visit to the convict is performed on Saturdays or Sundays and on non-working public holidays from 9.00 to 17.00. The visit lasts at least one hour. The duration of the visit for more than one hour is approved by the director of the institution.

The visiting room must be spacious, clean, lighted, heated as needed, ventilated, with appropriate sanitary facilities and an appropriate number of chairs and tables. The visit can also be done in suitable open spaces in the institution.

The institution is obliged to display data on the time and conditions of the visit in a visible place. All visits are recorded in the visit book. Data on the persons who will visit the convict are entered in the convict's visit card. If the information provided by the convict about the persons who will visit him is incorrect, the convict will be disciplined.[63]

Visits by counsel or attorney are also important for the convicted person. The question of the visit of a defense counsel or attorney certainly depends on whether a defense attorney or attorney is needed by the convict. So, it depends primarily on the fact that criminal proceedings are being conducted against the convict or that he needs a proxy in order to engage in some other procedure.

Defense counsel, attorney or a person called by him for the purpose of giving a power of attorney visits the convict during working hours. The visit is carried out in a room suitable for exercising the right of the convict to visit a defense counsel or a proxy or a person invited by him for the purpose of giving a power of attorney. The visit of the defense counsel, attorney or person invited by the convict to give a power of attorney shall be entered in the appropriate records of visits (article 91of LECS and article 46 of the Rulebook on House Rules of Penitentiary Institutions and District Prisons).

There should certainly be foreign citizens in prisons in the Republic of Serbia who have been deprived of their liberty on various legal grounds. In connection with the visit, LECS stipulates in the article 92 that a foreign citizen

[63] On disciplinary punishment of convicted persons, see Milić, I., Dimovski, D., Punishment of convicted persons - disciplinary measures, Proceedings of the Faculty of Law in Novi Sad, no. 1/2016, pp. 219-231. Drakić, D., Milić, I., Determining the truth in a disciplinary procedure conducted against a convict while serving a prison sentence, Proceedings of the Faculty of Law in Novi Sad, no. 2/2016, pp. 475-491.

has the right to visit a diplomatic and consular representative of the country of which he is a citizen, ie a state that protects his interests, and a convict whose interests are not protected by any state has the right to visit competent bodies and organizations. international organizations. The convict gives written consent to this visit. The diplomatic-consular representative of the foreign state and the representative of the competent international organization will inform the institute in writing about the date and time of the visit.

The so-called marital visits are also important for convicts. The convict has the right to stay with his spouse, children or other close person for three hours once in two months in special premises of the institution. We see that in the positive regulations of the Republic of Serbia, the circle of persons with whom the convict has the right to stay in a special room is expanding. The special room of the institution must be spacious enough, heated, lit, with the necessary furniture, bathroom and adapted for the stay of children. The convict does not have this right while serving a disciplinary measure of solitary confinement (article 94 and 95of LECS).

The convict may be visited once a week by a clergyman or other religious official. According to the LECS, this right is considered a religious right. If there is a sufficient number of convicts of the same religion in the institution, at their request, in accordance with the Law, the director of the institution will allow a clergyman or other religious official of that religion to visit them regularly or to have regular service or teaching in the institution.

If a person is well-governed in a penitentiary, a convicted person can be granted an extended right to receive visits. According to the article 129 of LECS convict, who is particularly well-governed and advocates and makes progress in the adopted program of treatment, the director of the institution may assign:

1) extended right to the number of visits;

2) extended right to a circle of persons who can visit the convict (further relatives, friends and others);

3) extended right to receive visits without supervision in the premises for visits;

4) extended right to receive visits in special premises;

5) extended right to receive visits outside the institution.

The scope of the extended right depends on the group to which the convict is assigned. It is logical that the best convicts (convicts who govern themselves best) have or can get the largest scope of this extended right. For example, a convict who is assigned to groups A1 and A2 - is allowed to receive visits outside the institution for eight hours - twice a month.

In order to enable only those persons who have the right to visit the convict and so that it is not possible to bring into the penitentiary the things that are forbidden (especially things that the convict cannot have in the

penitentiary), it is logical that there are and certain rules for "visitors". The identity of the visitor is determined and he is entered in the book of visits.

The visitor is searched before entering the visiting room. The personal search is performed by an official of the same sex as the visitor, in a way that respects the dignity and keeps the personal belongings of the visitor. If the visitor does not agree to the search, the visit will not be allowed.

If a visitor or a convict endangers order or safety by his actions or condition, the director of the institution or a person authorized by him may refuse or interrupt the visit. In case the visitor tries to bring in illegal items or items, the visit will be interrupted or not allowed. Items found during the search that are likely to be related to a crime are confiscated from the visitor and the regional police body is immediately notified. A record shall be made of the temporarily seized items (article 47 of the Rulebook on House Rules of Correctional Institutions and District Prisons).

A convicted person may be allowed to leave the penitentiary for a certain period of time while serving a prison sentence. One of the reasons for leaving the penitentiary is a visit to family members. Thus, a convict may be allowed to visit a certain number of his family members. Whether the convict will have this special right-convenience depends on his conduct. That is, which group is assigned to him. It is logical that this benefit should be given only to those convicts for whom there are fears that they will abuse this right (that they will commit a crime or that they will not return to the penitentiary). There is also individualization with regard to this special right-convenience, because the best convicts are allowed to spend more often and a larger number of hours with family members. For example: A) A convict who has been assigned to group A1 - a visit to family and relatives is allowed on weekends and holidays for a total of up to 120 hours per month, and in a month in which a non-working state or religious holiday is up to 144 hours, B) is a certain group B2 - a visit to family and relatives can be approved on weekends and holidays for a total duration of up to 48 hours per month, and in the month in which the non-working state and religious holiday is up to 72 hours. C) convicted persons serving a prison sentence in a closed ward (groups V1 and B2) do not have the opportunity to exercise this extended right-benefit.

THE RIGHT OF SPECIAL CONVICTS TO VISIT

Until 2009, in the Republic of Serbia, there was only the Law on the Execution of Criminal Sanctions, as the only law that regulated the execution of a prison sentence. However, that year the Law on the Execution of Imprisonment for Organized Crime was passed. This is the Law that applies to the "most dangerous convicts", who have been convicted, viewed from the

legislator's point of view for the most serious crimes.[64] These are parts of organized crime, terrorism, etc. However, this does not mean that this law is automatically applied to convicted persons due to the most serious crimes, but after a final verdict, a special procedure is conducted in which it is decided whether the convicted person will be sent to serve his sentence in the Special Department. in the Special Department, this law applies to him. Of course, there are special rules as to whether the convict will serve the entire sentence in that special ward.[65]

Life in the Special Department is different from the life of a convict to whom this law applies. In this regard, there are specifics regarding the visit to the convict. It is important to note that the Law on Execution of Imprisonment for Organized Crime provides that, unless otherwise provided by its provisions, the provisions of the Law on Execution of Criminal Sanctions apply accordingly to serving a prison sentence in the Special Department. and a special rulebook on house rules - the Rules of Procedure of the Special Department for Serving Imprisonment for Organized Crime.[66]

Bearing in mind that these are special convicts, whose rights differ from those of ordinary convicts, the right to visit also differs. This difference refers primarily to the number of visits, the duration of the visit as well as the manner in which the visit is performed.

The convict has the right to visit close relatives once a month. Exceptionally, the director of the institution, with the consent of the president of the court, ie the authorized judge, may approve an individual visit of other persons. The course of the visit is audio-visually monitored and recorded, except in the case of the visit of defense counsel, the Protector of Citizens and representatives of international organizations dealing with the protection of human rights. The convict has the right to a visit lasting no longer than one hour. The duration of the visit for more than one hour is determined by the director of the institution. Thus, the duration of the visit differs from that of ordinary convicts. The problem is that it is not prescribed how long the visit can last.

The visit is performed on Saturdays or Sundays and on public holidays from 9.00 to 17.00. Data on the time and conditions of the visit stand out in a

[64] With regard to convicted persons, and with regard to the legal regulation, we can distinguish between "ordinary convicts" and "special convicts", which depends on which law is applied to them during the execution of a prison sentence (Grujić, Milić, 2015: 820).

[65]On the referral of convicts to serve a prison sentence, see Milić, I., Referral of convicts to serve a prison sentence and the possibility of postponing the execution of a prison sentence, Proceedings "Criminalistic - Criminological Research - Status and Perspectives, Banja Luka, 2015, p. 283-293.

[66] Rulebook on House Rules of the Special Department for Serving Prison Sentences for Organized Crime, "Official Gazette of RS", no. 18/2010, 43/2013, 76/2017 and 8/2020.

visible place. It is also prescribed that the visit to the convict be performed in a room that must be clean, lit, heated as needed, ventilated, partitioned with safety glass, equipped with means of communication and chairs. When close relatives visit the convict, the visit is performed in a room that is not partitioned with safety glass.

Defense counsel or attorney visits the convict during working hours. If another criminal procedure is conducted against the convict, the defense counsel representing the convict in that procedure shall visit the room that is not partitioned with safety glass. The visit of the defense counsel or the attorney is entered in the appropriate record of visits. At the same time, the convict has the right to be visited once a month by a priest. The visit of the clergyman is performed in the visiting room and can last for a maximum of one hour.

CONCLUSION

Bearing in mind that the purpose of serving a prison sentence is the re-socialization of the convict - his return to the community, while serving the prison sentence, the convict must be allowed to communicate and contact with the outside world. The convict has the right to visits by foreign family members for whom this right is also important. The importance of the visit is best indicated by the results obtained from penological studies. Namely, according to the research from 1972, it was concluded that prisoners, who maintain close contact with family members while in prison, have better outcomes after release and lower rates of recidivism. In order to support this finding, we will state the fact that the so-called loners were six times more likely to return to prison during the first year after leaving the penitentiary. The findings of this study are confirmed by results published in the journal Corrections Today, published by the American Correctional Association, entitled The Role of Family and Pro-Social Relationships in Reducing Recidivism. Thus, the article states that the family can be a key component in helping individuals who are released from prison. Their role is reflected in the provision of social support, but also social control, which leads to the prevention of criminal behavior.

The presented results of this research show the importance of this right for the resocialization of convicts. Therefore, it is necessary to continue with the continuous study of the implementation of this right in practice, because the presented cases from the jurisprudence of the European Court of Human Rights show that it is possible to deny convicts the right to visit not only on the basis of by the legislator inadequate normative solutions. At the same time, it should not be forgotten that the right to visit may be jeopardized by events such as the Kovid pandemic19 in which we are currently. Namely, although

the administrations of penitentiary institutions, wanting to protect the health of convicts and workers, banned any visits at one time. The question is rightly raised that such a decision of the Directorate for the Execution of Criminal Sanctions violates the provisions of the LECS regarding the right of convicts to visit. The pandemic is another circumstance that affected the scope of the right of convicts to visit, which leads us to the conclusion that it is necessary to find a balance between protecting the health of convicts and their right to have visits while serving a prison sentence.

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VICTIMS OF HOMICIDES COMMITTED BY WOMEN IN THE REPUBLIC OF NORTH MACEDONIA

Ass. Prof. Dr.sc Angelina Stanojoska
University "St. Kliment Ohridski" – Bitola, Faculty of Law,
Republic of North Macedonia
e-mail: angiest22@gmail.com
angelina.stanojoska@uklo.edu.mk

Julija Jurtoska, MSc
University of Cincinnati, College of Law, USA
e-mail: jurtoskajulija@yahoo.com

Abstract

What is the purpose of the study? In the Republic of North Macedonia, until the beginning of our research, to our knowledge, victims of homicides committed by women have not been a point of interest of the criminological and victimological thought.

Why victims of homicides committed by women? The importance of such studies is to be found into the analysis of women's quality of life. Examining the cases of homicides where women are the offenders, we extract information about the criminal situation and the relation offender – victim, which is important in knowing the actual crime genesis. What is important to point out is that women's homicides and victims are mostly found in the traditional, family area, where there was domestic violence, abuse or any other kind of conflict that could not have been resolved in any other way, such as domestic arguments, confrontation, self-defense or to others.

The data used in this research has been gathered by analyzing and collecting data from the court files of eleven (N=11) females who have committed homicide in the period between 2003 and 2014. The Republic of North Macedonia has four appellate courts on its territory and for the purposes of this research we've chosen two Appellate Courts: The Appellate Court in Skopje and the Appellate Court in Bitola, because these two courts have the highest number of court cases on a yearly level. The number of cases in the period of interest was seven (N=7) cases from the area of the Appellate Court in Skopje and four (N=4) cases from the area of the Appellate Court in Bitola. In order to be given a possibility to read and analyze the cases of women's homicide, a

long process of written and verbal contacts was needed with each of the appropriate primary courts.
The data collection sheets were constructed using as an example of a study of homicides committed by women in six American cities (see Mann, 1996). The collection of data from the court files took place in the facilities of the primary courts which were chosen for this analysis. We've been given the court files and after signing a document for protection of personal data, we've started the analysis. The colection of data started in February 2018 and ended in October 2018. The long process has been a consequence of the slow processing of our requests for an insight in the court files.
The data analysis included statistical methods (descriptive statistics and correlation analysis) in the process of testing Agnew's GST and the correlation of individual strain, negative emotions and victim-offender relations.

Key words: homicide, Republic of North Macedonia, victims, women.

INTRODUCTION: WHY DO WOMEN KILL?

For a long period of time, violence has been perceived as a gendered phenomenon, with clear differences between males and females in the process of committing violent acts and victimization (Fitz – Gibbon & Walklate, 2016). The sexist portrait of women who kill has an aspect connecting violence with hypersexuality, virginity or masculinity; and another one where a dichotomy between "good" and "bad" is made. Good – mothers, gentle, passive; bad – the whore, the deadly specie (Blum & Fisher, 1978), meaning the ones acting by their gender roles will never commit homicide.

Male violence is constituted in the cultural norms "to be a "real" man is to be ready to fight and ultimately to kill and to die" (Cockburn, 2009: 162). Actually, violence is the widely accepted attribute of masculinity (Connel, 1987; D'Cruze, Walklate & Pegg, 2006). Violence is a patterned and regular act, deeply rooted inside a society through the existing "subcultures of violence" (Wolfgang and Ferracuti, 1967), which are seen inside interpersonal relationships, the process of person's socialization and inside the system of values. All these areas are fraught with violence (Blum & Fisher, 1978). Women do not commit homicide to be the "real" women, but in most cases to free themselves from the "real" men mentioned before, and in such way escape a position of vulnerability. In those cases, it is difficult "to separate victimization from offending" (Daly and Chesney – Lind, 1988: 520).

Actually, by being a woman, in some situations and circumstances can influence the final decision of committing a homicide. Women in a gender – stratified society face challenges that directly relate to their position in the named society. Their murders are linked to a desperation from an abusive

home, traditional expectations, unbearable life situations and victimization. Experiencing low quality of life, women react in an extreme way through homicide (Jensen, 2001). Vast majority of murders when a woman commits them, occurred at home (Mann, 1996), were against intimate partners (Browne and Williams, 1993) and in most cases do not involve planning (in most cases are an impulsive act of strain and negative emotions) (Goetting, 1987; Agnew, 2006). Meaning that, when women choose their victims, they either murder their husbands, children of other family member, or the only other significant choice are their lovers (Blum & Fisher, 1978). The reasons women commit homicide are rarely one of economic reasons, and in those cases their role is secondary. With mostly them committing these crimes in a response to abuse and direct attacks (Jensen, 2001). It is what Meda Chesney – Lind defined as "criminalization of victimization" (Chesney – Lind, 2002), meaning that females can be found as victims of abuse and maltreatment and as delinquents and offenders at the same time (Chesney – Lind & Merlo, 2015).

Whenever a woman commits homicide, most of the people ask themselves how she could do such an atrocity, but the real question should be asked is how so few women choose to commit murder in an abusive situation, if we know that women are "three times more likely to be killed by their intimate partners and are accounted for 86% from all victims of domestic violence" (Chesney – Lind & Pasko, 2013: 99). Pathologizing women's violence and connecting it with the Battered Women Syndrome has led to another claims that women as domestic abusers are the same as men are, and that men are also victimized by women in domestic situations (Straus, 1977, 1990a) with rates in violence between men and women which are at the same level – having "sexual symmetry in marital violence" (Stets and Straus, 1990; cited from Dobash et al., 1992: 73) (Straus and Gelles, 1990b; Straus at al. 1980; Steinmetz, 1986), and even higher in some years (McNeely and Mann, 1990). Such claims at the end were rejected by other researches showing that "adult violence in the home usually happens from males towards females" (Dobash et al., 1992: 74). The status of an unfit mother or a fallen woman, has been changed with the one of helpless victim trying to find a way out of the helpless situation (Shaw in Dobash et al., 1995), it becoming the only explanation of female violent behavior, excluding other cases of female criminality. Oversimplifying the etiology of women's violent behavior and connecting it only with them being abused (perceiving them as the "helpless" victim).

What is data showing? Shaw (1992a) after a survey which examined a federal prison population in 1989 has concluded that there are several types of women who kill, having in mind the motive, criminal situation and circumstances in which the homicide was committed. There are women who killed after being a being a victim of domestic abuse for a long period of time;

the ones who killed acquaintance after sexual encounter; those who killed someone after a long period of drinking or doing drugs (complex criminal situation); women who have committed a *crime passionnel;* women who have killed their "Johns" or clients; those who killed during a robbery; women who killed their child or someone of their own as a result to depression, by accident, vengeance etc. (Shaw in Dobash et al., 1995). Other narratives give the dichotomy of the "bad" who are outlaws and threat for society, but are also socially demonized, and the "mad" who are passive figures, incapable of understanding their acts, psychologically debilitated, (D'Cruze, Walklate & Pegg, 2006), with traits of individual pathology (Blum & Fisher, 1978: 190).

Lisa Priest (1992) while analyzing the 11 women murderers, draws a clear line between women who were battered before committing homicide, and those who are "genuine" or "dark" (Priest, 1992). It is what Walford (1987) points out as "victims" and "true killers" and Radford (1993) as "true women victims of domestic violence" and those "women who are not battered" and are "undeserving viragos" (Radford, 1993: 195). It is not only abuse, but also alcohol and drugs, bad companion, bad luck and a bad day, psychological characteristics of the woman offender. Like a vicious circle where gender differentials allied with characteristics such as race and class, are narrowing the options women have, in material, social, emotional and psychological aspect, to a point where only murder is the "potential outcome" (D'Cruze, Walklate & Pegg, 2006: 68).

Actually, with "situating the act of murder in the normality of everyday life, and mapping the socio – cultural response to that normality", we make a better sense in the understanding process of "how the subject murderer is constructed and reconstructed over time, especially in relation to gender" (D'Cruze, Walklate & Pegg, 2006: 39).

STATISTICAL OVERVIEW OF VIOLENT CRIMES COMMITTED BY WOMEN IN THE REPUBLIC OF NORTH MACEDONIA

Women offenders in general were rarely a subject of interest in Macedonian criminological thought considering their low level of contribution to the total number of criminal offenders in the Republic of Macedonia. But, same as the global opinion of female criminality, in most of the cases, Macedonian women offenders were perceived as the "fallen" and "lost" women, because they were not fulfilling their gender obligations (starting a family or take care of that family) who are not worthy of being researched in an attempt of explaining the reasons for their criminal behavior.

Table 1: Convicted offenders' rate and convicted women rate per 100 000 criminally liable citizens, and convicted women rate per 100 000 criminally

liable women in the Republic of North Macedonia (State Statistical Office of the Republic of North Macedonia)

Year	Total number of criminally liable/responsible citizens (Age 14 years - more)	Total number of convicted perpetrators	Total number of convicted women	Number of convicted perpetrators per 100 000 criminally liable citizens	Number of convicted women per 100 000 criminally liable citizens	Total number of convicted perpetrators for violent crimes	Total number of convicted women for violent crimes	Total number of convicted perpetrators for murder	Total number of convicted women for murder
1991	2 033 964	7095	679	349	33	1309	168	*	*
1992	-=-	6660	567	327	28	1073	119	*	*
1993	-=-	6538	415	321	20	976	86	*	*
1994	1 945 932	6724	387	345	20	977	99	*	*
1995	-=-	7711	554	396	28	1303	137	40	3
1996	-=-	6341	406	326	21	1014	87	33	4
1997	-=-	4732	312	243	16	722	69	23	4
1998	-=-	6128	373	315	19	775	69	30	4
1999	-=-	6783	372	348	19	810	65	49	2
2000	-=-	6496	357	334	18	724	56	35	3
2001	-=-	5952	298	306	15	529	42	27	5
2002	2 022 547	6383	374	315	18	567	44	43	6
2003	-=-	7661	394	379	19	684	44	52	6
2004	-=-	8097	463	400	23	674	43	61	3
2005	-=-	8845	574	437	28	689	60	40	2
2006	-=-	9280	560	459	27	857	52	40	5
2007	1 667 690	9639	622	578	37	828	34	41	1
2008	1 678 404	9503	635	566	38	835	40	33	1
2009	1 689 265	9801	695	580	41	905	61	53	1
2010	1 698 313	9169	669	540	39	872	62	34	2
2011	1 706 069	9810	661	575	39	945	50	37	2
2012	1 711 140	9042	624	528	36	881	63	37	2
2013	1 717 353	9539	701	555	41	920	55	32	2
2014	1 721 528	11683	1126	679	65	924	63	34	/
2015	1 726 369	10312	865	597	50	790	61	32	3
2016	1 730 164	8172	723	472	42	761	59	28	/

Graph 1: Total number of convicted offenders and convicted women rate, total number of convicted perpetrators and convicted women for violent crimes and for murder (State Statistical Office of the Republic of Macedonia)

The only source for statistical data in the Republic of Macedonia is the State Statistical Office whose yearly publications regarding "Perpetrators of Crime" give a blurring information regarding the real situation with criminal activity in the country. And not to mention female criminality, where the publications only consist indigent data about the number of female offenders, the type of crime they've committed, the sanction they've been given and a very few demographic characteristics.

Table 1 consists statistical data about convicted women in general, and convicted women for violent crimes and murder, on a yearly level, in the period 1995 – 2016. Also, because of the lack of information regarding the natural trends of movement in the population numbers, we had to use the results of the general census of population from 1991 (for years 1992 and 1993), from 1994 (for years from 1995 – 2001) and from 2002 (for years 2003 – 2006).

The ratio between convicted men and convicted women for violent crimes (during the period 1991 – 2016) oscillates between 6.8 in 1991 as the lowest and 23.3 in 2007 as the highest. The average number of convicted women for violent crimes for this period is 69 women a year. And the ratio between convicted men and convicted women for murder (during the period 1995 – 2016) is lowest (4.4) in 2001 and highest (40) in 2007. The average

number of convicted women for murder is 3 women a year, which is around 8.6% from the total number of convicted offenders for murder.

The average Macedonian female criminal has primary or secondary education (there are cases of Roma women criminals with no education or finished fourth grade), between 25 – 35 years of age (group 1) and 45 – 60 years of age (group 2); and have Macedonian, Albanian or Roma ethnic origin. Females in most cases commit four groups of crimes: property crimes (theft, aggravated theft and fraud), violent crimes (bodily harm and grievous bodily harm), traffic crimes (endangering traffic safety) and crimes against marriage, family and youth (abduction of a child; neglecting and mistreating of a child; and non – payment of maintenance). Average female criminals are either unemployed or have uncertain employment status (changing employment positions), in most cases were abused by their intimate partners or other member of their family (especially in the cases of violent crimes committed by females) (State Statistical Office of the Republic of Macedonia, 2007 – 2016). In cases of murders, average Macedonian female offenders are from the same ethnic origin as female offenders in general are, mostly unemployed or with unstable employment, are in the previously mentioned age groups (25 – 35 and 45 – 60 years of age), and in the most of the cases their locus operandi were their home, with family members as their most frequent victims.

METHODOLOGY, DATA COLLECTION AND SAMPLE

The data used in this research has been gathered by analyzing and collecting data from the court files of nine (N=9) females who have committed homicide in the period between 2003 and 2014. The Republic of Macedonia has four appellate courts on its territory and for the purposes of this research we've chosen two Appellate Courts: The Appellate Court in Skopje and the Appellate Court in Bitola, because these two courts have the highest number of court cases on a yearly level. The number of cases in the period of interest was six (N=6) cases from the area of the Appellate Court in Skopje and 3 (N=3) cases from the area of the Appellate Court in Bitola. In order to be given a possibility to read and analyze the cases of women's homicide, a long process of written and verbal contacts was needed with each of the appropriate primary courts.

The data collection sheets were constructed using as an example a study of homicides committed by women in six American cities (see Mann, 1996). The analysis took place in the facilities of the primary courts which were chosen for this analysis. We've been given the court files and after signing a document for protection of personal data, we've started the analysis. The Data Collection Form was consisted of four different parts: 1. Offender Characteristics (Background Characteristics); 2. Victim Characteristics (Background

Characteristics and Victim – Offender Relation); 3. Offence Characteristics; 4. Court Decision and Criminal History. The analysis started in February 2017 and ended in October 2017. The long process of analysis has been a consequence of the slow processing of our requests for an insight in the court files.

RESULTS AND DISCUSSION

Maybe the most important characteristic of female perpetrated homicides is their intrafamily setting. While murder in general is a personalized crime, in the majority of cases when the offender and the victim had known each other, "female perpetrated homicides appear to be an especially intimate act." (Blum & Fisher, 1978: 192). Such victim's distribution is understandable knowing that women tend to spend more of their time in their homes and have most of the interactions with family members.

Majority of cases show that half of the victims were relatives or acquaintances or in any other way were known to the offender, and half of them were spouses or ex-spouses (Klaus and Rand, 1984; cited from Harries, 1990). Intimate victims are the ones the offender had a close relationship, such as "relatives, friends, neighbors and work associates" (Saltzman and Mercy, 1993: 66). There must be emotional intimacy between the offender and the victim so the last one can be categorized as a significant other. Emotional intimacy exists between nuclear family members, other relatives and in-laws, intimate partners (married or unmarried), boyfriends/girlfriends, regardless of whether they've been living together or not.

The term intimate partner homicide is gender neutral term, but these types of homicides "are anything but gender neutral" and are shaped through the influence of social, historical and cultural norms and practices (Stubbs, 2016: 40). With females being the most often violently victimized by their intimate partners, it is obvious that in cases of mariticide, previous victimization is the salient factor. In recent studies, four risk factors were identified as possible precipitants to domestic murder: employment stress, victim intoxication, self – defense and alcohol involved conflicts (McKee and Dwyer, 2015). Mize and Shakelford (2008) in their research have concluded that gays commit homicide more often than heterosexuals or lesbians, but females of both sexual preferences commit more brutal killings than males.

Browne (1987) have concluded that "women's behavior seemed to be primarily in reaction to the level of threat and violence coming in". The triggering moment of a homicide in cases of long history of abuse, is the conclusion that the safety of her children or her safety are at stake, because the proportion of violent events is higher compared to the violent events from before. Wolfgang (1967) pointed out that in more than half of mariticide cases,

husbands have "precipitated" their own victimization by abusing their spouses (Browne, 1987). Women who have killed their husbands explain such situations as ones where there is a "strong sense of "it's him or me" and "this is the one", meaning they knew that the particular incident would result in either theirs or their partner's death" (Jensen, 2001: 50). "Victim – precipitated murder is applied to those criminal homicides in which the victim is direct, positive precipitator in the crime. The role of the victim is characterized by his having been the first in the homicide drama to use physical violence directed against his subsequent slayer." (Wolfgang, 1958: 252). "Victim precipitation occurs when the offender's action in committing or beginning to commit a crime is initiated after and directly related to, an action (be it physical or verbal, conscious or unconscious) on the part of the victim. The offender perceives the victim's behavior as a facilitating action to the commission of the crime. The action of the victim might be said to have triggered the offender's behavior." (Silverman, 1973: 107). But such definitions open a wide range of possible discussion regarding what should be understood as an act of precipitation. The moment a wife who was a victim of domestic abuse for a long time of period decides to leave her violent partner; a baby being born; or a child that did not write her/his homework? (Polk, 1997). "The conceptualization of violent episodes as victim-precipitated or situational transactions all suggest that it is useful to view such episodes as more than a product of the will or motivation of the violent offender. They imply the need to understand violent crime in general, and homicide, in particular, as an outcome of a dynamic interplay between offenders and victims" (Silverman and Kennedy, 1993: 92).

The battered women syndrome in homicide cases is often connected with self-defense and cases where the woman used violence as a reasonable and necessary act in response to the imminent danger of serious bodily harm or death, and in direction of avoiding such a danger.

When the victims are older in age, females are rarely the perpetrator, but when they are, they've been victims to violent acts before the homicidal act (Salari, 2007). Traditional values in society accent the importance of family ties and home care for elder family members. Of course, such home nursing means women should be the main caregivers. Such caring, especially for disabled and aging relatives can be stressful, and it in connectedness to other factors, such as financial strain, the no availability of others to help, psychological exhaustion, the great dependency of only one family member (in this case the woman), eventually can result in abuse, where homicide is an extended version (Jensen, 2001).

Table 2: Victim's Characteristics

	Case A	**Case B**	**Case C**	**Case D**	**Case E**	**Case F**	**Case G**	**Case H**	**Case I**
Nationality/Ethnicity	Macedonian	Macedonian	Bosnian	Macedonian	Macedonian	Albanian	Macedonian	Macedonian	Macedonian
Age (years)	66	73	7	/	/	/	Newborn	3 years	23 years
Victim – Offender Relation	Mother	Stepmother	Son	Husband	Husband	Intimate Partner	Son	Daughter of the neighbor	Son

Using the victim – offender relations we could say that there are possible three groups: family members; friends and acquaintances; and strangers.

Friends include a "specific known, nut nonfamily relationship" and acquaintances include "other known" individuals (Hazlett & Tomlinson, 1988; cited from Mann, 1996: 107). Friends and acquaintances are "nonstrangers" and both the victim and offender are related, well known to, or casually acquainted with one another" (US Department of State) or are "people who have known each other in some way, ranging from neighbors and business associates to close personal friends" (Zahn and Sagi, 1987: 382). Acquaintances have known each other for a shorter period of time, they have no such deep relations as friends do, and the term "implies more than a recognition, but less than friendship" (Wolfgang, 1958: 205).

Stranger is a person with who the offender did not have any other previous contact or no previous relations existed (Wolfgang, 1958; Shields, 1987).

Female perpetrated homicides regarding the gender characteristics of victims are mostly intergender, with very rare cases of intragender. Goetting (1988b: 181) concluded that "female on female homicide is a rare form of patterned behavior" (Mann, 1996: 98).

When the mother is the perpetrator, the children from both genders are equally likely to become their victims (Resnik, 1969). Their vulnerability connected to their age has a direct impact over the instrumentum and modus operandi of their mothers. Namely, the victims less than 1 week are either strangled, suffocated or drowned (Kunz and Bahr, 1996) or exposed, but those who're older are either battered, shot or stabbed (Critteden and Craig, 1990).

When the homicide has happened in the home, then the offender is more likely to know the victim (UNODC, 2011). The most crucial

characteristic of women who commit homicide in comparison to men is the fact that women mostly kill family members (their intimate partners, children, or other family members), with rare cases when they kill a stranger (Schwartz, 2012). When women kill other family members it is often because of social and economic entrapment, which culminates in "eliminating" their children or elder family members.

In our research, we have concluded that in our sample victims in homicides that are committed by women in North Macedonia are family members. Motive is either domestic violence – when the woman is the victim and ends the cycle of violence with a homicide; or the woman is commiting the domestic violence and commits homicide in the process of violence. Althoug our sample is still small, we think it is an important step towards deeper analysis of homices committed by women in our country.

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SAFETY MEASURES IN THE CRIMINAL CODE OF THE REPUBLIC OF NORTH MACEDONIA

Ass. Prof. Pakiza Tufekdji, Phd
Faculty of law-Kichevo, UKLO-Bitola
pakiza.tufekci@uklo.edu.mk

Ass.Prof. Ivona Shushak-Lozanovska, Phd
Faculty of law-Kichevo, UKLO-Bitola
ivona.susak@uklo.edu.mk

Abstract
Safety measures are a special kind of sanctions in our criminal law. They apply only to perpetrators of crimes. Safety measures serve as a means of protecting society from crime. The court imposes these measures on the perpetrator of a certain crime due to his dangerous condition in the cases and under conditions provided by law. The purpose of the safety measures shall be to remove situations or conditions that may influence the offender to commit crimes in the future. Offenders may be imposed the following safety measures:
1) compulsory psychiatric treatment and custody in a health institution;
2) compulsory psychiatric treatment in freedom; and
3) compulsory treatment of alcoholics and drug addicts;
4) medical and pharmacological treatment of offenders of sexual assault upon a child of up to 14 years of age.
The court may impose one or more safety measures on the perpetrator of a crime, when there are conditions for their imposition provided by this Law.
In the following paper we will analyze the application of safety measures and their impact on perpetrators of crimes.
Key words: crime, penalties, alternative measures, safety measures, protective termination of criminal proceedings.

INTRODUCTION

Safety measures serve as a means of protecting society from crime. The court imposes these measures on the perpetrator of a certain crime due to his dangerous condition in the cases and under conditions provided by law.

Although the idea of security measures as modern criminal sanctions has existed since the time of Protagoras and Platon, it took two centuries (from the death of these important philosophers) for their formal introduction into positive law. Protagoras of Abdere, whose name is associated with both the beginning and the spiritual preparation of the Sophists, is the first thinker whose idea of the necessity of achieving especially preventive goals through state sanction. Protagoras inherited, among other things, left us a number of thoughts, and one of them will become the programmatic principle of rationalist philosophy: "Man is the measure of everything, of what is what he is, and of what is not what he is not." (Laertije, 1973, p. 309). Plato, who pays due attention to the famous sophist, interprets his statement in a purely individual sense. Protagoras argues that it is not possible to understand knowledge of things by itself, but that it is possible only at the level of what Kant later called phenomena of the world. This is followed by his vision of the relativity of truth as a human creation. Protagoras elevates man to the pedestal of the Supreme Judge in all spheres of the physical and moral worlds. In this way, Protagoras laid the foundations for a rational critique of Greek society at the time and opened the door to individualistic, utilitarian, and relativistic currents in the Greek world, pointing to the collapse of all then-existing traditional values and ideals.(Laertije, 1973, p.312) His approach at the time is extremely modernist, and in the context of understanding the time that will happen much more later and the visionary approach, it is not even absent when it comes to his understanding of the purposes of state punishment. From today's perspective, the Protagorean words sound miraculously, opposing the punishment whose ultimate goal is revenge, but arguing that the sanction should aim at a different goal, ie that by imposing a sanction the perpetrator should be better and nobler. His argument was that the one who cunningly committed a crime should not be punished just because he did it, because what has already been done can not be changed, but because such behavior will not be repeated in the future, nor from the one who has already committed the crime (special prevention), nor from other, potential perpetrators (general prevention).

Although Plato was a fierce critic of the Sophists, he had a similar view when it came to thinking about the purpose of punishment. (Laertije, 1973, p. 315) Aware of the fact that the punishment, as the most severe coercive measure, which is realized by the state with its apparatus of physical coercion and its enormous impact on man, special, milder measures are needed that will influence the perpetrator on the one hand, and will satisfy justice. Plato mentions the two essential alternatives which he would later normally

have to justify, namely retrospective retaliation for the crime committed (absolute theory of punishment) and prospective function, prevention of future crimes (relative theory of punishment). Plato's advocacy of the prospective function of punishment should not surprise us, since in his teaching he always considers the opinions of his teacher and spiritual father, Socrates. (Djurich, 2010, p.68)

And Socrates thought that evil only arises from ignorance, and if we want to know the truth and develop a desire for the truth, we must start working on ourselves. This also applies to perpetrators of crimes. In this connection it is important to mention Plato's notion of justice, which derives from his knowledge of the inevitable trauma of the human individual on the one hand, and the state community in whose framework and according to whose rules man should live on the other hand. As the "father and founder of universalism", ie a social theory that represents the synthesis of individualism and collectivism ". Plato puts the social principle on an equal footing with the individual if he has not yet given it an advantage. Hence, according to Plato, the individual is considered only as a member who serves the community, and in everything he works and creates, he is only part of a larger whole of a community. From the submission of the whole individual life of the individual as a whole to a so-called social community, as a characteristic of Plato's ethical doctrine, arises and fits with Plato's mentioned view of the purpose of state punishment. (Laertije, 1973, p. 320)

It follows from the above that Protagoras and Plato advocate the idea that the purpose of state punishment must not be exhausted simply by retaliation, the infliction of evil for an act which has already been committed and which is an end in itself, but must be considered. perhaps to a greater extent for another purpose of punishment, which is seen in the attempts to prevent the recurrence of socially dangerous actions in the future. In other words, the perpetrator should not be punished only because he committed a crime, but is punished so as not to repeat the same, ie to be resocialized. (Tupanchevski,Kiprijanovska, 2014, p 37)

They appeared as independent criminal sanctions in the criminal legislation at the beginning of the 20th century. Their acceptance is linked to the teachings of the Italian positive school. The representatives of this school start from the idea that the society can be protected from crime only by isolating and treating socially dangerous perpetrators of crimes. The representatives of this school propose that the punishment be omitted from the system of criminal-legal sanctions and that the measure of social protection be established in its place as the only criminal-legal measure. (Djurich, 2010,

p.69) According to the representatives of this school, the crime is a symptom for assessing the danger of the perpetrator, but it is not important in determining the security measure that will be imposed. The measure of social protection is determined according to the character and intensity of danger of the perpetrator. These allegations have been sharply criticized, especially by the representatives of the classical and neoclassical schools, who advocate the punishment with all its traditional features to remain the only criminal law sanction. However, although the conceptions of the positivist school are not fully accepted in the theory of criminal law, the idea of the danger of the perpetrator of a crime and the need to respond to that danger with a special criminal legal sanction has not been rejected. This idea is also used by the representatives of the sociological school.

The first draft law that systematized safety measures as a separate type of sanction in the criminal code was the Swiss one from 1883. Thanks to this pre-draft, the legislations of other countries are also influenced, so as independent criminal-legal sanctions were introduced in the Criminal Code of Norway (1902), the Criminal Code of Great Britain (1905), the Criminal Code of Sweden (1927), etc. The Kingdom of Yugoslavia in its Criminal Code of 1929 accepts the duality of criminal law sanctions, which means that in addition to penalties it also accepts security measures, which can be imposed on a criminally responsible and incalculable perpetrator of a crime. This duality of criminal law sanctions was later accepted in Yugoslavian criminal law.

Today, security measures generally known by every contemporary criminal law legislation. While the goal of punishment is revenge, moral reprimand and general prevention achieved through intimidation, the goal of security measures is to treat and correct the perpetrator of the crime. In the dualistic system, in addition to the punishment, security measures are used, ie the prohibition and deprivation of certain rights and authorizations, which provide protection of the society from crime. (Zhivanovich, 1928, p.38)

Therefore, the dualistic system of criminal sanctions is based on penalties and security measures, ie. punishment and security measure in addition to and strengthening the preventive effect of the history that will be imposed on a certain perpetrator of a crime. Security measures are special criminal sanctions in the case of criminal law. For the first time in the case of criminal law (within the SFRY) we are mentioned in the General Part of the Criminal Code of 1947, but also in the Law on the Type of Penalties of 1945 were implemented sanctions that are in nature and worked on security (prohibition to perform activity, expulsion from the case of residence, etc.).

While the main purpose of punishment is revenge, moral warning and general prevention through intimidation, safety measures are aimed at treating and correcting the perpetrator. Safety measures are imposed only when the court in the specific case determines that there is a danger that the perpetrator will commit a crime again due to a certain condition of his person, whether: mental illness, addiction or some other circumstances that may affect as a criminogenic factor.(Gruevska-Drakulevski, 2017, p. 21) In essence, security measures are criminal-legal sanctions that consist in restricting or depriving the perpetrator of certain rights and freedoms from the crime, which means that the existence of these measures finds its essence in the protection of society from crime, as well as treatment to perpetrators of crimes that are dangerous to society. However, protecting society from crime is not the primary goal of safety measures. These measures must be adapted to the elimination of the danger, if they must turn to the person of the perpetrator of the crime and act in order to prevent the recurrence of the crime. The purpose of the safety measure is to remove the condition or conditions that may affect the perpetrator not to commit crimes in the future. The duration of the measures is related to the termination of the reasons for which the measures were imposed or to the determination of their maximum duration by the legislator. (Gruevska-Drakulevski, 2017, p. 27)

As for the legal nature of security measures, they can be divided into personal or personal and real or real. Personal are those with which the perpetrator is deprived or restricted of some freedom or some right (eg compulsory psychiatric treatment), while the real ones refer to the restriction of a property right (eg confiscation of an object). Some measures affect at the same time the personal and real rights of the perpetrator of the crime (eg prohibition to perform a profession or activity can be both personal and property).

A certain category of perpetrators of crimes during the commission of the crime manifest a certain condition that is not observed in other perpetrators. (Zhivanovich, 1928, p.39) This condition is called dangerous. Dangerous situation is found in two categories of perpetrators of crimes. The first category includes unpredictable perpetrators and perpetrators with reduced mental capacity, while the second category includes perpetrators of habit and returnees, and in this category can be added perpetrators who commit crimes under the influence of alcohol and drugs. There is also another group of perpetrators of crimes that cause a dangerous social situation, and here I would mention the perpetrators of crimes against traffic safety. By their content, security measures represent the restriction or deprivation of certain rights and

freedoms of the perpetrator of a crime. For example, in the case of perpetrators of crimes that fulfill a dangerous condition, the punishment itself is not able to protect society from crime, so special criminal legal sanctions are taken against these persons, which primarily consist in treating and repairing such perpetrators. (Tupanchevski, Kiprijanovska, 2014, p 39)

Safety measures may not be applied to persons who have been found to have a so-called dangerous condition prior to the commission of the crime, as they apply after the commission of the crime. Therefore, the safety measures are aimed at treating and correcting the perpetrator of the crime, so with these measures it is desirable to achieve protection of society from crime and prevent the perpetrator from committing a crime again, thus achieving the so-called special prevention. Undoubtedly, the acceptance of security measures as a separate type of criminal law sanctions is an important step in the development of modern criminal legislation. On the one hand, this would mean abandoning the classical, traditional conception of punishment as the sole and omnipotent sanction. On the other hand, the introduction of security measures in the system of criminal law sanctions also means humanization of criminal law and setting the criminal policy on socially real relations. If the question arises as to the justification of the large number of security measures found today in modern criminal law, then it is difficult to answer in absolute terms.

TYPES OF SAFETY MEASURES

According to the CCM, the purpose of the security measures is to remove the conditions or conditions that may influence the perpetrator to commit crimes in the future.

The following security measures may be imposed on perpetrators:[67]

1) compulsory psychiatric treatment and storage in a health institution,
2) compulsory psychiatric treatment at large,
3) mandatory treatment of alcoholics and drug addicts and
4) medical pharmacological treatment of perpetrators of sexual assault on a child up to 14
years.

[67] Criminal Code of the RSM "Official Gazette of the Republic of Macedonia No,37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82 / 13,
14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/15, 226/15, 97/17, 248/18 Article 61

The court may impose one or more security measures on the perpetrator of a crime, when there are conditions for their imposition provided by this Law.

Compulsory psychiatric treatment and keeping in a health institution and compulsory psychiatric treatment at liberty are imposed on an incalculable perpetrator of a crime on his own.

With the decision for imposing the measures, the court may determine a temporary prohibition to perform a profession, activity or duty, or a prohibition to drive a motor vehicle, which last for the duration of the application of the measures. The decision of the court is submitted to the competent body or the legal entity in which the perpetrator is employed, to the registration court or to the body that is competent for supervising the implementation of the ban on driving a motor vehicle. Compulsory psychiatric treatment and detention in a health institution and compulsory psychiatric treatment at liberty are imposed on a perpetrator whose mental capacity is significantly reduced if he is sentenced. Compulsory treatment of alcoholics and drug addicts can be imposed if the perpetrator has been sentenced, probation, probation with protective supervision, court reprimand or release from punishment.

Medical-pharmacological treatment can be imposed on a perpetrator of sexual assault on a child up to 14 years of age if he has been sentenced to prison.

1.1.***Compulsory psychiatric treatment and custody in a health constitution***

A perpetrator who has committed a crime in a state of insanity or significantly reduced insanity, the court will impose compulsory psychiatric treatment and custody in a health institution, if it determines that due to that condition he can commit a crime again and that in order to eliminate this danger he needs his treatment and storage in such an institution. The court reviews the need for treatment and custody of the perpetrator in a health facility every year.

1.2. Compulsory psychiatric treatment at large

The perpetrator who has committed a crime in a state of insanity or significantly reduced insanity, the court will sentence him to compulsory psychiatric treatment if he finds that due to such a condition he can commit a crime again, and to eliminate this danger, his treatment at large is sufficient. The measure from paragraph 1 can be imposed on an incalculable perpetrator or perpetrator whose comprehensibility is significantly reduced in relation to which a mandatory psychiatric treatment and storage in a health institution is determined, the court will determine based on the results of the treatment that its storage is no longer necessary and treatment in a health facility, but only at

large. Under the same conditions, the court may impose compulsory psychiatric treatment on a perpetrator whose insanity has been significantly reduced and who has been released on parole. Compulsory psychiatric treatment at liberty when imposed on an offender whose mental capacity is significantly reduced may not last longer than two years. A perpetrator whose mental capacity has been significantly reduced and who has been sentenced to imprisonment, the time spent on compulsory psychiatric treatment at liberty shall not be counted in punishment. If the perpetrator who has been sentenced to compulsory psychiatric treatment at large does not undergo treatment or leaves it voluntarily, the court may replace that measure.

1.3.Mandatory treatment of alcoholics and drug addicts

This security measure can be imposed on a perpetrator of a crime due to dependence on constant use of alcohol, drugs and other psychotropic substances, when there is a danger due to this dependence to continue to commit crimes, the court may impose mandatory treatment. The measure from paragraph 1 is executed in an institution for execution of a sentence or in a health or other specialized institution. The time spent in such an institution is counted in the sentence. When pronouncing a suspended sentence, the court may order the perpetrator to be treated at liberty, if the perpetrator agrees to undergo such treatment. If the perpetrator without a justified reason does not undergo treatment at liberty or leaves the treatment voluntarily, the court may decide to revoke the conditional sentence or the measure of compulsory treatment of alcoholics and drug addicts to be forcibly performed in a health or other specialized institution. If this measure is imposed with a suspended sentence, a sentence other than imprisonment, or with a suspended sentence, a suspended sentence with protective supervision, a court reprimand or release from punishment, may last for a maximum of two years.

1.4.Medical-pharmacological treatment

The reform of the national substantive criminal law, which has been taking place in the last few years with a strong dynamics, has resulted in new and substantial corrections in the register of security measures: -pharmacological treatment"(Article 65-a). Thus, the Republic of Macedonia becomes a leading country in the region when it comes to such a legal solution This measure is imposed on the perpetrator of a criminal act of sexual assault on a child up to 14 years of age and is imposed when there is a danger that he will continue to commit such acts.

The measure is executed at liberty in specialized medical institutions after serving the prison sentence, and the supervision of the execution of the measure is carried out by the Administration for Execution of Sanctions. The

Administration for Execution of Sanctions shall inform the court at least once every six months about the execution of the measure and the need for its extension or termination.
If the offense is punishable by life imprisonment, the court may sentence the perpetrator to 40 years in prison if he agrees to medical-pharmacological treatment that will last for the rest of his life or for the time that according to the court is necessary to last. treatment.
If the crime is punishable by a long prison sentence of 40 years, the court may sentence the perpetrator to 20 years in prison if he agrees to medical-pharmacological treatment that will last until the end of his life or until the time until which according to the court is necessary for the treatment to last. Whereas if the crime is punishable by imprisonment of 20 years, the court may impose on the perpetrator the minimum prison sentence prescribed for the crime if he agrees to medical-pharmacological treatment that will last until the end of his life or until the time according to the court's assessment is necessary for the treatment to last.
As an exception within the same provision, the legislator prescribes forced execution of the measure in a health or other specialized institution, if the perpetrator did not undergo or voluntarily left the treatment. As an exception, the court, without the consent of the perpetrator, obligatorily pronounces the measure of the perpetrator who committed the crime in return and lasts until the end of his life or until the time until which, according to the court, the treatment is necessary (paragraphs 6 and 7).
A person released without a legal reason is not assigned to perform the measure of medical-pharmacological treatment or after the expiration of three days from the day when someone has to report for the execution of the measure in the medical institution does not do so, the institution is obliged within 48 hours to to inform the Directorate for Execution of Sanctions. The Administration for Execution of Sanctions will immediately inform the court competent for execution of the sanction about the adoption or release of the treatment. In order to carry out the measure of medical-pharmacological treatment, the court will immediately issue an order for forcible detention of the person submits it to the police.
Convicted pedophiles in Macedonia will first have to serve all or part of their prison sentence before they have the opportunity to be released if they agree to undergo chemical castration. Then they will have to go for intensive examinations after which the doctors will assess whether they will be castrated. It is also planned to talk to a psychologist, who should assess whether the convict understands the need for chemical castration.

Table 1

	2012	%	2013	%	2014	%	2015	%	2016	%	2017	%	Aver age value
Number of convicted persons	9042		9539		11683		10312		8172		6273		
Total imposed safety measures	52	0,5	59	0,6	61	0,5	63	0,6	71	0,8	86	1,3	0.71
Compulsory psychiatric treatment and custody in a health constitution	21	40,3	59	0,6	27	44,2	12	19,1	27	38,0	42	48,8	48.2
Compulsory psychiatric treatment at large	15	28,5			21	34,4	26	41.2	26	36,6	35	40,6	30,27
Mandatory treatment of alcoholics and drug addicts	16	30,7			13	21.3	25	39,6	18	25,3 .3	9	10.4	21,2
Medical-pharmacological treatment													
		100, 0		100 ,0		100,0		100, 0		100, 0		100, 0	

Source: State Statistical Office

In the period from 2011 to 2018, the percentage of imposed security measures increased slightly from 0.32 to 71. Compulsory psychiatric treatment and custody in a health institution participates with the highest percentage, compulsory psychiatric treatment at liberty participates with 30.37%, while compulsory treatment of alcoholics and drug addicts with 21.2%. What is characteristic is that the Republic of Macedonia is the first country in the region to introduce medical-pharmacological treatment of pedophiles as a safety measure, but from 2014 until today it has never been applied. New amendments to the Criminal Code are also announced and according to the statements of the Ministry of Justice, this measure will probably be abolished.

Table 2

	2018	%	2019	%	2020	%	Average value
Number of convicted persons	5857		4712		6351		

Total imposed safety measures	83	0,8	199	1,9	133	1,3	4

Source: State Statistical Office

Unfortunately, the State Statistical Office does not offer information on the type of safety measure imposed for the period 2018-2021. Apart from the total number of imposed safety measures, the statistics show that most of the imposed measures are imposed on the perpetrators of crimes against life and body.

CONCLUSION

Safety measures are a special kind of sanctions in our criminal law. They apply only to perpetrators of crimes. The common goal of punishment and safety measures is to protect society from crime, as well as to deter the perpetrator from repeating the crime in the future. Safety measures as well as punishment are imposed only on the person who committed the crime. Although they are related to the dangerous condition of the perpetrator, their pronouncement is possible only towards the persons who are in a certain dangerous condition, but have also committed a crime. Another common feature is that the imposition of both punishment and measures actually restricts certain rights and freedoms of the perpetrator. Regarding the imposition of safety measures, the category of perpetrators to whom it is imposed is not disputable.

Safety measures as well as punishment can be imposed only if provided by law which means that the rule applies here: *Nulla poena sine lege.* Finally, penalties and security measures are imposed by the Court.

However, with the development of modern criminal law, the punishment is increasingly directed towards resocialization of the perpetrator, and at the expense of that there is a loss of its retributive character.

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THE DILEMMA ON SOCIAL DEVELOPMENT: BETWEEN RISING POWER OF TECHNOLOGY AND PROTECTION OF DEMOCRACY AND FREEDOM

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

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

Nina Ilik, MA
Institute for Research and European Studies, North Macedonia
ORCID iD: https://orcid.org/0000-0003-1313-9549
nina.nilik@gmail.com

ABSTRACT

Whether it is accelerated with the ongoing pandemic, or it is just the natural course of progress and evolution, technology is, not so slowly, overtaking the leadership in every aspect of social development. With the internet rising into an uncontrolled giant, it becomes obvious the lack of policies that will guarantee neutrality, freedom of speech and protection of human rights. The development ofregulation of the digital space has been up in the agenda of EU lately, and two of the most visible steps toward it,are the recently presented Digital Services Act (DSA) and European Democracy Action Plan (EDAP). However, national interests are prevailing in this area also, thus making technology both strong and dangerous weapon in the hands of sovereign governments. Arethe institutions going to make the right steps toward ensuring that online discourse is democratic and in compliancewithethical standards, or the autocratic tendencies and powerful private sector will use technology to undermine what we've been fighting to achieve for decades?

Keywords: technology; democracy; regulation; power; EU.

INTRODUCTION

During the last decades, technology has been presentin almost every aspect of our everyday lives. Unimaginable developmentshave been made incommunication andinformation technologies, robotics, artificial intelligence, etc. Nevertheless, every adventure comes at a price and so is the technological one. The exacerbating development of new technologies seems to be happening with such speed that it can be hardly controlled regarding the side effects it provokes to our liberties. Therefore, it is obvious that democratic countries need to re-shapetheir order and certainly regulate the way technology is used and developed, thus prevent potential new forms of harmful practicestoward their values and liberties. The urgent need to develop new normative approaches and creating a legal framework for Big Tech companies has been felt particularly in Europe, presenting itself as the only way toward preventing abuse of the development we are all so eager to embrace.

As some authoritarian regimessuch as China, are going forward in giving example of how technology could be used to impose limitations and control over civil rights and liberties, the world and particularly the European Union are realizing the emergency question mark above the issue of adopting legislation for control of the use of technology. Namely, since the outbreak of the pandemic, Chinese authorities combined low- and high-tech tools not only to manage the outbreak of the coronavirus, but also to deter internet users from sharing information from independent sources and challenging the official narrative (Xu, 2020). This level of state surveillance is not new for China, since it was known to be happening in the Xinjiang region previously, but it was the first time it was spread throughout the country and in the name of public health, a matter that can be easily misused to further compromise the already fragile issue of human rights in this country. It is obvious that EU cannot allow this to happen and must regulate the use of technology not only for collecting and using private data but also for interfering in everyday lives of citizens and tackling their liberties in order to provide safe space for tech innovations and making sure that those innovations that we are so willing to introduce in our societies will not come at a price we are not ready to pay.

The EU unlike some other democratic countries such as the US, tends to develop its legal framework on technology in a way that givespriority to citizens' rights over market laws. In the course of 2020 and 2021 it made significant steps towards a stricter regulation regarding the technological

companies thereby taking over a leading role in promoting a stand that prioritizes citizens' rights and liberties, while having in mind and not disregarding those of the companies. However, different aspects of the issue are at stake and when comes to technological companies it is a matter of big investments in research and innovations as well as highly competitive race, which makes stepping back in the interest of broader and harmonized regulation thus providing protection of civil rights and liberties, a controversial issue that requires a long way of negotiation and compromises from all included parties. This is not an easy quest to complete and therefore it will be for quite some time that the dilemma on social development brought by technology will keep on the pedestal of hot topicsin the EU.

THE CHALLENGES OF THE DIGITAL CONSTITUTIONALISM WITHIN EU

An algorithmic society (AO) can be defined as a set of practices and discourses involving hybrid links between public and private bodies, supported by a set of new data-driven technologies that create new layers of society management through own ways of knowing and acting. The challenge of digital constitutionalism is not to limit the social power of algorithms, but to limit the social power that works through algorithms.

(Liberal) constitutionalism has a vertical dimension where the power to restrict freedom is public, located in a certain territory and limited by the national constitution. With the rise of the AO and at a time when jurisdictions are becoming porous and irrelevant, public authority is no longer the only factor in respecting fundamental rights and democracy. In AO, new sources of power are concentrated in multinational private actors.

The rise of digital constitutionalism in the EU means a codification of the EU Court of Justice's commitment to protecting fundamental rights in the digital environment and limiting the power of online platforms by implementing legal instruments to increase transparency and accountability in content editing. and data processing.

In general, such EU activity can be systematized in two phases:

I. Digital Liberalism

II. Judicial activism

The third one, yet to be developed and achieved is

III. Constituting a Single Digital Market.

(I)Digital liberalism

Since the signing of the Treaty of Rome in 1955, the primary goal of the European Economic Community has been to establish a common market and bring economic policies closer together among the Member States. The adoption of the Nice Charter in 2000 aimed to impose a strict obligation to respect the fundamental freedoms of the EU: the free movement of goods, services, capital and people. This liberal (market) approach was initially transposed into the digital environment.

In the field of data and content, paradigmatic examples are Directive 2000/31 / EC ("E-Commerce Directive") and Directive 95/46 / EC ("Data Protection Directive") which confirm that The aim of the EU was and still is to ensure the smooth development of the Single European Market.

The main objective of the *e-Commerce Directive* was to provide a common framework for electronic commerce and the smooth functioning of the internal market by ensuring the free movement of information society services between EU Member States. The directive establishes an exemption regime for internet service providers (understood as "online intermediaries"). The Directive covers non-involvement of Internet intermediaries in content creation, relieving them of the responsibility of transmitting or hosting illegal content to third parties (in accordance with the American model of safe harbor established by the Communication Decency Act and Digital Millennium Copyright Act).

Exemption from liability is twofold:

1. The Directive aims to encourage the development of the information society through the free movement of information society services as a reflection of freedom of expression in accordance with EU law.
2. This special regime does not apply to entities that do not have effective control over the content of third parties. The e-commerce directive sets out a general rule consisting of a ban on general monitoring.

Member States may not oblige Internet intermediaries to monitor the information transmitted or stored by users within their Internet services, and at the same time, Internet intermediaries are not required to establish facts or circumstances that reveal illegal activities carried out by their users. through the appropriate service. IPs transfer the responsibility to their users (e.g. social media), i.e. through their "Terms of Use" (Terms of Use) they transfer the responsibility to a private sphere (guided strictly by economic interests and paying attention to the risk of liability).

IPs are generally considered irresponsible for transmitted or hosted content (the principle of "safe port") until they become aware of the illegal nature of the hosted information or content, when they need to remove or

disable access to it. This formulation relies on the awareness of Internet intermediaries (according to the principle "notice and takedown"), which (spontaneously) allows them to accumulate power for autonomous decision-making to remove or block certain content or information, based only on the risk of possible behavior of responsibility.

With *the Directive 95/46 / EC ("Data Protection Directive")*, the EU decided to regulate the processing of personal data to address the challenges posed by the increased use and processing of data, in addition to the provision of new services and the development of digital technologies.

The rise and consolidation of the right to data protection can be explained as a response to the algorithmic society governed by new technologies or automated systems implemented by public and private data processing entities. Namely, if the right to privacy used to be enough to protect personal data, the processing of personal data is no longer sufficient to protect the negative dimension of this right which leads to an increase in the positive dimension to increase the degree of transparency and accountability in processing. of the data.

The Directive is based on the premise that the processing of personal data will serve humanity and aims to protect the fundamental right to privacy of data subjects, in order to consolidate and ensure the smooth functioning of the internal market as an instrument for guaranteeing the fundamental freedoms of the Union.At the time, the actors operating in the digital environment were Internet intermediaries that offered the storage, access, and transmission of data over networks. There were no social media, e-commerce markets or other digital services, ie the role of internet intermediaries was passive.

The way in which the directives were implemented (as opposed to the regulations) made it even more impossible to take a single EU approach to the issue of personal data protection in the context of the dynamic development of digital technologies.

General Data Protection Regulation (EU) 2016/679 (fully effective 25 May 2018) refers to data protection and privacy in the European Union and the European Economic Area. The primary goal is to give individuals control over their personal data and to simplify the regulatory environment for international business by unifying EU law. An economic entity or "enterprise" should be engaged in "economic activity" in order to be covered by the Regulation. No personal data may be processed unless such processing is carried out in accordance with one of the six legal principles set out in the Regulation: consent, contract, public service, vital interest, legitimate interest

or legal obligation. Each Member State shall set up an independent oversight body (IBO) to hear and deal with complaints, sanction administrative violations, and so on. NGOs from each Member State cooperate with other NGOs, providing mutual assistance and organizing joint operations. The European Data Protection Board coordinates the NPOs of the Member States.

Article 21 of the Regulation allows the individual to object to the processing of personal data for market or non-market purposes. This means that the data controller must give the individual the right to stop or prevent the processing of personal data.

An objection may not be lodged when processing the data:

1. It is implemented legally or officially;
2. When there is a "legitimate interest", where the organization needs to process data to provide the data subject a service for which it has applied; and
3. These are activities of public interest.

Article 33 stipulates that the data controller is legally obliged to notify the supervisory body without delay, unless this will result in a violation of the rights and freedoms of individuals. The regulation is strictly intended to regulate the personal data that goes into the hands of companies. What is not covered by the Regulation is commercial information or household activities.

(II)Judicial activism

With the EU Charter of Fundamental Rights, the EU Court of Justice has begun to create legal doctrines to protect the rights of individuals in the context of digital technology, in particular on the basis of the provisions of Art. 7 and Art. 8 on Respect for Private and Family Life and Personal Data Protection.

In the *case of Google France*, the ECJ concluded that if an Internet service provider did not play an active role in giving knowledge or control over the stored data, it could not be held liable for the data stored at the request of an advertiser unless it became aware of the illegal nature of that data or of the activities of that advertiser, and at the same time failed to act in a timely manner to remove or disable access to them. Attorney General Poares Maduro concluded that search engine results are the product of automated algorithms that apply objective criteria to generate pages that are likely to be of interest to the Internet user and therefore, even if Google has a monetary interest in providing users with the opportunity to access more relevant pages, however, there is no interest in attracting a specific page to the user's attention. Attorney General Maduro did not recognize the active role of this service provider.

In the *L'Oréal case,* the ECJ acknowledged that offering assistance, including optimization, presentation or promotion of sales offers, was not a neutral activity. However, the court did not reject the opinion of Attorney General Maduro in Google France, but with this decision acknowledged that automated technologies have led to some service providers (providers) taking an active role instead of being passive providers of digital products and services. .

In the *Scarlet and Netlog cases*, the ECJ found that the ban on installing a general data monitoring system did not respect the freedom of business of Internet brokers. This referred to the prohibition of Member States imposing a general obligation on service providers to monitor the information transmitted or stored by IPs. The basic question concerned the proportionality of such a prohibition.The ECJ sought to strike a balance between the basic rights of users (the right to data protection) and freedom of expression on the one hand, and the interests of Internet platforms not to be burdened with expensive monitoring systems on the other.

In the *case of Promusicae*, the ECJ recognized the relevance of data protection, ie the right that guarantees the protection of personal data and hence private life and its functional relationship with the protection of privacy.

In the *case of Digital Rights Ireland*, the ECJ repealed Directive 2006/24 / EC (Data Retention Directive) because of its disproportionate effects on fundamental rights, namely the privacy rights and data protection of EU citizens set out in the Charter.

In the *Schrems case*, the ECJ declared Decision 2000/520, which was the legal basis for the transfer of data from the EU to the United States (ie a secure port), invalid. The ECJ based this decision on the principle of "equivalence" between the legal orders. Namely, the adequate level of protection required by third countries for the transfer of personal data from the EU should provide a degree of protection equivalent to the EU.

The *Google Spain case* is the first court attempt to challenge the power of online platforms and to respond to the Union's legislative inertia, drawing the contours of the EU's digital constitutionalism. The role of Articles 7 and 8 has enabled the ECJ to establish that a search engine such as Google falls into the "data controller" category.The ECJ has decided that the processing of personal data should be considered as being carried out in the context of the activities of the controller's seat in the territory of a Member State, when the search engine operator opens a subsidiary in a Member State with a view to promoting and selling advertising space offered by that search engine and which directs its activities towards the citizens of that Member State.

The ECJ has entrusted search engines with the right to delete content online without removing the information. Hence, the data subject has the right to ask the search engine to delete the links to the information relating to him or her from the list of web results based on his or her name, of course in the light of the fundamental rights under Article 7 and 8 of the Charter. This interpretation provided a legal basis for data subjects to exercise their rights against private actors. The ECJ recognized the right to be "forgotten on the Internet" through the interpretation of the Data Protection Directive or the de facto application of Articles 7 and 8 of the Charter. At the same time, the ECJ delegated to search engines the task of balancing fundamental rights in assessing users' claims for the right to be "forgotten online".

ARTIFICIAL INTELLIGENCE REGULATION AND THE PROTECTION OF PERSONAL FREEDOMS

> "*Less than a decade after breaking the Nazi encryption machine Enigma and helping the Allied Forces win World War II, mathematician Alan Turing changed history a second time with a simple question: "Can machines think?" Turing's paper "Computing Machinery and Intelligence" (1950), and its subsequent Turing Test, established the fundamental goal and vision of artificial intelligence.*" (Built In, 2020)

Artificial Intelligence (AI) is used to describe systems programmed to act and work as humans. These systems are programmed for solving problems and improving themselves. Some of the most used data analysis today–such as search algorithms and recommendation enginesare AI based technologiesdriven by machine learning and algorithm decisions. The intention and expectation of AI developers is that these machines will eventually be able to perform the same tasks as humans would. The use of AI technologies can affect various sectors and areas of life, such as health, education, work, social care and law enforcement. AI canprovidevery important opportunities in the advancement of human rights across many areas. But AI being so progressively developing in circumstance where its possibilities are still not fully known and discovered, it is becoming obvious it has the potential to bring huge progress but also to undermine or violate human rights protections.

Namely, the use of big data[68] and AI can threaten the right to equality, the prohibition of discrimination and the right to privacy. The violation of these rights can lead to risk of enjoyment of other fundamental rights and personal and political freedom. As artificial intelligence evolves, it magnifies the ability to use personal information in ways that can intrude on privacy interests by raising analysis of personal information to new levels of power and speed.

The regulation on the AI development and use had been a hot topic within EU for quite some time. There have been several documents in the form of declarations, recommendations, communications etc. directly related to the definition and regulation of the use of AI. In the terms of EU communication and language, AI is defined as "…systems that display intelligent behavior by analyzing their environment and taking actions – with some degree of autonomy – to achieve specific goals." (EC, 2018).

One of the most important documents to directly tackle the harmonization of laws of member states is the Commission's *White Paper on Artificial Intelligence - A European approach to excellence and trust*where it is recognized that "To address the opportunities and challenges of AI, the EU must act as one and define its own way, based on European values, to promote the development and deployment of AI" (EC, 2020). Although this White paper focuses broadly on the benefits of the use of AI in strengthening the industrial and professional markets, supporting the increased data production and storage, as well as building an ecosystem of excellence that can support the development and uptake of AI across the EU economy and public administration, it furthermore recognizes that "…While AI can help protect citizens' security and enable them to enjoy their fundamental rights, citizens also worry that AI can have unintended effects or even be used for malicious purposes. These concerns need to be addressed. …lack of trust is a main factor holding back a broader uptake of AI." (EC, 2020).

Following this paper, after a year of highly intense debate with several different perspectives being loudly emphasized (the national and EU's government bodies, private sector and civil society sector), on April 2021 a Proposal for harmonized rules on Artificial Intelligence (Artificial Intelligence Act) was issued, that finally traced the way forward to a harmonized regulation

[68]The term "big data" refers to data that is so large, fast or complex that it's difficult or impossible to process using traditional methods. (source: https://www.sas.com/en_us/insights/big-data/what-is-big-data.html)

regarding one of the most specific and controversial issues of the digital market. As stated in the proposal, its specific objectives are:

- *"ensure that AI systems placed on the Union market and used are safe and respectexisting law on fundamental rights and Union values;*
- *ensure legal certainty to facilitate investment and innovation in AI;*
- *enhance governance and effective enforcement of existing law on fundamentalrights and safety requirements applicable to AI systems;*
- *facilitate the development of a single market for lawful, safe and trustworthy AIapplications and prevent market fragmentation."* (EC, 2021).

However, it is a long way to go toward firmly settled and harmonized EU regulation on AI and the issue is quite new, with quite an enormous scalability in its development, which makes it both super-powerful and intimidating. As some CSOs warn, "The data processing and analysis capabilities of AI can help alleviate some of the world's most pressing problems…Yet these same capabilities can also enable surveillance on a scale never seen before, can identify and discriminate against the most vulnerable, and may revolutionize the economy so quickly no job retraining program can possibly keep up." (Access now, 2018).

CONCLUSIONS

Continuous data collection and sharing, app's tracking, use of online cookies, the use of CCTV cameras and other surveillance tools are posing a severe challenge to people whose physical and online activities are being constantly monitored by both governments and tech firms. The increased state surveillance and governments recurring to Big Tech Firm developing tracking strategies and apps during the pandemic has pushed the debate for a re-design of how technologies and their use should be regulated in a way that does not compromise individuals' basic freedoms. In this sense, it is very important that governments and institutions act in very mindful ways considering the new challenges and threats posed by technology and its misuse at the individual- and society-level. One of the main challenges in this regard is to make Big Tech firms comply with democratic values and standards in the respect of fundamental rights and the rule of law in the way in which they use, elaborate, and collect personal data, how they ensure freedom of expression and at the

same time control their contents. This is particularly salient in the European context, as these are considered as fundamental pillars of the Union itself. From here, the governance question arises. How is the EU performing in regulating Big Tech company?

Is technology a friend or a foe for the European Union? The question arises in many international meetings and summits as a consequence of the technological progress and the consequential emergence of new possible threats to democracy and citizens.

Considering the values, the EU is founded on, the aim of the development of digital constitutionalism is to provide higher level of protection of the civil rights and liberties, to mitigate the risks of illegal content spreading, to control the use of private data and secure the tech development and innovation are done in a controlled environment that will not allow them to produce some sort of uncontrollable tech monsters. As previously mentioned, these laws still have to go through a careful and multi-level review process. However, bringing a harmonized legislation will revolutionize the way in which tech companies operate as part of democratic societies making the European Union a leading pioneer in this field. Following that way, other democracies, such as the US and the UK, that are currently developing digital marketspolicies, will follow the EU path and develop regulations aimed at protecting their citizens' rights. In that way, western democratic world will develop comprehensive approach towards the creation of harmonized policies in a way that embraces all the possibilities technological development is bringing to the societies at the same time providing highest possible level of protection of the values these societies are built upon.

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THE CONCEPT OF AN INVESTMENT IN BILATERAL INVESTMENT TREATIES

Mirjana Ristovska, Ph.D.
Associate Professor at Faculty of Law, University "St. Kliment Ohridski" – Bitola,
Republic of North Macedonia
e-mail: mirjana.ristovska@uklo.edu.mk

Abstract
The definition of the term investment is usually an integral part of the Bilateral Investment Treaties (BIT) general provisions. The definitions are set broadly and they refer to *"every kind of profit"* or "*every kind of investment in the state territory"*, and are supplemented with an incomplete list of specific examples. The dominant view in investment practice is that the term investment is extensive, which includes traditional forms of capital investment, as well as investments in the services sector, technology, engineering, construction, and the like.
The notion of investment can also be defined by the parties themselves (host state and foreign investor) by mutual agreement. Therefore, the basic aspects in defining the term investment are the form and nature of the activity, not the area of economic activity.
The subject of this paper is a normative analysis of the provisions contained in the Bilateral Investment Treaties signed by the Republic of North Macedonia, which refer to the term investment. The subject of analysis will also be the arbitration practice of the International Center for Settlement of Investment Disputes (ICSID) regarding the determination of the term investment.

Keywords: *investment, ICSID, BIT.*

INTRODUCTION

Nowadays, Foreign Direct Investments are recognized as a powerful force for supporting the economy of developing countries and the least developed countries in the world. The two basic legal forms in which foreign

direct investment can occur are Bilateral Investment Treaty - BIT (agreement between two countries containing reciprocal rights and obligations) and Multilateral Investment Treaty - MIT.

The emergence of Bilateral Investment Treaties, as a means for promoting and protecting the investments, coincides in time with the conclusion of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States in Washington on March 18, 1965, or more commonly known as the Washington Convention. The main aim of the adoption of the Washington Convention was unique - the protection and promotion of foreign investments. The signatories believed that a structured method of dispute resolution would foster international investment and that such investment would spur economic development (Grabowski 2014, 289).

The number of international treaties for protection and promotion of investments has been constantly growing in recent decades: in 1980 there were only a hundred agreements, and in 1992 more than four hundred, so that in 2001 the number increased to 1800, and today it is more than 3000 treaties, signed by about 180 countries. This trend also is followed by the Republic of North Macedonia, which has, so far, signed thirty-nine agreements for the protection and promotion of investments.[69]

DETERMINATION OF THE DEFINITION OF INVESTMENT - RATIONE MATERIAE PRECONDITION FOR BIT APPLICATION

Bilateral Investment Treaties usually contain a definition of the term "investment" which is protected by the specific treaty, within the introductory provisions (Newcombe and Paradel 2009, 66). The definitions are set broadly and refer to "every kind of profit" or "every kind of investment in the territory", and then are supplemented with an incomplete list of specific examples. A typical definition of the term "investment" in this context is the definition contained in the 1989 Bilateral Investment Treaty concluded between the United Kingdom and the USSR[70]. The EU follows an asset-based approach with an exemplary list of protected assets and is thereby in contrast to NAFTA adopting a comparatively broad definition. The investment definition in the EU-Vietnam FTA is phrased the following:

[69] https://arhiva.finance.gov.mk/en/node/6727

[70] Article 1 (a) of the BIT, available at: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2235/download

"Investment" means every kind of asset which is owned or controlled, directly or indirectly, by investors of one Party in the territory of the other Party, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk and for a certain duration. Forms that an investment may take include:
(i) tangible or intangible, movable or immovable property, as well as any other property rights, such as leases, mortgages, liens, and pledges;
(ii) an enterprise, shares, stocks, and other forms of equity participation in an enterprise including rights derived therefrom;
(iii) bonds, debentures, and loans and other debt instruments, including rights derived therefrom;
(iv) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
(v) claims to money, or other assets or any contractual performance having an economic value;
For greater certainty, "claim to money" does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to a natural or juridical person in the territory of the other Party, or financing of such contract other than a loan covered by subparagraph (iii), or any related order, judgment, or arbitral award.
(vii) intellectual property rights as defined in Chapter Y of this Agreement [Intellectual Property] and goodwill;
Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments" (Kube 2019, 200-201).

The term "investment" in Bilateral Investment Treaties signed by the Republic of North Macedonia is determined similarly, as in most Bilateral Investment Treaties. As a representative example, we can refer to the definition contained in Article 1 of the Agreement concluded between the Macedonian Government and the Finnish Government on the Promotion and Protection of Investments[71]:

"For the purpose of this Agreement:

[71] Available at: https://finance.gov.mk/wp-content/uploads/2020/12/Finska.1_0.pdf

1. The term "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including, in particular, thought not exclusively:
(a) movable and immovable property or any property rights such as mortgages, pledges, leases, usufruct and similar rights;
(b) shares in and stocks and debentures of a company or any other form of participation in a company;
(c) claims to money or rights to performance having an economic value;
(d) intellectual property rights, such as patents, copyrights, trademarks, industrial designs, business names and geographical indications, as well as technical processes, know-how and goodwill; and
(e) concessions conferred by law, by administrative act or under the contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources."

The term "investment" was defined in a very similar way in the Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Bulgaria on the reciprocal protection and promotion of investments.[72] The only exception is that the list with five examples contained in the BIT with Finland is expanded with an additional point:

"(f) rights to goods, intended for the creation of economic value or economic purposes, which, on the basis of a leasing contract and in accordance with national law, are given for use by a lessee in the territory of one of the Contracting parties, by an owner who is a national of the other Contracting Party or a legal entity established in the territory of that Contracting Party."

Article 1 from the Agreement concluded between the Macedonian Government and the Italian Government on the mutual promotion and protection of investments firstly defines the term "investment" in a positive way as[73]:
"any kind of property invested by a natural or legal person of a Contracting Party in the territory of the other Contracting Party, in conformity with the

[72] Available at: https://finance.gov.mk/wp-content/uploads/2020/12/Bugaria.1.pdf
[73] Available at: https://finance.gov.mk/wp-content/uploads/2020/12/Italija.1_0.pdf

laws and regulations of that Party, irrespective of the legal form chosen, as well as of the legal framework."

Then, in the next paragraph the term "investment" is defined in a negative context:

"it does not include claims under business transactions whose object is acquiring goods or services or credits, unless it concerns loans which, according to their aim and scope, have a form of participation (similar to loans for participation)."

The list with examples provided by this Agreement is expanded with the additional new item:

"(f) *any increases in value of the original investment."*

All Bilateral Investment Agreements concluded by the Republic of North Macedonia contained a common provision, which reads as follows:

"Changes in the legal form of investments (invested or reinvested) shall not affect their designation as "investment" for the purpose of this Agreement."[74]

Similar definitions, with minor variations in the context of the terms and the scope of the investment, are contained in most Bilateral Investment Treaties. These definitions include direct and indirect investments and modern contractual and other types of transactions that have economic value.

THE CONCEPT OF THE "INVESTMENT" ACCORDING TO THE INTERNATIONAL CENTER FOR THE SETTLEMENT OF INVESTMENT DISPUTES PRACTICE

The determination of the concept of "investment" has proved to be the most problematic in the practical application of the Washington Convention. This is because the final version of this Convention does not contain a definition of the term "investment" despite extensive discussions and numerous proposed definitions during the preparatory work.

[74] Article 1 from the Agreement between the Macedonian Government and Belgo-Luxemburg Economic Union on the reciprocal promotion and protection of investments.

According to some authors, the concept of "investment" introduced by the Washington Convention covers only foreign direct investments (Branko, 294-295). In practice, however, it is adopted the broader meaning of the term "investment", covering the investments in services and technology (Redfern and Hunter 1992, 55), construction, and engineering (Trajković 2000, 139) as well as traditional forms of capital investment.

This indicates that the key issue in defining the term "investment" is not the areas of economic activity covered by it, but the form and nature of the activity (Mclachlan, Laurence and Matthew 2007, 165).

In legal theory, investing usually means any investment of capital in a way that income or profit can be expected for the investor (Knuštek 2002, 26). A key fact that distinguishes investment from ordinary consumption is the expectation of some positive but uncertain effect from the undertaken activity.

The arbitration practice of the International Center for the Settlement of Investment Disputes has made a significant contribution to defining the notion of investment. This is quite understandable since one of the competences of the ICSID in the determination of its jurisdiction is to decide whether the dispute arose out of an investment.

Fedax N.V. v. the Republic of Venezuela is the first ICSID case in which the jurisdiction of the Centre has been objected to on the ground that the underlying transaction does not meet the requirements of an investment under the Washington Convention.[75] The request for arbitration concerns a dispute arising out of certain debt instruments, issued by the Republic of Venezuela and assigned by way of endorsement to the claimant Fedax N.V. The Republic of Venezuela has objected to the jurisdiction of the Centre on the ground that the company cannot be considered to have invested for the purposes of the Convention because it acquired by way of endorsement the promissory notes issued by the Republic of Venezuela in connection with the contract made with the Venezuelan corporation Industrias Metalt1rgicas Van Dam C.A.[76] The Republic of Venezuela has argued in this respect that Fedax N. V: 's holding of the above-mentioned promissory notes does not qualify as an "investment" because this transaction does not amount to a direct foreign investment involving "a long term transfer of financial resources - capital flow - from one country to another (the recipient of the investment) to acquire interests in a corporation, a transaction which normally entails certain risks to the potential

[75] Fedax N.V. v. Republic of Venezuela (ICSID Case No. ARB/96/3), Decision of the Tribunal on Objections to Jurisdiction, July II, 1997, para. 25.

[76] Ibid., para 18

investor Venezuela has further argued that in the light of the rule of interpretation laid down in Article 31.1 of the 1969 Vienna Convention on the Law of Treaties, the term "investment" should be interpreted "in good faith following the ordinary meaning to be given to the terms of the treaty in their context and the light of its object and purpose. Under such an interpretation in Venezuela's view, investment in an economic context means "the laying out of money or property in business ventures so that it may produce a revenue or income. Venezuela contends that this particular interpretation is necessary to accommodate the definition of investments as comprising "every kind of asset" as that phrase appears in Article 1 (a) of the 1991Agreement.[77]

The Tribunal unanimously decided that the present dispute is within the jurisdiction of the Centre and the competence of the Tribunal, stating as follows:

"The Tribunal considers that the broad scope of Article 25 (1) of the Convention and the ensuing ICSID practice and decisions are sufficient, without more, to require a finding that the Centre's jurisdiction and its competence are well-founded. In addition, as explained above, loans qualify as an investment within ICSID's jurisdiction, as does, in given circumstances, the purchase of bonds. Since promissory notes are evidence of a loan and a rather typical financial and credit instrument, there is nothing to prevent their purchase from qualifying as an investment under the Convention in the circumstances of a particular case such as this."[78]

The Fedax arbitral tribunal's position was confirmed in the **Salini case**:[79]

"The doctrine generally considers that investment infers: contributions, certain duration of performance of the contract and participation in the risks of the transaction. In reading the Convention's preamble, one may add the contribution to the economic development of the host State of the investment as an additional condition.

In reality, these various elements may be interdependent. Thus, the risks of the transaction may depend on the contributions and the duration of the performance of the contract. As a result, these various criteria should be

[77] Ibid., para 19

[78] Ibid.,para. 29

[79] Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco (ISCID Case no. ARB/00/4), Decision on jurisdiction, July 2001, para 52

assessed globally even if, for the sake of reasoning, the Tribunal considers them individually here."

Ultimately, the Salini tribunal set out four objective "elements" of investment for ICSID jurisdiction, including a) the contribution, b) certain duration, c) participation in the risks, and d) the contribution to the economic development of the host State, which later became the famous "Salini test". Subsequently, many tribunals have adopted the Salini approach to articulate objective criteria for the notion of "investment" under the ICSID Convention and concluded that such elements should not be set aside by the consent of parties in investment treaties. In the **Patrick Michell v Congo** annulment, for example, the ad hoc Committee held that: *"the parties to an agreement and the States which conclude an investment treaty cannot open the jurisdiction of the Centre to any operation they might arbitrarily qualify as an investment."* It is thus repeated that, before ICSID arbitral tribunals, the Washington Convention has supremacy over an agreement between the parties or a BIT (Chaisse, Choukroune and Jusoh 2021, 33-34).

The Tribunal in the case **Mihaly International Corporation v. Sri Lanka**[80], found that the costs incurred in preparing for the conclusion of the public contract, including the amount spent on planning the financial and economic modalities necessary for the negotiation and finalization of the contract, did not constitute an investment under the Treaty between the United States of America and the Democratic Socialist Republic of Sri Lanka concerning the Encouragement and Reciprocal Protection of Investment:[81]

"The Tribunal is consequently unable to accept as a valid denomination of "investment", the unilateral or internal characterization of certain expenditures by the Claimant in preparation for a project of investment. The only reference made by the Claimant to the BIT, in particular, Article II(2), is not to any extended definition of investment but to existing "investment" or investment in esse or in being, which is to be accorded "fair and equitable treatment". In the case under review, the Tribunal finds that the Claimant has not provided evidence of such an investment in being which qualifies for "full protection and security." Failing to provide evidence of admission of such an

[80] Mihaly International Corporation v. Democratic Socialist Sri Lanka (ICSD Case no. ARB/00/2), para 61.

[81] Signed September 20, 1991; Entered into Force May 1, 1993.

investment, the Claimant's request for initiation of a proceeding to settle an investment dispute is, to say the least, premature."

CONCLUSION

Bilateral Investment Treaties are the basic legal instruments for the protection and promotion of investments in developing countries and the least developed countries in the world. The term "investment" is determined in very different ways in particular BITs. Generally, the definition of the term "investment" is set in a broad mode and it refers to "every kind of profit" or "every kind of asset" and is supplemented with an incomplete list of specific examples. This kind of list can be defined positively or negatively.

The Republic of North Macedonia follows the trend of concluding bilateral investment treaties and so far, had signed thirty-nine agreements for the protection and promotion of investments. The term "investment" in Bilateral Investment Treaties signed by the Republic of North Macedonia is determined similarly, as in most Bilateral Investment Treaties.

The Washington Convention does not contain a definition of the term "investment." Therefore, the arbitration practice of the International Center for the Settlement of Investment Disputes has made a significant contribution to defining the notion of "investment." Fedax N.V. v. the Republic of Venezuela is the first ICSID case in which the jurisdiction of the Centre has been objected to on the ground that the underlying transaction does not meet the requirements of an investment under the Washington Convention. Lately, in the Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco case, ICSID set out four objective "elements" of investment for the purpose of ICSID jurisdiction, including a) the contribution, b) certain duration, c) participation in the risks, and d) the contribution to the economic development of the host State.

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FREEDOM OF BELIEF AND RELIGION AS A FUNDAMENTAL HUMAN RIGHT

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

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

PhD. Marija Dukoska
marijadukoska@live.com

Abstract
"Human rights are not alien to any culture and they are inherent in all nations; they are universal. "[82]
Human rights are a complex social phenomenon characterized by specific: political, legal, cultural and economic regularities.
The freedom of religious beliefs has a millennial character and their beginnings are grounded in the being of man and his community. Religious freedoms and their regulation by international and regional legal instruments are undoubtedly the foundation of any modern democracy.
Based on the well-known concept of the separation of religious feelings from the state-legal system, in the democratic countries, and in that context in the Republic of Northern Macedonia, a specific symbiotic fusion of the state and religious communities is developing. States more or less successfully manage this very sensitive issue elaborated as a fundamental principle of human freedoms, of course only if it is practiced as an individual and not a collective right, which must not endanger the rights of others.

Keywords: Human rights, International law, Religion, Religious community

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

CONCEPT AND PRINCIPLES OF PROTECTION OF HUMAN RIGHTS IN THE FIELD OF BELIEF AND RELIGION

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally, in a fair and equitable manner, on an equal footing and with the same degree of importance. Although the significance of national and regional specifics and the different: historical, cultural and religious views must be considered, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. freedom[83].

In order to determine the essence of the term and the principles, ie the essence of the freedom of belief and religion, the most important thing is to understand in a legal sense the meaning of the word "religion". A generally accepted philosophical point of view is that it should primarily include at least confession, ie respect for faith, life in accordance with certain principles and some form of worship. Confession of faith in this sense implies an essential and detailed interpretation of the world (universe) and the human place in it, as well as the existence of mysticism and regularity (transcendentalism), which is an important criterion for distinguishing religion from philosophical belief.

The Universal Human Rights System is established by the United Nations with the primary goal of promoting and strengthening respect for human rights and freedoms for all without distinction as to race, sex, language or religion.

Through the Charter of the United Nations, its Declarations, Covenants and Conventions generate continuous progress in the democratic process, and in that context improve the situation in the field of human rights in the world. The World Organization thus more or less successfully creates a generally recognized and comprehensive structure for the protection of human rights, establishing two basic protection mechanisms:

- A system of protection arising from the Charter itself. Namely, the General Assembly of the United Nations establishes a Commission for Human Rights (Human Rights Council), which generates special procedures (Charter-based system);

- The second specific system is based on the nine established Covenants and Conventions in the field of protection of fundamental human rights (Treaty-based system);

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[83] World Conference on Human Rights, Vienna 1993 Vienna Declaration and Action Plan, Item 5.

In this context, a fundamental document is the General Declaration of Human Rights, adopted in December 1948 by the General Assembly of the United Nations. It is, in fact, the first international act to articulate human rights and freedoms as a being. All previous documents in this area were of national or regional character. The text of this Declaration has been prepared by representatives of the most important religious denominations and traditions, such as: Christianity, Islam, Buddhism and the Hindu tradition.[84]

Because of this, human rights do not have true Christian values, although in the course of their development they have been intertwined in many ways with aspects of the Christian faith.[85] In this context, on the other hand, what some legal theorists who criticize the alleged Western concept of human rights claim when they say that this concept comes down to the rights of the individual is not true.[86]

Particularly important for us as a country striving for European integration is the regional system for the protection of human rights, ie the European system of protection to which the Council of Europe enters.[87]

The Council of Europe in the field of protection of human rights on November 4, 1950 in Rome adopted the famous European Convention for the Protection of Human Rights and Fundamental Freedoms. It contains the following rights:

Article 2 - Right to life
Article3 - Prohibition of torture
Article 4 - Prohibition of slavery and forced labor
Article 5 - Right to liberty and security
Article 6 - Right to a fair trial within a reasonable time
Article 7 - Freedom from punishment without law
Article 8 - Right to respect for private and family life
Article 9 - Freedom of thought, conscience and religion
Article 10 - Freedom of expression
Article 11- Freedom of assembly and association
Article 12- Right to marriage
Article 13 - Right to an effective remedy

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[84] Mary Robinson, „Die Allgemeine Erklärung der Menschenrechte – ein lebendiges Dokument“, y: *Jahrbuch Menschenrechte 1999*, Frankfurt 1998, page. 31

[85] Wolfgang Huber, *Recht und Gerechtigkeit*, Gütersloh, 1996, стр. 240

[86] Heiner Bielefeldt, Der Streit um die Menschenrechte, y: *Menschenrechte im Umbruch*, Neuwied, 1998, page. 4

[87] The Council of Europe was established by the Treaty of London of 1949 and has 47 member states. It is composed of two main bodies: the Parliamentary Assembly and the Committee of Ministers.

Article 14 - Prohibition of discrimination
Protocol No. 1:
Article 1 - Protection of property
Article 2 - Right to education
Article 3 - Free elections
Protocol no. 4:
Article 1- Prohibition of deprivation of liberty due to debt
Article 2 - Freedom of movement
Article 3- Prohibition of expulsion of own citizens
Article 4- Prohibition for collective expulsion of foreigners
Protocol No. 6:
Article 1- Prohibition of the death penalty
Protocol No. 7:
Article 1- Expulsion of foreigners
Article 2- The right to two levels in the criminal procedure
Article 3- Right to compensation in case of judicial error
Article 4- The right not to be convicted or punished twice for the same crime
Article 5- Equality between spouses
Protocol No.12
General prohibition of discrimination

Of particular importance for our elaboration is Article 9 - Freedom of thought, conscience and religion, which underlines:

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

2. The freedom to express one's religion or beliefs may be subject only to such limitations as are prescribed by law and which constitute measures necessary in the interests of public safety, order, health and morals or the protection of the rights and freedoms of others, as necessary. in a democratic society.[88]

In that context is Article 2 of the First Additional Protocol to the Convention, which prescribes the right to education, and consequently the right of parents to religious education of their children. The article entitled Right to Education underlines: No one can be deprived of the right to

[88] Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950 The translation of the Convention and the Protocols into Macedonian is taken from the "Official Gazette of the Republic of Macedonia" no. 11/1997; 30/2004 and 30/2005.

education. In its activities in the field of education and teaching, the state respects the rights of parents to provide education and teaching in accordance with their religious and philosophical beliefs. [89]

Freedom of thought, conscience and religion, as well as the right of parents to educate their children religiously, is also enshrined in Article 18 of the International Covenant on Civil and Political Rights, which underlines:

1. Everyone has the right to freedom of opinion, conscience and religion. This right includes freedom to hold his or her religion or belief in worship and belief, of alone and in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. services and teaching.

2. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.

3. The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental freedoms and rights of others.

4. The States Parties to the present Covenant undertake to respect the freedom of parents and, in the event of a need for legal guardians, to provide religious and moral upbringing for their children in accordance with their own convictions.[90]

In addition, European countries are members of the Organization for Security and Co-operation in Europe, and consequently accept the document on basic human rights, ie the Final Document of the Second OSCE Meeting (CSCE) held in Vienna in 1986 and which is why it is popularly called the Vienna Document.

European countries must respect and enforce the fundamental human right to religious freedom through their constitutions and legal systems.

LEGAL REGULATION OF THE FREEDOM OF CONSCIENCE AND RELIGION IN THE REPUBLIC OF NORTHERN MACEDONIA

According to some legal theorists, the right to freedom of religion or belief is perhaps the most essential, on which the individual and collective

[89] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20 March 1952

[90] International Covenant on Civil and Political Rights (Adopted and opened for signature and ratification or accession by UN General Assembly Resolution 2200 A (DGJ) of 16 December 1966. Entered into force on 23 March 1976.)

philosophy of living is based. Content The right to freedom of religion or belief is governed by the Universal Declaration of Human Rights of the United Nations adopted in 1948, the International Covenant on Civil and Human Rights adopted in 1966 and of course the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The initial determination of the framework parameters of national legislation is based on:

Articles 18 and 29 of the Universal Declaration of Human Rights;[91]

Articles 4, 18 and 27 of the International Covenant on Civil and Political Rights; [92] Article 1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief;[93]

Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;[94]

All these conventions and declarations, as well as a number of others have been ratified by the Assembly of the Republic of Northern Macedonia, and thus have become an integral part of national legislation.

Among the international documents related to the legal regulation of freedom of religion is of course the Report of the Special Rapporteur on Freedom of Religion or Belief Asma Jahangir presented at the thirteenth session of the UN Human Rights Council on December 28, 2009, submitted to the General Assembly.

Although in general the freedom of religion is positively assessed in the Conclusions and Recommendations of this Report, especially in point 58 it is specified: "Regarding the intra-religious tensions within both the Orthodox Church and the Islamic community, the Special Rapporteur would like to to remind the Government of its obligations to remain neutral and non-discriminatory, especially with regard to the registration procedure". [95]

Relations between the state and religious communities and religious groups are regulated by the Constitution of the Republic of Macedonia, the Law on State Administration Bodies and the Law on Church, Religious Community and Religious Group.

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[91] *UN Universal Declaration of Human Rights*

[92] *International Covenant on Civil and Political Rights (ICCPR) GA UN*

[93] *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981 (UN 1981 Dec.)*

[94] *European Convention for the Protection of Human Rights and Fundamental Freedoms*

[95] United Nations A/HRC/13/40/Add.2, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir

In general, religious freedoms in the Republic of Macedonia after its legal independence from the former Yugoslav federation are regulated by the Constitution of the Republic of Macedonia, namely Article 19, which is supplemented by Amendment 7 of the Constitution of the Republic of Northern Macedonia which states that: Freedom of religion is guaranteed. Expressing one's faith freely and publicly, individually or in community with others, is guaranteed.

The Macedonian Orthodox Church, other religious communities and groups are separate from the state and equal before the law.

The Macedonian Orthodox Church, other religious communities and groups are free to establish religious schools and social and charitable institutions in accordance with the law.[96] But this article undergoes some redefinition with Constitutional Amendment VII, which was adopted after the well-known events of 2001.

It determines that:

1. The Macedonian Orthodox Church, as well as the Islamic religious community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish community and other religious communities and groups are separated from the state and are equal before the law.

2. The Macedonian Orthodox Church, as well as the Islamic religious community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish community and other religious communities and groups are free to establish religious schools and social and charitable institutions in a procedure provided by law.

3. Item 1 of this amendment replaces paragraph 3 of Article 19, and item 2 replaces paragraph 4 of Article 19 of the Constitution of the Republic of Macedonia. [97]

Due to such changes in the Constitution, the then valid law that regulated the law of religious communities in the Republic of Northern Macedonia had to be changed, so in 2007 the now valid Law on the Legal Status of a Church, Religious Community and Religious Group was adopted.[98]

This Law, more precisely in its Article 2, defines: “Church, religious community and religious group, in the sense of this law, is a voluntary

[96] Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia. 52/91,

[97] Amendments to the Constitution of the Republic of Macedonia, Official Gazette of RM.91 / 01,

[98] Law on the Legal Status of a Church, Religious Community and Religious Group, Official Gazette of the Republic of Macedonia. 113/07,

community of natural persons who with their religious conviction and the sources of their teaching achieve the freedom of religion united by faith and identity expressed by the equal performance of worship, prayer, rites and other expressions of faith. "

Article 4 of the existing legal text states: "Religious discrimination is not allowed."

Religious conviction does not release the citizen from the obligations he has as a citizen under the Constitution, laws and other regulations, unless otherwise regulated by law or other regulation.

The Constitutional Court of the Republic of Northern Macedonia in a procedure upon a submitted initiative with a Decision repealed the articles: 27, 28 and 29 of the existing Law, in which the part for religious education, ie the possibility to organize religious education as an elective subject in accordance with the law in the educational institutions.[99] Particularly important for the definition of the legal regulation that covers the regulation of the right to freedom of religion is the Law on Organization and Work of the State Administration Bodies, which established the Commission for Relations with Religious Communities and Groups as a separate state administration body. , with the status of a legal entity.

Article 29 of the Law on Organization and Work of the State Administration Bodies stipulates that:

(1) The Commission for Relations with Religious Communities and Religious Groups performs the activities related to the legal status of the religious communities and religious groups, as well as the matters related to the relations between the state, religious communities and religious groups.

(2) The Commission for Relations with Religious Communities and Religious Groups has the capacity of a legal entity. Therefore, this commission takes care of the legal status of religious communities and religious groups and the relations between the state, religious communities and religious groups.[100]

For the first time as a service established for religious affairs, the Commission appeared in the period from 1944 to 1945 as a Religious Commission. Then, from 1945 to 1951, this body was part of the then Secretariat of Internal Affairs. The Commission is then transformed into an independent body which in different periods, although having an identical role, is named differently. Thus, from 1951-62 it existed as the Commission for

[99] Decision of the Constitutional Court of the Republic of Macedonia, U.no.104 / 2009 of 22 September 2010, Official Gazette of the Republic of Macedonia. 132/10,

[100] Law on Organization and Work of the State Administration Bodies, Official Gazette of RM. 58/00,

Religious Affairs, from 1963-76 as the Republic Commission for Religious Affairs, from 1977-2000 as the Republic Commission for Relations with Religious Communities, and since 2000, as the Commission for Relations with Religious Communities and Groups.[101]

The Commission has: Sector for Relations with Religious Communities and Religious Groups with two departments: - Unit for determining the legal status of religious communities and religious groups; - Unit for determining the relations between the state, religious communities and religious groups; The celebration of religious holidays should be considered as a kind of proclaimed principle of religious freedoms, part of which are: State holidays, and the other Holidays of the Republic of Northern Macedonia. Of course, in this context are the so-called: Non-working days for believers.

CONCLUSION

The Republic of North Macedonia is a multiethnic, multicultural and multi-religious country in which from a normative-legal aspect the religious differences and the freedom of religion or belief are respected.

Although dominant in their capacity and influence both in the field of religious teachings and in overall life, are members of the Orthodox faith, embodied in the Macedonian Orthodox Church - Ohrid Archbishopric and the Islamic religious community, still in the country more or less successfully and unhindered still live: 14 Churches, 6 Religious Communities and 7 Religious Groups.

Basically, the religious freedoms in the Republic of North Macedonia at this moment, but still will be in correlation with the overall relations of the community, more precisely the interaction of the relation: people - people, Christianity - Islam, of course burdened with everything after the expressed fear of religious extremism, embodied in radical Islam.

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[101] http//www.kovz.gov.mk

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THE CONTRIBUTION OF THE NEW ROMANIAN CIVIL CODE TO THE INSURANCE OF THE CONTRACT'S NORMATIVE FUNCTION

Florin I. Mangu, PhD
Law Faculty, West University of Timișoara, Romania
florin.mangu@e-uvt.ro

Abstract
The contract is a necessary and effective legal means for the organization of social life, fulfilling, for this purpose, a normative function: any contract, through its effects, is materialized in the creation of private legal rules, which are binding for the contracting parties; third parties have a duty to respect the legal reality created by the contract and to refrain from any conduct which would contravene it; the court and the legislator himself are required to comply with the binding force of the contract. The Romanian Civil Code of 2009 establishes when the parties agreement generates the contract; at the same time, it lays down rules on determining the minimum content of the contract, expresses a clear concern for the static and dynamic security of the civil circuit by ruling in favor of the contract, provides rules on contractual remedies and sanctions in case of non-performance of the contract.

Keywords: binding force, sufficient agreement, *favor contractus*, contractual remedies, contractual sanctions, ordinary clauses, standard clauses

The role of the law governing contracts is to maximize the volume of contracts that facilitate trade, so that their significant number can create an operational market (L. Gramcheva, The Regulatory Function of Contract Law. A Comparative Law and Economics Approach, Department of Law, European University Institute, Florence, 2015, 4). That law is, at the same time, an instrument of regulation of the market, which influences the behaviour of its subjects, through mandatory or default (the majority of) rules that it establishes, and the standards that they set (L. Gramcheva 2015, 10). In order to fulfil these functions, the law sets forth two principles: freedom of contract (art. 1169 of the Romanian Civil Code – hereinafter ”RCC”), which concerns the choice of the contractual partner, the elaboration of the contract,

respectively its conclusion, and sanctity of contract (art. 1270 RCC), which represents an effect of the former and constitutes, for both for the parties and third parties, the guarantee of legal certainty (P. Jadoul, Variations sur „Pacta sunt servanda". Autour et alentour du Code civil, in A. Ruelle și M. Berlingin: ed. coord., Le droit romain d'hier à aujourd'hui. Collationes et oblationes. Liber amicorum en l'Honneur du professeur Gilbert Hanard, Presses de l'Université Saint-Louis, 2009, 257 – 258). These principles outline the primary vision of the contract: it is the result of the autonomy of will of the parties, of their mutual free and conscious agreement (art. 1166, art. 1204 RCC), deemed by the law to be enforceable through the courts, that have the power to compel any of the co-contractors to fulfil the promise undertaken in the contract (art. 1516 RCC, art. 622 of the Romanian Code of Civil Procedure – hereinafter "RCCP").

There is a two-way relationship between contract law and the latter: the former provides the latter with support for its legal form and the latter provides the former with a mechanism by which its normative generality becomes manifest in concrete legal relations. The contract, thus, functions as an instrument by which the legislator creates, regulates and adjusts the market, in an attempt to reduce or even mitigate its potential failures, that the autonomy of the parties objectified in the uncensored freedom of contract could cause (Chr. May, Contract as normative regulation and the implied rule of law, în A.Claire Cutler and Thomas Dietz eds., The Politics of Private Transnational Governance by Contract, Oxfordshire, Routledge, 2017, *passim*). For this purpose, the law governing contracts (art. 1270, par. 1 RCC) recognizes the power of the mutual agreement of the parties to create private legal rules that generate effects similar to those of the rules of law (I. Reghini, Ș. Diaconescu, P. Vasilescu, Introducere în dreptul civil, Hamangiu, Bucharest, 2017, 22 – 27). Sanctity of contract also ensures a valid contract is binding upon the parties and the courts, so that the contract can only be modified or terminated by consent of the parties or if provided for by the law (art. 1270, para. 2 RCC).

Article 1169 RCC entrenches the principle of freedom of contract, within certain boundaries: the mandatory provisions of the law, public order and good morals; they represent, each and every one, taken individually and / or collectively, limitations of the autonomy of will of the contracting parties, through them, the legislator, but also society, imposing (to a certain extent) the form, content and direction of the market. The three limits of the freedom of contract act directly and by right on the will of the contracting parties, establishing a minimum set of rules, respectively of standards that they must follow and / or reach, prior, as well as at the time of contracting, so that their

mutual agreement be enforceable as a contract (e.g. art. 1170 RCC imposes, in the form of an obligation, the standard of good faith, both at the time of negotiating and concluding the contract).

A similar role is played by the default provisions of the law, whose effects on the autonomy of will of the contracting parties can be both direct and indirect, thus fulfilling, at the same time, a default and a stimulating function. Thus, through their function of filling in the gaps (I. Ayres, R. Gertner, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, Yale School Legal Scholarship Repository, Faculty Scholarship Series, 1989, 87; E. A. Posner, There Are No Penalty Default Rules in Contract Law, Florida State University Law Review, volume 33, Issue 3, 2006, 564 - 565) which the parties left, either negligently (because, at the time when the contract was concluded, they could not anticipate all and every contingency, they both lacked the necessary information, or there has been, between them, an information asymmetry – E. A. Posner, 2006, 568-569), or intentionally (because transaction costs were too high and did not justify a deviation from the assumed contractual balance nor from the standard of the average person with an ordinary degree of prudence and care, provided for by the default provisions of the law – E. A. Posner, 2006, 567 - 568) in the contract, these provisions will impregnate, directly, on the legal relationship of the parties, the will of the government (art. 1167, para. 1 RCC: all contracts are subject to the general rules of Chapter I. The contract, Title II. Sources of obligations, Book V. On obligations, and para. 2: The Civil Code, and other special laws lay down particular rules regarding certain contracts; art. 1168 RCC: contracts that are not regulated by the law shall be governed by the provisions of the same chapter hereabove, and, should these not be sufficient, by the special rules regarding the contract to which they most resemble).

However, default legal provisions can also indirectly influence the content of the contract, thus fulfilling a function of stimulating the autonomy of the wills of the parties: they determine future contracting parties, who are dissatisfied with their content, to act and establish definitions, rules, standards, rights and obligations derogating from what the legislature has suggested (C. Bridgeman, Default Rules, Penalty Default Rules and New Formalism, Florida State University Law Review, volume 33, Issue 3, 2006, 691), as such provisions may be removed by the parties from the content of the contract, by expressly agreeing on other private normative rules (A. J. Hirsch, Default Rules in Inheritance Law: A Problem in Search of Its Context, Fordham Law Review, volume 73, issue 3, 2004, 1032 – 1033), while observing, in this sense, only the limits of freedom of contract (art. 1169 RCC).

In relation to the principle of freedom of form or consensualism (art. 1178 RCC), default legal provisions, by exercising their function of stimulating the autonomy of will of the parties, indirectly end up imposing a minimally - formal character on the contract, by inducing the contracting parties to evidence it in a document with *ad probationem* value. Thus, although contracts are effective between the parties and are only enforceable by them, they are also binding upon third parties, who are supposed not to prejudice, in any way, the rights and obligations of the parties, as legal situations (art. 1281, 1st sentence RCC). In order for a contract to be performed specifically, and for its effects to be definitively introduced in the legal circuit, it must have binding effects in respect of third parties, not in the sense in which it has between the parties, as a source of rights and obligations, of private legal norms, but as a legal situation – the effect of the contract that legitimately altered the civil circuit, by modifying it. Third parties can avail themselves of the effects of the contract, but do not have the right to demand its enforcement (art. 1281, 2nd sentence RCC), precisely because the contract does not constitute a source of rights and obligations in respect of them; however, they will have the obligation to abstain and to do nothing likely to prevent the contracting parties from exercising their rights or from fulfilling their obligations, under pain of civil liability for any damage caused to the them (art. 1349, art. 1357 *sqq* RCC). To that effect, third parties must have knowledge of the content of the contract, or a written document evidencing it not only facilitates the proof of this content, but also ensures such proof, when it is drawn up in accordance with the legal requirements.

Theoretically, art. 1281, 1st sentence RCC operates with a legal fiction: starting from the premise of general awareness, by operation of law, of the contract, it entrenches the *erga omnes* and *ope legis* binding effects of any and every contract, which is, actually, a corollary of the sanctity of contract, an indispensable tool in the specific performance of the contract by the parties. In practical terms, however, the legislator implicitly acknowledges that the fiction of general awareness, by operation of law, of any and every contract is one that has serious limitations in everyday life, which is why, in case of those written documents that are most likely to be unknown to those who did not actively and directly participate in their preparation - the acts under private signature – it set forth, in art. 278 RCCP, the requirement of a certain date, subjecting the *erga omnes* binding effect of the date on these documents either to the fulfilment of certain formalities or the occurrence of circumstances that unequivocally attest to the fact that they could not be drawn up at a later date than that of fulfilment of the formalities or the occurrence of the

circumstances. The law governing contracts succeeds, as such, through the synergic action of the substantive and procedural rules, to indirectly induce the adoption by the contracting parties of a minimally - formal conduct that supposes evidencing the content the contract in an instrument which will subsequently facilitate its proof; in this manner, the default provisions of the law governing contracts also serve to fulfil the function of the contract of serving as legal proof as *instrumentum probationis*.

The legal force of the validly concluded contract (art. 1270 RCC) also manifests itself in respect of the courts, that cannot, in principle, intervene in validly concluded contracts, but only have, specifically, the prerogative of its interpretation, for the exercise of which they have at their disposal a set of rules of interpretation of contracts / contractual clauses (art. 1266 - 1269 RCC), which entrench, among others: the rule of interpretation of the contract according to the common intent of the parties, and not according to the literal meaning of the terms (art. 1266, paragraph 1), the rule of systematic interpretation of the contractual clauses, in accordance with each other, and giving each clause the meaning resulting from the whole contract (art. 1267), respectively the rule of interpretation of the unclear terms in favour of the one that undertakes an obligation (art. 1269, paragraph 1), establishing, at the same time, that doubtful clauses are to be interpreted in the sense that best suits the nature and object of the contract, taking into account, among other things, the circumstances in which it was concluded, the interpretation previously given by the parties, the meaning generally attributed to the clauses and expressions in the field and by the customs, in the sense in which they can produce effects, and not in the one in which they could produce none (art. 1267, paras. 1, 2, 3). It is precisely in order to avoid submitting the contract to the interpretation of the courts, thus exposing themselves to the risk that the result the courts would reach be inconsistent with their mutual agreement - as all the tools the courts can use in their interpretation of the contract involve the risk of distorting the meaning of the contractual clauses - that the parties will prefer to expressly state in the contract, *ex ante*, their intent to derogate from the default legal provisions, whenever they are dissatisfied with them (L. L. Fuller, Consideration and Form, Columbia Law Review, volume 41, 1941, 799). They manage to avoid, in this manner, in most cases, the costs engaged in discovering vast and elaborate evidence, which have the potential of diminishing the expected value of the contract as a whole (C. Bridgeman , 2006, 688). The Romanian legislator directs the contracting parties towards this result, setting forth (traditionally, still through art. 1191 of the Romanian Civil Code of 1864, continuing with art. 309 of the Romanian Code of Civil

Procedure of 2013) strict rules regarding the proof of legal acts: in principle, no legal act can be proved with witnesses, if the value of its object amounts to more than 250 lei (equivalent to approximately 50 euros). Indirectly, we may say, the legislator regulates in order to persuade the contracting parties to draft as complex as possible contracts, which they have to evidence, in order to facilitate their proof, in writing. The normative function of the contract, thus, becomes apparent: the document evidencing the contract, drawn up in accordance with the law, serves as full proof of the private legal norm that the parties generated by their mutual agreement, and which can be enforceable through the courts, like a law (art. 1270, art. 1516 *sqq* RCC).

One of the special powers of the courts, to intervene in the validly concluded contract, recognized by art. 1182, para. 3 RCC, consists in completing the contract with secondary elements, on which either the parties did not agree, at the time of concluding it or subsequently, or the third party designated to determine them failed to make an option. The Romanian legislator of 2009 divided the structural elements of the contract into essential and secondary elements, respectively.

At art. 1182, para. 2 RCC, it is shown that it is sufficient for the parties to agree on the essential elements of the contract, thus reaching what the doctrine has called "sufficient agreement", even if it leaves some secondary elements to be subsequently agreed or their determination is entrusted to another person. These essential elements are objective, being legally established as *sine qua non* in determining the nature, respectively the purpose and content of the contract and without which the respective contract could not be validly concluded. However, there are also subjective essential elements, being qualified as such by the parties; for example, in the process of negotiation, the parties may essentialize one or more elements which, moreover, are not enshrined as such by the legislator, since they do not represent a characteristic of either the type of the contract in question or even its species; for instance, the way in which the price is paid (cash or by bank transfer; globally or in instalments), the place of the delivery of the good, etc. (art. 1185 RCC: when, during the negotiations, a party insists on reaching an agreement regarding a certain element or a certain form, the contract is not concluded until an agreement is reached on these); this is an application of the autonomy of will of the parties, objectified in their freedom to contract, one of the foundations of the contract as private law. The Romanian law does not recognize the judge's prerogative to determine the secondary elements of the contract according to the principle "on what the parties would, in fact, have wanted to contract", proposed in the common-law doctrine (Ch. J. Goetz, RE

Scott, The Mitigation Principle: Toward a General Theory of Contractual Obligation, Virginia Law Review, volume 69, number 6, 971), but forces the judge to take into account, as the case may be, the nature of the contract and the intention of the parties (art. 1182, para. 3, last part RCC), a solution that is closer to the one established in paragraph 204 of the Restatement Second of Contracts, where is mentioned the completion of a gap contract with elements "reasonable according to the circumstances", the term "reasonable" being assessed according to the circumstances in which the parties themselves contracted (I. Ayres, R. Gertner, 1989, 92). Therefore, the judge will first determine the nature of the contract, after which, depending on it, s/he will complete it with secondary elements resulting either from the rules (both imperative and supplementary) governing the matter of the respective contract, or from the rules that arrange the contract in general, respectively the contract with which the product of the agreement of the wills of the parties is most similar, according to art. 1167 - 1168 RCC. But, even thus limited, this power of the judge, the process of qualification, respectively of completing the contract with its secondary elements, can endanger the fate of the contract, removing it from the true agreement of the wills of the parties. That is why, through the provisions of art. 1182, para. 2 - 3 RCC, the co-contractors are encouraged to also insert in the content of the contract (at least) those secondary elements to which they confer greater importance and which they would not like to be later on determined by the judge, thus eliminating *ex ante* the risk that their agreement of wills be misappropriated or at least altered. Here is another lever through which the legislator, indirectly, highlights the normative function of the contract.

Then, because, according to art. 1272 RCC, the valid contract concluded binds not only to what is expressly stipulated, but also to all the consequences that the established practices between the parties, the customs, the law or equity give to the contract, according to its nature, and, moreover, because the usual terms in a contract are self-understood, although they have not been expressly stipulated, its parties risk to end up, in the content of the contract, with rights and obligations, rules and standards, definitions on which they did not initially agree and which, at the same time, do not satisfy their interests. Undoubtedly, they cannot exclude, from a contract, the imperative provisions of the law, because, on the one hand, these are limits of the freedom to contract (art. 1169 RCC), and, on the other part, such a contract, which represents only the means to evade the application of an imperative legal norm, is sanctioned with absolute nullity for illicit cause consisting in fraud of the law (art. 1237 - 1238 RCC). However, all the other consequences referred to

in art. 1272 RCC can be, if not completely eliminated, at least significantly restricted through the outlining, by the parties, of a contractual content as complex as possible, leaving as little room for completion or interpretation as possible. The real challenge that art. 1272 RCC brings to the contracting parties is to get thoroughly informed *ex ante* (E. A. Posner, 2006, 573), so that, at the conclusion of the contract, they know as many aspects as possible about the real content of their agreement of wills; only in this way will the co-contractors be able to insert in the content of the contract derogatory provisions from the unsatisfactory supplementary legal ones and, thus, to give efficiency to the normative function of the contract.

Perhaps the most stimulating for the autonomy of will of the parties are the supplementary legal provisions in the field of contractual remedies and sanctions (art. 1516 *sqq* RCC), which regulate the rights that the creditor of an obligation (including contractual) unjustifiably or guiltily non-executed has upon their debtor's assets: to request or, as the case may be, to proceed to the forced execution of the obligation; to obtain the termination of the contract or, as the case may be, the reduction of their own correlative obligation; to receive damages, if due; to use, when necessary, any other means provided by law for the realization of their right (art. 1516, para. 2 RCC). These texts provide, in practice, to the parties, from the moment of concluding the contract, a clear picture of the consequences for the unjustifiable or guilty non-execution of the contractual obligations. The contractual risks (excluding the fortuitous ones) reveal only in this phase both their identity and their true extent. Implicitly accepting the application of these supplementary rules, by expressly not avoiding them, means assuming all these risks. The normative texts that regulate the contractual remedies and sanctions are based entirely on the principle of the binding force of the contract, constituting, practically, its direct and necessary consequence: if, pursuant to art. 1270 RCC, the valid contract concluded is imposed on the parties by the force of law, it is absolutely normal that the same law that enshrined this principle provides the creditor with the concrete means to satisfy his/her claim (art. 1516, paragraph 1 RCC: the creditor has the right to the full, exact and timely execution of the obligation). The whole basis of contractual remedies and sanctions consists in the force of law that the contracting parties themselves have accepted for their agreement of wills, assuming all its consequences. Logically, if the parties do not wish to apply any of the supplementary legal rules in the field of contractual remedies and sanctions, they are free and even encouraged to circumvent it, namely to arrange for themselves, by their agreement of wills, their legal regime, respecting the limits of the imperative provisions in the matter (for example,

at art. 1551, paragraph 1 RCC, by providing *favor contractus*, the legislator enshrined the rule according to which the creditor has no right to resolution when the non-execution is of little importance, any contrary stipulation being considered unwritten), of public order and of good morals.

Therefore, the supplementary provisions of the law of the contract, through their function of stimulating the autonomy of will of the contracting parties, have (and) the role of enhancing the normative function of the contract: the power to create legal norms of the agreement of the wills of the contracting parties is legally recognized, the parties being, at the same time, stimulated (channelled) to exercise their contractual freedom and to insert in the content of the contracts that they conclude definitions, rights and obligations, rules and standards derogating from the supplementary law of which they are not satisfied, whenever it is important for them that the judge interpret the contract easily and predictably (A. Schwartz, Karl Llewellyn and the Origins of Contract Theory, Yale Law School Legal Scholarship Repository, Faculty Scholarship Series, 2000, 14-15).

An alternative to the negotiated contracts is the contract of adhesion (L. Pop, I. F. Popa, S. I. Vidu, Curs de Drept civil. Obligațiile, Universul Juridic, Bucharest, 2015, 46 – 48; P. Vasilescu, Drept civil. Obligații, Hamangiu, Bucharest, 2017, 292-295), in which the essential clauses are imposed or drafted by one of the parties, for itself or as a result of its own instructions, the other party having only to accept them as such (art. 1175 RCC). To such a contract, although partially amputating the contractual freedom (as regards the possibility of negotiating its content), the law recognizes the same force of law as of a negotiated contract, so that, in most cases, it is preferred in legal relationships that require some degree of individuality, on the one hand, and, on the other hand, where one of the parties is either less informed or does not have the necessary resources for receiving prior information, or for drafting the contract, being satisfied to adhere to the contract proposed by the other party. The Romanian legislator does nothing but encourage the conclusion of such contracts, the legislator being fully aware, on the one hand, that the *proferens*' effort regarding the drafting the contract will not be limited to proposing an incomplete contract to the adherent, but will tend to stipulate and settle inside the contract all the contingencies s/he can foresee, and, on the other hand, s/he will not abuse his/her privileged position, conferred by the additional information known, as well as (perhaps) his/her economic status, in the sense of proposing to the adherent an unbalanced contract, both in value and in law (in fact, any legal imbalance will be reflected in a value imbalance), since, after all, s/he must

ensure that the adherent will enter into the contract. Article 1269, para. 2 RCC provides that the stipulations from the contracts of adhesion are interpreted against the one who proposed them, thus encouraging the *proferens* to be more explicit and to provide the adherent, within the contract, with more details on the contractual obligations; in this way, *proferens* practically plays in his/her own favour, as such an approach will also have the consequence of significantly narrowing the range of action of the judge called upon to interpret the contract (*in claris cessat interpretatio*), who will find that the clarity of the wording and the degree of details significantly increase the chances that the less sophisticated party (the adherent) will understand the contractually assumed obligations (E.A. Posner, 2006, 580).

However, 99% of the contracts concluded today are standard contracts, a necessity of the market, remaining that only atypical transactions are concluded in non-standard contractual forms, the specificity of the transactions requiring a classical contracting process deriving from their innovative character, the particular circumstances in which the parties find themselves or the economic value of the operation. Standard contracts are drawn up by the *proferens* in order to be used repeatedly, in a series of transactions of the same type, being non-negotiable, specific to both relationships between professionals and between professionals and consumers, presenting an indisputable utility whenever the transactional context is presumed neutral, these contracts being incompatible with the adaptation to the particularities of each client, being destined to a multiple and, in principle, inflexible use (L. Bercea, Contractul standard ca text contrafactual, in M. Nicoale, R. Rizoiu, L. Toma – Dăuceanu: ed. coord., In Honorem Valeriu Stoica. Drepturi, libertăți și puteri la începutul mileniului al III – lea, Universul Juridic, Bucharest, 2018, 736–738). The clauses that make up the standard contracts are discussed in the text of art. 1202 RCC, these being the result of the unilateral will of *proferens*, having the purpose to be applied in all the contracts of the same nature concluded by him/her, with all the contractual partners, being used successively, several times, during a time interval. In the competition between the standard and the negotiated clauses, the latter prevail (art. 1202, para. 3 RCC). Standard contracts thus tend, through their nature, to become (perhaps) the most eloquent expression of the normative function of the contract, because within their content one can find, as a rule, the most numerous private legal norms derogating from the supplementary legal ones, unsatisfactory for *proferens*. The force with which these contracts oppose their parties, as well as third parties, but also the judge, is equivalent to that of a negotiated contract, so standard contracts are, like any other contract, sets of (standard) private

rules, proposed by *proferens*, which, through their acceptance by the adherent, acquire normative force for the parties (art. 1270 RCC). Although standard contracts are able to ensure the stability of contracting procedures and the predictability of contract performance, by reducing to a minimum the transaction costs, they may result in the loss of contractual balance, through terms favourable to *proferens*, the imperfect information of the adherent as regards the content and effects of contractual clauses, as well as the systemic standardization of unfair terms (L. Bercea, Market for lemons. O aplicație la încheierea contractelor standard între profesioniști, in D. A. Popescu, I. F. Popa: ed. coord., Liber Amicorum Liviu Pop. Reforma dreptului privat român în contextul federalismului juridic European, Universul Juridic, Bucharest, 2015, 70).

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IMPARTIALITY OF THE JUDGE, GUARANTEE OF THE RIGHT TO A FAIR TRIAL. THE SINUOUS ROUTE FROM THEORY TO PRACTICE

Associate Professor, PhD, Florina Popa,
West University of Timișoara, Law School, florina.popa@e-uvt.ro

Abstract
According to art. 6 of the Romanian Code of Civil Procedure, every person has the right to a fair trial, in an optimal and predictable time, by which an independent, impartial court and established by law. Judges must be impartial in the performance of their professional duties, being obliged to decide objectively, free from any influences. In order to ensure the credibility of judicial activity, it is not enough for the judge to be impartial, but he must also maintain the appearance that he is impartial. But what exactly does "an impartial court" mean? What guarantees do we have that we can totally control human subjectivity? This paper is a reflection on the judge's duty to be impartial, by reference to the landmarks of judicial practice in the matter.

Keywords: the right to a fair trial; the impartiality of the judge; the ethics of the judge

THE OBLIGATION OF THE JUDGE TO BE IMPARTIAL - PERSPECTIVE OF THE LEGISLATOR

The principle of the right to a fair trial is a fundamental right, being enshrined in both the national legislation and in various international legal acts.

Thus, in the national regulation, the right to a fair trial is provided by art. 21 para. (3) of the Constitution of Romania, setting out that the parties have the right to a fair trial and to the settlement of cases in a reasonable amount of time, as well as by art. 10 of Law no. 304/2004 on judicial organization, providing that all persons have the right to a fair trial and to the settlement of cases in a reasonable amount of time, by an impartial and independent tribunal, established according to the law. Similarly, art. 6 of the Code of civil procedure, enshrines the right of any person to the judgment of

his/her case in a fair manner, as soon as practical and predictable, by an independent, impartial tribunal, established by the law and in this view, the tribunal has the obligation to order all the measures permitted by law and to ensure the timely performance of the judgment.

From the perspective of international legal acts, the fairness of the procedure is enshrined in art. 6 of the ECHR. providing the right of any person to a fair, public judgment of his/her case and within a reasonable amount of time, by an independent and impartial tribunal, established by the law, deciding upon the breach of rights and obligations of a civil nature, as well as in art. 47 of the Charter of Fundamental Rights of the European Union, ruling that any person is entitled to a fair, public trial and within a reasonable amount of time, before an independent and impartial tribunal, previously established by law. Similarly, art. 10 of the Universal Declaration of Human Rights provides that any person is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, which will decide upon either his/her civil rights and obligations or upon the merits of any criminal charge against him/her. Similar provisions are included in art. 14 of the International Covenant on Civil and Political Rights, setting out that all persons shall be equal before the courts and tribunals and any person has the right to have his/her dispute heard fairly and publicly by a competent, independent and impartial tribunal, established by the law, deciding either upon the merits of any criminal charge against him/her, or upon the appeals regarding the rights and obligations of a civil nature.

SIGNIFICANCE OF IMPARTIALITY FROM THE DOCTRINE PERSPECTIVE

From the scheme of legal acts mentioned, an essential prerequisite of the fair trial is its judgement by an independent and impartial tribunal, established by law.

The judge's independence and impartiality concern both the judicial organization, meaning the legal regulation of the tribunal existence, its establishment and composition, as well as its actual operation, assuming a determined dispute.

Both the independence and the impartiality of the judge represent self-evident benchmarks for the credibility of the judicial system, without which the operation of the rule of law cannot be imagined.

Both concepts are indissolubly linked, as a judge who is not independent cannot be impartial: independence is the required (but not sufficient) prerequisite of impartiality.

Judge's independence refers to the absence of any interferences of the executive or legislative power, on the one hand, and of the litigants, on the other hand, in the exercise of the courts' functions (functional independence), but also aims at the statute of the judges and guarantees of such a statute, i.e. recruitment method, advancement method, limits arising from the nature of the judge's function etc., as well as the fact that the judge cannot be deprived of his/her function through arbitrary approaches or someone's will (personal independence) - C. Bîrsan, *Convenția europeană a drepturilor omului,* Ed. C.H. Beck, București, 2005, pag. 490 et seq.

The judge's impartiality means the exercise of all prerogatives, independently, unbiased, equidistant and hearing the parties in the absence of any prejudices, granting them equal chances in the trial, in order for them to support their own points of view. "Bias" or "prejudice" represents "*the tendency, predilection or predisposition to favour a certain position, party or outcome (...), the predisposition to settle an issue or a case in a certain way, not leaving the judicial route completely open to reviews and deliberations*". (I. Copoeru (coord.), B. Maan, I. Huitfeldt, T. Gundersen, *Ghidul practic de etică și deontologie profesională pentru judecători și procurori*, București, 2017, pag. 35.)

As it has been said before, the absence of the judge's impartiality can manifest not only in words, but also in attitude, giving as examples in this regard (...) *epithets, slurs, demeaning nicknames, negative stereotyping, attempted humour based on stereotypes (related to gender, culture or race, for example), threatening, intimidating or hostile acts that suggest a connection between race or nationality and crime, and irrelevant references to personal characteristics. Bias or prejudice may also manifest themselves in body language, appearance or behaviour in or out of court. Physical demeanour may indicate disbelief of a witness, thereby improperly influencing a jury. Facial expression can convey an appearance of bias to parties or lawyers in the proceeding, jurors, the media and others. The bias or prejudice may be directed against a party, witness or advocate.* "Commentary no. 58 on the *Bangalore Principles of judicial conduct* (Editor, S. R. Roos, Translation - Cristi Danileț), București, Ed. C. H. Beck, 2010, pag. 58)

An example that might show the lack of impartiality can be imagined under the provisions of art. 217 para. (1) NCPC, setting out that the president of the panel is the police of the hearing, being able to take measures "*for keeping the order and decency, as well as the ceremony of the hearings*". Para. (6) of the same article states that „*The president draws the attention of the party or of any other person disrupting the hearing or overruling the*

*measures taken, to observe the order and decency, **and in case of need orders his/her removal (s.n.)***", and para. (7) provides that „*Underage persons may be removed from the courtroom, as well as **persons appearing in an indecent outfit (s.n.).***" Similarly, para. (9) of art. 217 of NCPC provides that, in case the one disrupting the order is the defender of the party "*the president shall call him/her to order and, if due to his/her attitude, the debates can no longer continue, the trial shall be postponed, applying the judicial fine provided under art. 187 para. (1) point 2, and the expenses incurred due to postponement shall be borne by him/her through enforceable decision, the provisions of art. 191 being applicable*". It is easy to anticipate that the procedure by which a person is sanctioned for the aforementioned offenses shall be in any case perceived by him/her as vexatious, however the judge must pay attention to the manner of applying the legal provisions mentioned, in order to avoid the exercise of attributions being perceived as a manifestation of subjectivity or potential prejudices. As it has been said "*unjustified reprimands of advocates, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgments and intemperate and impatient behaviour may destroy the appearance of impartiality, and must be avoided*." (*Commentary on the Bangalore Principles of judicial conduct,* (op. cit.), paragraph 62, pag. 59 - 60. Similarly, see: C. Ghigheci, *Etica profesiilor juridice,* Ed. Hamangiu, București, 2017, pag.223 et seq.)

However, what is included and what is not included in the scope of prejudices? For example, it has been said that „ *The judge's set of personal values, his/her philosophy, or beliefs about the law, cannot represent subjectivism or prejudice. The fact that a judge has a general opinion on a legal or social issue directly related to the case does not make him/her incompatible to preside"* (J. M. Shaman, S. Lubet, J. J. Alfini, *Judicial Conduct and Ethics,* 3rd ed. (Charlottesville, Virginia, The Michie Company, 2000) *apud.. Commentary on the Bangalore Principles of judicial conduct,* (op. cit.), paragraph 60, pag. 59, footnote 36*).* Other authors showed that *"(...)the judge has his/her own vision of life, his/her own emotions even during the trial he/she presides or in which participates as a member of the panel. Moreover, he/she has political preferences. All these states, conceptions, feelings cannot lead the activity of the judge, because, otherwise, it affects his/her capacity to be impartial in a certain case. Of course, these (the judge's conceptions, feelings, even personal "history") contribute to a certain perception of the facts that the judge has to settle. But it is difficult to say to what extent the judge's own personal, spiritual experience, desires and passions can influence his/her decision. However, psychologically speaking,*

the judge cannot ignore, even if he/she does, it is done subconsciously, his/her own "history". (...)"- I. Copoeru (coord.), B. Maan, I. Huitfeldt,T. Gundersen, *Ghidul practic de etică și deontologie profesională pentru judecători și procurori,* (op. cit.), pag. 46. In accordance with the latter views, we argue that, indeed, the boundary between the set of personal values and prejudices is often volatile. In this regard, we ask, for example, whether a judge referred with the judgement of partition of joint property, following a divorce, known to have a misogynistic approach, would be able to rule impartially on the share of the wife's contribution to the acquisition of the joint property, purchased during the marriage, given that she, raising the four minor children and taking care daily of the household, had no job during the marriage? Of course, the same question can be asked about the impartiality of a judge, who is referred by the applicant to rule on the loss of parental rights of the other parent, alcoholic and violent, given that the judge him/herself has recently gone through similar life situations, being forced to endure the violence of the spouse. How will the defendant feel about the judge's attitude? Will the judge be able to overcome subjectivism? Even if the answer is yes, the question is: how would a fair-minded and reasonable observer perceive the judge's (im)partiality, if informed, i.e. if he/she was aware of the set of personal values and the life experience the judge went through recently?

On the other hand, the difference between "opinion", which is acceptable and "subjectivism", which is unacceptable, must be noted. We find it natural for the judge to reflect on the information becoming aware of when reading the file of the assigned case, context in which we consider the statement that *„ the proof that the mind of a judge is* ***tabula rasa*** *would show lack of training, not of subjectivism"* (Laird v. Tatum, United States Supreme Court (1972) 409 US 824, *apud. Comentariu asupra Principiilor de la Bangalore, privind conduita judiciară,*is grounded (op. cit.), pag. 59). Indeed, it seems unrealistic to require a judge who is aware of the parts of the case not to think about the possible solution that he could rule in that case, taking into account several working hypotheses, regarding which he/she admits that they may or may not be confirmed by the evidence to be administered in the case. The lack of impartiality is generated not by the existence of an opinion, but by the drive not to change it, by the refusal to remain open to listening and analysing the arguments, which would actually thwart the purpose of any procedural debates.

As a standard of conduct, it has been said that the impartiality principle assumes that the authorities in charge with justice are neutral "*neutrality being of the justice essence*".(R. Chiriță, *Dreptul la un proces echitabil, (op. cit.),*

pag. 29),Impartiality involves neutrality as "nobody can be the judge of own case". The principle gains both a literal application - nobody can judge a case to which he/she is a party (*neminem judex*) or in which he/she has an economic interest, and an "interpretative" application, appropriate for cases when, although in reality there is no question of the absence of impartiality, it might however arise from the perspective of a reasonable observer, informed, without personal interest in that case. There are opinions that contradict the identification of impartiality with neutrality, arguing that, on the contrary, the judge can never be neutral, because „*the judge necessarily has personal views, he/she is not an incorporeal being, he/she is of flesh and blood; he/she necessarily has beliefs. Nobody wants the judge losing contact with people. Platon said that only the dead were impartial! Personal preferences, from our culture, education, values in which we believe ... truly exist. The judge cannot cease having personal views, except when he/she gives up humanity!*" (S. Gaboriau, *L'impartialité du juge n'est pas la neutralité.Pour une conception engagée de la fonction judiciaire,* available *online* at *http://www.medelnet.eu/images/Gaboriau.pdf*, accessed on 04.09. 2021).

We consider that the two points of view end up being diametrically opposed due to the different connotations that are attributed to the concept of neutrality. We consider that it is not wrong to argue that impartiality can, however, be seen as neutrality, but in the sense of equidistance from the litigants, and not as an isolation of the judge from the society in which he/she lives. The credibility of judicial institutions involves the existence of judges connected to the life of the city, and not of some who live outside or "above" it. The assessment of the facts brought before the court can be made by the judge only by reference to his/her own life experience, which he/she cannot gather in an "aseptic" environment, but only by confronting the daily reality, being in contact with people's social issues, with their worries and unrest. The life experience will be necessary in cases such as those regulated by art. 329 Code of civil procedure, setting out that: *"In the case of presumptions left to the light and wisdom of the judge, he/she can rely on them only if they have the weight and power to give rise to the probability of the alleged fact (...)".* The "light and wisdom of the judge" are not "given", they are "constructed", because, in principle, man is not born wise, but becomes so, and "becoming" is achieved only by gathering life experience.

THE STANDARDS OF IMPARTIALITY IN THE ECHR: SUBJECTIVE IMPARTIALITY *VERSUS* OBJECTIVE IMPARTIALITY

As regards the requirements of impartiality, the European Court of Human Rights (ECHR) has created a rich case law, referring both to the fact that the court must be impartial **from a subjective point of view**, i.e. no member of the court must show bias or prejudice, as well as the fact that the court must be impartial **from an objective point of view**, i.e. it must offer sufficient guarantees to rule out any legitimate doubt in this regard, including from the perspective of a reasonable observer, informed and separate from the conflict of the parties.

And, since there is no actual possibility of detecting with certainty a person's subjective beliefs, personal impartiality must be presumed. In our legislation, the impartiality of justice is enshrined as a matter of constitutional principle, art. 124 para. (2) of the Constitution of Romania which provides that: "*The justice is unique, impartial and equal for everybody*", provisions in relation to which the Constitutional Court of Romania ruled that "*the judges enjoy the constitutional presumption of impartiality, this being attached to their professional status. This presumption can be, however, overturned, individually, with respect to each judge separately, provided that the absence of the subjective or objective impartiality of the judge is proved"* (paragraph 20 of the Decision of CCR br. 558/16.10.2014, available *online* at http://legislatie.just.ro/Public/DetaliiDocumentAfis/163719, accesed on 05.09.2021).

However, *"(...) the absence of neutrality is seldom a tangible reality. Unless the judge exposes **biases** against one of the parties, how could his/her partiality be proved if we cannot, humanly speaking, probe into his/her mind? Therefore, acknowledging clues of the absence of neutrality, of an appearance in this respect, is sufficient to remove the presumption of neutrality of the judge"*(R. Chiriță, *Dreptul la un proces echitabil*, (op. cit.), pag. 34).

With regard to objective impartiality, the ECHR has repeatedly ruled that the court must provide, mainly by the way in which it was composed, sufficient guarantees of impartiality to rule out any legitimate doubt in this regard. (Piersak vs. Belgium, 01. 10. 1982; Castillo Algar vs. Spain, 28. 10. 1998; De Cubber vs. Belgium, 26. 10. 1984; Kress vs. France, 7. 06. 2001; Hauschildt vs. Denmark, 24. 05. 1989 etc.). In the case law of the Court, in order to decide in a particular case that there is a justifiable reason to fear that a court is biased, it must be determined whether, regardless of the personal conduct of one of the members of that court, there are verifiable facts which

cast doubt on the impartiality of the court. "*The objective assessment focuses essentially on hierarchical or other connections between judges and other actors in the proceedings*." (R. Bercea, *Protecția drepturilor fundamentale în sistemul Convenției Europene a Drepturilor Omului*, Ed. C. H. Beck, București, 2020, pag. 194.)

However, the theory of the objective test of impartiality has been extreme in some cases, such as the affair Procola vs. Luxembourg, of 28.10.1995, in which the ECHR noted that even a simple doubt, no matter how unfounded, is still sufficient to alter the impartiality of the court in question. This decision generated a wave of reactions, especially from practitioners, the most vehement of which was that of judge Paul Martens, who criticized the "tyranny of appearances" and the "impenetrable sphinx" position claimed by the ECHR from the judge. In his view, the judge should not be a "speechless" arbitrator, but should express him/herself during the debates, challenging the parties to contradictory debates on all relevant aspects of the case, because there is no *"fundamental right to the intellectual virginity of the judge, kept intact until the day of pronouncing the decision"*, the only condition being that the decision is not made outside the judicial debate, based on evidence that has not been submitted to the contradictory debates of the parties.(Paul Martens, *La tyrannie de l'apparence*, *Revue trimestrielle des droits de l'homme*, 1996, pag. 640). Indeed, it is unreasonable to require the judge not to have a personal view, as long as, at the same time, he/she has the obligation to analyse the facts pending before the court, in order to prepare for the trial of the case. How will he/she know what evidence is admissible, relevant, conclusive, useful if he/she has no idea about the situation pending before the court? What can be asked of him/her, however, is that his/her opinion should not be inflexible *ab initio*, so that he/she can be present in all the contradictory debates.

In any case, it should be noted that, like independence, impartiality is not only a matter of substance but also of appearance: it is not enough to be independent and impartial, this must be also visible from the perspective of a reasonable observer, who, if the judge seems to be biased, will perceive this as an injustice, thus prejudicing the credibility of justice itself. In these circumstances, it was rightfully concluded that the perception of partiality erodes the public trust, thus undermining the foundation of the legitimacy of the judicial system. (For a very interesting and well-founded study on this topic, see: A. Richardson Oakes, H. Davies, *Justice must be seen to be done: a contextual reappraisal*, pag. 462-494, available online at: https://law.adelaide.edu.au/system/files/media/documents/2019-02/alr-37-2-ch06-oakes-davies.pdf, accesed on 01.09.2021)

According to art. 2.5. of the Bangalore Principles, *"The judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially".* It should be noted that these provisions also refer to the "*reasonable person*", who "*might believe*" that the judge is unable to decide the matter impartially. The wording of the Bangalore Principles - *"it may appear to a reasonable observer"* - was detailed at the Hague meeting in November 2002, concluding that "*a reasonable observer*" must be an observer "*both fair-minded and informed*".

But who is this *reasonable, bona fide* observer who is *disinterested in the case,* yet at the same time being "*informed*"?

The plurality of qualities designed by ECHR case law and codes of conduct coexisting in one and the same person has caused an effervescent interest in foreign literature, directing the "spotlight" on the "identity" of the reasonable observer, who happens to put in practice exactly the usual attributes of the judicial function. Against this background, there were also opinions that signalled the absence of standards in this matter, showing that there is, in fact, no unanimously accepted benchmark against which we can reference the reasonable or the informed nature of this observer, therefore it is not clear what that observer must know in order to be able to objectively assess impartiality. (J. McKoski, *Giving Up Appearances: Judicial Disqualification and the Apprehension of Bias,* (2015), 4, British Journal Legal Studies, pag. 60 – 65).

What exactly is an "informed" observer? Should he/she be a law connoisseur or should he/she have deep insight into human psychology? No matter the answer to the minimum set of skills that the observer should have, it is hard to imagine that an "ordinary" person, without legal training, would have a general culture so sophisticated as to infer the way the judges think, what are their ethical standards, etc. From this finding to the question of what was pursued by the creation of this fictional character was only a step. The answer was that „*the hypothetical reasonable observer of the judge's conduct is postulated in order to emphasize that the test is objective, is founded on the need for public trust in the judiciary, and is not based purely upon the assessment by other judges of the capacity or performance of a colleague.*"- Paragraph 77 of the *Commentary on the Bangalore Principles of judicial conduct,* (op. cit.), pag. 65 Similarly, M. Kirby states that the reasonable observer, although an artificial concept, „*a means whereby judges express their respect for the opinion of people in whose service they act*" (M. Kirby, *Judicial Recusal: Differentiating Judicial Impartiality, and Judicial*

Independence?, text available *online* at: https://www.michaelkirby.com.au/images/stories/speeches/2014/2732A%20%20AUSTRALIAN%20BAR%20REVIEW%20-%20JUDICIAL%20RECUSAL.pdf, accessed on 20.08.2021).

In any case, the generally accepted criterion for ruling out is the reasonable perception of subjectivism, and the objective test must provide answers to the questions: "*What would such a person conclude, looking at the matter realistically and practically after fully examining the issue? Would that person think that it is more likely that the judge, either consciously or unconsciously, will not decide fairly?*". In the quasi-unanimity of the cases, it is difficult to anticipate that the judge will manifest an open bias in a certain case, the existence of prejudices being, as a rule, difficult to perceive from the perspective of objective manifestations. Specifically, it usually starts from the assumption that, although it *suspects a real subjectivism*, the party cannot prove it, and then gives up asserting the absence of subjective impartiality, being easier to claim that there is a reasonable perception of subjectivism (perception whose exigency is easier to establish through the objective test) – i.e. the appearance of impartiality.

It is well known that, as a rule, justice works under pressure, being required to make sometimes crucial decisions for people and their lives, in trials in which parties unequal in terms of resources and social status fight, sometimes in an extremely tense atmosphere, "*life and death*". Under these conditions, it is easy to imagine why each of the litigants would be willing, *in extremis*, to do (almost) anything to win, or – at least – not to lose. That is why the independence and impartiality of the judge become overbid: how can he/she be an effective arbitrator in the case, if he/she is not independent and impartial, and if he/she is not seen as such, both by each of the parties and (or, especially) by third parties? Ideally, the judicial procedure should be conducted in such a way that even the losing party is satisfied with its fairness, which would ensure a positive perception of how justice has been done, regardless of whether we look at things from the perspective of the winning party or from the perspective of the party losing the trial. The reality is, however, different, in the sense that often the losing party or its lawyers are tempted to blame the unfavourable outcome on the lack of independence or impartiality of the court, instead of assuming the loss. Thus, although it is accepted that it is not enough that justice must be done, but it must be perceived as being done, the question arises: „*What are the chances for the losing party to recognize that justice was indeed done*?"(F. van Dijk, *Judicial Independence and Perceptions of Judicial Independence,* in „Perceptions of

Independence of Judges in Europe. Congruence of Society and Judiciary", Palgrave Macmillan, *Open Acces*, 2021, pag. 8 - 13).

Instead of conclusions, a call to reflection on the question recently posed by a researcher: why should judges care about how the public perceives their actions, even more than they care about the truth behind their actions? (F. Schumann, „*The Appearance of Justice": Public Justification in the Legal Relation* , 66 University of Toronto Law Faculty Review, vol 66 (2), pag. 191, available *online* at: *https://heinonline.org/HOL/LandingPage?handle=hein.journals/utflr66&div=11&id=&page*=, accesed on 20.08.2021). In other words, why is what the litigants but also reasonable, informed and fair-minded observers (appearances, i.e. - a.n.) may perceive more important than what is not seen, although it may exist in reality (impartiality itself, i.e. - a.n.)?

The answer was that abstract truth is not a criterion that justifies the way justice does its job (or, at least, not one that provides answers that everyone can understand - a.n). This justifies the reason for the existence of the reasonable observer, not involved in the conflict, however "informed", that *persona* who has all the qualities of the ideal judge, with the difference that his/her role is to seek the "actual" truth, not the "abstract" truth. In other words, his/her role is to bring justice closer to the citizen, to make its functions and its mode of operation "*accessible*" to people: the application of justice must be perceived "authentically", and procedures must be explained to the public through a supporting speech. In these circumstances, it has been said that the "reasonable observer" is the public to which, in fact, the "reputable speech of the judge" addresses, a speech that seeks to recognize the role of justice in public life, thus legitimizing the judicial function. (F. Schumann, „*The Appearance of Justice": Public Justification in the Legal Relation*, (op. cit), pag. 193.)

Therefore, the answer to the role of the observer expert in the matter of impartiality is given by the author J. McKoski, stating that: „*The whole idea of employing the reasonable person standard in judicial ethics is* ***to bring the public into the room"*** **–** J. McKoski, *Giving Up Appearances: Judicial Disqualification and the Apprehension of Bias,* op. cit, pag. 53.

Indeed, it is beyond any doubt that the society's trust is absolutely necessary for any judicial system to fulfil its purpose, and its legitimacy can only be obtained if the judicial system is independent and, in this context, establishes sufficient guarantees for ensuring the judges' impartiality.

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RADICAL SOCIAL REACTION IN MODERN REPUBLIC OF CROATIA - CRADLE OF NATIONAL TERRORISM

Ivan Dešić, Univ.crim.spec [102]
Dijana Gracin, PhD [103]
Ksenija Butorac, PhD[104]

Abstract
30 years after the Homeland war The Republic of Croatia faces many social, political and economic problems. Although Croatia became part of European Union in the year 2013, it still faces problems with corruption and nepotism, high levels of youth emigration and rising intolerance regarding nationality, sexual orientation and cultural differences, together with growing distinction between income of working classes and wealthy groups of people.
Growing injustice, especially at the financial and class level, causes revolt between young people, who face open humiliation from the government, ministers, the prime minister itself and the president. Growing dissatisfaction escalated on the 12th October 2020, when a young individual expressed his opinion through an assault rifle and started burst fire on the government building in the center of the capital, wounding a police officer.

The topic of this paper is growing terrorism according to social dissatisfaction and growing revolt of Croatian youth, and tensions, followed by economic differences and legal injustice. The authors will try to analyze and connect cases, effects of social situation and history of terrorism, as well links between terrorism and changes in social situation of the inhabitants of the country concerned.

Keywords: Terrorism, Social Welfare, Inequality, Corruption, Socio-economic factors, Croatia, Government

[102] Univ.crim.spec., University of Rijeka, Croatia, European Union
[103] Assist. Prof., University of Zagreb, Military Studies, Zagreb, Croatia, European Union
[104] Full Prof., Police University College, Ministry of the Interior and University of Zagreb, Croatia, European Union

INTRODUCTION

Following the burst fire from the assault rifle on the 12th October 2020, when Danijel Bezuk committed crime against police officer (Miljuš and Karakaš Jakubin 2020) and with purpose to leave the message for the Croatian government members and authorities, Croatian security services analyzed the event and described it as possible terrorist act against the authorities.
The topic of this paper is growing terrorism according to social dissatisfaction and growing revolt of Croatian youth, and tensions, followed by economic differences and legal injustice. The authors will try to analyze and connect cases, effects of social situation and history of terrorism, as well links between terrorism and changes in social situation of the inhabitants of the country concerned.

ANALYSIS OF THE TERMINOLOGY

In order to analyze the event precisely, it is important to make distinction and define terms.

Ruby defines terrorism with such criteria which include political motivation, directed towards civilian population and committed by cloaked members of the society, more precisely, by individuals who performs clandestine operations, and not by the states (Ruby 2002, 10). In the same time, Kaplan includes the factor of fear caused by terror (Kaplan 1978, 239). From legal point of view, Croatian Criminal act in Article 97 (CC 2011) defines terrorism as the criminal actions with goal of serious intimidation toward population, state or organization, in order to do or not to do specific action.

Meanwhile, social welfare can be defined as well being of the entire society with energy, environmental and economic influences (Bemš, et al. 2016, 5). While Bergson problematize oversimplification of the social welfare as economic factor (Bergson 1954) coming from Arrow's definition of the social state in which each person has different available resources and amount of productive resources invested in each productive activity (Arrow 1951, 17). Although the social welfare can be reconsidered using different criteria, among which are Bentham's criterion (Alvarez-Cuadrado and Van Long 2009), Pareto-optimality criterion (Buchanan 1962) and Kaldor-Hicks compensation criterion (Stringham 2001), for the purpose of this work the social welfare will be narrowed as situation in which all citizens have equally distributed resources, with equal rights to achieve or gain each resource.

Social justice can include criteria that include justice system in decision-making procedures, as well as their vision of equal values and equal treatments for each individual of the society. As there will be distinction between justice system (legal system), for the purpose of this work the social justice will include equal treatments for each individuals, which considers dignity and respect from the authorities facing civilians (Tyler 2000, 122), diversity and injustice that might come from cultural and economic diversity (McArthur 2016), or narrowed, class and economical (in)equality (Thompson 2016, 17).

To sum up all criteria in single description, we will define social welfare, economic factors, education, social justice and inequality as socio-economic factors.

COMPARISON BETWEEN TERRORIST CASES AND SOCIO-ECONOMIC FACTORS

In order to find the connection between socio-economic factors and terrorist attacks, it is necessary to make comparison between HDI[105] and other factors with map of the locations of terrorist attacks. Of course, it is important to highlight that not all terrorist attacks have same motivation, but the goal is always similar – action against civilians, to create atmosphere of fear, in order to gain economic profit and influence.

TERRORIST ATTACKS

Different terrorist attacks occurred in different years, but most locations or regions remain same. Since fall of Berlin wall and the collapse of the communism, the magnitude of terrorist attacks which often occurred in Spain (ETA), Ireland and United Kingdom (IRA), and Germany (RAF), is getting lower and lower, almost insignificant. Meanwhile, there is rise of the terrorist attacks in the areas with mainly Muslim population, or countries with lower standards and drug problems (Central Africa, Middle East, South Asia and South America).

Arab countries, like Iraq, Syria, Libya and Egypt had more liberal laws in social interaction and female rights comparing to Saudi Arabia and UAE, but the regimes in all countries were totalitarian dictatorships, therefore some ethnic groups had limited possibilities (Kurds, Shia's) or some activities still

[105] Human development indeks - definition

were forbidden. But citizens still had possibilities to gain guaranteed social rights, medical care, social care, free education, job etc., while in Afghanistan and Iran many leisure activities were forbidden, and even education was luxury (Ahmida 2012).

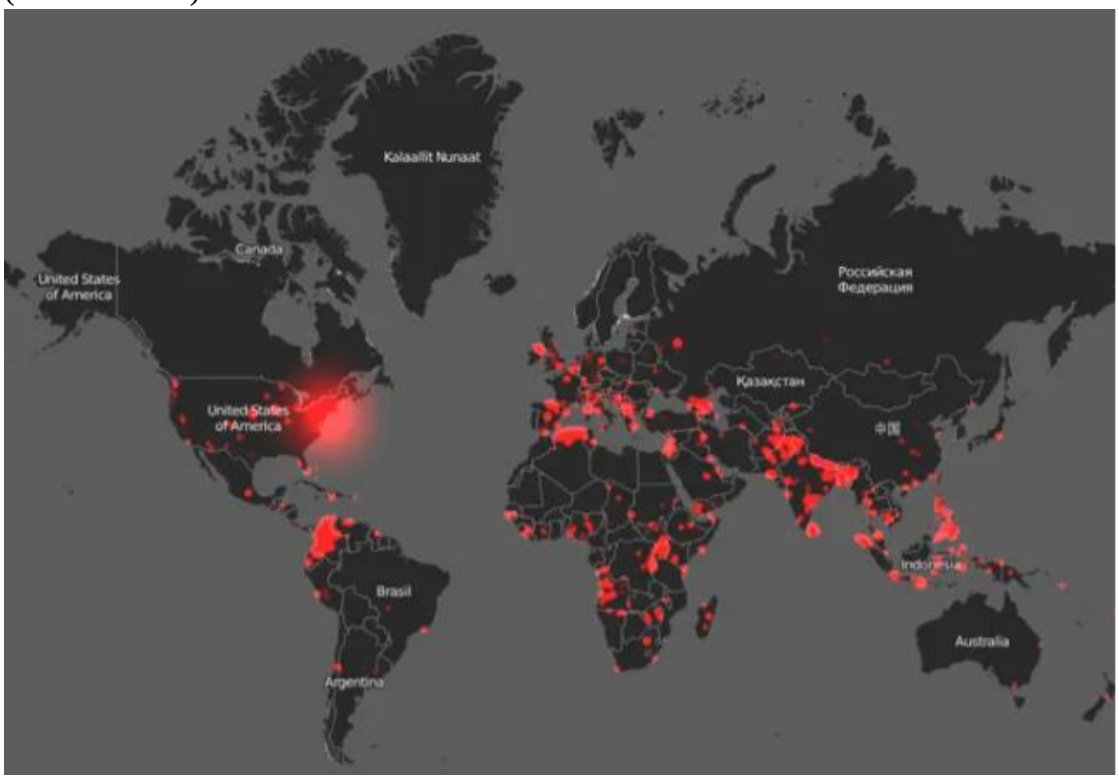

Figure 1:The year saw a consistent bundle of activity in Israel and South America. From the site it is notable how the situation changes in Iraq, Syria and Libya after the falls of the regimes and insurgencies on the Syrian territory over 20 years, taking into consideration lesser terrorist activities before the falls of regimes and „Arab Spring". Available at: https://www.businessinsider.com/global-terrorist-attacks-past-20-years-in-maps-2017-5#2001-september-11-2001-marked-the-us-greatest-loss-of-life-from-a-foreign-attack-in-the-countrys-history-more-than-2700-people-were-killed-in-the-attacks-on-new-york-citys-twin-towers-about-300-of-those-were-firefighters-and-emergency-responders-5

It is notable that after the falls of regimes in the Maghreb and Middle East during „Arab spring "situation worsened (Figure 1) (Moghaddam 2012), and following years up to this date have been full of conflicts and cradles of terrorist groups, or new groups which seized power. Comparison with terrorist activities from 2005 to 2021 shows huge difference between terrorist activities in 15 years long period (Figure 2 and 3).

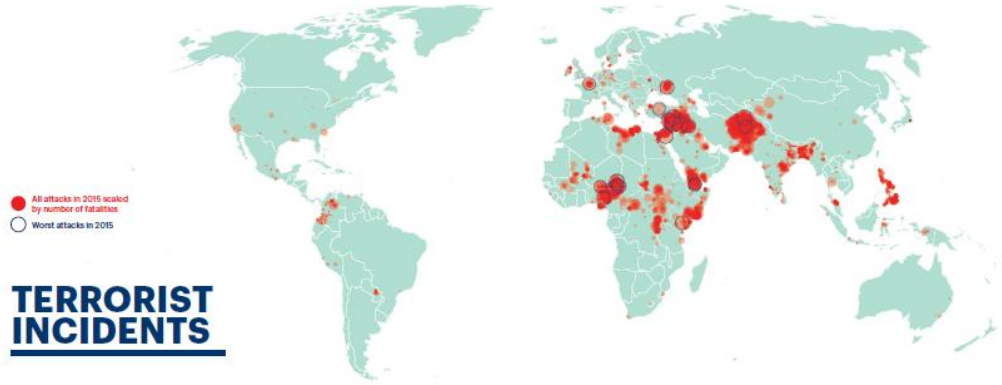

Figure 2: Terrorist incidents 2015. Available at: https://www.geospatialworld.net/blogs/maps-of-global-terrorism/

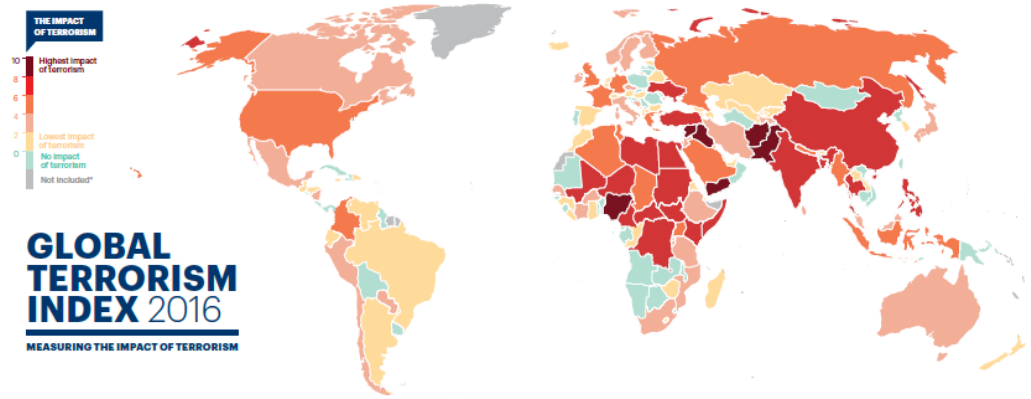

Figure 3: Terrorist incidents 2016. Available at: https://www.geospatialworld.net/blogs/maps-of-global-terrorism/

SOCIO-ECONOMIC FACTORS

Comparing the countries in the world, it is highlighted that USA, Canada, Australia, Japan and European countries, mostly Scandinavian countries, have high Human development index (Figure 4) (UNDP 2014).

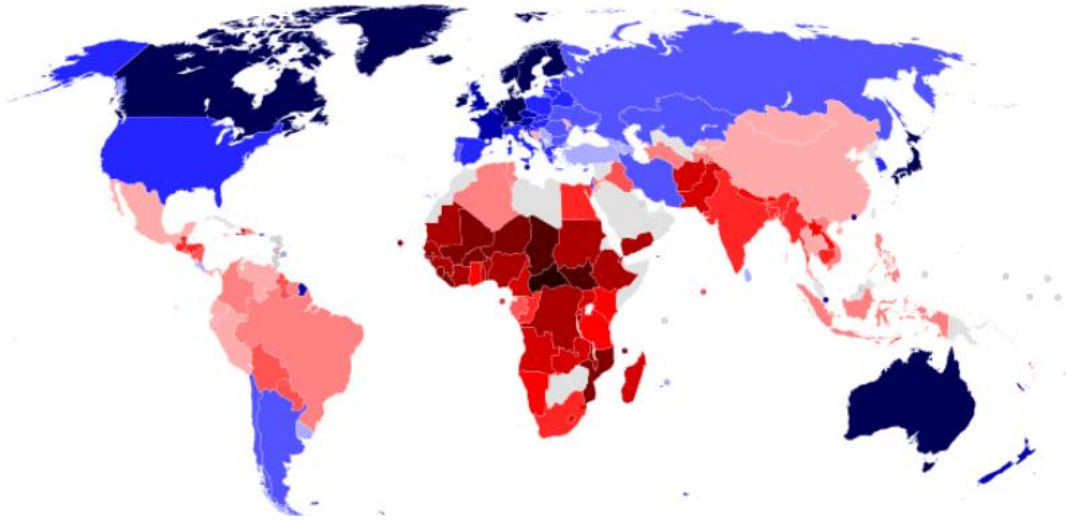

Figure 4: 2018 Inequality-Adjusted Human Development Index. Available at: https://en.wikipedia.org/wiki/Economic_inequality

Also, data shows that social activities, rights, economic equality, social welfare, health and social justice are highest in Scandinavian countries (Figure 5), in which Denmark has one of the fastest judicial systems (EU 2019, 12), Norway has one of the highest GDP per capita (Trading economics 2021), while corruption is on the lowest level[106]. Dadašov and Mungiu-Pippidi in their article explain the analysis of the corruption index (Dadašov and Mungiu-Pippidi 2016).

[106] Corruption indeks for Denmark is 88, Sweden 85, and Norway 84, according to the business people opinion surveys and expert assessments (Transparency International 2020)

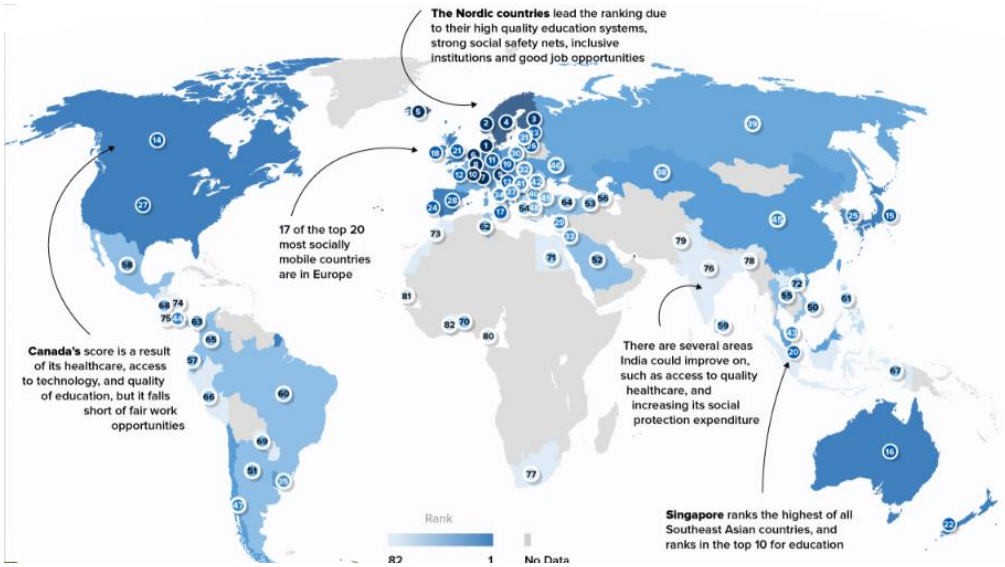

Figure 5: The Social Mobility of 82 Countries. Available at:https://www.visualcapitalist.com/ranked-the-social-mobility-of-82-countries/

Meanwhile, Libya and Syria significantly dropped in human rights, with ongoing war and conflicts, which places them on the worst countries for living in the world, next to central African countries and Afghanistan region. Destroyed infrastructure, inflation, radical oppositions, war crimes and corruption are raging in those countries.

OUTCOME OF THE COMPARISON

Comparing the maps of the world countries in which terrorist activities are more frequent, meaning the magnitude of the terrorist activities are more often in those countries with low HDI, meaning that there are more terrorist activities in poorer countries. Conclusion is that lifestyle, corruption, injustice, insecurity, poverty and inequality (Ragazzi 2017, 169) are tightly connected with possibility of raising terrorist activities (Krieger and Meierrieks 2016, 20). The reason can be in psychology of the individuals, who, after losing any opportunity to develop themselves in the equal environment, seek justice and safety in radical groups, motivated by financial opportunities, feeling of being part of community, motivated by religious fanatics, or just motivated by pure hatred towards the members who haven't done anything to improve or change current situation (Sanyal 2021, 3).

It is important to highlight that even in the countries with high HDI index and good social welfare and social security the terrorist event can occur.

Such examples are organized terrorist attack in France (BBC 2015), Christmas' attack in Berlin (Fürstenau 2020), Breivik's massacre in Norway (BBC, Norway massacre: 'We could hear the gunshots getting closer' 2017) and bombing at Manchester stadium (Bell , et al. 2021). Even the magnitude of those attacks was serious and with large number of victims, such events are rare and incomparable with constant and frequent attacks that occurs in Afghanistan, Iraq, Syria, Libya, Somalia, Nigeria etc.

Such results which shows socio-economic factors with frequency of terrorist attacks, for which the reason of the attack can be both political, religious (Benmelech i Klor 2020) or nationalistic/patriotic, give us the insight of possible security threat in the region of Balkan countries, in this case, Croatia. As seen before, states like eastern and southeastern Europe have average or slightly below average socio-economic factors, which can cause revolts, riots and dissatisfaction with current and ongoing government system.

CROATIAN CASE

As new member of European Union, Croatia had a great opportunity to became strong factor in growing and developing economic, industrial, touristic and educational competitive environment. With regular financial support from European Union both for civil and government sector, and with surveillance factor which controls and regulate government activities on the field of justice, it's implementation of the rule of law, and with great interest in Croatian industrial and economic development, Republic of Croatia achieved slight growth in all factors.

But even with supervisors from the European Commission, the nature of the Croatian politicians and inability of the Croatian population to adapt or accept new trends, taking into consideration that majority of Croatian population are seniors with age limit over 40 years, it is understandable that such population is slower and non-flexible in adjustment to new systems. Such reasons still keep influence from late communist era, with high nationalistic tendency which remained since the Homeland War from 1990 – 1996.

The education system is still stagnating, considering that Universities have a monopoly on the elections of Deans and traditional programs which are outdated, causing disinterest for such systems from younger population, which often migrate to foreign countries, especially with possibilities which occurred after joining European Union. With higher amount of senior population and pensioners, and high amount of people working in government administration and passive professions, deficiency of financial income, high debts and huge

pressure on the health and social care institutions, the state is facing crisis in social systems. With tendency of system which is considered „social aware state“, the Republic of Croatia is facing the incompetency to keep social welfare and economic equality, which already shows great difference between low, middle and high classes.

With high level of corruption[107] (Vuković 2017) and the interests which individuals have in current situation, causing higher stagnation with goal of keeping only chosen individuals who have monopole on Croatian industry, Croatian economy is stagnating even more, which resulted with Croatia becoming one of the 3 worst countries in the European Union in GDP per capita, also causing the slowest developing economy and industry rate (Eurostat 2021). The corruption cases are even worse if taking into consideration that Major of the Croatian capital and one of biggest cities in Croatia are under investigation for bribe, influence trading and other cases of corruption, as well as politicians such as ex Prime minister (DW 2014) and several entrepreneurs and businessmen. Court cases showed great injustice, releasing the suspects or postponing cases, with low sentences comparing to the sentences which occurs to the rest of population, middle class peoples.

It is understandable that such behavior of the elites, which shows no regret or intention to keep low profile in front of judicial systems, cause revolts and rioting between people.

Growing dissatisfaction resulted with several individual cases against the authorities, and the worst escalated on the 12th of October 2020, when young individual opened burst fire from assault rifle on the government building, wounding police officer.

BACKGROUND OF THE ATTACK – POSSIBLE REASONS

Following the comparison between terrorist attacks and socio-economic factors, it can be taken into consideration that the current situation in the Croatia with insecure social welfare and social injustice, inequality, stagnating economy, high level of corruption and questionable justice system, triggered the individuals to commit such act (Caruso and Schneider 2011, 39).

It is important to highlight that in the Republic of Croatia the radical religious groups are rare or almost insignificant, and only such case occurred during Homeland War, as result of Croatian involvement in war in Bosnia and

[107] Corruption index for Croatia is 47, what places it as the 63rd country in the world according to the Corruption perceptions index.

Herzegovina and fighting against Mujahedeens which joined Army of Bosnia and Herzegovina, which mostly consisted of Muslims. In other hand, there is higher risk of radical extremism manifested in nationalism, according to the Croatian Security-Intelligence Agency (SOA 2020). With current minorities which are mainly consisted of Serbian nationality, with fresh traumas from war, and tendency of Croatians to express their dissatisfaction through nationalistic manifestation, there is a risk of outbursting nationalism.

Government bodies are ignoring and turning blind eye towards such problem, because such profile of people is mainly voters for existing right winded party, Croatian democratic party.

Despite the profile of the perpetrator, which shows from his Facebook profile that he was right winded extremist, his act against government, right winded party, might be confusing at first. Taking into consideration the fact that the perpetrator was from poorer part of Croatia, with father as war veteran who lived on the level of lower middle class, despite the political interest, it is obvious that socio-economic factors played main role in his act. Similar cases occurred in city of Rijeka, when war veteran entered in City Hall with assault rifle because of the disputes about his property, for which he blamed the authorities from the city council (Večernji 2005). Although there weren't victims, the created atmosphere activated security services in order to negotiate the positive outcome of the situation. Another case included pensioners who threatened to activate with car full of explosive gas in the middle of city center, which also ended without victims. Such situation included sensitive groups of low-to-middle class citizens with irregular incomes and sensitive social situation.

Knowing that many young people emigrated, with insecure social and economic situation, the citizens became revolted on the elites who disrespect institutions of the state, creating the atmosphere of distrust towards government and justice system. Such desperate situation, with constant stagnation created a huge psychological stress, which in the end resulted with radical solution (Borum 2010, 5-6). As the perpetrator pointed out on his Facebook profile before suicide, „there are no untouchables “. Such comment and action can be defined as terrorist action, as it is criminal offence committed in order to achieve fear against civilians. But at the same time, with existing situation, it is understandable, and with current tendency of the injustice and open mockery, the message is clear: either the system and the mentality of the elites will change, or we will face even worse scenario on the larger scale.

CONCLUSION

The goal of this work was to connect the socio-economic factors, such as social welfare, social justice, education, equality and financial stability with reasons that might trigger terrorist activities. Such comparison was used to describe and explain the reasons of growing criminal activities and escalations in the Republic of Croatia, which escalated when civilian opened fire on Croatian authorities, governmental building and officers.

From the comparison it is notable that there is connection between socio-economic factors and terrorist activities, showing that Human Development Index and social welfare and financial stability of the individuals has a role in the magnitude and frequency of the terrorism in targeted region or country.

With high level of social insecurity, distrust in legal system, corruption, financial instability and weak social welfare, the Republic of Croatia faces possibility to be the target of growing radical extremism, precisely nationalism.

Reaction of the Danijel Bezuk, the young individual who opened fire on the Croatian authorities, is the example which resulted with growing tension and dissatisfaction with existing socio-economic situation, worsened by corruption and stagnation and lack of flexibility and political will to change the existing situation. With current tendency of the injustice and open mockery, the message is clear: either the system and the mentality of the elites will change, or we will face even worse scenario on the larger scale.

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OPEN OR CLOSED ELECTORAL LISTINGS FOR THE ASSEMBLY AND MUNICIPAL COUNCILS IN REPUBLIC OF NORTH MACEDONIA

Svetlana Veljanovska PhD
Faculty of Law – Kicevo-UKLO Bitola
svetlana.veljanoska@uklo.edu.mk
Sasha Dukoski PhD
Faculty of Law – Kicevo-UKLO Bitola
sasadukoski@hotmail.com

Marija Dukoska PhD
marijadukoska@live.com

Abstract

The election cycles that have been held so far in the Republic of Macedonia, since the independence until today, have been conducted in several ways. Some of them were conducted as election of the people's representatives in the country through one constituency, then there was a division of the country into a large number of constituencies and the current Electoral Code has divided the territory of the country into six constituencies.

The changes that were made by replacing the majority with a proportional model was in order to enable equal representation of MPs from all parts of the country and the same applies to local councils where representatives from all parts of the municipality should participate. An important aspect is the percentage of women as part of the electoral lists but also members of minority communities.

In some countries in Europe (Denmark, BiH) the principle of open electoral lists works, which lately has been increasingly promoted as an idea in Republic of N.Macedonia.

This paper will try to present the advantages and disadvantages of both models (open and closed electoral lists) from the aspect of the Macedonian democratic political scene.

Keywords: elections, open lists, closed lists, quotas, representation

INTRODUCTION

Since its independence, the Republic of North Macedonia has gone through a number of election cycles at the local and national level. Initially, the election of people's representatives was conducted within the model of one constituency, and then this constituency was divided according to the amended Electoral Code, into six constituencies on the territory of the country.

As for the nomination of members of the Municipal Councils and the candidate lists for the election of members of the Macedonian Parliament, that power is held by the local party elites and the leaders of the coalitions, and usually depends on their proposal whether someone will become part of the "winning combination", which provides the potential candidate with a ticket to the Municipal Council or to the Assembly of Republic of N. Macedonia.

The latest trend in the country's democratic movements is to promote the need for greater voter rights and to enable them to influence the creation of candidate lists for members of the Council or Parliament. The aim is to have more influence over the elected representatives, who in turn will have to respect the votes of the electorate, and not just follow the instructions of the party leaders.

However, given the representation of political parties in the Local Councils and the Assembly, the country's political elites are not prepared to relinquish their "acquired" right to delegate representatives to these bodies. Namely, our practice is to nominate the most prominent members of the party for members of the Council at the top of the candidate lists, where the "winning combination" is actually, and below the lists are the candidates who are members of the parties with less experience and less influence in the membership. Those who are aware of the fact that they will not enter the Council, sometimes condition their nomination by appointment to a managerial position in a national institution or by employment, provided that they are currently unemployed, which is almost always the case with younger party members, who in return they get the votes of their peers.

Due to these pre-election agreements, the possibility of establishing open lists in the Republic of North Macedonia is still difficult to accept in practice, despite all declarative statements of political leaders that all options are possible and will be discussed with possible amendments to the Election Law the country.

The members of the State Election Commission with whom I communicated on this topic stated that open list voting takes place in several European countries: Bosnia and Herzegovina, Denmark and Germany, and

outside Europe they mentioned Brazil. According to them, this principle of voting in our country is very difficult to be applied due to the political awe of the population and the level of political culture in the country among the entire population regardless of ethnicity.[108]

WHAT IS OPEN AND CLOSED LIST?

To distinguish between open and closed voter lists it is necessary to know their definition.[109] Open lists allow voters in the election process to present different preferences for candidates and parties, giving them the opportunity to vote for different party lists. Voters can create their own "virtual" voter list from what party lists offer. Open lists are structurally related to the right to vote, according to which each voter has more votes and in this way non-partisan elections are encouraged. Voter lists are open in two ways:
1. They provide open expression of the political affinities of the voters and the opportunity to enter into non-partisan elections;
2. They create an opportunity for greater freedom, greater independence of the elected representatives in relation to the political parties and the political leaders they nominate in the elections. Theoretically, this type of open list election model is very unusual.
Voters or the electorate are given three options during the election:
1. To vote for a political party or coalition;
2. To vote for a political party or coalition and at the same time elect as many candidates from the list as they deem worthy of their support.
3. To vote for as many candidates from the list of one party and coalition as they deem necessary.

This means that in such a case the voters have the opportunity to choose a party or coalition and to vote for any party on the list (item 1), to vote for the party or coalition and only for certain candidates from the offered list, which will have to be done new regrouping of the offered candidates (item 2), and although they did not vote for the party, by voting for their candidates to cast their vote for the party / coalition (item 3).

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[108]In the correspondence with the State Electoral Commission, my previous information was confirmed. Namely, they were not well informed about different electoral models, which might be used in our country, about their initiative, in order to improve voting culture in the RM. Most of the members of SEC were concentrated on their obligations within the frames of the Electoral Code, although each one of them, as part of their obligations has attended delegations monitoring electoral processes in European countries in the past.
[109]Glossary of Political Terms.

The advantage of an open list is the fact that the candidate is open to the voter and a better relationship is established between them. After the elections, the candidate has a responsibility not only to the party, but also to the voter.

The closed list is a form of election that allows the voter to vote for the list and the candidates of only one party.

There are two types of closed lists: blocked and unblocked. The former allows the voter to vote for the party list or coalition in general, as offered by the party leadership. The advantage of this model is the fact that the party leadership can formulate the correct ranking of the candidates according to the regulations for party affiliation in the coalition lists, age, gender, ethnic representation, educational and regional quotas, etc. This is where the candidates are maximally dependent on the party leadership that is in charge of their nomination.

The closed unblocked list gives voters the opportunity to vote for one candidate on the list, with the elected candidates being those who received a majority of preferential votes. The advantage of this list is the opportunity given to the voters to influence the election of MPs and greater independence of the candidates in relation to the party leadership. A disadvantage of this list is the inability to plan adequate ethnic representation, gender quota and age.

Our country has paid great attention to these issues in recent election cycles, although when it comes to party interests, some absurd situations occur.[110]

EXPERIENCE FROM THE COUNTRIES WITH MORE ADVANCED DEMOCRACY REGARDING THE OPEN LISTS VOTING SYSTEM

Given the fact that we unconditionally strive for the European Union and strive in every way to accept the positive (and, unfortunately, often negative) characteristics of European societies, I will point out a few examples of open voting.

In the Netherlands, one can vote for anyone on the candidate list according to a model called "preferential voting". Selected candidates are those who will win 25% of the required quota and they can be selected instead of the candidate who precedes the list and who will win a lower percentage of

[110]An example of such absurd is the State Electoral Commission where women are not proportionally represented, although it is responsible for controlling the candidate lists and to return them to further drafting if the number of women-candidates is less than 30%.

votes. This practice often applies to local elections, when voters know the candidates on the lists, although there are often two or three people in a region.

The same method of election is applied in Sweden, where in order to be included in the list. Candidates must win at least 5% of the votes that will be won by the party that proposed them. In Slovakia, in the European Union body elections, three of the thirteen members are elected on the basis of preferential votes.

Open lists were introduced in Brazil in 1945 and in Europe for the first time in Finland in 1955, then in Chile in 1958, in Poland and in Bosnia and Herzegovina this method of voting was first applied with amendments to the 2001 Electoral Code.[111]

In some countries, this type of election guarantees is used in the election of political party leaders and candidates for ministerial posts. However, this allows party leaders to somehow create a personal composition of the government of the Republic of North Macedonia that is being influenced by the choice of electorate.

This type of voting requires special preparation. I think it is appropriate to give a brief description of the technical possibilities that should be provided for open list voting.

Previously, two methods of voting were used:

- The first is to have a large ballot box for each party, and then boxes for different candidates;
- The second way, used in Slovakia, is to have a separate ballot box for each party. In order to preserve the secrecy of the ballot, each voter receives ballots from each party. He chooses his candidates or the party in general from one of the ballots, puts them in an envelope, and then in the ballot box. He returns the remaining ballots to a location within the constituency specifically designated for that purpose.

WHICH PRINCIPLE OF LISTS FORMULATION IS MORE APPROPRIATE FOR THE YOUNG MACEDONIAN DEMOCRACY?

The advantages and disadvantages of both options offered in this paper, it can be concluded that, in relation to the elections in the Republic of North Macedonia, the principle of creating closed lists, applied in previous election cycles, is even more effective. This stems from several facts cited in various reports made after each election cycle.

[111]Electoral Code of BH, Official Gazette of the BH 23/01 of 19 September 2001

1. Gender representation, although a minimum of 30% has been set, is lower than this rate. The counter-arguments given by politicians and women's NGOs (which often respond to these issues), are that women are not politically active enough in this country and that they are not interesting enough to be represented in institutions seeking elections.
2. The representation of people with disabilities, ethnic communities, etc., is still unsatisfactory.
3. The question arises, if there were no ethnically pure parties, would Albanians have a sufficient number of representatives in the Assembly, because in other parties they are represented in very small numbers and rarely manage to enter the winning combinations on local or parliamentary lists.[112]

According to the Constitution, every adult citizen of the Republic of North Macedonia has the right to equal participation and representation in political parties, participation in public affairs and the right to have equal treatment in public institutions, as well as to vote and be elected. In this part everything is clear and there is no discrimination, which means that they strictly adhere to all the principles, the electoral lists can function fully, without any obstacles. However, constitutional provisions require more than just equal treatment and opportunities. They also demand equal results considering the specific needs of men, women and other selected categories.

The practical experience from the previous election processes shows that in the absence of quotas for the representation of women, there were about 3-5%, while after the introduction of these quotas their presence increased to almost 25%. This case is far from the Scandinavian countries, but in comparison to the Balkans, twenty years ago, the situation has changed significantly in a positive direction.

However, the real situation could be seen in areas where quotas are not mandatory in elections: no women were elected mayors in the first elections and only four were elected in the last local elections, few women in positions as manager in public enterprises, excluding educational institutions and partly health facilities where women still have the highest representation rate as employees and management staff. Even private companies have small number

[112]On a local level, coalitions of smaller parties of ethnical communities succeed to enter into the Councils with several representatives from the Turkish, Serbian and Roma communities, even in regions where the number of their potential voters from the appropriate ethnicity is not enough for them to be elected through their own lists. In some areas there are reactions from the bigger parties in the coalition of the Macedonian political block, which believe that smaller coalition partners make profit on their account, i.e., on the account of non entrance of their co-party members positioned lower on the lists.

of women in management positions because in the private sector the prevailing opinion is that women are effective as support, rather than as bearers of a particular activity.

CONCLUSION

Although the Constitution of the Republic of North Macedonia guarantees equal rights of all adult citizens regarding their voting rights, the reality is still based on the decisions of the party elites, and in the smallest parties, on the opinion of the party leader. Therefore, for the election process in which the entire adult population is involved, depending on the decisions and the proper functioning of the institutions whose members we elect (especially the Assembly at the national level and local councils at the local level) I believe that closed lists should be used in the following election cycles in the Republic of North Macedonia. This is especially necessary for voters who, unfortunately, are not sufficiently informed and educated and therefore are not able to decide on equal representation of smaller ethnic communities, women, vulnerable groups and other underrepresented categories of citizens.

Political leaders are still, at least ostensibly, trying to represent everyone according to the level of their involvement in society and social life and to ensure that their voice is heard. Is this possible? From our experience so far, we can conclude that this is difficult to achieve, but it is better than going back to a time when only the chosen ones were able to be representatives of public opinion and under the guise of representativeness, to impose their opinion on the overall condition in society.

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CONCEPTUAL APPROACH TO ORGANIZING LOCAL SELF-GOVERNMENT IN EMERGENCY SITUATIONS*

Jovanka Tošić, Samed Karović[2], Siniša Domazet[3]

PhD student, Educons University, Faculty of Security Studies, Vojvode Putnika 87, Sremska Kamenica 21208, SERBIA, tosicjovanka@gmail.com
[2]Full proffesor, Educons University, Faculty of Security Studies, Vojvode Putnika 87, Sremska Kamenica 21208, SERBIA, karovic.samed@gmail.com
[3]Associate proffesor, Educons University, Faculty of Security Studies, Vojvode Putnika 87, Sremska Kamenica 21208, SERBIA, sdomazetns@gmail.com

Abstract
Emergency situations arise as a result of various events. The work of local self-governments in emergency situations implies efficient action on mitigating the consequences of emergency situations. The way of effective action of local self-government in such a situation is a challenge for effective counteraction to the emergency situation.
The paper describes one of the possible ways of local self - government to act in emergency situations, to successfully mitigate the consequences and protect and rescue the population in such a situation. The paper uses the method of content analysis, as well as the legal-logical methods of induction and deduction.

Keywords: state of emergency, local self - government, law, organization, mitigation

INTRODUCTION

Emergencies situations represent a constant combination of different events and testing the ability of society and the state to successfully manage

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emergencies in such a situation and provide assistance to the population in a given situation. It can be stated that emergency situations have become more frequent lately, more diverse and caused by various events. Sources of emergency situations have become more frequent and cause increasing consequences for people, material goods and the environment on a daily basis. It should be especially noted that the different definitions of emergency situations are oriented to the sources of threats and the ways in which society operates. The paper accepts the legal framework of emergency situations in the Republic of Serbia, so that such an approach enabled the definition of the model of functioning of local self-government in emergency situations conditioned by the Protection and Rescue Plan in emergency situations.

Successful emergency management will be efficient and effective if the entire system works in depth. The local self-government has a significant role in that, with its capacities and implementation of its competencies within the Law on Disaster Risk Reduction and Emergency Management. The limited capacities of local self-government should be borne in mind, both in terms of financial resources and in terms of material and human resources. However, if the local self-government is functionally organized and if the Protection and Rescue Plans are done realistically and anticipated events that could lead to a state of emergency, then the conclusion is clear that the local self-government will not be surprised and will be able to react very rationally and organized. Otherwise, it will encounter enormous problems and difficulties and will not be able to approach effective emergency management responsibly. This will create dissatisfaction and distrust among the population towards the bodies that are in it and distrust towards the state.

EMERGENCY SITUATIONS

There is enough evidence and data in the history of mankind that people, material goods and the environment have been constantly exposed to dangers and extraordinary events that have changed the world and human society, created history and changed the environment. People were finding ways to deal with these adversities and how to react to them. The modern age has made the causes for declaring emergency situations more and more complex, the consequences more destructive and, thanks to information and communication technologies, all present in the public, and thus in everyday life. Many mechanisms have been defined or created in scientific and professional bodies and institutions dealing with emergencies to anticipate,

prevent, counteract and reduce the consequences of emergency situations (Đorđević, D., Karović, S. 2017).

Emergency situations are caused by a certain development scenario, the impact on man and the environment, and the scale and effect of the phenomenon. Having in mind the above, emergency situations are most often classified according to the following criteria: the cause of the emergency situation; the speed of development of the emergency situation and the scale of the effects of the emergency situation (Savić, S., Stanković, M. 2012).

Frequent natural disasters in recent years, with the consequences they cause, significantly endanger the social community, human lives, material goods and the environment. The topicality of emergency situations induces the constant need of the social community to find an adequate response to the manifested security threats. By declaring a state of emergency, the social community creates a specific legal framework that enables the engagement and use of all available resources of society in protection and rescue (Kršljanin, D., Karović, S. 2015).

Based on everything that has been said about emergency situations, it can be stated that they bring with them a certain amount of damage, that they require additional efforts that must be made in order to repair the consequences. Additional efforts include the use of funds from the local and wider part, because regular activities of people cannot satisfy the needs for solving such a situation.

THEORETICAL CONCEPT OF EMERGENCY SITUATIONS

The term emergency situation originated at the beginning of the 20th century in the Russian professional literature (*črezvыčajnaя situacія*). Situation (lat. *situatio*) means position, place, circumstances, condition, circumstances. However, the situation in the modern sense does not represent a place, which is why it can be defined as a characteristic condition that is a consequence of an action or event (Mlađan 2015).

Manifestation of negative consequences caused by natural disasters or human actions directly affects the frequent need of the authorities to declare a state of emergency situatuon in part or in the entire territory of the Republic of Serbia. Timeliness in preparation and organization in response to the causes that lead to the declaration of emergencies reduce the number of potential victims, reduce the negative consequences and create the necessary conditions for the functioning of society (Kršljanin, D., Karović, S. 2015).

Consideration of the conceptual definition of emergency situations by modern theorists creates a large number of doubts. They are reflected in a different approach to conceptualization. Essentially different definitions are present in the literature. There are also doubts in the legal regulations, where the concepts of state of emergency, emergency situation, emergency events and crisis are used in various laws, without a clear demarcation or mutual correlation. Due to the large number of hazards, with different consequences, it is difficult to form a single and precise definition that would cover all the characteristics and features of an emergency situation (Karović 2014).

Taking into account the meanings of the terms that make up the phrase "emergency situations", in the most general sense, it can be said that it implies a state (circumstances, environment, environment) different from the usual (normal or regular) specific social community in which intense influences of various factors which pose an ultimate and general security threat.

Russian researcher *Gerzen* defines an emergency situation as "disruption of normal living and working conditions in facilities or a given territory, caused by an accident, natural disaster, catastrophe, environmental accident, epidemic, etc., but also by the use of available means that can use a potential adversary and which may lead to human and material losses and damage to the health of the population, flora and fauna, or the environment in general" (Gerzen 1992).

Emergency situation are a security situation (a set of threatening elements that reflect the state of security in a certain time and space) in which the state of functioning of the social system of the country or its parts, caused by events (natural, technogenic and social) on a large scale, and as a consequence they endanger the lives of the population, material goods and the environment (Mlađan 2015).

In the Law on Risk and Disaster Reduction and Emergency Management, an emergency situation is defined as “a situation when the risks and threats or consequences of disasters, emergencies and other dangers to the population, environment and material goods are of such scope and intensity that their occurrence or consequences it is not possible to prevent or eliminate them through regular action of the competent bodies and services, which is why it is necessary to use special measures, forces and means for their mitigation and elimination with an intensified regime of work ". The same law states that "the protection and rescue system is part of the national security system and an integrated form of management and organization of protection and rescue system entities in the implementation of preventive and operational measures and execution of tasks of protection and rescue of people and goods

from natural disasters and other accidents, including measures to recover from those consequences". Also, the law states that an emergency event is "an accident caused by a natural disaster and other accidents, which can endanger the health and lives of people and the environment; and whose consequences can be prevented or eliminated by regular action of competent bodies and services" (Law on Disaster Risk Reduction and Emergency Management, Official Gazette of RS,).

Emergency management is the direction of protection and rescue entities in performing their obligations and tasks. An emergency situation is declared immediately upon learning of the imminent danger of its occurrence. An emergency situation may also be declared after it has occurred, if the immediate danger of occurrence could not have been foreseen or if due to other circumstances it could not have been declared immediately after learning of the immediate danger of its occurrence. The emergency situation is lifted by the cessation of danger, ie the cessation of the need for the implementation of protection and rescue measures against natural disasters and other accidents. A state of emergency may be declared for the municipality, city or town of Belgrade, and for part or all of the territory of the Republic of Serbia (Đukuć 2018).

PANDEMIC AS A FORM OF EMERGENCY SITUATION

The current issue at the moment is the COVID-19[113] pandemic crisis, to which the Republic of Serbia was not immune.[114] The key element for the mentioned crisis was the media and the public address of the highest leaders in the Republic of Serbia.

As the authors Karović, Domazet and Ješić pointed out, quoting Tom Christensen & Per Leagreid, coronavirus 2 (SARS-CoV-2CV), which causes the disease COVID-19, has a devastating effect all over the world. By May 20,

[113] COVID-19 is a "mild to severe coronavirus disease", which is especially characterized by fever, cough and difficulty breathing and can lead to pneumonia and respiratory failure. The name is an unusual type of abbreviation, created from parts of two different words (COronaBIrus & Disease) and the last part of the date (19 from 2019). COVID-19 was first identified in Wuhan, China in December 2019 (https://www.merriam-webster.com/words-at-play/coronavirus-words-guide) (16.06.2021 at 22.09).

[114] Since the beginning of the 20th century, there have been a number of pandemics: the 2009 H1N1 pandemic, the Spanish flu 1918/19 (not of Spanish origin), as well as the 1957 and 1968 flu pandemics, and now the 2019/20 COVID-19 pandemic. Among the most famous pandemics is the Black Death, a plague that spread through Asia and Europe in the middle of the 14th century (https://www.merriam-webster.com/words-at-play/coronavirus-words-guide) (June 16, 2021 at September 22).

2020, 4,927,229 people had contracted the virus and about 324,035 had died from it. The UN Secretary General even described it as a "threat to humanity". The dominant definition of the crisis among executive politicians around the world is that the coronavirus is extremely dangerous and should be fought in any way. This led to draconian measures, literally closing entire states, regions and municipalities (Karović, S., Domazet, S., Ješić, 2021).

In almost all countries, including the Republic of Serbia, crisis headquarters have been formed with the aim of defining and taking measures to alleviate such grazing. The biggest part of the burden in counteracting the pandemic crisis was borne by the holders of power and the political elite of the society. As Tom Christensen and Per Lægreid point out, „ […] experts who advise political leaders in the fight against the virus often point out that politicians must make decisions in conditions of great uncertainty, without really knowing much about the effect of various measures such as closing schools or businesses, but most countries have done so. There were few counter-arguments, but they are gradually increasing with slow opening and deregulation in some countries, and some people say that "the cure is worse than the disease". In relation to these arguments, some researchers and epidemiologists argue that the coronavirus is not much more dangerous than the common seasonal flu and that putting such weight on health problems in a crisis is too much of a cost to society, both socially and economically (Karović, S., Domazet, S., Ješić, 2021).

An emergency situation is at the same time a crisis situation. Managing an emergency situation also means managing the crisis, which means, as the authors Karović, Domazet and Ješić point out, quoting Tom Kristinsen and Per Lægreid, „[…] has two main dimensions - governance capacity and governance legitimacy that separately and dynamically affect how political and administrative actors mitigate, define, handle and learn from crises. Management capacity means what structures and resources are available to address the crisis, but also used in practice. The division of management capabilities encompasses four types: analytical, coordination, regulatory, and delivery capability. The legitimacy of governance speaks to the environment of the government system - ie. citizens and media - experience and evaluate government efforts during the crisis. This can take the form of what is called "diffuse support", which means trust in institutions and political-administrative actors over time, but also "specific support", alluding to trust in certain actors or measures in certain situations. If the crisis is resolved well, there will often be high levels of trust and legitimacy, while a poor assessment of legitimacy can undermine governance. In a crisis situation, legitimacy is

often associated with accountability, not primarily internal political, administrative or professional accountability, but what is called horizontal or social accountability, where political leaders try to justify or argue measures taken, which is an important democratic characteristic" (Karović, S., Domazet, S., Ješić, 2021).

All measures taken in a pandemic crisis are related to communication with the public. The key part refers to "making sense", which means how actors use certain arguments and symbols in support of their crisis management measures, which is a central part of the legitimacy of management. It is the question of legitimacy that needs to gain public support. The creation of meaning depends on the ability to manage, ie. what the state is able to do given the capacity it has, but also from the cultural norms and symbols that can affect that capacity (Karović, S., Domazet, S., Ješić, 2021).

To effectively manage a pandemic crisis or a crisis in general, both management capacity and legitimacy are required. There is often a difficult trade-off between capacity and legitimacy, but this is also a dynamic relationship. Capacity is important, but it is also crucial that measures to resolve the crisis are accepted by citizens and that they follow the advice and instructions of the government. Therefore, crisis management is also a matter of perception. It is often most successful when it is able to combine the quality of democratic representativeness and state capacity (Karović, S., Domazet, S., Ješić, 2021).

These elements are known from before and have been discussed in a theoretical sense. However, in a specific situation, as the already mentioned author pointed out by quoting Tom Kristinsen and Per Lægreid, „[…] for a crisis response to be effective and legitimate, the government must be prepared to perform a range of tasks. It must act, it must make sense of the situation, it must make decisions and cooperate across horizontal and vertical borders, it must formulate and communicate a convincing and enabling understanding of what has happened and what needs to be done to address the crisis... This includes explaining what happened, communicating what needs to be done, and providing guidance to those affected, those involved in the response, and society as a whole. It is about framing the crisis in order to understand and resolve it. The media often play a major role in spreading the meaning of government and communicating with citizens (Karović, S., Domazet, S., Ješić, 2021).

These findings are a key basis for action at the level of local governments. As important as it is at the state and government level, it is also important at the local government level to maintain a reputation that includes:

performative reputation (capable of doing business in a way that citizens interpret as competent and efficient); moral reputation (local self-government is compassionate, honest and flexible. Does it protect the interests of its voters and citizens?); procedural reputation (does the local government follow commonly accepted rules, processes and procedures?) and technical reputation (does the local government have the skills and capacities needed to deal with complex situations such as a pandemic crisis?) (Karović, S., Domazet, S., Ješić, 2021).

It should be emphasized that at the local level, that is at the level of local governments, maintaining a reputation is based primarily on a combination of management capacity and legitimacy and is reflected in the complex and dynamic logic of action in crisis communication and meaning creation.

LOCAL SELF-GOVERNMENT

Local self-government is an autonomous system of governing local communities, constituted in narrower parts of the state territory. The development of local self-government is one of the conditions for democracy and the rule of law.

Many authors have dealt with the definition of local self-government. Ratko Markovic defines local self-government as "a form of decision-making and management of local communities, in a narrower territory, directly by its inhabitants or through their representation, which they directly elect, and other local bodies (Marković 2008).

Balša Špadijer (Špadijer 1993) states as the basic characteristics of local self-government:

- free choice of a representative body or direct decision-making on important issues of interest to the local community;
- existence of a certain narrower territory;
- organizational independence of local institutions;
- the existence of a certain financial independence
- revenue collection and budget;
- normative independence within the constitution and laws.

According to the law on local self-government, local self-government is the right of citizens to directly and through freely elected representatives manage public affairs of direct, common and general interest for the local population, as well as the right and obligation of local self-government bodies

to plan and regulate and manage public affairs that are within their competence and of interest to the local population (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018).

Local self-government is exercised in the municipality, city and the city of Belgrade. Foreign citizens may have individual rights in exercising local self-government under the conditions and in the manner determined by law. Citizens who have the right to vote and reside on the territory of a local self-government unit, manage the affairs of local self-government, in accordance with the Constitution, law and the statute of the local self-government unit (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018).

LEGAL FRAMEWORK OF LOCAL SELF-GOVERNMENT IN THE REPUBLIC OF SERBIA

Local self-government bodies, their structure, competencies and framework of action are regulated by the Law on Local Self-Government. In addition to this law, the work of local self-government is regulated in more detail by the statute issued by the municipal / city assembly, which is the highest legal act of the local self-government unit. The statute regulates: the rights and duties of the local self-government unit and the manner of their realization, the number of councilors of the local self-government unit assembly, the organization and work of bodies and services, the manner of managing citizens of affairs within the competence of the local self-government unit, conditions for initiating a civic initiative and other issues of importance for the local self-government unit (http://www.voditeracuna.rs/stranice/institucionalni-okvir-i-nadleznosti-lokalne-samouprave/ 09.05.2021.).

The Constitution of the Republic of Serbia from 2006 contains a much more advanced arrangement of local self-government than the one that existed in the previous constitution from 1990. The Constitution guarantees local self-government the right to its own property and sources of financing, and dedicates a special part (seventh part of the Constitution "Territorial Organization", Articles 176 - 193) to its organization (and organization of territorial autonomy), which is much more extensive and better than provisions on local self-government from the 1990 Constitution. Among other solutions, in that part of the Constitution, local self-government is guaranteed legal protection from encroachment by state bodies and bodies of territorial

autonomy. Provisions on local self-government are also contained in the part of the Constitution on economic regulation and public finances (third part of the Constitution), as well as in some other parts of the Constitution (Milosavljević 2009).

The Law on Local Self-Government as the main legal regulation on local self-government, the valid Law on Local Self-Government (hereinafter: LLSG) was adopted by the National Assembly of the Republic of Serbia at the end of 2007 (published in the Official Gazette of RS No. 129 of December 29, 2007). In addition to the introductory (basic) and transitional and final provisions, the content of the LLSG consists of provisions governing (Milosavljević 2009): establishment, territory, legal status and bodies of local self-government units (Articles 16 to 66); direct participation of citizens in the exercise of local self-government (Articles 67 to 71); local self-government (Articles 72 to 77); relations between the bodies of the Republic, territorial autonomy and the bodies of local self-government units (Articles 78 to 87); cooperation and association of local self-government units (Articles 88 and 89); symbols and names of parts of populated places in the unit of local self-government (Articles 90 to 94); and protection of local self-government (Articles 95 to 98).

It seems that the law on local self-government is up to the requirements of time, because it provides a legal framework for the development of local self-government and the continuation of the reform, which should gradually lead to full harmonization of the factual situation in this area with the highest European standards. Like its predecessor - the 2002 Law on Local Self-Government - this law seeks to further increase the share of local self-government units in the exercise of power through decentralization, and thus the development of democratic processes in Serbia (Kršljanin, D., Karović, S. 2015).

JURISDICTION OF LOCAL SELF-GOVERNMENT IN EMERGENCY SITUATIONS

The jurisdiction of the local self-government unit in the protection and rescue system are defined in Article 29 of the Law on Disaster Risk Reduction and Emergency Management.

The unit of local self-government within its competencies, in the field of disaster risk reduction and emergency management: adopts an act on the organization and functioning of civil protection; develops and adopts risk assessment, local disaster risk reduction plan, protection and rescue plan;

forms an emergency headquarters; forms protection and rescue entities; forms civil protection units; cooperates with neighboring local self-government units; takes urgent and preventive measures in order to reduce the risk of disasters (Law on Disaster Risk Reduction and Emergency Management, Official Gazette of RS, 87/2018.).

The jurisdiction of local self-government in the Republic of Serbia are very numerous, diverse and realistically significant. These jurisdictions are significantly limited by legislative interventions, which in a number of issues did not find the best measure between the need for local self-government to enjoy freedom of decision-making and initiative in solving its own problems and the need to preserve preconditions for legitimate functioning of local self-government.

LOCAL SELF-GOVERNMENT AND THE PANDEMIC

The purpose of the issue related to the relationship between local self-government and the emergency situation is based on the fact that one of the elements of the way to curb the pandemic crisis is to declare a state of emergency. The topicality of emergency situations induces the constant need of the social community to find an adequate response to the manifested security threats. By declaring a state of emergency, the social community creates a specific legal framework that enables the engagement and use of all available resources of society in protection and rescue (Kršljanin, D., Karović, S. 2015).

Article 2, paragraph 7, of the Law on Risk and Disaster Reduction and Emergency Management defines an emergency situation as a situation that arises from a declaration by the competent authority when risks and threats or consequences for the population, environment and material and cultural goods of such scope and the intensity that their occurrence or consequences cannot be prevented or eliminated by regular action of competent bodies and services, due to which it is necessary to use special measures, forces and means for their mitigation and elimination with an intensified regime of work (Law on Disaster Risk Reduction and Emergency Management, Official Gazette of RS, 87/2018.).

There is a whole range of theoretical considerations for emergencies. As the authors Karovic, Domazet and Jesic pointed out, quoting Bajrami S., Karovic S. and Radic G., who point out that: „[…] The problem of clear theoretical definition and understanding of the term "emergencysituation" today, when every country faces numerous risks and dangers, is another

problem that hinders the successful and efficient functioning of all entities in the protection and rescue of people, material goods and the environment. Increasingly frequent and devastating accidents, accidents, natural disasters and other forms of endangering the population and society as a whole impose the need to clearly define and clarify the legal instrument, which the state uses in situations when basic living and working conditions are endangered" (Karović, S., Domazet, S., Ješić, 2021).

Article 38 of the Law on Disaster Risk Reduction and Emergency Management defines "that a state of emergency is declared when the risks and threats or consequences of a catastrophe on the population, material and cultural goods or the environment are of such scope and intensity that their occurrence or the consequences cannot be prevented or eliminated by regular action of the competent bodies and services, which is why it is necessary to use special measures, additional forces and means for their mitigation and elimination with an intensified regime of work. An emergency situation is declared immediately upon learning of the imminent danger of its occurrence.

An emergency situation may be declared even after its occurrence, if the immediate danger of an emergency situation could not have been foreseen or if due to other circumstances it could not be declared immediately after learning of the immediate danger of its occurrence. The emergency situation is lifted by the cessation of danger, ie the cessation of the need to implement disaster protection and rescue measures (Law on Disaster Risk Reduction and Emergency Management, Official Gazette of RS, 87/2018.).

As the authors Karovic, Domazet and Jesic stated that if we keep in mind that the elements of crisis management and emergency situations are also oriented towards forms of prevention, in which the authors Djordjevic D. and Karovic S. agree and point out that: „[…] many analyzes of previous years indicate that the field of prevention is the weakest link in the emergency management system. Also, a special problem is the creation of an integrated emergency management system and, within that, the creation of effective prevention mechanisms that would be an integral part of that system" (Karović, S., Domazet, S., Ješić, 2021). Also, the authors Bajrami S., Karovic S. and Radic G., point out: "Prevention would include measures and activities of monitoring and updating […] risk mapping, planning of forces and means, as well as the period of activation of forces, constant training and training of personnel in in accordance with the applicable standard operating procedures inherent in the various forms of threat in the event of a declaration of an emergency" (Karović, S., Domazet, S., Ješić, 2021).

Taking into account the pandemic of infectious diseases and aspects of action at the level of local self-government through the emergency situation, as a means of managing the pandemic crisis, then the mechanisms and actions of such activities must necessarily be established. This means that decision-makers at the level of local self-government are required to act efficiently, that is to assess the effectiveness of the adopted measures and the manner in which they are implemented. Therefore, at the level of local self-government, there must be a consensus on the adopted measures, including epidemiologists and virologists, ie respecting their advice (Karović, S., Domazet, S., Ješić, 2021).

It should be noted that emergency situation caused by natural disasters, including pandemics or human activities, claim many lives on a daily basis and destroy and degrade the environment in various ways, causing great material damage and loss (Karović. S., Domazet, S. 2019).

A special problem in the Republic of Serbia is that there is no strong public sector, nor is there a well-developed welfare state and open and transparent work at all levels of executive power, including government. Also, the Republic of Serbia is not a society of high trust. Citizens' trust in local self-government is different, and relations of mutual trust between state bodies are much smaller than in many other countries. Also, the Republic of Serbia does not have a strong economy that can support all the necessary measures to counter the pandemic crisis and the effective implementation of the planned measures in an emergency situation (Karović, S., Domazet, S., Ješić, 2021).

ORGANIZATION OF LOCAL SELF-GOVERNMENT

Article 27 of the Law on Local Self-Government states that the municipal bodies are: the municipal assembly, the mayor, the municipal council and the municipal administration.

The Municipal Assembly consists of councilors who are elected for four years and whose number cannot be less than 19 or more than 75. In the case of cities, the number of councilors must not exceed 90, and the Law on the Capital stipulates that the Belgrade City Assembly may to be 110 councilors. The councilors elect the president of the municipal assembly from among themselves, who organizes the work of the assembly, convenes sessions and chairs them. The Municipal Assembly also elects the Deputy President of the Municipal Assembly (Vasiljević 2008).

In order to organize its own work and perform professional tasks for its own needs, the Assembly elects its President and Deputy President and appoints the Secretary of the Assembly. The President of the Assembly is

elected from among the councilors, for a term of four years, by secret ballot, and is elected if a majority of the total number of councilors of the Assembly votes for him (Milosavljević 2009).

The president of the municipality is elected by the municipal assembly, from among the councilors, for a period of four years. He is elected on the proposal of the president of the municipal assembly, and a majority of the total number of councilors is required for the election. The candidate for the president of the municipality proposes the candidate for the deputy president of the municipality, and the mandate of both councilors ends on the day of the election (Vasiljević 2008).

The municipal council consists of the mayor, deputy mayor, as well as members of the municipal council whose number is determined by the municipal statute and elected by the municipal assembly, for a period of four years, by secret ballot, by a majority of the total number of councilors. Candidates for members of the municipal council are nominated by the candidate for mayor. When deciding on the election of the mayor, the municipal assembly simultaneously and jointly decides on the election of the deputy mayor and members of the municipal council. The president of the municipality is the president of the municipal council. Deputy Mayor is a member of the municipal council by function (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018).

The most important instruments of the mayor's influence on the municipal council, in addition to the fact that both the president and the council are elected by the same parliamentary majority, are that he convenes and chairs council sessions and has the authority to suspend the municipal council's decision. In addition, it is the mayor who is authorized to represent the municipal council. Finally, with the dismissal of the mayor, the mandate of not only the deputy mayor, but also the municipal council ends (Vasiljević 2008).

The municipal administration, as a single service, is managed by the superintendent, and a person who has graduated from the Faculty of Law, passed the exam for work in state administration bodies and at least five years of work experience in the profession can be appointed to that position. If the municipal administration is organized into several administrations, each of these administrations is managed by the superintendent.

THE CONCEPT OF ORGANIZATION OF LOCAL SELF-GOVERNMENT

The local self-government unit is responsible for, through its bodies, and in accordance with the Constitution of the Republic of Serbia, the Law on Local Self-Government and the Law on Emergency Situations on Environmental Protection, adopting programs for the use and protection of natural values and environmental protection programs from natural and other major disasters, as well as fire protection, and to create conditions for their elimination, ie mitigation of their consequences. In order to accomplish these tasks and define in more detail the tasks of protection and rescue, local self-government units have prescribed documents, among which the most important are (Šećerov, P., Lončar., M. 2017):

– Decision on the organization and functioning of civil protection on the territory of the local self-government unit. This decision regulates the organization and functioning of civil protection in the system of protection and rescue of the population, material and cultural goods from dangers caused by natural disasters and other accidents on the territory of local self-government, determines the subjects of the protection and rescue system, protection and rescue forces and other issues of importance for the organization and functioning of civil protection (https://skupstina.novisad.rs/wp-content/uploads/2016/12/Sl-10-2.pdf, 08.07.2021.),

– Decision - decision on the formation of the headquarters for emergency situations;

– Rules of Procedure of the Emergency Situations Headquarters - these Rules of Procedure of the Emergency Situations Headquarters regulate: the manner of preparation of the staff session, determination of the agenda, scheduling and conducting the staff session, manner of discussion and decision-making on issuing orders, conclusions, recommendations, other issues related to staff work);

– Plan and program for the development of the protection and rescue system in accordance with the long-term plan for the development of protection and rescue of the Republic of Serbia;

– Decision on determining qualified legal entities for protection and rescue - this decision determines companies and other legal entities, authorized and qualified for the implementation of protection and rescue measures in the Republic of Serbia;

– Decision on the formation of general purpose civil protection units - this decision, in accordance with the regulations, regulates the formation, organization, equipment, training and functioning of the general purpose civil protection unit. General purpose civil protection units are formed, equipped and trained to perform extensive and less complex tasks in the field of protection and rescue, such as localization and extinguishing of initial and minor fires, participation in rescuing those affected by earthquakes, participation in flood protection, indicating the first assistance, maintaining order, participation in rescuing shallowly buried from rubble and clearing by hand, clearing roads and small areas of snow with hand tools, participation in evacuation of the population from the endangered area and care of the endangered population, as assistance to specialized civil protection units and other activities based on assessment of needs, decisions and orders of the Municipal Emergency Headquarters and other competent authorities (https://kursumlija.org/fajlovi/stab%20za%20vanredne%20situacije, 08.07.2021).

– Conclusion on the appointment of the Commissioner and Deputy Commissioner for Civil Protection;

– Annual work plan of the emergency staff;

– Annual report on the work of the emergency staff;

– Decision on initiating the process of making a risk assessment from natural disasters and other accidents and a plan for protection and rescue in emergency situations;

– Conclusion on the formation of professional and operational teams for protection and rescue;

– Conclusion on the implementation of training of citizens for personal and collective protection.

Disaster risk assessment of a local self-government unit and the protection and rescue plan of a local self-government unit shall be prepared by the competent body of the local self-government unit, which includes a person with a license to prepare an assessment and plan, ie another legal entity may be hired. . The assessment of the local self-government unit is adopted by the competent body of the local self-government unit at the proposal of the emergency staff of the local self-government unit, and after obtaining the consent of the Ministry (Decree on the content, manner of preparation and obligations of entities in connection with the preparation of disaster risk assessment and protection and rescue plans, R Official Gazette of RS, no. 102/2020.).

THE STRUCTURE OF LOCAL SELF-GOVERNMENT

Local self-government units, in accordance with the Constitution and the law, independently prescribe the organization and competence of their bodies and public services. The structure of local self-government is shown in Figure 1.

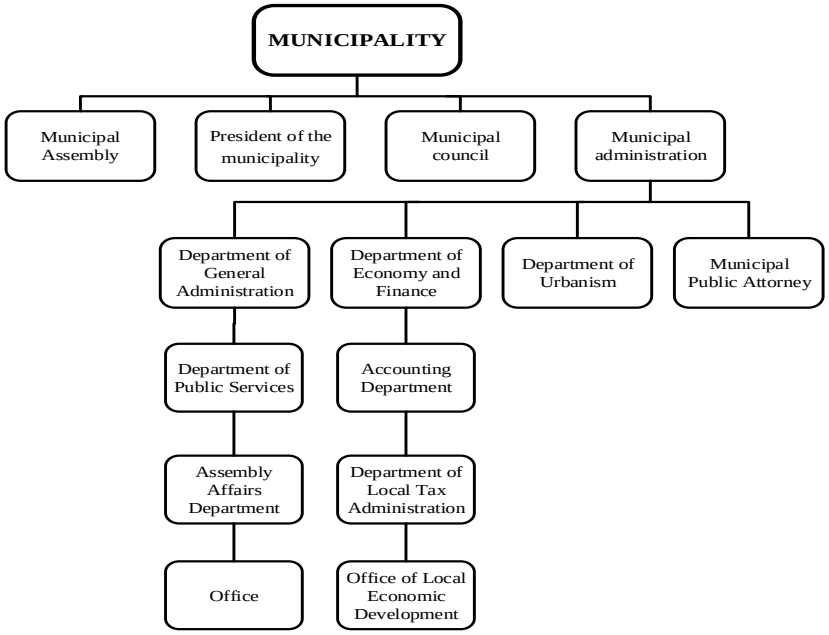

Figure 1. Structure of local self-government (Source: Author s own work)

It is characteristic that the structure consists of elements of management and executive bodies. The governing body is the assembly, and the executive includes the mayor and the municipal council.

Municipal Assembly, in accordance with the law (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018 2016): adopts the statute of the municipality and the rules of procedure of the assembly; adopts the budget and the final account of the municipality; enacts regulations and other general acts; adopts the spatial and urban plan of the municipality; calls a municipal referendum and a referendum on a part of the municipal territory; establishes services, public companies, institutions and organizations; appoints and dismisses the management and supervisory board, appoints and dismisses directors of public companies, institutions, organizations and services; elects and dismisses the

President of the Assembly and the Deputy President of the Assembly; appoints and dismisses the secretary of the assembly; elects and dismisses the mayor...

Mayor of the Municipality (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018): represents the municipality; proposes the manner of resolving issues decided by the Assembly; is in charge of budget execution; directs and harmonizes the work of the municipal administration; adopts individual acts for which he is authorized by law, statute or decision of the Assembly; performs other tasks determined by the statute and other acts of the municipality.

Municipal council (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018): proposes the statute, budget and other decisions and acts adopted by the Assembly; directly executes and takes care of the execution of decisions and other acts of the municipal assembly; makes a decision on temporary financing; supervises the work of the municipal administration; monitors the implementation of business programs and coordinates the work of public companies whose municipality is the founder; submits a quarterly report on the work of public companies to the municipal assembly...

Municipal administration (Law on Local Self-Government, Official Gazette of RS ", No. 129/2007, 83/2014 - other law, 101/2016 - other law and 47/2018): prepares draft regulations and other acts adopted by the municipal assembly, the mayor and the municipal council; executes decisions and other acts of the municipal assembly; performs administrative supervision over the execution of regulations; executes laws and other regulations whose execution is entrusted to the municipality; performs professional and administrative-technical tasks for the needs of the work of the municipal assembly, the president of the municipality and the municipal council.

The Law on Local Self-Government determines the organization of municipal administration so that in municipalities with less than 50,000 inhabitants the municipal administration is formed as a single body, while in those with more than 50,000 inhabitants municipal administrations can be formed for certain areas.

The Law on Disaster Risk Reduction and Emergency Management defines that for monitoring activities on disaster risk reduction and coordination and management in emergency situations, emergency headquarters are formed at the level of local self-government, ie. for the territory of the municipality - the municipal headquarters for emergency situations which is formed by the competent body of the municipality. The

Emergency Situations Headquarters forms expert-operational teams as its auxiliary expert bodies. The Emergency Situations Headquarters issues orders, conclusions and recommendations. The Emergency Situations Headquarters has its own seal and record book, in accordance with a special law (Law on Disaster Risk Reduction and Emergency Management, Official Gazette of RS, 87/2018.).

PROPOSAL OF CONCEPTUAL ORGANIZATION OF LOCAL SELF-GOVERNMENT IN EMERGENCY SITUATIONS

By applying the inductive-deductive method, the method of content analysis and the legal-logical method of induction and deduction, a solution was reached that combines elements of the organization of local self-government in emergency situations and the Protection and Rescue Plan in emergency situations. The concept originated as a requirement for the efficiency and effectiveness of the functioning of local self-government in emergency situations.

The new concept of organizing local self-government is structurally shown in Figure 2, which includes the department for emergency situations, and will include 2-3 persons in charge of emergency management and protection in emergencies and other situations.

In the presented structure, it can be noticed that the department is directly subordinated to the Mayor of the Municipality. This shows how much importance should be attached to it when it comes to security and protection in the area of local self-government. Of course, for this it is necessary to change the legal framework when it comes to the competencies of local self-government, but only in the field of security, ie emergency management.

The results of the research showed that in the process of drafting the Protection and Rescue Plan, regardless of the existence of the so-called methodologies for risk assessment, it is necessary to enable a project approach to the development of the Protection and Rescue Plan in emergency situations. In order for this plan to be functional, in addition to risk assessment, it necessarily imposes the definition of a structure and persons with clearly precise competencies and work procedures.

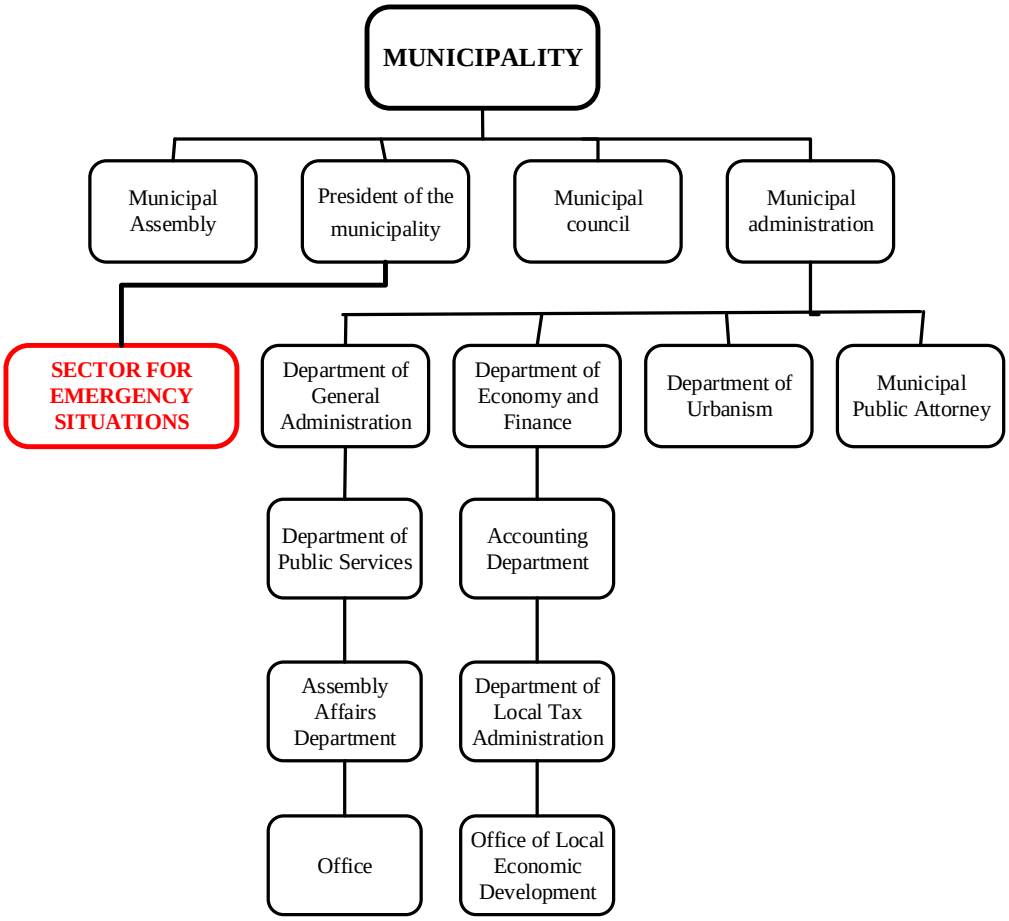

Figure 2. Proposed model of organizing local self-government in emergency situations (Source: Author s own work)

Work procedures are a key element for every situation and ensure operability in emergency management and comprehensive implementation of all parts of local self-government in order to solve the problem of emergency management.

Especially what should be emphasized from the point of view of the department for emergency situations, refers to the context of the expertise of the staff that makes up that department. It is necessary for them to be persons from the domain of profession and persons who have been educated for emergency situations and to have managerial knowledge in terms of organizational skills, including knowledge from the security system.

That department is working on protection and rescue plans according to the project approach, because that will include all elements of a quality and realistic protection and rescue plan in emergency situations. At the department

level, it is necessary to define the competencies of civil protection and civil protection units with all accompanying parts, from organization, formation, training and proficiency testing. The department should have a special responsibility in the field of equipping civil protection units in accordance with the estimated sources of endangerment of local self-government.

CONCLUSION

Emergency situation, which are defined in the legal framework of the Republic of Serbia, cause various damages to the community. The legal framework of emergency situations in the Republic of Serbia defines the key elements and competencies of local self-government in such a situation. A declaration of a state of emergency can be caused by various events, such as pandemics, floods, fires, earthquakes, explosions or other accidents caused by the action of nature or human factors. All this conditions that the society, ie the state should be prepared to be able to react in such a situation and to be organized so that it can manage an emergency situation. This means that it is capable of enabling the protection and rescue of the population and material goods in such conditions.

It is stated in the paper that the most important role in the protection of people is played by preventive protection measures. In most cases, as can be seen in practice, it is impossible to completely eliminate the risk of an emergency situation, regardless of the implementation of preventive measures. Such measures are never enough, and they are caused by a lack of financial resources.

It was stated that the legal framework defines all competencies in terms of emergency situations and that there are no legal frameworks for obstacles in the work of local self-government in terms of emergency management.

The concept of organizing local self-government in emergency situations caused by a pandemic assumes that local self-government can function in such situations and points to the need to expand the structure in the part dealing with emergencies to increase the number to 2-3 with the necessary expertise in security and protection population in emergencies.

Bearing in mind that it is possible to conceive the organization of local self-government adapted to the state of emergency due to pandemics, it is justifiably possible to talk about its universality to all emergencies, as it provides flexibility regarding the project approach to drafting emergency protection and rescue plans and the flexibility of manpower and technique engagement.

Analysis of the proposed concept of organising local self-government in emergencies and the project approach of drafting an emergency protection and rescue plan gave assumptions to successful emergency management. The concept of organising local self-government in emergencies will ensure the affirmation of protection and rescue and give the importance necessary in the current state. The future will show the importance of such an approach and the continuous development of the security system will be ensured, especially in the sphere of protection and rescue of the population in emergency and crisis situations.

When it comes to further development and research in the field of security management and emergency situations, the orientation should be on realistic assessments of vulnerability and various epidemic diseases in the entire spectrum of society. It stresses the need for research in the sphere of response and training of special professional teams that can be used for different events and the needs of long-term financial planning for the development of civil protection units at the local self-government level.

Also, future research should focus on the early warning system and the development of information and communication technologies and their networking at all levels. This will provide a unique system of data and information that is the basis for effective action in all emergency situations.

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THE IMPLEMENTATION OF HUMAN RIGHTS-BASED APPROACH BY STATES IN CONTEMPORARY SOCIETIES

Vesna Stefanovska, PhD
Legal researcher, Institute for Human Rights

Abstract
The Human Rights-Based Approach (HRBA) aims to integrate human rights in the society and in the proper functioning of every state, which strives towards democracy, and the protection of human rights. This points to the fact that HRBA is oriented towards the protection of human rights rather than the needs of the people, the state and the society as a whole. This paper will analyze how HRBA is applied, oriented and understood by the state institutions and the braches of power through the four main pillars: (1) transparency, (2) accountability, (3) non-discrimination and (4) participation. HRBA is related to the process of empowerment, forms of advocacy, adoption of laws in order to raise awareness about its implementation by states in their own domestic systems. Moreover, the paper will argue how HRBA is crucial for providing help to vulnerable groups in times of pandemic and for maintaining the rule of law and protection of basic human rights.

Keywords: HRBA, society, states, human rights and HRBA analysis.

INTRODUCTION

Over the last decade, human rights have gained prominence as a universal set of norms and standards that are increasingly shaping the programmes and activities of many international organizations starting from the United Nations, continuing to the Council of Europe and the European Union. It is widely acknowledged that the promotion and protection of human rights is essential for maintaining and achieving peace, sustainable human development, democracy, rule of law and security. These standards are common to all states which strive to respect for the fundamental rights, but also to provide their implementation in practice through the HRBA that is considered as an essential tool for sustainable development.

The HRBA is based on the recognition that human rights and development are closely interrelated and mutually reinforcing. This understanding stems from the UN General Assembly Declaration on the Right to Development in 1986 and was further endorsed by the 1993 World Conference on Human Rights. Since then mainstreaming of human rights into development cooperation has attracted increasing political recognition among major development actors as essential to working towards effective, sustainable and just human development (Ussar 2011, p.7). The question which raises is: Why we need human rights-based approach? And the answer is simple and logic. It is not sufficient for the states to only comply to respect the human rights and fundamental freedoms. It is of utmost important for them to be effectively implemented in practice and this can be achieved through the incorporation of HRBA into laws, bylaws and any other documents which are relevant for functioning of the state institutions. HRBA presents the bond between state administration, local community and non-governmental organization and other institutions involved in these processes. The HRBA focuses on analyzing the problems that appear in its implementation and how inequalities, discriminatory practices may be reduced first, and then eradicated. Thus, the essence of this approach is oriented towards the people itself rather than the needs.

The real potential of human rights lies in its ability to change the way people perceive themselves vis-à-vis the government and other included actors. This means that the human rights framework provides a mechanism for implementation of these human rights, while the human rights-based approach to development is actually calculating the possible outcomes from their implementation and how these right can be implemented. In order to assure proper implementation, this paper will be focused on the argument that a separate analysis should be done for each human right having in mind its own nature, the protection that provides and the risks from possible violation moreover having in mind the sector where this human right should be implemented. Moreover, the paper will explain why the implementation of HRBA is crucial for the states, not only in emergency situations such as the pandemic caused by the coronavirus, but the purpose of becoming an integral part of everyday lives of people.

RETROSPECTIVE OF HRBA: FROM AN APPROACH UNTIL AN ESTABLISHED STANDARD

After the atrocities committed during the World War II, human rights gained prominence at a global level as an instrument of transformation and justice. The growing importance of human rights resulted in drafting some of the most important human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. In the past decades, the existence of human rights on international level was never disputed, however it lacked the moment of development.

A HRBA has been described as the most far-reaching attempt to integrate human rights into development cooperation, whereby the core mission of development practitioners has evolved from notions of charity to the obligation to promote and protect human rights. The very beginnings of the HRBA can be located in the relation which existed between the human rights and development. Despite their synergy, the international community did not acknowledge the policy imperative of integrating one into other until the mid-1980s (Hollander et al. 2013). In 1986 the UN General Assembly adopted the Declaration on the right to Development and this declaration was reaffirmed by the World Conference on Human Rights in Vienna in 1993. On this way democracy, human rights and sustainable development were linked through the creation of the human rights-based approach.

The United Nations defines HRBA as a framework for the process of human development that is normatively founded on international human rights standards and operationally directed to promoting and protecting human rights. Under HRBA, public policy and development are conceptualized in terms of providing individuals with human rights-guaranteed choice of opportunities and means of self-fulfillment. This is an obligation of the state and a core function of public authorities, with corresponding rights of individual and groups to demand respect for and enforcement of their provision (UNSDG | Human Rights-Based Approach) Further, HRBA demands priority action for the most vulnerable and places the very rights-holders at the steering wheel of the action regarding the policy-making and development. In practice, the implementation of the HRBA was faced with several problems as a result of divergent interpretation of its meaning.

According to Broberg and Otto Sano, it soon turned that different actors applied rather diverging-sometimes even inconsistent definitions of the notion of the human right-based approaches. This necessary caused problems and in order to address these, in 2003, several UN bodies convened a workshop

on the matter which in turn led to the production of a statement entitled The Human Rights-Based Approach to Development Cooperation towards a Common Understanding among the United Nations Agencies (Broberg and Otto Sano 2017, p.666). According to this statement the UN's development policies must be guided by the principles of human rights and the statement identifies and explains six human rights principles such as: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; accountability and the rule of law; participation and inclusion and equality and non-discrimination. Following the adoption of HRBA to development, further approaches were subsequently adopted by different UN agencies.

When taken together, the human rights standards which form the HRBA provide the foundation on which all processes are to be operationalized. The reason behind this explicit grounding emerges from the conceptual understanding that such standards will strengthen and deepen situation analysis with the express purpose of advancing the full realization of human rights or set thereof (Miller and Redhead 2019, p.707). Indeed, for proper implementation of HRBA, there is a need for involvement of human rights-based analysis. Broberg and Otto Sano (2018, p.670) define three major components such as: (a) the actual status of human rights in the setting where development assistance is to be provided. This includes the specific analytical perspective of rights-holders and duty-bearers; (b) the identification of specific vulnerable groups who should benefit from the proposed activities and (c) a focus on human rights principles for example: participation, accountability and non-discrimination.

According to Frankovits, some governments still refuse to accept that the human rights framework provides equal precision to economic, social and cultural rights as it does to civil and political rights. Some UN members still equate economic and social development with economic and social rights. Those who question the legitimacy of economic, social and cultural rights are so wedded to individualism and competition that they reject the obligation of states to be responsible for the welfare of their citizens (Francovits 2002, p.11). Undoubtedly, there has been positive moves towards a universal acceptance of the international human rights framework as the basis for analysis and objective setting for development.

However, it is inevitable to say that some human rights cannot be fully realized immediately because the process of implementation needs enough time, proper legal instruments and their effectiveness. People at each level of decision-making must be actively provided with the information that will enable them to take part and to contribute towards the implementation of

human rights-based approach. In this notion, it is important to emphasize that Jeff Harper and Tom Rifer focus on the contradiction between having rights and actualizing them in their article "Beyond the Right to Have Rights: Creating spaces of Political Resistance Protected by Human Rights". This means that rights are meaningful if they are not implemented. The best implementation comes from the human rights-based approach.

The 2000 Human Rights Development Report argues that the major added value of a human rights-based approach to development is accountability which is a key to the protection and promotion of human rights, since states are accountable for protection of human rights, hence their positive and negative obligations are oriented towards protection and prevention of any kind of violation of the established human rights principles under the human rights-based approach. This is in correlation with the principle of progressive realization where states are obliged to take positive action and avoid going backward. Once a government has adopted policies and actions guaranteeing certain rights, needs to implement them.

The implementation of the human rights-based approach on the European soil, in respect of the European Union (EU) is slightly different than the prescribed and developed by the UN agencies. The Lisbon Treaty of the EU firmly anchored the importance of human rights in both the EU's internal and external policies. Although development cooperation is still a shared competence with its member states and national governments are thus no strictly bound by the EU development policies, the duty of loyal cooperation and an increasing push for greater harmonization, coordination and coherence has led to a more streamlined 'European' development policy (Broberg 2011, p.545). In this sense, the 2006 European Consensus on Development which underlined the protection of human rights, good governance and democratization has served as a fundamental guiding tool for sustainable development, whereby human rights and democracy have been identified as one of the cross-cutting issues to be mainstreamed into all of the Union's Actions. However, the development of a coherent EU vision and policy on a HRBA is still a work in progress (Hollander et.al. 2013, p.15).

In recent years, the European Commission has undertaken new steps to further align its development policies with human rights. For that purpose, in 2012, the Council adopted a Strategic Framework on Human Rights and Democracy, accompanied by an action plan to implement the framework. The framework defines the principles, objectives and priorities for improving the effectiveness and consistency of EU policy over the next 10 years. These principles include mainstreaming human rights into all EU policies (as a 'silver

thread'), including when internal and external policies overlap, and adopting a more tailored approach. The action plan set out specific steps for the period up to 31 December 2014. A renewed action plan for the 2015-2019 period, based on the assessment of the first plan and on the political guidance of the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR), was adopted in July 2015. The new action plan for the period 2020-2024 is currently being developed (Fact sheets on the EU 2020).

While not legally binding, the EU guidelines on human rights adopted by the Council of the EU provide practical instructions for EU representations around the world on: action against the death penalty; dialogues on human rights; the rights of the child; action against torture and other cruel treatment; protecting children in armed conflicts; protecting human rights defenders; complying with international humanitarian law; combating violence against women and girls; promoting freedom of religion and belief; protecting the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people; promoting freedom of expression both online and offline; non-discrimination in external action and safe drinking water and sanitation.

As mentioned previously in the paper, there is a slight difference in implementation of the HRBA between the UN agencies and the EU bodies. The firs difference can be identified in the name, the EU refers to the rights-based approach (RBA) instead of HRBA. The Council Conclusions refer to a Right Based Approach (RBA), encompassing all human rights. The disappearance of the "H" should not be understood as a downgrade in terms of human rights and a weakening of the EU commitment towards upholding them. On the contrary, the reference to an RBA goes beyond the formally recognized human rights, to include other types of rights, such as intellectual property rights, basic economic and social delivery rights as well as sexual and reproductive health and rights (European Commission 2014). An RBA therefore is an approach covering a broader category of rights than those covered by an HRBA.

THE IMPLEMENTATION OF HRBA IN TIMES OF PANDEMIC

The current pandemic with which the word is still facing, has brought the spotlight again on the need for proper implementation of human rights-based approach in health crisis in order to maintain and provide the right to health and health protection. This is due to main reasons starting from the right to health protection, right to acquire vaccines for all citizens as well as to

prevent violations of the guaranteed human rights. Every action and decision delivered by the governments during the declared state emergencies or afterwards has the potential to impose significant human rights impacts.

The logic of securitization in response to the COVID-19 pandemic is also clear in the government actions around the world when some of them used the pandemic as a pretext to fortify surveillance and policing infrastructure (Aaron, 2020). Other states in Europe used their right to derogate from the implementation of the European Convention on Human Rights (ECHR) on the basis of Article 15 ECHR. From a legal point of view, there was no need to submit *note verbale* to the Council of Europe and to use the instrument of derogation, when the Convention itself allows derogation from certain of its own provisions in time of war or other public emergency threatening the life of the nation. Hence, having in mind these provisions, as well as the constitutional provisions of the states, declaring state of emergency could be seen as justifiable mean. However, what raises concerns is the fact that the protection of human rights and fundamental freedoms must not be subject of any derogation.

As a result of the pandemic, states reacted in two ways: the first one declared state of emergencies and imposed lockdowns, while the others used the so-called 'herd-immunity' and did not impose any restrictions. The USA, UK, Sweden and Brazil-countries with lax Covid-19 regimes had amongst the highest Covid-19 deaths per million rates (WHO 2020). In March 2020 when most of the European countries declared state of emergency, Sweden was the only country that decided to rely on people's individual responsibility to curtail the spread of the disease. Sweden's policy of allowing the controlled spread of Covid-19 viral infection among the population has so far failed to deliver the country's previously stated goal of herd immunity (Orlowski and Goldsmith 2020). The Swedish case is obviously a failed attempt or wrong calculation in implementation of the human rights-based approach.

Restrictions in respect of freedom of movement, right to education, health protection, freedoms of expression and assembly should be observed through the human rights-based approach. Across Europe, the most marginalized groups have been disproportionately impacted by lockdown rules, more frequently detained and receive inadequate medical and economic support are problems which should fall within the scope of the implementation of HRBA. Hardest hit has been women, youth and the most vulnerable in society including the poor, older persons, persons with disabilities, indigenous peoples, minorities, children migrants and refugees (UN Human Rights Council 2021). According to the many analysis which were prepared and

presented during the 2020 and the beginning of 2021 have shown that the domestic and gender-based violence are increased, thus many women were subject to physical, psychological and other kind of violence during the lockdown.

Public health crisis should first and foremost be addressed through an approach that focuses on human rights with resources and decision directed to support people who face economic, social and psychological diffulties. In the times that follow, some COVID-19 emergency measures may be subjected to scrutiny because they led to unjustifiable restrictions on the enjoyment of the human rights and fundamental freedoms.

The ongoing vaccination may also open some issues which tackle the implementation of human rights-based approach especially in regard of respecting the pillars of HRBA including protection against discrimination, transparency and accountability. For that matter, it is of crucial importance for the states to adopt national public health strategies and vaccination plans to guarantee the right to health on these hard times. Addressing inequalities is important for discerning whether the most marginalized and disadvantaged people are facing as well, better or worse under policies and programmes.

HOW TO RESOLVE PROBLEMS EMERGING FROM THE IMPLEMENTATION OF HRBA?

Earlier approaches to development were no longer considered to be long-term sustainable and believed to maintain unequal power relations. Indeed, the implementation of human rights-based approach besides its strengths, it is faced with weaknesses as well. HRBA is criticized for being more rhetorical that brought to actual change in practice. Problems are detected in several areas such as: the inability of states to meet obligations for implementation of HRBA to development, programming and decision-making. Another issue represents the lack of legal mechanisms for effective implementation of human rights-based approach.

The main role of the HRBS is to identify who has rights (rights-holders) and what freedoms and entitlements they have under international human rights law as well as obligations of those responsible for making sure right-holders are enjoying their rights (duty-bearers). An HRBA empowers right-holders to claim their rights and supports duty-bearers to meet their obligations. Accountability provides to ensure that policies and programmes are responsible to the needs of rights-holders (Health Policy Makers 2015, p.4)

Having in mind the analysis already prepared about the positive and negative outcomes from the implementation of human rights-based approach, it can be observed that HRBA is not suitable for all types of development and it is not suitable for all types of recipient communities. Banik takes the view that the application of a human rights-based approach must be strategic whereas the approach is not suitable for mainstreaming in all aid interventions (Banik 2010). Hickey and Mitlin in their analysis *'Human rights-based approaches to Development; Exploring the Potential and Pitfalls'* point out that a HRBA to development tends to make development debates and action more political, but also that this approach strengthens law and legal arguments in development action. Moreover, Hickey and Mitlin simultaneously argue that in some cases a HRBA can lead to the provision of ideological and legal resources, which local groups can use to combat exclusion and discrimination, but on the other hand equally can promote inequalities and conflicts between different groups in society, promote non-sustainable use of natural resources and inappropriate governance (Hickey and Mitlin 2009).

Lessons learnt from the human rights-based approach emphasize that their implementation depends from many factors including the nature of the human right that need to be implemented, the capacity of state institutions to develop and program laws and bylaws in respect of the single individual human rights and the level of enforcement of the right by right-holders against duty-bearers. The last one shows the strength and potential of the state governance to deal with the human rights-based approach.

CONCLUSION

For many years, universally adopted human rights standards were put on the margins when they should be the center of every state policy. Human rights standards contained in many international conventions are showing the need for implementation of HRBA in all development and programming sectors in all areas including health, education, governance, employment, labour relations, social and economic security.

The pandemic offered two choices for the states: to introduce strict-anti-COVID measures precipitating an immediate and sharp economic downturn, or to adopt lax anti-COVID measures, hope for herd immunity and try to keep the economy churning (Paker and Slava 2020). However, both of these two approaches forgot about the people and focused rather on the needs. The first one violated several human rights, starting from the right to education, freedom of movement, expression of religion and freedom of

assembly, while the latter diminished the right to life and the right to health protection. Indeed, both approaches lacked of human rights-based approach in their programming when they delivered acts which concerned the lives and health of whole nations.

States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. In the same time, they need to refrain from any violations upon human rights. Where they fail to do so, right-holders are entitled to institute proceedings. As discussed in this paper, the application of good programming practices does not itself constitute a human rights-based approach, because it requires additional elements such as: assessment and analysis identifying the human rights claims, monitoring of implementation and precipitation of the possible outcomes.

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HUMAN FREEDOM AND ECONOMIC DEVELOPMENT: A GRANGER CAUSALITY ANALYSIS OF PANEL DATA

Dr. Katerina Shapkova Kocevska, Associate professor
Iustinianus Primus Faculty of Law, University Ss. Cyril and Methodius – Skopje, k.shapkova@pf.ukim.edu.mk

Dr. Elena Makrevska Disoska, Associate professor
Faculty of Economics, University Ss. Cyril and Methodius – Skopje, elenam@eccf.ukim.edu.mk

Abstract
Vigorous empirical research has been done recently about the immense impact of institutions on economic prosperity. Numerous studies have provided valuable evidence that market-supportive institutions, which limit the power of the state and promote individual choice, self-ownership, rule of law and voluntary exchange, have a positive impact on economic development. Here, we would like to introduce and examine one relatively new measurement of the institutional environment – the human freedom index and its link to economic prosperity. Human freedom is an indexed co-published between the Cato Institute and the Fraser Institute. It presents the state of human freedom in the world by uniting the aspects of personal and economic freedoms. In the paper, we examine the relationship between human freedom and economic development using the Granger causality test of panel data. The general idea is to analyze if there is a causal relationship between human freedom and economic growth and to determine the direction of the relationship. Additionally, we examine the causality between these two variables among the different regions around the world. The results of the study can serve as an indication of whether supporting human freedom can accelerate economic growth.

Key words: Institutions, Human freedom, Personal freedom, Economic freedom, Economic growth, Economic development

INTRODUCTION

The human freedom is a significant determinant of the economic growth in the modern economic theories. This aspect became popular with the rise of the new institutional economics (Brkić et al. 2020; Justesen 2008; Kacprzyk 2016). Human freedom is a social concept that recognizes the dignity of individuals or in other words human well-being. This concept is interconnected to other social and economic aspects, and it is very hard to be measured. In this research we use the human freedom index co-published between the Cato Institute and the Fraser Institute to determine the influence of the human freedom on the economic growth.

The topics become very popular during the pandemics due to COVID-19 virus. Imposing disproportionate restrictions that limited the information, free expression in the name of stopping Covid-19 caused negative effects in basic freedoms, and people lost confidence in the institutions. Contrary to this argument, some authors claimed that human rights do not present a barrier to crucial action to contain the virus and that human rights can act as a guide in the fight against the pandemic (Scheinin and Molbaek-Steensig 2021). In a pandemic, one person's actions affect the well-being of others. And whenever there are such externalities, the well-being of society requires collective action (Stiglitz 2021). In both cases, ensuring basic form of certainty is required, so that people can make rational decisions and can engage into investments that can contribute to higher economic growth.

The main objective of this paper is to determine the impact of human freedom (and its components: personal and economic freedoms) on the economic growth (expressed as GDP growth, GDP per capita and GDP per capita growth). The sample is comprised of 160 countries all around the world in the period from 2008 to 2018. However, since different regions have its own specifics, in the second part of the research we tried to establish the connection between human freedom and GDP growth in seven different regions.

This paper addresses the following questions:

- is there empirical evidence about causality between human freedom and economic growth? Is this positive relationship existing in different regions?
- is there empirical evidence about causality between segments of human freedoms (economic and personal freedoms) and economic growth? Is this positive relationship existing in different regions?
- can improvement in the human rights contribute to higher economic growth (worldwide and in different regions).

LITERATURE REVIEW

There are different views in the academic literature concerning the economic effect of human rights. One of the views is that improvement in the human right can make the legal system more efficient, increase income and consequently increase growth over time. Therefore, various groups of human rights (civil rights, property rights, social rights) are a precondition for productive and efficient decisions of individuals, and thus efficiency-enhancing. Other view is that there is no evidence that human freedoms in different regions of the world are harmful to growth. The majority of the studies (Jørgensen and Sano 2017; Blume and Voigt 2007) find no evidence to support this relationship. In other words, human rights either promote growth or have no effect on growth.

This paper ensures continuity of the previous research of Disoska and Kocevska (2021). By using the Granger causality test, we have proven that improvements in human development led to higher economic growth, which further promotes human development. In this paper, we go further, by decomposing the index into its main components, we try to find specific relationship between economic and personal freedom to the economic growth.

The literature suggest that there is a positive relationship between economic growth and aspects of economic freedoms in general, especially in the European countries (Kacprzyk 2016; Brkić, Gradojević and Ignjatijević 2020; Akin et al. 2004; Cebula 2011, 2013; Cebula and Clark 2014, Ali and Crain 2001, 2002; Tortensson, 1994.) Very few papers have questioned the relationship between economic freedom and growth (De Haan et al. 2006; Carlsson and Lundström 2002).

Personal liberty encompasses the freedom of the press and the rights of individuals to assemble, hold alternative religious views, receive a fair trial and express their views without fear of physical retaliation. Gwartney et al. (1996) argue that a country may be liberal in a political sense — that is, be highly democratic while at the same time major civil liberties are protected, by adopting policies that conflict with economic freedom. The problem of authoritarian culture and/or restriction of individual freedoms can limit the economic growth (Abrams & Lewis 1995).

Political liberties, as part of personal liberties can be understand as the freedom of the citizens to participate in the political process vote, lobby, and choose among candidates, elections are fair and competitive, and alternative parties are allowed to participate freely. Therefore, good governance and political freedom are also significant to the process of economic growth (Lui

1996; Zhao, Kim and Du 2003; Akcay 2006; Brito-Bigott et al. 2008; Sano and Marslev 2016). This argument was supported in our previous papers of Disoska and Kocevska (2017; 2019). Better and freer institutional quality has a positive influence on economic growth, they reduce transactional costs and decrease market inefficiencies. The lessons from the East Asian financial crisis, confirms that without a strong institutional framework, economic growth can not be sustained (Clarke 1999).

DATA

In this paper, we analyze an unbalanced panel data covering 160 economies in the period from 2008 to 2018. Two groups of variables are used in the analysis: variables representing the economic development and variables explaining the institutional environment (human freedom and its components: personal and economic freedoms).

We use three separate variables to capture the economic development in the countries worldwide: Gross domestic product (hereinafter: GDP) growth, GDP per capita and GDP per capita growth. All of the variables are collected from the World Bank national accounts data, and OECD National Accounts data files through the World Bank Database portal. *GDP growth* represents the percentage growth rate of GDP at market prices based on constant local currency, calculated on an annual basis. *GDP per capita* is GDP given in constant 2010 U.S. dollars, divided by midyear population. *GDP per capita growth* is the annual percentage growth rate of GDP per capita based on constant local currency.

Table 1. Descriptive statistics of economic development variables

	GDP growth	*GDP per capita growth*	*GDP per capita*
Mean	3.329722	1.846013	14104.70
Median	3.405300	1.982400	5330.540
Maximum	123.1400	121.7800	110702.0
Minimum	-62.07590	-62.37810	210.8040
Std. Dev.	5.234801	5.128263	19236.49
Observations	1745	1745	1745

Source: World Bank national accounts data, and OECD National Accounts data. Authors' own calculations.

Human freedom is presented by the human freedom index, co-published by Cato Institute and the Fraser Institute (Vasquez and McMahon, 2020). The index is considered a broad measure of human freedom around the world. It measures to which extent the negative rights of individuals are respected by the countries worldwide. Human freedom index integrates 76

different indicators of personal and economic freedom of the individuals, organized in two broad categories: personal freedom and economic freedom. Personal freedom is constructed from 7 distinct areas or variables, including Rule of Law, Security and Safety, Movement, Religion, Association, Assembly, and Civil Society, Expression and Information, and Identity and Relationship. Economic freedom, on the other hand, incorporates Size of Government, Legal System and Property Rights, Access to Sound Money, Freedom to Trade Internationally, and Regulation of Credit, Labor and Business. Each of these variables is given on a 0 to 10 scale, where 0 stands for least free and 10 for most freedom. The latest edition of the index was published in 2020 and it covers total 162 countries in the period from 2008 to 2018. In the following table (Table 2), we present the descriptive statistics of the human freedom, economic freedom and personal freedom variables.

Table 2. Descriptive statistics of institutional variables

	Human freedom	*Economic freedom*	*Personal freedom*
Mean	6.998571	6.840339	7.151923
Median	6.970000	6.950000	7.165000
Maximum	8.990000	8.970000	9.590000
Minimum	3.600000	2.720000	2.310000
Std. Dev.	1.077697	0.932157	1.398671
Observations	1680	1680	1680

Source: Human freedom index 2020 (Vasquez and McMahon, 2020). Authors' own calculations.

The descriptive statistics of the individual components of economic freedom and political freedom are presented in Annex 1 and Annex 2.

STATIONARITY AND TRANSFORMATION

Before we continue with examination of the relationship between the economic variables and institutional variables, we have checked the stationarity of the time series. In the test equation, we used both individual intercept and trend. We performed two tests ADF – Fisher and PP – Fisher Chi – square tests, both assuming individual unit root processes as a null hypothesis. These two tests are considered to be most appropriate unit root tests for unbalanced panel data (Baltagi 2005). The results from the unit root tests are given in Table 3.According PP- Fisher Chi - Square test, all of the variables are stationary at a level or I(0) processes. When using ADF Fisher test, Human freedom and Personal freedom are stationary at first level, while all the other variables are I(0) processes. Having in mind the results from the

PP – Fisher Chi –square test, in the following sections of the paper, we assume all of the employed variables to be stationary processes at level.

Table 3. Results from unit root tests

Variable	ADF - Fisher Chi-square		PP - Fisher Chi-square	
	F stat	Stationarity	F stat	Stationarity
GDP growth	760.153***	I(0)	1083.37***	I(0)
GDP per capita	590.766***	I(0)	745.553***	I(0)
GDP per capita growth	749.268***	I(0)	1081.58***	I(0)
Human freedom	456.778***	I(1)	483.303***	I(0)
Economic freedom	355.043*	I(0)	580.211***	I(0)
Personal freedom	734.141***	I(1)	443.508***	I(0)

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

In the next section, we describe the methodology that is used in order to examine the causality between the economic and institutional variables.

METHODOLOGY

Our empirical strategy is to examine the causality between the human freedom and economic development, by performing a panel data specific causality testing. We perform Granger causality test (Granger 1969) on the following bivariate model:

$$y_{i,t} = \alpha_{0,i} + \alpha_{1,i} y_{i,t-1} + \cdots + \alpha_{k,i} y_{i,t-k} + \beta_{1,i} x_{i,t-1} + \cdots \beta_{k,i} x_{i,t-k} + \epsilon_{i,t}$$
$$x_{i,t} = \alpha_{0,i} + \alpha_{1,i} x_{i,t-1} + \cdots + \alpha_{k,i} x_{i,t-k} + \beta_{1,i} y_{i,t-1} + \cdots \beta_{k,i} y_{i,t-k} + \epsilon_{i,t}$$

Where x and y denote the variables, t denotes the time period dimension of the panel, and i denotes the cross-sectional dimension.

In addition, we assume the panel data to be one large stacked set of data and the coefficients are same across all cross-sections:

$$\alpha_{0,i} = \alpha_{0,j}, \alpha_{1,i} = \alpha_{1,j}, \dots, \alpha_{l,i} = \alpha_{l,j}, \forall i, j$$
$$\beta_{0,i} = \beta_{0,j}, \beta_{1,i} = \beta_{1,j}, \dots, \beta_{l,i} = \beta_{l,j}, \forall i, j$$

RESULTS AND DISCUSSION

In this section, we present the results from the analysis of the relationship and causality between human freedom and economic development. We focus on the variable *Human freedom* as it was previously

defined in Section 3, but we also examine two additional aspects of human freedom – *Economic freedom* and *Personal freedom* and their connection with economic progress. Economic development is presented through three alternative variables, including GDP growth, GDP per capita growth and logarithmic transformation of GDP per capita.

First, we analyze if there is causation from the institutional variables (human freedom, economic freedom and personal freedom) to economic development by using Granger causality test for panel data. The null hypothesis is that human / economic / personal freedom do not cause economic development. The alternative hypothesis is that the different aspects of freedom have impact on economic development and can be used as predictors of economic growth. Granger causality testing do not provide information about the strength of the relationship between the variables.

The results from the Granger test of causality from human freedom to economic growth are given in Table 4.

Table 4. Causality from human freedom to economic development

		Null Hypothesis: Human freedom does not Granger cause GDP growth.		Null Hypothesis: Human freedom does not Granger cause GDP per capita growth.		Null Hypothesis: Human freedom does not Granger cause log (GDP per capita).	
Lags	Obs	F-stat	p-value	F-stat	p-value	F-stat	p-value
1	1506	18.675***	2.00E-05	0.01584	0.8998	37.281***	1.00E-09
2	1347	5.02797***	0.0067	5.1475***	0.0059	19.5946***	4.00E-09
3	1188	2.23883*	0.0821	2.07679	0.1015	8.37381***	2.00E-05
4	1032	1.86728	0.114	2.35694*	0.052	5.60983***	0.0002
5	876	4.46254***	0.0005	7.31459***	1.00E-06	9.36562***	1.00E-08
6	722	2.25499**	0.0366	5.05855***	4.00E-05	7.70823***	5.00E-08
7	572	1.46613	0.1767	3.52201***	0.001	4.41231***	9.00E-05
8	423	0.78042	0.6202	1.91874*	0.0558	4.16709***	8.00E-05
9	274	1.09134	0.3695	1.94642**	0.0461	3.48848***	0.0004
10	137	1.47749	0.1565	1.75518*	0.0767	2.39204**	0.0128

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

The Granger test has been performed on 10 lags, because we expect to have prolonged effect of the human freedom on growth. We analyzed three scenarios examining the causality between the human freedom index, on one hand, and the GDP growth, GDP per capita growth and logarithmic transformation of GDP per capita, respectively, on the other hand. The null hypothesis in each of these scenarios is that the human freedom do not Granger

cause economic growth. In the first case, when we examine the relationship between human freedom and GDP growth, we can reject the null hypothesis in the first six lags[115]. Causal relationship is also confirmed from human freedom to GDP per capita growth, but with different lag length(2-10 lags)[116]. In the third case, when we examined the relationship between the human freedom and logarithm of GDP per capita, the null hypotheses is rejected regardless the lags lengths, meaning that the human freedom does Granger cause GDP per capita growth with lags from 1 to 10 years.

We further study the direction of causality from economic growth to human freedom by using Granger causality test. The results from the analysis are presented in Table 5.

Table 5. Causality from economic development to human freedom

		Null Hypothesis: GDP growth does not Granger cause human freedom.		Null Hypothesis: GDP per capita growth does not Granger cause human freedom.		Null Hypothesis: Log(GDP per capita) does not Granger cause human freedom.	
Lags	Obs	F-stat	p-value	F-stat	p-value	F-stat	p-value
1	1506	0.34151	0.559	1.64214	0.2002	0.45424	0.5004
2	1347	0.55351	0.5751	0.29098	0.7476	1.0774	0.3408
3	1188	1.35628	0.2547	1.5005	0.2127	1.55447	0.1988
4	1032	1.41375	0.2273	1.32767	0.2577	1.25733	0.2851
5	876	0.89117	0.4863	0.77779	0.5658	0.77666	0.5666
6	722	0.99741	0.4259	0.92447	0.4765	0.96257	0.4496
7	572	0.46888	0.8572	0.40755	0.8978	0.53667	0.8069
8	423	0.35801	0.942	0.35235	0.9446	0.35043	0.9455
9	274	0.63987	0.7625	0.59737	0.7988	0.59191	0.8033
10	137	1.53576	0.1354	1.42107	0.1795	1.19193	0.3035

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

The results from the Granger causality analysis presented in Table 5, we can notice that long-term causal relationship from economic growth to human freedom does not exist. In all of the analyzed scenarios, presented in

[115]At significance level of 15%. When the significance level is 10%, the null hypothesis that human freedom does not Granger cause GDP growth should not be rejected when lag length is 4.

[116]At significance level of 15%. When the significance level is 10%, the null hypothesis that human freedom does not Granger cause GDP growth should not be rejected when lag length is 3.

the above-mentioned table, the null hypothesis should not be rejected at level of significance of 10%. This is a strong indication that promoting human freedom is beneficial for economic development. On the other hand, it seems that there is not an automatic consequence of economic development to human freedom, based on the results of the analysis from the economic development to human freedom.

CAUSALITY BETWEEN ECONOMIC/PERSONAL FREEDOM AND ECONOMIC DEVELOPMENT

Further, as economic freedom and personal freedom are two major components of human freedom, we were interested if they can be treated separately as an explanatory variable of economic growth. Thus, we expanded the analysis to explore the interconnectedness between the economic freedom and personal freedom, on one hand and economic growth, on the other hand. Again, the economic growth is presented by three alternative variables, including GDP growth, GDP per capita growth and logarithm of GDP per capita.

The results from the Granger causality testing from economic freedom to economic growth are summarized in Table 6, while the reverse causality testing from economic growth to economic freedom are presented in Table 7.

Table 6. Causality from economic freedom to economic development

		Null Hypothesis: Economic freedom does not Granger cause GDP growth.		Null Hypothesis: Economic freedom does not Granger cause GDP per capita growth.		Null Hypothesis: Economic freedom does not Granger cause log (GDP per capita).	
Lags	Obs	F-stat	p-value	F-stat	p-value	F-stat	p-value
1	1506	13.2561***	0.0003	0.1306	0.7179	20.5308***	6.00E-06
2	1347	1.80274	0.1652	1.26505	0.2826	9.69523***	7.00E-05
3	1188	0.51252	0.6737	0.86217	0.4602	5.41576***	0.0011
4	1032	0.26382	0.9012	0.65367	0.6244	2.98568**	0.0182
5	876	2.01645*	0.0741	4.31821***	0.0007	5.67019***	4.00E-05
6	722	2.2342**	0.0383	4.68042***	0.0001	6.79659***	5.00E-07
7	572	1.71518	0.1028	3.82323***	0.0005	4.55012***	6.00E-05
8	423	1.2862	0.2488	2.42755**	0.0143	4.09856***	0.0001
9	274	1.08925	0.371	1.62052	0.1096	1.97016**	0.0432
10	137	1.86037*	0.0578	2.17385**	0.0241	2.84325***	0.0034

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

Table 7. Causality from economic development to economic freedom

		Null Hypothesis: GDP growth does not Granger cause economic freedom.		Null Hypothesis: GDP per capita growth does not Granger cause economic freedom.		Null Hypothesis: Log (GDP per capita) does not Granger cause economic freedom.	
Lags	Obs	F-stat	p-value	F-stat	p-value	F-stat	p-value
1	1506	9.15223***	0.0025	14.7462***	0.0001	0.02621	0.8714
2	1347	3.49911**	0.0305	5.16948***	0.0058	6.54758***	0.0015
3	1188	5.20896***	0.0014	7.19847***	9.00E-05	7.53474***	5.00E-05
4	1032	3.4547***	0.0082	4.65842***	0.001	5.5417***	0.0002
5	876	2.98011**	0.0113	3.31372***	0.0057	3.64333***	0.0029
6	722	1.38058	0.2198	1.73855	0.1094	2.53387**	0.0196
7	572	1.42343	0.1931	1.85529*	0.0747	2.10143**	0.0417
8	423	0.6412	0.7431	0.86152	0.5491	0.8247	0.5811
9	274	1.0129	0.43	1.25253	0.2635	1.31359	0.2299
10	137	1.66954*	0.0961	1.5596	0.1275	1.71039*	0.0863

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

The results from the Granger causality testing of the relationship between the economic freedom and economic development are not straightforward as the results from the test between the human freedom and economic development. When we examine the relationship between the economic freedom and GDP growth, we notice that economic freedom (Granger) cause GDP growth where lags are 1,5,6 and 10, at a significance level of 10%. However, GDP growth also causes economic freedom on a long term (lags 1 to 5, and 10) at the same level of significance. Similar conclusion can be drawn when we examine the relationship between the economic freedom and GDP per capita growth. Our causality analysis shows that the causality between these two variables is bidirectional, economic freedom cause GDP per capita growth when lags are from 5 to 10, but also GDP per capita cause economic freedom when lags are 1 to 7 (level of significance is 15%). In the third case, when logartimic transformation of GDP per capita is used as a proxy of economic development, we notice stable, long term causality from economic freedom to economic development (lags 1 to 10, level of significance 10%). However, we also observe a reverse causality from economic development to economic freedom (lags 2 to 7, and lag 10, level of significance 10%).

Finally, the causality between personal freedom and economic development are presented in Table 8 and Table 9. As it was already explained,

personal freedom constitutes second important aspect of human freedoms and because of that we were interested in examining its relationship with economic development. From the results given in Table 8 we observe existence of long term and stable causality from personal freedom to economic development, at a significance level of 10%. Thus, personal freedom (Granger) cause GDP growth from 1 to 6 lags, GDP per capita growth from 2 to 9 lags and logarithm of GDP per capita from 1 to 9 lags. On the other hand, at the same significance level, the causal relationship from economic development to personal growth is random. In this case, economic development cause personal freedom with lags 1,2,3 and 6. Only in one case, with lag of 6 years, the F-stat from Granger causality testing from GDP per capita growth to personal freedom is statistically significant. Logarithm of GDP per capita (Granger) causes personal freedom with 1,2 and 6 lags, at a significance level of 10%.

Table 8. Causality from personal freedom to economic development

		Null Hypothesis: Personal freedom does not Granger cause GDP growth.		Null Hypothesis: Personal freedom does not Granger cause GDP per capita growth.		Null Hypothesis: Personal freedom does not Granger cause log (GDP per capita).	
Lags	Obs	F-stat	p-value	F-stat	p-value	F-stat	p-value
1	1506	17.7041***	3.00E-05	0.1838	0.6682	33.4161***	9.00E-09
2	1347	6.24162***	0.002	6.44827***	0.0016	18.2428***	2.00E-08
3	1188	3.20703**	0.0224	2.33983*	0.0718	6.84955***	0.0001
4	1032	2.74454**	0.0274	3.22168**	0.0122	5.45272***	0.0002
5	876	3.26945***	0.0062	5.95243***	2.00E-05	6.77081***	3.00E-06
6	722	2.12206**	0.0489	4.56591***	0.0001	5.77651***	7.00E-06
7	572	1.52213	0.157	3.25014***	0.0022	3.31444***	0.0018
8	423	1.46997	0.1662	2.04707**	0.04	3.33322***	0.001
9	274	1.49437	0.1501	2.02935**	0.0366	3.61804***	0.0003
10	137	0.78456	0.6435	0.99148	0.4549	1.53683	0.135

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

Table 9. Causality from economic development to personal freedom

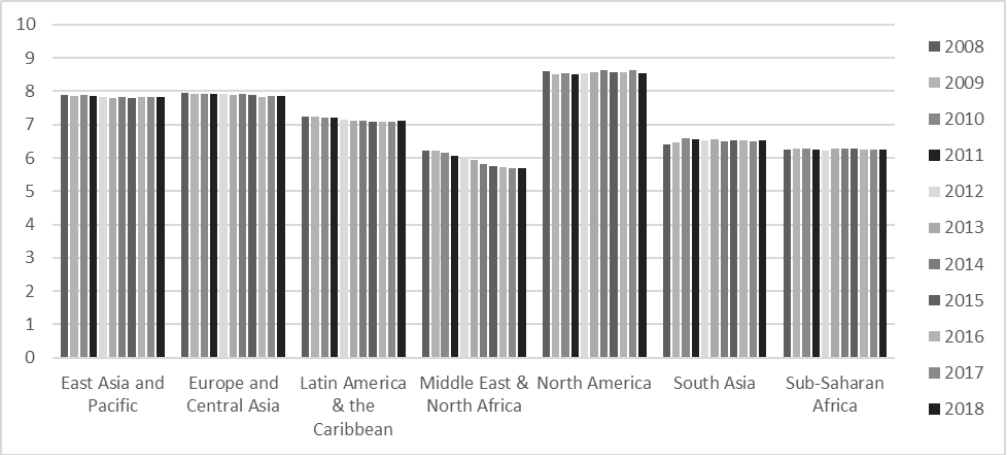
		Null Hypothesis: GDP growth does not Granger cause personal freedom.		Null Hypothesis: GDP per capita growth does not Granger cause personal freedom.		Null Hypothesis: Log (GDP per capita) does not Granger cause personal freedom.	
Lags	Obs	F-stat	p-value	F-stat	p-value	F-stat	p-value
1	1506	4.07397**	0.0437	2.21619	0.1368	5.18959**	0.0229
2	1347	3.16859**	0.0424	1.87643	0.1535	3.27042**	0.0383
3	1188	2.09176*	0.0996	1.06057	0.3649	1.52273	0.2069
4	1032	1.20142	0.3085	1.29323	0.2708	1.18231	0.3169
5	876	0.99391	0.4203	1.13443	0.3404	0.81469	0.5392
6	722	2.30678**	0.0326	2.30939**	0.0324	2.06613*	0.0551
7	572	1.26334	0.2663	1.29918	0.2483	1.47995	0.1717
8	423	1.38772	0.1998	1.37157	0.207	1.4188	0.1865
9	274	1.4086	0.1845	1.0968	0.3655	0.9376	0.4929
10	137	1.18254	0.3097	1.2116	0.2908	1.17917	0.3119

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

REGIONAL ANALYSIS

The final question we aim to answer in this paper is if there is a difference between the regions of the world with regard to the causality between human freedom and economic development. We have organized the countries in 7 groups with regard to their geographical location: East Asia and Pacific; Europe and Central Asia; Latin America and the Caribbean; Middle East and North Africa; North America; South Asia; and Sub-Saharan Africa. The country list for each of the abovementioned regions is provided as appendix to the text (See: Annex 3). The average value of human freedom per region is given at Figure 1.

Figure 1. Average value of human freedom, per region (2008 – 2018)



Source: Human freedom index 2020 (Vasquez and McMahon, 2020). Authors' own calculations.

We notice difference between the human freedoms among the selected regions. North America is the region with highest average value of human freedom. On the other hand, the region of the Middle East and the North Africa region manifests the lowest and constantly deteriorating average value of human freedom. However, the regions differ not only by human freedom, but also by their size and number of countries within them. Europe and Central Asia is largest region with total 46 countries, while North America region is consisted from only two countries: Canada and United States of America. The size and the level of development of the countries also differs among the regions.

Having in mind these specifics of the regions, we proceed with the results of the Granger causality testing between the human freedom and economic development between the regions. In the next three tables (Table 10, Table 11 and Table 12), we present the F statistics and the number of observations for 10 lags for the causality between human freedom and GDP growth, GDP per capita growth and log (GDP per capita), in this order.

When we analyze the causality from human freedom to GDP growth, on a regional level, we noticed that the null hypothesis is rejected only in East Asia and Pacific region and Latin America and the Caribbean region, at a level of significance of 10% for lag 1 and lag 2. In the opposite case, when we analyze the impact of GDP growth to human freedom, we can reject the null hypothesis in the region of Europe and Central Asia, that GDP growth does not Granger cause human freedom, at lags 1,2 and 3 and a level of significance of 10%.

Table 10. Causality between Human freedom and GDP growth, by region

Null hypothesis: Human freedom does not Granger Cause GDP growth														
Lags	East Asia and Pacific		Europe and Central Asia		Latin America and the Carribian		Middle East and North Africa		North America		South Asia		Sub-Saharan Africa	
	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F stat	Obs	F-stat
1	90	9.85***	450	1.7	244	4.02**	159	1.47	20	0.25	153	0.94	390	0.04
2	81	3.52**	404	1.57	219	2.47*	141	1.21	18	0.63	136	1.12	348	0.51
3	72	1.74	358	0.4	194	0.76	123	1.05	16	0.11	119	1.97	306	0.27
4	63	1.4	313	1.07	169	0.73	106	0.87	14	3.81	102	0.95	265	0.37
5	54	2.01*	268	1.34	144	1.59	89	1.12	12	3.29	85	1	224	1.44
6	45	1.27	223	2.00*	119	1.12	72	1.03	/	/	69	0.55	184	1.17
7	36	1.53	178	1.52	94	0.61	56	1.76	/	/	54	0.68	146	1.17
8	27	3.02*	133	0.47	70	1.02	40	0.71	/	/	39	2.57**	108	1.55
Null Hypothesis: GDP growth does not Granger Cause Human freedom														
Lags	East Asia and Pacific		Europe and Central Asia		Latin America and the Carribian		Middle East and North Africa		North America		South Asia		Sub-Saharan Africa	
	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F stat	Obs	F-stat
1	90	0.25	450	3.72*	244	0.91	159	0	20	0.11	153	1.67	390	2.94*
2	81	0.16	404	5.10***	219	1.05	141	0.15	18	0.93	136	0.79	348	0.82
3	72	0.25	358	2.94**	194	1.24	123	0.27	16	1.2	119	3.06**	306	0.82
4	63	0.14	313	1.15	169	1.5	106	0.4	14	0.22	102	2.08*	265	0.8
5	54	0.49	268	1.14	144	1.01	89	0.28	12	0.48	85	0.68	224	1.17
6	45	0.8	223	1.58	119	1.11	72	1.09	/	/	69	0.7	184	1.75
7	36	1.06	178	1.39	94	2.16**	56	0.98	/	/	54	0.48	146	1.04
8	27	0.6	133	1.1	70	1.04	40	1.45	/	/	39	0.97	108	1.03

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

Similar results are obtained from the analysis of the causality between the human freedom and the GDP per capita growth. Again, the null hypothesis is rejected in the East Asia and the Pacific region (lags 1-8) and Latin America and the Carribean region (lags 1,2), at a level of significance of 10%. GDP per capita growth cause human freedom in the European region with lags of 1,2 and 3 years, when level of significance is set to 10%.

Table 11. Causality between Human freedom and GDP per capita growth, by region

Null hypothesis: Human freedom does not Granger Cause GDP per capita growth														
Lags	East Asia and Pacific		Europe and Central Asia		Latin America and the Carribian		Middle East and North Africa		North America		South Asia		Sub-Saharan Africa	
	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F stat	Obs	F-stat
1	90	12.48***	450	1.72	244	5.72**	159	0.21	20	0.72	153	0.69	390	0.76
2	81	4.97***	404	2.11	219	3.36**	141	0.25	18	1.29	136	1.14	348	1.51
3	72	2.57*	358	0.55	194	1.1	123	0.39	16	0.56	119	1.51	306	1.07
4	63	2.69**	313	1.56	169	0.97	106	0.84	14	4.73*	102	0.64	265	1.07
5	54	3.14**	268	1.82	144	1.82	89	1.13	12	5.23	85	0.73	224	2.13*
6	45	2.34*	223	2.21**	119	1.29	72	0.88	/	/	69	0.43	184	1.39
7	36	2.69**	178	1.58	94	0.66	56	1.13	/	/	54	0.7	146	1.54
8	27	4.14**	133	0.99	70	1.19	40	0.56	/	/	39	2.09*	108	1.7
Null Hypothesis: GDP per capita growth does not Granger Cause Human freedom														
Lags	East Asia and Pacific		Europe and Central Asia		Latin America and the Carribian		Middle East and North Africa		North America		South Asia		Sub-Saharan Africa	
	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F stat	Obs	F-stat
1	90	0.77	450	3.04*	244	0.49	159	0	20	0.13	153	1.19	390	3.58*
2	81	0.11	404	4.75**	219	0.79	141	0.09	18	0.99	136	0.6	348	1.32
3	72	0.37	358	2.41*	194	1.21	123	0.22	16	1.75	119	2.53*	306	1.3
4	63	0.24	313	0.75	169	1.69	106	0.48	14	0.33	102	1.69	265	0.95
5	54	0.48	268	0.84	144	1.21	89	0.29	12	0.47	85	0.46	224	1.21
6	45	0.45	223	1.49	119	1.2	72	1.12	/	/	69	0.71	184	1.74
7	36	0.68	178	1.47	94	2.21**	56	1.04	/	/	54	0.42	146	1.03
8	27	0.45	133	1.21	70	1.09	40	1.9	/	/	39	0.99	108	1.03

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

Finally, when we examine the relationship between human freedom and GDP per capita, transformed in logarithmic form, we noticed that human freedom causes GDP per capita, on the long run, in the following regions: East Asia and the Pacific, Europe and Central Asia, Latin America and the Caribbean and Sub-Saharan Africa. The causality in the opposite direction, from Economic prosperity to human freedom is evidenced in the Sub – Saharan region. In the both cases, level of significance is 10%.

Table 12. Causality between Human freedom and log(GDP per capita), by region

Null Hypothesis: Human freedom does not Granger Cause log(GDP per capita)														
Lags	East Asia and Pacific		Europe and Central Asia		Latin America and the Carribian		Middle East and North Africa		North America		South Asia		Sub-Saharan Africa	
	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F stat	Obs	F-stat
1	90	8.74***	450	8.43***	244	13.15***	159	0.92	20	0.6	153	0.01	390	4.9**
2	81	0.88	404	11.02***	219	6.46***	141	0.22	18	1.39	136	1.78	348	3.15**
3	72	1.66	358	4.83***	194	2.62*	123	0.2	16	0.54	119	1.07	306	2.29*
4	63	1.28	313	3.67***	169	1.91	106	0.84	14	1.63	102	0.6	265	1.92
5	54	2.33*	268	4.34***	144	3.07**	89	1.3	12	66.55*	85	0.63	224	3.2***
6	45	1.97*	223	5.24***	119	2.1*	72	1.18	/	/	69	0.51	184	2.29**
7	36	2.71**	178	3.88***	94	0.85	56	1.19	/	/	54	1.54	146	2.23**
8	27	5.6***	133	2.83***	70	1.46	40	0.54	/	/	39	1.9	108	2.83***
Null Hypothesis: Log(GDP per capita) does not Granger Cause Human freedom														
Lags	East Asia and Pacific		Europe and Central Asia		Latin America and the Carribian		Middle East and North Africa		North America		South Asia		Sub-Saharan Africa	
	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F-stat	Obs	F stat	Obs	F-stat
1	90	2.6	450	0.61	244	0.53	159	0.81	20	0.79	153	0.5	390	3.07*
2	81	2.08	404	1.95	219	0.76	141	0.5	18	0.32	136	0.82	348	3.17**
3	72	2.04	358	2.42*	194	1.3	123	0.51	16	2.97*	119	1.28	306	2.28*
4	63	1.68	313	0.66	169	1.72	106	0.85	14	0.81	102	2.63**	265	1.17
5	54	0.98	268	0.9	144	1.2	89	0.48	12	0.7	85	0.61	224	1.38
6	45	0.91	223	1.45	119	1.03	72	1.21	/	/	69	0.58	184	0.96
7	36	0.69	178	0.97	94	3.86***	56	1.22	/	/	54	0.44	146	1.22
8	27	0.45	133	1.34	70	1.5	40	1.85	/	/	39	0.94	108	1.15

Note: p-value: *** significant at 99% level; ** significant at 95% level, * significant at 90% level.

CONCLUSIONS

The economic literature still does not have common position on the relationship between human freedom and economic development. The challenge of our paper was to determine the relationship of influence among these variables, using Granger causality test. The results have shown that human freedom has influence on enhancing the economic growth, but in turn it does not create more human freedoms (there is no statistically significant prove).

Regarding the components of the human freedom, the model has proven that economic freedom has bidirectional relationship. Therefore, economic freedom is a significant factor in the country's economic development and prosperity and *vice versa*. This relationship manifest in long run, since economic freedom is a comprehensive indicator of many freedoms that often need more time to be implemented and make fully effective. Some of them are: protection of property rights, the presence of corruption, the size of public spending, the tax burden, ease of doing business in the country, flexibility in the labor market, price stability, international trade, the presence of foreign investment, development of financial markets and many other parameters of economic liberalism.

We did not find two-way relationship between the personal freedom and economic development. However, Granger causality has proven stable and long-term influence of the personal freedom to the economic growth.

Regarding the regional analysis, we find positive one way relationship of the two observed variables in East Asia and Pacific region and partly in Europe and Central Asia and Latin America and the Caribbean. However, these conclusions need to be carefully elaborated since we worked with regions with different number of countries and observations. That can lead us to bias conclusions.

In all of the equations, we use three indicators of economic development (GDP growth, GDP per capita and GDP per capita growth) in order to prove the robustness of the relationship between human freedom and economic growth. However, GDP per capita seems to be the best indicator that proves the long-term causality on the global and on regional level. Further analysis should be made in quantifying the causality between economic growth and human freedom in the world as well by different regions.

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Annex 1. Descriptive statistics of economic freedom variables

	Size of Government	Legal System and Property Rights	Access to Sound Money	Regulation of Credit, Labor and Business	Freedom to Trade Internationally
Mean	6.557184	5.263813	8.154714	7.046781	7.056927
Median	6.600000	5.140000	8.400000	7.100000	7.200000
Maximum	9.500000	8.500000	9.900000	9.500000	9.600000
Minimum	0.100000	2.200000	0.700000	2.500000	1.800000
Std. Dev.	1.309353	1.400505	1.403121	1.052879	1.296699
Observations	1754	1760	1680	1693	1679

Source: World Bank national accounts data, and OECD National Accounts data. Authors' own calculations.

Annex 2. Descriptive statistics of political freedom variables

	Association, Assembly, and Civil Society	Expression and Information	Identity and Relationship	Religion	Rule of Law	Security and Safety
Mean	7.192820	8.373690	7.206190	7.404059	5.243393	8.093333
Median	7.900000	8.800000	8.800000	7.900000	4.900000	8.300000
Maximum	10.00000	10.00000	10.00000	9.900000	8.800000	10.00000
Minimum	0.500000	0.100000	0.000000	0.600000	1.700000	3.500000
Std. Dev.	2.295750	1.378931	3.191699	1.648729	1.550951	1.466843
Observations	1727	1680	1680	1749	1680	1680

Source: World Bank national accounts data, and OECD National Accounts data. Authors' own calculations.

Annex 3. Regions and countries

Region	Countries	Number of countries
East Asia and Pacific	Australia; China; Fiji; Hong Kong; Japan; Korea, Rep.; Mongolia; New Zealand; Papua New Guinea	9
Europe and Central Asia	Albania; Armenia; Austria; Azerbaijan; Belarus; Belgium; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Greece; Hungary; Iceland; Ireland; Italy; Kazakhstan; Kyrgyz Republic; Latvia; Lithuania; Luxembourg; Malta; Moldova; Montenegro; Netherlands; North Macedonia; Norway; Poland; Portugal; Romania; Russian Federation; Serbia; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Tajikistan; Ukraine; United Kingdom	46
Latin America and the Carribian	Argentina; Bahamas; Belize; Bolivia; Brazil; Chile; Colombia; Costa Rica; Dominican Republic; Ecuador; El Salvador; Guatemala; Guyana; Haiti; Honduras; Jamaica; Mexico; Nicaragua; Panama; Paraguay; Peru; Suriname; Trinidad and Tobago; Uruguay; Venezuela	25
Middle East and North Africa	Algeria; Bahrain; Egypt, Arab Rep.; Iran, Islamic Rep.; Iraq; Israel; Jordan; Kuwait; Lebanon; Libya; Morocco; Oman; Qatar; Saudi Arabia; Syrian Arab Republic; Tunisia; Turkey; United Arab Emirates; Yemen, Rep.	19
North America	Canada; United States of America	2

South Asia	Bangladesh; Bhutan; Brunei Darussalam; Cambodia; India; Indonesia; Lao PDR; Malaysia; Myanmar; Nepal; Pakistan; Philippines; Singapore; Sri Lanka; Thailand; Timor-Leste; Vietnam	17
Sub-Saharan Africa	Angola; Benin; Botswana; Burkina Faso; Burundi; Cabo Verde; Cameroon; Central African Republic; Chad; Congo, Dem. Rep.; Congo, Rep.; Cote d'Ivoire; Eswatini; Ethiopia; Gabon; Gambia; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Madagascar Malawi; Mali; Mauritania; Mauritius; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Seychelles; Sierra Leone; South Africa; Sudan; Tanzania; Togo; Uganda; Zambia; Zimbabwe	42

Source: World Bank national accounts data, and OECD National Accounts data. Authors' own calculations.

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THE ROLE OF HONORARY CONSULS IN MODERN DIPLOMATIC RELATIONS

Ile Masalkovski, Ph.D.
Assistant Professor at Faculty of Law, University "St.Kliment Ohridski" – Bitola
North Macedonia
e-mail: masalkovski.i@gmail.com

Mirjana Ristovska, Ph.D.
Associate Professor at Faculty of Law, University "St.Kliment Ohridski" – Bitola,
Republic of North Macedonia
e-mail: mirjana.ristovska@uklo.edu.mk

Abstract
The consuls, official representatives of the government of one country acting on the territory of another country, generally are appointed due to several reasons: to aid and protect the citizens of the consul's country; to encourage and facilitate the economic relations between both countries; to encourage and aid the growth of the culture between both countries, and more. According to this, the role of the consuls differs from the one of the ambassadors in today's diplomatic relations. Additionally, the distinction of the consuls can be seen from a point that they have very limited privileges and immunity comparing to the ambassadors. Namely, the consular positions are limited comparing to the diplomatic representatives, not only in terms of their function (consular representation as a rule act on their duties only in their district), but in their nature as well (for instance, the consular representatives fundamentally do not have similar political positions which is the case with the diplomatic representatives.
The subject of this paper is analysis of the consular representatives' role in today's modern state of affairs. In terms of methods, the authors will apply the normative method, the comparative method, as well as the historical method. The main goal of this paper is to do academic research with regards to the evolution of the consuls' role, as well as the future challenges and perspectives of this title.

Keywords: *consuls, privileges, immunities.*

INTRODUCTION

The institution of honorary consul (consul ad honorem) has its roots in ancient times. Some authors, for modern beginnings of honorary consuls, point to the institution of the Ancient Greek proxenos (Lateiner Donald and Crawley Richard 2006, p. 33-34), who was usually a wealthy merchant with socio – economic ties with another city and had a public function of protecting its citizens. Nowadays, many states engage a local resident, particularly in outlying areas of a receiving state, to perform consular work on a part-time basis. Such a person, called an "honorary consul," may even be a national of the receiving state. An honorary consul may have some connection in her or his background to the sending state. Honorary consuls typically practice a profession of their own and work out of the office they use in that profession. Consuls, whether career or honorary, are responsible for a given territory (Quigley J., Aceves W. and . Shank A. 2009, p.28).

Consular privileges and immunities are advantages and interests which are provided to the heads of consular missions, consular officials and consular employees to perform their consular functions, during their acting on the territory of another country. The specificity of the consular positions is a well-known limitation of privileges and immunities comparing to those of the diplomatic representatives. Namely, the consular positions are limited comparing to the diplomatic representatives, not only in terms of their function (consular representation as a rule act on their duties only in their district), but in their nature as well (for instance, the consular representatives fundamentally do not have similar political positions which is the case with the diplomatic representatives.

PRIVILEGES AND IMMUNITIES OF HONORARY CONSULAR REPRESENTATIVES

According to the Vienna Convention on Consular Relations, the honorary consular officials have several facilities, privileges and immunities: protection of the consular premises, exemption from taxation of consular premises, inviolability of consular archives and documents and exemption from customs duties.[117] Additionally, honorary consular officials may exercise several other

[117] Article 58 paragraph 1 from the Vienna Convention on Consular Relations

privileges and immunities in the same manner as career consular officers, which are introduced by article 58 paragraph 2. This kind of privileges also will be discussed in the paper. Privileges and immunities provided for the honorary consular officials are not accorded to their family members.

a) Protection of the honorary consular premises

The issue of protection of the honorary consular premises, within modern consular relation, is not disputable. The differences that may be occurred, in this respect, are whether the protection of the consular promises should be determined in absolute or in relative manner.

The most common opinion is that the authorities of the receiving state may enter the premises of the honorary consulate only with the consent of the honorary consul or a person authorized by him or with the permission of the head of the diplomatic mission of the sending state. In this respect, Vienna Convention states that:

" the receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity." [118]

b) Exemption from taxation of honorary consular premises

Consular premises of a consular post headed by an honorary consular officer of whom the sending State is the owner or lessee, under the Vienna Convention are exempted from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered. [119]

c) Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer, according to Vienna Convention, are inviolable at all times and wherever they may be. The consular archives and documents

[118] Article 59 from the Vienna Convention on Consular Relations
[119] Article 60 from the Vienna Convention on Consular Relations

should be kept separate from other papers and documents and from the private correspondence of the head of a consular post. [120]

d) Exemption from customs duties[121]

Article 62 from the Vienna Convention states as follows:

"The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post."

COUNSUL AD HONOREM ACCORDING TO THE MACEDONIAN LEGISLATION

Honorary consuls appointed by the Macedonian Government are local people living in the receiving state, who enjoy reputation and trust in it. They are not carrier officials.

According to the article 61 from the Law on Foreign Affairs[122], the Government, at the proposal of the Minister for Foreign Affairs, appoints an honorary consular official. The Honorary consul performs tasks determined by the instruction of the Minister for Foreign Affairs. The Honorary consul works in accordance with the instructions and under the supervision of the head of the diplomatic-consular mission department. Honorary consul has an obligation to give a report about its activities in front of the competent diplomatic-consular mission and in the same time to coordinate its work with it.

The public appearances of the Honorary consul are in accordance with the Ministry guidelines. The Honorary consul provides the means for the functioning of the consular office, while the Ministry for Foreign Affairs provides a flag, coat of arms, a sign with the consular official name and seals.

[120] Article 61 from the Vienna Convention on Consular Relations
[121] Article 62 from the Vienna Convention on Consular Relations
[122] Official Gazette of Republic of Macedonia, 103/2015, 22.06.2015

The Republic of North Macedonia had appointed twenty tree Honorary Consuls until now, in the following states: Republic of Austria, the Kingdom of Belgium, State of Israel, Canada, the Italian Republic, The Principality of Lichtenstein, the Kingdom of Norway, Republic of Turkey, Republic of Romania, the Kingdom of Sweden, The Swiss Confederation, Federal Republic of Germany, United States of America, Republic of Indonesia and Republic of India. [123]

On the other side, there are forty honorary consuls appointed by the different states around the world on the territory of the Republic of North Macedonia.[124]

THE ROLE OF THE CONSUL AD HONOREM IN MODERN DIPLOMATIC RELATIONS

For both career and honorary consuls, assistance to sending-state nationals is a major activity. The scope of functions is typically greater for career consuls than for honorary consuls. In general, however, certain functions are typical. A consul may provide advice and information to sending-state nationals who seek to do business in the receiving state. Consuls attest to the validity of documents issued in the receiving state that a national may need to use in the sending state (Quigley J., Aceves W. and. Shank A. 2009, p.29).

As a general rule, honorary consuls have two main tasks:

1) development of economic, scientific and cultural relations between countries (in particular, promoting commerce in both directions) and
2) protection of the interests of their sending State and their citizens.

The honorary consul does not receive any remuneration from his sending country and is usually an entrepreneur or public servant who has close links with the country to be represented. It is a serious advantage for a country that chooses honorary consuls to represent its citizens. However, the functions of the honorary consul may be extended or reduced as necessary (Grasis J. 2019, p.2).

123 https://www.mchamber.mk/upload/Spisok%20na%20pocesni%20konzuli%20na%20RM%20vo%20stranstvo.pdf

124 https://dw3yoh98rrrmk.cloudfront.net/276fca3ef23b45018099b1d96e5bb26e.pdf

CONCLUSION

The honorary consuls, unlike the career consuls, do not receive a salary from the state that appoints them. The career consul must be a citizen of the state he/she is nominated for, while the honorary consul can also be a citizen of the receiving state or even a third state citizen.

The functions and competences of the honorary consuls are much more limited compared to those of the career consuls. At this point, honorary consuls are mostly engaged with economic, cultural, and scientific cooperation between the two states, as well as with helping the citizens of the state of appointment.

In modern diplomatic practice, the institute of the honorary consul is not accepted by all states and therefore do not appoint thins kind of consuls to other states. However, the institute of honorary consuls is introduced and well-determined by the Vienna Convention on Consular Relations, which states that each state independently decides whether to appoint and accept the institute of honorary consul.

The Republic of North Macedonia accepts the institution of honorary consuls, and so far, there are thirty-nine appointed honorary consuls by the Macedonian Government. Macedonian honorary consuls are persons with foreign citizenship and domicile, who enjoy a huge reputation and trust in their local community. Primarily, their main activities are to promote and protect Macedonian interests, especially in the field of economy, tourism, and culture. According to the diplomatic practice, there are no financial implications of their work to the budget of the Republic of North Macedonia. In this regard, the Macedonian Government had also appointed an economic promoter in nearly thirty states in the world.

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SOCIAL DISORGANISATION THEORY AND JUVENILE DELINQUENCY

Ivona Shushak Lozanovska, PhD
St. Clement of Ohrid University, Bitola
Faculty of Law, Kichevo, Assistant professor
ivona.susak@uklo.edu.mk

Pakiza Tufekci, PhD
St. Clement of Ohrid University, Bitola
Faculty of Law, Kichevo, Assistant professor
pakiza.tufekci@uklo.edu.mk

Abstract
The social disorganization theory is one of the most enduring place-based theories of crime. This theory shifted criminological scholarship from a focus on the pathology of people to the pathology of places. Social disorganization theory suggest that a person's residential location is more significant than the person's characteristics when predicting criminal activity and the juveniles living in this areas acquire criminality by the cultures approval within the disadvantaged urban neighborhoods.
Testing social disorganization theory for the causes of index (major) crime incidence among juveniles is the subject of this study. Delinquency rates are quite high and it is an important problem for every society. It is needed to know the causes of delinquency to find appropriate solution ways and to decrease the delinquency rate.
Method: The paper presents results of conducted research in correctional home for children. Descriptive qualitative analysis was used to draw conclusions.
Conclusion: The theory of social disorganization, that sees the causes of crime in social desintegration, widespread in those parts of the city districts that are predominantly inhabited by poor people, is applicable in our juvenile crime situation, especially when we see who they are, where they come from and what life challenges they face every day.
Key words: juvenile, delinquency, theory, social-disorganization, causes

INTRODUCTION

The process of locating the problem and the source of crime and delinquency is not simple. It is dependent on various factors that can be directed towards both the individual i.e. the perpetrator and the social environment.

Most of the initial theoretical explanations of the criminal behavior refer to the behavior of the individual and the search for causes within the soul, the mind and the biological characteristics of the human body, while claiming that sociological factors have little or no influence on the occurrence of criminal behavior. However, with the beginning of the 20th century, the view that crime is a social product begins to dominate, and therefore more attention should be attributed to social factors and their influence.

The basis of sociological theories is based on the view that the pressure from society is a sufficient factor to create children with characteristics of the society where they live in, ie in short, they point out that each individual is a mirror of its society. The theory of social disorganization is even more specific in this part and connects the crime and the delinquency with the disorganization of neighborhoods. The disorganization, conditioned by poverty, residential mobility, racial/ethnic heterogeneity and family disorders, is recognized as a cause of crime by the representatives of this theory, primarily through its contribution to the paralysis of social control mechanisms.

In the paper, an attempt to explain the criminal behavior of children placed in an educational correctional facility will be made, by applying the postulates of this theory.

SOCIAL DISORGANIZATION THEORY

The criminological theory of social disorganization, whose genesis we have been following since the beginning of the 20th century, shows its relevance even today. This is quite understandable given the fact that it is a theory that explains the causes of crime and all forms of socially unacceptable phenomena through the prism of social factors. The authors who accept this theoretical orientation in criminology and social pathology, perceive society as a dynamic category, where organization and disorganization appear as opposite but relative terms.

No society functions completely efficiently and therefore we can discuss about different degrees of organization or disorganization. The social disorganization occurs particularly when changes occur in the balance of

society so that the harmonious processes that unite the various social forces are disrupted in a functional sense. Due to the group being the basic unit of society, social disorganization is defined as a process of internal disintegration of groups (Arnaudovski, 2007: 205). When social groups and institutions fail to fulfill their roles and functions, within the established order, there is a disturbance of the functioning of the established order and failure to achieve the set goals. In such manner the balance in society is disturbed, social problems appear, and in the more severe forms of its disturbance, social crises appear which necessarily require action for their solution. Due to the fact that they cause social problems and phenomena, their importance for crime is also perceived, because this disorganized or unbalanced situation is interpreted as a reason for disabling social control and braking the processes of directing objective conditions and changes in order to achieve socially useful goals. (Sulejmanov, 2000: 304)

According to the theory of social disorganization, the characteristics of the settlements affect the degree of social disorganization in the community. This is so because certain characteristics can hinder the development of social ties that promote the ability to solve common problems, including crime. The characteristics of greatest interest among researchers of social disorganization are poverty and unemployment, mobility of the population, ethnic composition and family disorders amongst others. They are related to crime only indirectly, primarily through their contribution to the paralysis of social control mechanisms. According to Sampson, neighborhood characteristics such as: family instability, housing mobility, and structural density weaken informal social control networks. The informal social control is also impeded by weak local social ties, reduced community attachment, anonymity, and reduced capacity for oversight and protection. Other factors such as poverty and ethnicity may also influence informal control, although their impact is likely to be indirect. Residents of areas characterized by family disorganization, mobility, and population density are less able to perform protective activities, less likely to report general deviation to authorities and to intervene in public harassment and to undertake responsibility for overseeing the behavior of their youth. The result is that deviation is tolerated and that the social control norms are ineffective. (Sampson,1987).

When it comes to the socioeconomic status as the first source of social disorganization, the initial research conducted under the auspices of the theory's creators, Shaw and McKay, has shown a strong link between social disorganization and social problems such as poverty. Poverty and misery are one of the most important criminological factors. Above all, individuals who

are economically devastated are in a repressed and degraded position, they experience humiliation of their personality and their dignity at every step. (Radovikj-Stojanovikj et al. 2019:50,51). "The loneliness and the feeling that you are not wanted is the worst poverty," said Mother Teresa, a famous statement that explicitly and unequivocally describes what we now call social exclusion. The poverty and the unemployment result in social exclusion from society, and the global structural inequalities result in mass deprivation and a general increase of fears of social marginalization. (Magerl, 2014:134). This social setting prevents individuals from articulating their goals and interests in a socially acceptable manner. Precisely due to the lack of these basic opportunities for a dignified life, they can opt for alternative answers to this situation, which leads to the "lower" strata of society creating the so-called "nests of crime". There are "marked territories" in cities- which vary in crime extent and structure, depending on social and economic differences. Criminal groups here adopt their code of conduct, which is passed down from generation to generation, the population is lacking in cultural and moral value, or in short it is socially disorganized. People living in such areas embrace such patterns of behavior and in some way contribute to making the area what it is. According to Shaw and McKay's theory, the social disorganization present in these poor neighborhoods is a key factor in delinquent behavior. The criminal behavior is no longer the result of personal traits or characteristics, but is related to environmental conditions (Hasakovikj, 2018:48).

It is not difficult to understand how the constant mobility of community members can disrupt social ties. This significantly impedes the ability of community members to get to know each other, to build trust and to communicate with each other, resulting in a reduction of informal social control, which is recognized as a key factor in crime prevention. Members of the community can develop the ability to take actions of mutual benefit only on the basis of mutual familiarity which is a prerequisite for gaining mutual trust and building solidarity between them. Frequent change of residence limits this possibility. In such communities we can freely say that people are strangers, and the causal consequences of this are anonymity, lack of relations between members of the community and lack of interest in its organization.

The third source of social disorganization, racial or ethnic heterogeneity, in the works of Shaw and McKay, as well as their followers, is recognized as a factor that undermines the ability of community members to reach consensus. Heterogeneity is accompanied by fear and mistrust, which ultimately results in the association of members of the communities on the basis of personal criteria (eg age, gender). As a result of this kind of

association, the social order becomes fragmented, petty-bourgeois and personalized. (Sampson et al.,1989:781). Despite the fact that different ethnic and racial groups can uphold conventional values, heterogeneity hinders communication and hinders the search for solutions of common problems and the realization of common goals. This undermines the social cohesion of the community, which provides the most fertile ground for the exercise of social control, as a necessary way to limit and control crime and prevents all other forms of socially unacceptable phenomena. In short, the more heterogeneous the ethnic origin of the inhabitants, the less likely it is to form a common set of values, primarily about what is acceptable and what is not. (Stanojoska,2020:65).

In addition, we will look into the disorders within the family, which are almost justified in the study of the theory of social disorganization, because the family is the basic social cell and as such is a condition for social prosperity. Of course, given the delicate educational and social function of the family in the proper formation of members of society, it is clear that this task can be successfully performed only by harmonious and functionally adequate families, with a pleasant family environment in which there are no negative phenomena and deviations (Mladjenovikj-Kupchevikj, 2001: 177-178). In contrast, families in which various elements or forms of structural devastation or functional disorganization are expressed become a center of deviant pressure, which is also manifested through the criminal behavior of young members (Jashovikj, 1991: 237).

The disruption of family relations can occur due to the above-mentioned socioeconomic characteristics of the family. The favorable financial conditions facilitate the educational role of the family, while families who find themselves in a difficult financial condition are not able to pay enough attention and care to their children. Hence, it is clear that social disorganization can affect crime, both by influencing the structure and stability of the family, by removing the mechanisms for controlling the behavior of young people, on one hand, and by creating greater opportunities for victimization (due to lack of proper control), on the other hand. From this it is evident that family disorders have a significant direct impact on the crime rate in the community, as they again affect the reduction of informal social control on a community level.

THEORY OF SOCIAL DISORGANIZATION IN THE CONTEXT OF JUVENILE DELINQUENCY

Shaw and McKay saw the causes of crime in social disorganization, prevalent in those parts of urban areas that are predominantly populated by poor people, who often come from ethnic minorities. In these neighborhoods, the dominant social culture exerts only a slight influence and the population relatively often chooses a markedly deviant rather than a conventional lifestyle. Such choices are often collective in nature. Young people in these areas that are antagonistic to social norms, easily find support for deviant lifestyles among their peers and even among their parents. This often leads to the formation of groups. Such groups initially develop a delinquent tradition to its own taste, and then moves on to new recruits. Once a group tradition is established, it will often continue regardless of any changes that occur within the neighborhood. Thus, tradition is passed down from one generation to the next, or from one ethnic minority to another, as new groups begin to dominate. (Sarnecki, 2001: 10,11)

Shaw and McKay suggest that in such areas the tradition of delinquent behavior tends to become the established norm, as informal delinquent groups seek in every way possible to gain new members, especially at a younger age. With their behavior by idealizing the world of crime, proclaiming the disobedience of social rules, norms of behavior and the law, by emphasizing easy earnings as the highest value, ignoring social obligations, etc., act as a "criminal infection". Young people growing up in this areas see a large number of individuals "succeeding" in this delinquent lifestyle and use them as an example for their own behavior. Alternative models of success are not available in these areas, so the negative impact of the neighborhood lies precisely in identifying negative patterns of behavior. The identification with the leader of a criminal group is especially important, because the leader of such a group always requires absolute obedience, which results in the so-called defensive identification. The defensive identification essentially means obedience to a person or a group that is extremely aggressive and threatens the individual who approaches the group. In fear of a possible punishment, such individual does not turn into an aggressor towards the people who threaten him/her, but towards the common "enemy", the society as a whole (Hajdukovikj, 1975: 54)

Hence, neighborhood can be a powerful criminogenic factor. This is even more pronounced in adolescence when the need for belonging to different social groups is strongly expressed. In this way, young people enter such informal groups, based on the acceptance of identical stands, views and values,

which is most pronounced when the family, the school and other formal institutions have collapsed around them, so this group serves as a substitute family, where psychologically they experience the direct communication that they lack. Later on, a criminal behavior appears as the subject and the goal of their grouping, by structuring in solidarity groups with firmly and clearly fixed criminal attitudes and goals. Shaw and McKay's view on how such deviant techniques are transmitted is influenced by the so-called cultural transmission. Hence, they emphasize: the intimate connection of the child with predatory groups or other forms of delinquent or criminal organization is of particular importance. Through his/hers contacts with these groups and on the basis of his/hers participation in their activities, he/she learns the techniques, strengthens the relations with his/hers delinquent friends and acquires attitudes appropriate to his/hers position as a member of such group. Hence, it is the nature of the neighborhood that regulates criminal behavior, not the nature of the people living there.

RESULTS OF A CONDUCTED RESEARCH

As a part of the research, an interview was conducted with protégés from the Correctional Institution. The interview was conducted by asking previously prepared open-typed questions, but all additional information that went beyond the planned scheme were recorded.

Of the interviewees, two are aged 17 and 18, one is aged 15 and one is aged 19. Each of them started their criminal career relatively early, on average at the age of 9 to 13, and according to the volume of crimes committed, they can be a counterpart of an adult criminal that is at the end of his/hers "career". Five of them are members of the Roma ethnic group and one is Albanian.

Before coming to the Correctional Institution, one of the children lived in the Orphanage "11 October" in Skopje, two of them were accommodated in the Public Institution for Care of Children with Educational and Social Problems "25 May" in Skopje, one "lived" with its family in Skopje, and two children (coming from the same family) did not have a permanent place of residence, traveling to countries as asylum seekers.

All respondents, both according to them and according to the documentation available in the home, come from large and completely dysfunctional families. Their parents are either criminals who are currently in prison or those who have since formed new families. As a result, these children are left to the "care and upbringing" by older family members (grandparents) or older siblings, which in a more simplistic way means "care and upbringing" on the street. Therefore, it is not surprising that half of them received

"institutional protection", and how much it can be considered as protection is more than obvious. The difficult financial situation is a common feature and that is perhaps the reason why everyone appeared as perpetrators of crimes in the field of property crimes, with an emphasis on aggravated theft and robbery. They say that poor and discriminated people live, or rather survive on the margins of society. Most in makeshift sheds and in substandard conditions. That was their reality that they faced each day, so they "managed as they know and can".

All respondents committed the crime in complicity with other persons, in groups not exceeding four members. The structure of these groups is predominantly homogeneous, consisting of children of the same or similar age. In the case of two respondents, the presence of members several years older than them was determined, who appear in the role of "brain of the operation", and the children in the role of "operatives".

The members of the group are not strangers, on the contrary, they are persons with whom the respondents communicated on a daily basis. Hence, the groups are composed either of family members (closer/wider) or of people living in their immediate vicinity (neighbors). Characteristic for the children who were placed in the above-mentioned institutions, is that they continue to form groups, but now it is from the home children that are currently available to them.

Symptomatic and interesting for discussion are the findings that no matter who had the idea to commit the crime, each of those acts could have been committed by one person, at least according to the respondents. The groups were created because in this way the crime is easier to be committed, and according to the interviewed children, the group execution is more interesting and more fun, regardless of the fact that at the end of the day the "prey" should be shared. In this regard, some of the respondents emphasize that they were involved in committing the crime "*to be believed that they did it*", " *they did what everyone else did, so as not to belittle them* ", and the more creative ones " *they wanted to help their friends to get some money* ". Hence, they are unified in the view that they independently joined the group, and that the first stimulus for its existence was not the criminal one, but the one that arises from the sense of belonging.

In the research itself, the focus could not be placed on the future of these children or the criminological prognosis regarding their behavior after leaving the institution. In principle, according to the statement by the psychologist from the institution, the children declare that they regret what they have done so far and promise that in the future they will not commit new

crimes. But the situation is always devastating in practice. **The children return to the same social milieu, with the same people in their environment and in the absence of post-penal treatment and in a short period of time they continue their criminal activities and end up as adults in one of the prisons across the country.** For that purpose, we ask the children the question: *" Will you be in touch with those people again when you get out of here?".* The answers were not at all surprising. The accomplices of some of the respondents are currently with them at the home or in the institution and prison, and the attitude of some of them shows that they are aware of the reality they face and therefore they say: " *Like it or not, they are where I live, but I will try not to hang out with them* ".

CONCLUSION

Looking at the bigger picture, who they are, where they come from and what life challenges the children in the research sample face, the theory of social disorganization is absolutely applicable in explaining their criminal activities.

As mentioned earlier, this theory sees the causes of crime in social disintegration, prevalent in those parts of urban areas that are predominantly populated by poor people. Alternative models of success are not available in these areas, so the negative impact of the neighborhood lies precisely in identifying the negative patterns of behavior following the example of "each for their own". This is even more pronounced in adolescence when the need for belonging to different social groups is strongly expressed. In situations where the family, school and other formal institutions have completely failed around them, this group serves as a replacement family, in which they psychologically substitute the direct communication that they lack. Later on, a criminal behavior appears as the subject and the goal of their grouping, by being part in groups with clearly fixed criminal attitudes and goals.

In any case, all the above-mentioned data indicate the seriousness of the problem and the need for a serious approach and organized activity by everyone involved.

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CREATING PUBLIC POLICIES AND LOBBYING VECTORS IN THE COMMUNITY

Assoc. Prof. Dr.sc Marjan Tanushevski
Business Academy Smilevski, BAS-Skopje / Bitola, martan@t.mk

Abstract
Public policies are being created all the time. Creating public policies does not mean interfering in the decision-making process, on the contrary, it is an aid to proper and fair decision-making.
The modern way of policy making implies designing and implementing public policies through a continuous and stable process, with structural interaction of the actors.
The legislation in North Macedonia unequivocally points to the vectors for lobbying and they refer to the legislative and executive power at the central level, and to the Municipal Council and the mayor at the local level.
To lobby, one needs to know the situation in the community, and this is the focus of the author's work linking CSOs as actors and their role in the policy-making process, filling a gap that local or national institutions cannot provide.

Keywords: public policy, lobbying, creativity, civil society, public sector.

INTRODUCTION

The modern way of creating policies between the public and civil society sector means designing and implementing public policies through a continuous and stable process, and with a structural interaction of the interested actors.

Public policies are not only the choice of public authorities, on the contrary, expertise is important, but also public policy analysis. If it is known that every public policy undertaken by the authorities has the aim, or as it should be, of solving the problems of the community, then those policies that achieve results will be considered successful. Therefore, public policies need to be understood, known, and then influenced. For the success of the processes related to public policies, it is necessary for the citizens to have appropriate knowledge, ability, and attitude for active participation in the political process,

which will enable a better life, better government and better care for the citizens.

Public policies are created. Creativity is a thought process that involves the creation of new original ideas or new possibilities for the use of current ideas. Not all people are equally creative, nor should creative thinking be innate. People can also learn, to think creatively. Creative people think unchallenged, advanced and innovative and thus come up with new ideas, not recognizing the dominant and socially prescribed norms, standards, stereotypes. They are people with great creative potential and energy, who, in addition to intelligence and professional knowledge, are characterized by high imagination, desire for research, curiosity, willingness to accept challenges and take risks, and thus with a high level of ability for organizing.

CIVIL SOCIETY ORGANIZATIONS AND PUBLIC POLICIES

Influence on public policies and their creation by civil society organizations is everywhere in the world. Impact implies the ability of citizens to know how to get involved in decision-making processes that are important to their lives. The participation of civil society organizations in the process of enacting laws and other public policy instruments (strategies, budgets and other programs) is extremely important for the development of any democratic society. Lobby groups provide an alternative form of participation in the political system to the more traditional means of joining a party. This is true. People are not as much politically involved as citizens of other nations (Davies, 1985, 22). As a reminder, citizen participation in the explanation, implementation and evaluation of public policies in the community is no longer an option, but a feature of advanced democracies. In that sense, despite the existing shortcomings, civil interaction and civil society involvement have become commonplace in the decision-making process. Creating policies in a participatory way has become an essential ambition of civil society organizations. We are all aware that it is not always easy to help and implement the citizen participation process. Therefore, huge efforts should be made to encourage civil society organizations and enable them to participate in the process of defining public policies.

FOCUS LOBBYING

Democratic systems of government base their political legitimacy on several principles. The first principle means ensuring equality in political decision-making, because if one group of citizens becomes more powerful or influential than others, then the democratic system may be jeopardized. The

second principle is related to responsible governance, and the third principle promotes transparency in governance, publicity and access to information. If any of these principles are violated, then the democratic system of government is delegitimized.

The profession of lobbying has an important "weight" / role in each of these principles or pillars of the democratic system. If practiced properly, lobbying can strengthen / improve citizen's accountability and participation in policy making. But when lobbying is moderate, it belongs to certain elites and if it is funded for someone's interests, it can become a danger and cause a negative perception among citizens. Of special importance for the civil society in the country are the experiences from the lobbying activities of the civil society organizations in the developed countries in the world, especially the USA and the EU member states, because they proved to be successful in creating certain policies when lobbying local or central authorities. Requirement for a successful lobby group is a good image. Stakeholders and the officials are more easily attracted to a group within it behaves in an attractive manner. The idea of an image has two dimensions, the first being its general appeal. The lobby group must have an image of both importance and trustworthiness. The professional lobby group always cares about its general image. It tries to make itself seen as important and trustworthy. The more anticipated influence it has, the more it can save on the costs of lobbying. The more respect or sympathy it enjoys, the easier it can obtain a place around a decision-making table (Shendelen, 2005, 200-201). It provides motivation for achieving goals and results, long-term sustainability and, most importantly, by applying lobbying skills and activities by civil society organizations, stronger and more democratic institutions and partnerships will be provided.

CSOs with capacity and only with capacity, can participate and influence the creation of public policies. This includes trained staff, knowledge of methods and techniques of influence, and other instruments that are taught. According to Daniel Gegan, a lobbying veteran in Brussels and a visiting professor at several European universities, lobbying in the EU is closely linked to the management process and is backed by a good education. He emphasizes that the influence of the civil society sector in the EU is becoming stronger, and the "clash" between the EU institutions and civil society organizations - more frequent and "I can unreservedly confirm that the future of quality and modern lobbying in the EU will be created by civil society organizations.

CSOs as a lobbying organization, although they represent the general or social interest of the community. Similar to the professional associations,

they aim to represent the interests of the target group they represent (Gueguen,2007, 55). Lobbying is most often associated in a political or business context, but in this paper, it is a tool for the civil society sector to create policies in the community.

COMMUNITY LOBBY VECTORS

The vectors of lobbying in North Macedonia are legally defined and are directed towards the legislative and executive power at the central level, as well as towards the Municipal Council and the mayor at the local level.

PARLIAMENT / ASSEMBLY

The lobbying channels in the Assembly of North Macedonia can be used by the civil society organizations through the working bodies of the Assembly whose sessions are public, through the MPs in the form of parliamentary questions, or through their local offices in the constituencies where they are elected. The working bodies of the Assembly consider draft laws and other acts within the competence of the legislature. The working body may invite scientific, professional and public workers and representatives of the municipalities, public enterprises, trade unions and other organizations, institutions and associations to the session in order to express opinions on the issues considered at the session of the body[125]. Initiatives for discussion on certain issues of the working body can be given by other working bodies of the Assembly, state administration bodies, municipalities, institutions, and citizen's associations[126]. - The working body that organizes the public discussion takes care that the draft law is published in order to be available to the citizens, public institutions, institutions, citizens associations and other interested subjects[127]. Experiences from the European Parliament indicate that lobbying of civil society organizations is most effective if it acts in the first phase or the moment when the proposal is submitted to the working body whose composition is known in advance, which means that its members should be informed about the CSO initiative. It should be remembered that the first reading is the most important so that the proposal is not rejected prematurely. A well-organized and managed association of citizens knows that lobbying is carried out in parallel with both the ministers and the MPs. It is not enough

[125] Rules of Procedure of the Assembly of the Republic of Macedonia, Official Gazette of the Republic of Macedonia 130/2010 Art.122

[126] Ibid Art.124 / 3
[127] Ibid Art. 146

just to ask, help and solutions should be offered. The proposals must clearly state what amendments to a particular law are expected. The procedure should be followed from the beginning to the end, because the President of the Assembly, immediately after the adoption, submits the law to the President of the Republic for signing the decree promulgating the law.

The results of the author's research showed that the lobbying channels in the Parliament of Republic of North Macedonia (RNM) are not formally closed, but still the participation in the working groups depends on the personal will of the president of the body, and the possibility of lobbying through MPs is always overshadowed by political interest. International reports on the involvement of the civil society sector and its contribution to the finalization of policies decided by the Assembly confirm that the lobbying channels are closed. The author's research shows declarative progress for better conditions in this area, and they are contained in the document Strategic Plan of the Assembly of the Republic of North Macedonia 2022-2026, in which special importance is given to the role of the so-called Open Parliament. But, apart from this document, the Parliament will also rely on the Action Plan for openness to the citizens 2021-2023. - The action plan provides modernization and openness of the Parliament, will improve the functionality and will help the citizens to be up to date with the decision-making, but also to get involved in them. Democracy, responsibility, accountability, accessibility, that is the most important thing for every Parliament.

GOVERNMENT

Within the framework of the rights and duties determined by the Constitution and the law, the Government determines the economic and development policy of the state. In order to exercise its competence, the Government adopts an annual work program, determines a strategy and takes measures for inclusion in European and Euro-Atlantic integration, monitors and analyzes the situation for realization and promotion of human rights and civil liberties, encourages the development of civil society institutions, takes measures to create conditions for the realization of citizens' rights to education, health care, social security and human resource development. This framework is in fact a signpost for lobbying activities by civil society organizations.

The Government of RNM specifically regulates the cooperation with citizens associations in Article 136 and 137 of the Government Rules of Procedure, then through the Department for Cooperation with Non-

Governmental Organizations[128] working within the General Secretariat of the Government[129], but also with the Code of Good Practices for participation of the civil society sector in the policy making process[130]. The Code is not a binding document, but still enables the promotion of cooperation between the government and the civil society sector through structured and regular communication and consultations in the policy-making process and improving the quality of policy-making processes, through the use of expertise by the civil society sector. The cooperation between the Government and the civil sector in the policy-making process is realized in the form of information, consultations, dialogue and partnership. This includes administering and updating an interactive website, using the single National Electronic Register of Regulations, establishing joint working groups, developing strategies and awareness-raising campaigns, and other activities[131]. But, as said above, in this case too, the declarative dominates over the practical and essential in the cooperation between the government and the civil society sector on topics that are in the function of the community. The strict remarks of the international observers caused the establishment of new documents and directions such as the Strategy of the Government of the Republic of Macedonia for development and cooperation with the civil sector 2018-2020 and the Action Plan for the same period. "Measure 9" of the indicated document emphasizes the need to establish an independent, representative, operational and efficient Council for cooperation and development of the civil sector and ensuring its regular work. This directly points to the inefficiency of the Council so far. In the research for this paper, we noted that "Measure 13" is the most important part of the Action Plan because it points to the promotion and encouragement of good practices for cooperation with civil society organizations at the local level. It is worth emphasizing the priority area - democratization, active participation of the civil society sector in social processes, in policy making and monitoring, with a special focus on the EU integration process which has the following objectives:

-Increasing the involvement of civil society organizations in the process of creating, implementing, monitoring and evaluating policies;

[128] Original note: The name of the department does not correspond to the Law on Associations and Foundations

[129] http://www.nvosorabotka.gov.mk/

[130] Official Gazette of the Republic of Macedonia, No. 99 dated 22.7.2011

[131] Ibid Art.6

-Strengthening the partnership in the processes related to the European integration;
-Adoption of amendments to the Code of Good Practices for participation of the civil society sector in the policy-making process in accordance with the monitoring results;
"Measure 16" of the Action Plan indicates cooperation with the existing effective thematic networks of civil society organizations for structured dialogue in the process of creating, implementing, monitoring and evaluating policies.

LOCAL GOVERNMENT

The local self-government represented through the Council and the Mayor as basic bodies of the municipality, are in fact institutions that cause special attention by the civil society organizations. This attitude is based on the results of the research which indicate that the Council and the Mayor are the best vectors for lobbying. The Law on Local Self-Government[132] specifies the direct participation of the citizens in the decision-making of the municipalities, which can be realized through a citizens' initiative, gatherings of the citizens and a referendum. Decisions can be influenced by direct contacts, proposals, public debates, as well as participation in the work of the bodies.

MUNICIPAL COUNCIL

The Municipal Council is an essential vector for community lobbying. The cooperation between the civil society organizations and the Municipal Council is regulated through the Statute and the Rules of Procedure. The council is a representative body of the citizens and in its competence is the adoption of a work program, the budget of the municipality, decides on the manner of disposal of the property of the municipality, performs other activities. According to the author's empirical research, civil society organizations have the greatest access to lobbying to the Municipal Council and can smoothly influence the preparation of the work program, the distribution of budget funds, but also to receive free space for accommodation and work. The number of lobbying activities is significantly higher towards this institution, but the achievements are also the largest, which confirms the

[132] Law on Local Self-Government, Official Gazette no. 5/2002

fact that an increased number of lobbying activities increases the probability of a successful lobbying process.

The Municipal Council works on sessions that are open to the public, and the preparation of the materials for the session is done in the commissions[133] of the municipal council, which can form special working bodies if necessary. According to the Statute, the cooperation of the Municipal Council with the civil society organizations is mandatory and that is why in the budget for each calendar year are planned financial means for support of projects and the work of the civil society organizations.

The preparation of the acts, sessions and sessions of the occasional and permanent commissions of the Council is performed by the municipal administration, which also monitors the issues in the areas of competence of the municipality. For greater efficiency in the lobbying process, CSOs should continuously maintain contacts with the relevant officials in the administration, because in that way they can provide relevant information. Formal or informal contacts are part of lobbying skills.

MAYOR

The Mayor, within his competencies, represents the municipality, controls the legality of the regulations adopted by the Council, with a conclusion publishes the regulations in the official gazette of the municipality and ensures the execution of the activities assigned to the municipality by law. Within its competencies, the mayor can initiate and propose regulations, propose the annual budget, and can also delegate the performance of certain activities of immediate interest and daily importance for the life and work of the inhabitants[134]. The mayor may convene a gathering of citizens on his own initiative, but also at the request of the Council or at the request of at least 10% of the voters in the municipality who collect signatures for that purpose. In such a situation, the mayor is obliged to convene a gathering of citizens for the question within 30 days.

The research showed that the channels for lobbying before the local self-government bodies are the most open, although the percentage amount is unsatisfactory. Better lobbying for local self-government is a result of more

[133] Author's note: The previous Law on Local Self-Government allowed representatives of civil society organizations with the right to vote to be members of the commissions (then boards). Under the current law, only elected councilors can be members of the commissions.

[134] Law on Local Self-Government, Official Gazette 5/2002 Art.86

frequent communication and acquaintances between elected officials and representatives of civil society organizations, which is considered an advantage. Some of the municipalities openly nurture the cooperation with the civil sector, for which they have developed special strategies for cooperation, but most of them, especially the rural municipalities, do not cooperate enough with the CSOs, which makes the possibility of lobbying more difficult. Such data lead to the conclusion that lobbying is an urban skill.

CONCLUSION AND RECOMMENDATIONS

In a multicultural Europe, the degree of success of CSOs in the policy-making process is increasingly measured by successfully applied lobbying methods and strategies. Lobbying creates a strong impulse for the civil society sector in the process of articulating the thought, idea and determination to achieve the goal of the organization. CSOs in North Macedonia are not in a position to automatically adopt the model or practices of lobbying of CSOs in EU member states, but they have an exceptional opportunity to learn from their experiences, from the achievements and most of all from the mistakes made in the lobbying process. The implementation of lobbying mechanisms strengthens the position in every policy-making process and confirms the commitment to an "institutional approach" or a system that exists and is sustainable because it creates value for actors.

The capacity of CSOs is key to success in the lobbying process and therefore it is important to promote lobbying as a skill, as part of the strategy of every CSO or as a policy-making tool that allows to create real conditions for effectuation and achievement of goals in the community.

The vectors of lobbying for policy making will be more efficient if the inclusive relationship with the institutions to which the lobbying activities of the civil sector are directed and which are discussed in this paper is practiced. In that sense, public authorities must explicitly demonstrate and affirm their democratic capacity by accepting an inclusive relationship.

The creation of public policies by civil society organizations increases the values of society, but do civil society organizations know their power!? An English proverb says that "the roof of a house is made while the sun is shining" and that is why civil society organizations in North Macedonia should use the chance for institutional establishment.

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URBICIDE IN THE CONTEXT OF INTERNATIONAL LAW AND EXAMPLE OF URBICIDE IN 21st CENTURY "KARABAG"

Prof. Dr. Abdülmecit NUREDİN*

ABSTRACT

The main aim of the paper is to highlight the new threat in global security with special reference to the concept of URBICIDE. Urbicide is a word that means "violence against the city" in Latin (urbs: city + cide: to cut, kill). The writer Michael Moorcock originally introduced the phrase in 1963, and it has since been adopted by opponents of American urban redevelopment in the 1960s (Pullan, 2002). The concept of urbicide has become quite prominent with the writings of Michael Berman in 1996 who elucidate the negative effects of rapid rebuilding on urban life through violence and destruction. To better understand the concept, I will emphasise upon the conflict between Armenia and Azerbaijan who are engaged in a bitter conflict from time immemorial which has led to urbicide of Agdam, a city in Azerbaijan. The conflict between the two countries again cropped up in 2020 where both the countries engaged in a relentless conflict for the region of Karabag. To better understand the concept and the ongoing conflict between the two countries; the essay will be divided under the following heads- Uribicide with special reference to Agdam, theory of Marshall Berman about urbicide, global security concern and international laws relating to it, conflict between Armenia and Azerbaijan, Urbicide in Nagorno-Karabagh and legal consequences and dimension of the conflict between the two countries. At the conclusion, I will stress upon legal repercussions of Azerbaijan's claim against Armenia for monetary and moral compensation.

Keywords: Urbicide, International Law, Agdam, Azerbaijan.

* International Vision University, Faculty of Law, nuredin@vizyon.edu.mk, North Macedonia.

URBICIDE

Urbicide is a word that means "violence against a city" in the literal sense. Michael Moorcock originated the phrase in 1963, and opponents of the country's reorganisation began using it in the 1960s (ibid). The phrase was coined during a time when urbanisation and globalisation were growing at a fast pace. In cities rather than in rural regions, fast globalisation has resulted in more violence and devastation inside the cities themselves. Particularly after the Sarajevo massacre, the instances of violence committed with the express purpose of destroying an urban region have started to be recognised. The most blatant example of urbicide is the deliberate destruction of a metropolis. But urbicide may take many forms that go unnoticed, as when the government designates parts of a city as slums or when cities are zoned. Direct urbicide or indirect urbicide are both forms of urbicide (Saifi, & Samman, 2019).

Direct urbicide refers to the intentional destruction of urban infrastructure with the intent to destabilise the city as a whole. There are several types of urban devastation, but this one is by far the most frequent. When urban neighbourhoods are demolished in an effort to erase the city's past, it is extreme urbicide. Urban neighbourhoods are being demolished not only for their buildings, but also for everything that gives the city its unique character (WorldAtlas, 2018). Extreme urbicide occurs in conjunction with other kinds of violence like genocide and ethnic cleansing, which are political and civic in nature (Hariri, 2002). Indirect urbicide refers to practises and policies that have a negative impact on a city. The acts and methods that bring indirect damage to a city are typically less obvious since they include laws, measures, and actions. Urbicide through construction or urbicide via control are examples of indirect urbicide (Tyner et al., 2014).

Agdam: Example of Urbicide

Urbicide, according to some, could be considered a kind of genocide since destroying people's houses equates to eradicating them. According to Martin Coward's book Urbicide, a similar viewpoint may be found. However, instead of using this word to describe all acts of violent crime against the city, Coward uses it to describe acts that aim to eliminate difference by destroying the material foundations of that difference. The liberated city of Agdam, which Armenia has ravaged and plundered for 30 years, serves as a sobering example of Direct URBICIDE. The Armenians took Agdam from the Azerbaijanis in the first Nagorno-Karabakh War in July 1993 (Ismayilova, 2021).

Aghdam City Destroyed by Armenia – Urbicide in Agdam

More than 30000 people were compelled to escape east because of the fierce fighting. In order to prevent Azerbaijanis from returning to the city after it was taken by Armenian troops, most of it was completely demolished. During the next decades, people continued to destroy the abandoned village by stealing its construction materials. Recently, the Head of Foreign policy of Azerbaijan Hikmet Hajiyev termed the demolition of Agdam as the clear case of urbicide by the Armenian forces. Hajiyev further tweeted that Cities are being targeted for genocide (ibid). Within Armenia's 28-year occupation period, the country committed urbicide in Aghdam obliterating homes, mosque of Agdam and famous structural sites. The city was handed back to Azerbaijan as part of a deal in 2020, but the whole town had been brutally brutalised to the point that no one could be able live there (Karabakh, n.d.).

Ruins and left over of Fuzuli and Jabrayil

MARSHALL BERMAN AND URBICIDE

Professor Berman in his Urban Ruins: City life with Urbicide described the phenomenon of "urbicide" - a specific kind of violence committed against the built environment (BALTHASER, 2017). He emphasised upon violent form of destruction of cities to accelerate the process of development of modernisation and globalisation. During his time in the Bronx, one of the most brutal urban renewal programmes of the twentieth century destroyed his area. This practise of urban modernisation known as "urban renewal" targeted low-income areas, wiping away diverse ethnic cultures and decimating small business districts while also destroying support networks and communities in the name of that most contemporary of ideals, Progress (Martens, n.d.). The Bronx has gone from being a multi-ethnic community with strong working- and middle-class apartment complexes to one of the poorest in the country. Berman describe this force process of modernisation and urban renewal as ‘Urbicide’. Urbicide was described by Berman as the destruction of the old cities and its ethos by the process of urban renewal. Though Berman spoke very little about the direct process of urbicide which is the result of war, ethnic clashes and violent takeover of territory. But he talked about Urbicide being the liturgical murder of the city. These actions destroy meaningful public spaces (such as squares, monument, and libraries) as well as the city's material foundation (infrastructure, services, and society

itself - the "urbs"). They also destroy the civic community and citizenry (the "civitas"), and destroy government-related institutions (such as privatisation and deregulation). Murder of this kind may occur in a variety of settings, including natural, anthropopic, and metaphorical (Waseem, 2015).

URBICIDE AND GLOBAL SECURITY

Direct and indirect violence against cities is not a new phenomenon. It has historical origins, and instances continue to occur from time to time. Other instances include the Roman Empire destroying Jerusalem, when Cleopatra ordered the city to be destroyed in its entirety, and the Soviet Union destroying Tenochtitlan as well as Dresden and Tokyo and United States using nuclear weapons on Hiroshima in 1945 (WorldAtlas, 2018). In contemporary times similar instances of genocide, violence and uprooting of indigenous people could be seen in a number of conflict and war. This include the war of Vukovar which was led by the Yugoslavian forces, the violence in Sarajevo during the Bosnia war, the Operation Murambatsvina in Zimbabwe and the Syrian civil war which led to displacement of large number of citizens. The Operation of Murambatsvina is one of the principle global security concerns for the political scientists as well as international scholars who viewed this is systematic destruction of rural areas to fit the urban population. During Operation Murambatsvina in May 2005, the rights of 700,000 Zimbabweans were violated when they were evicted from their urban dwellings and forced to start again (Beall, & Goodfellow,2014). This is a clear violation of Art 25 of the UN charter which describes the right of every individual to live with human dignity and to take care for their health and wellbeing. Sarajevo is one of the examples of urbicide when two parties are involved in the war and conflict (Gunter, n.d.). In Sarajevo, UN declaration of Human Rights, Article 3, which gave every citizen the right to life, liberty and security is being violated. Moreover, in the war and destruction of the cities in Sarajevo, 20,000 Muslim women are being raped and tortured which is also violation of Article 5 which states torture and other brutal or degrading punishments and treatments are prohibited. A similar level of aggression and brutality is being seen in the Syrian conflict where the citizens have been systematically targeted and uprooted from their cities. Despite Article 54 of Protocol I of the 1977 Geneva Convention, international response to urbicide in Syria has been ineffective. Art. 54 forbids the assaulting of items essential to the population's existence, destruction, removal, or rendering of such objects (Hariri,2020).

The Global Security and overarching authorities need to see urbicide not only as a process of modernisation and urban development but urbicide

also destruction of the life and basic human rights of the people. When Armenia attacked Agdam and Fuzuli they have not only destroyed homes and cities but also displaced people which is a global security concern. United Nation needs to look beyond violence and destruction to urbicide but also it led to displacement, destitute, migration issues and violation of basic fundamental rights.

URBICIDE IN UN AND INTERNATIONAL LAW

International and humanitarian law currently does not address urbicide explicitly. It has not yet entered public awareness and public discourse to the degree that it can be formally instantiated into international law since the word was just recently created and understood, during the Yugoslav War in the 1990s. There are some who believe that urbicide is already illegal under international law if genocide is defined as the intentional killing of people in their cities (Bobic, 2014). It's also possible to make the case that urbicide, or the intentional destruction of human habitations and urban areas, is prohibited under international and humanitarian law because of the consequences of other laws addressing environmental degradation and the reliance of people on it. These laws protect people's rights to sufficient shelter, life, privacy, mental health, and freedom of movement, amongst other things. Urbicide gets its name from a city in Bosnia-Herzegovina where civilians' fundamental human rights were routinely violated by the city's military and police forces. Confessional writing produced during the siege shows how the quality of life in Sarajevo dropped dramatically, public space was taken over and militarised, and people had to fight every day for necessities like food and water, according to urbicide testimonies in Sarajevo. Similar instances of human right violation could be seen in Agdam were the destruction of cities and demolition of Azerbaijan settlement represents violation of fundamental rights as codified in the International Covenant on Economic, Social, and Cultural Rights in OHCHR. There may be benefits to distinguishing the legal definition of urbicide from human rights legislation, just as urbicide conceptually differs from human rights. The conventional nation-state parties to international law may not be sufficient as stakeholder in any legal procedure, customary or otherwise, if urbicide occurs in the city. However, localising urbicide's criminality too much runs the danger of absolving governments often accused of being aggressors against cities and their people due to their inactivity.

Prosecuting urbicide or putting in place any kind of legal system that specifically addresses crimes of this kind is often counterproductive to their political goals. A major part of the UN's duty is also to keep the world safe and

secure, which includes combating terrorism and keeping an eye out for threats that may undermine the progress made in promoting international peace and security. In the 1990s, one kind of problem was the proliferation of intrastate conflicts, in which people were purposefully targeted. In urbicide similar instances could be found when one group systematically targets the other and destroy their property and livelihood. Hence the first thing is to address the issue of terminology that would deal with the destruction of cities and human life. Recent rulings by the International Court of Justice, such as the February 2007 acquittal of Serbia in the reparations case for crimes against humanity committed by the Serbian government in Bosnia, may show the necessity to differentiate between urbicide and genocide even further.

CONFLICT BETWEEN ARMENIA AND AZERBAIJAN IN KARABAG

Although Nagorno-Karabakh is located in Azerbaijan, the bulk of the people who live there are ethnic Armenians. The Soviet Union's internal strife in the 1980s erupted when Nagorno-Karabakh chose to join Armenia, starting a conflict that ended in 1994 with a truce. Before the truce tens of thousands of people lost their lives and a million or more were displaced. Azerbaijanis made up the vast majority of people displaced as a result of the conflict. However, Nagorno-Karabakh has been held by ethnic Armenian separatists supported by the Armenian government since then but remains part of Azerbaijan. In the intervening years, the OSCE Minsk Group, which was established in 1992 and is headed by France, Russia, and the United States, has served as a mediating organisation for peace negotiations (Abiliov, 2018). However, confrontations persisted, with dozens of soldiers on both sides being killed in a major flare-up in 2016 (Mommadav, 2016). In 2019 July, violence again erupted near the Armenian-Azerbaijani border, around 300 kilometres (185 miles) from Nagorno-Karabakh. Azerbaijan hosted large-scale joint drills with the Turkish military towards the end of the month. On the 27th of September, a new outbreak of hostilities occurred. As reported by Armenia, it was Azerbaijan that opened fire. In retaliation for Armenian assault, Azerbaijan declared a "counter-offensive." Both parties signed a peace agreement mediated by Russia in November, bringing the conflict to a close. Under the agreement, Azerbaijan retains authority over certain regions throughout the war and Armenia withdraws its soldiers from those areas. The truce will be monitored by almost 2,000 Russian troops. Azerbaijan claims that the Karabakh war is now ended, but different think tanks have stated that the area is so rich in natural resources that running the pipelines through the

territories would once again bring the two nations into battle (carnagie). As a result of Armenia's military alliance with Russia and Azerbaijan's alliance with Turkey, any escalation in the war may pull in those countries' neighbours. A confrontation between Moscow and Ankara over Russia's involvement in Syria and Turkey's downing of a Russian warplane last November may result from this.

URBICIDE IN KARABAG

There is still uncertainty over the status of the Armenians in Nagorny Karabakh after the conclusion of the war. Tens of thousands of residents from Hadrut district, Shusha, and numerous villages in the north and east of the region were relocated as a result of the war. These people left Karabakh, came from different parts of Armenia and moved to Karabakh in 1993, so they left the place they occupied for almost 17 years. During the war, many of these people, as well as the vast majority of the residents of Stepanakert, the capital of Karabakh, fled to Armenia. According to Carnegie endowment more than 50,000 individuals have been displaced due to the war (Waal, 2021). The BBC reported that continuous clashes between the two have turned the Karabakh region in a ghost town with shell holes and unexploded bombs litter the landscape (BBC News, 2020). The Guardian reported that Karabakh is a classic example of direct Urbicide with early estimates, between 70,000 and 75,000 people – including 50% of Karabakh's adult population and 90% of its women and children – have been forced to flee their homes (Presse, 2020). The second biggest city of Ganja, Azerbaijan accuses Armenian troops of firing civilian targets in urban areas. Prosecutors in Azerbaijan said 1,200 people lived in 427 houses that were demolished by the Armenian forces (Ismayilova, 2021). Eurasianet, a global newpaper agency, detects that after 1994 when the Armenian ethnic group took control of the certain region furst targeted the Azerbijian Muslim population (Mejlumyan & Isayev, 2021). Large scale displacement, destruction of homes and principal locations are being destroyed. During the 27 years of Armenian rule, the city was demolished and mined to the point of no return before being recovered by Azerbaijan. Due to the lack of people and damaged infrastructure, the city has turned into a wilderness has been likened to a World War I battleground.

SUIT FOR DAMAGE AGAINST ARMENIA

Although there are no laws that binds a country action responsible for urbicide but Azerbaijan could file a suit in the united Nation against ethnic cleansing that has been perpetuated by the Armenian government with the

support of local Armenian population in the disputed region. The number of people displaced and the devastation of Karabakh's town may possibly be intended at compensation for harm done to Armenians. Azerbaijani citizens may seek compensation in the form of monetary compensation, estate or territory compensation, or a combination of the three. UN human rights provide in article VII that victims of human rights violations may seek sufficient, effective, and timely compensation for the damage they have experienced as a result of the violation. In addition, under the UNHR clause VIII an international human rights law or international humanitarian law breach victim has the same right to a fair and effective judicial remedy. Clause IX allows the victim state to seek restitution for severe human rights or humanitarian law violations. When it comes to compensation, it's critical that it match the seriousness of the violations and the harm they've caused (Abilov, & Isayev, 2016).

MATERIAL AND MORAL COMPENSATION

Azerbaijan has filed a case at the United nation top court accusing neighbouring Armenia of a “policy of ethnic cleansing” targeting Azerbaijanis. With the help of the United Nations' highest court, Azerbaijan has accused Armenia of a "political ethnic cleansing" against its own people (Cornell, 2017). Armenia in a similar vein has also accused Azerbaijan of the state sponsor terrorism. In its written submission, Azerbaijan claimed that “Armenia once again targeted Azerbaijanis for harsh treatment driven by ethnic hatred,” referring to the 2016 outbreak of hostilities. The legal prosecutor of Azerbaijan has said as a result of Armenia's ethnic cleansing tactics, cultural erasure, and incitement to hate towards Azerbaijanis, the rights and freedoms of Azerbaijanis, as well as Azerbaijan itself, are routinely violated. To force Armenia to "protect Azerbaijanis from the irreparable damage caused by Armenia's continuing behaviour,' Azerbaijan may petition the court to impose immediately so-called "provisional measures." Azerbijian could also prompt action of the United nation as during the latest conflict the Armenian Army has repeatedly broken the agreement, killing many Azerbaijani troops and a civilian while injuring many more. Armenia is being sued by Azerbaijan for compensation for damage to property in the seized areas. Azerbaijan began drafting the case against Armenia two years ago. According to the damage assessment from an international body, Azerbaijan suffered damages worth more than $50 billion as a result of the attack (Huseynov, 2021). There have been significant instances in recent history of nations being obliged to make restitution after interstate conflicts, such as the

1990 Iraqi invasion of Kuwait, according to Azerbaijani parliamentarian Ugar Bayramov (Resolution 687) who has pointed this out. Furthermore, even the poorest nations have partially or fully met their compensating obligations after being held responsible by international tribunals, according to the official. Because of this, Armenia's poverty does not exempt it from paying reparations to Azerbaijan for the harm caused by its occupation (ibid)."

CONCLUSION

Urbicide which has been referred to destruction of the urban cities is a grave security concern for the international community. The destruction and the displacement that has been cause due to conflict between Armenia and Azerbaijan is stupendous. It has ruined the entire Karabkah region after 30 years of conflict between the two. Although ceasefire has been brought but many people are returning to their place but the destruction and the ruination caused by the conflict will not be able make Karabakh a urban centre again. Moreover, the United Nation and International community still in dilemma as they cannot define the term. The term is often misplaced with ethnic cleansing, pogrom or genocide. International actors should treat urbicide as a human rights violation and take decisive action against those responsible. Due to the fact that the twenty-first century has been filled with violence and wars, international action, compensation, and rehabilitation for displaced persons should be high on the list of priorities.

In the group of goods of a public interest that enjoy special protection, the Constitution of the Republic of Azerbaijan encompasses all natural resources, flora and fauna, goods in common use, as well as the objects and buildings of a particular cultural and historical significance. Therefore, the cultural heritage has a fundamental value to the Republic of Azerbaijan, which protection is of a public interest and must be exercised throughout the territory. Considering that the protection of cultural heritage is passed on to future generations as an ultimate goal, there is a legal framework for its protection primarily in the basic Law on Protection of Cultural Heritage.

The framework for the protection of the cultural heritage of the Republic of Azerbaijan was violated by Armenia. Also, many cultural and religious sites have been destroyed by Armenia on the Azerbaijani territory of Karabakh, which marks the legal basis for compensation.

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THE ROLE OF THE STATE IN THE 21st CENTURY[135]

Mariana Maksimovic PhD

Institute of Social Sciences Belgrade
mmaksimovic@idn.org.rs

Abstract

Due to geopolitical changes in the world, thinking primarily of the relationship between the USA and China, intensive changes in the domain of information technologies, which have led to changes in the way of work and life, the question of the role of the nation state in that context is justified. Today, the state and society are facing the putting of traditional values into a new concept, in which the notion of freedom and democracy is more widely observed. Properly understood democratic values should prevent the human rights and freedoms of all citizens from being endangered. What is characteristic of each state is the importance of its institutions, which can be formal or informal. While formal institutions can change almost "instantly", an example of this is a change in the law "overnight", informal ones are slowly changing, such as customs or religious beliefs. The question is whether the welfare state still has the significance that it had before in one society? It is known that the welfare state has been in crisis for a long time, that many of its characteristics have been called into question. Today, in addition to the nation-state and its institutions, other social actors are emerging, such as non-governmental organizations. Then, the relationship between the state and the market is quite complicated today, and the most important issue in that relationship is the economic freedoms of market actors. Depending on their percentage, it is determined which political and economic system will prevail in one country.

Key words: US-China relationship, institutions, welfare state, economic freedoms, liberalism

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INTRODUCTION

In the first decade of the 20th century, great geoeconomic and geopolitical changes took place in the world. Some of the changes became clearly visible with the 2008 economic crisis. This paper will discuss one of the most noticeable changes, and that is the change in the balance of power between the United States and China, which have become mutual competitors. Another important change is the intensive digitization around the world. Then, the paper will talk about institutions, although it must be emphasized that the state is the most important formal institution. After the Second World War, the state had a mechanism for protecting the social rights of citizens. Until the end of the 20th century, the welfare state successfully performed its function, but the influence of the welfare state weakened with the flourishing of the new neoliberalism.

GEOPOLITICAL CHANGES IN THE WORLD AND DIGITALIZATION

Former political opponents of the USA and China have become competitors for dominance on the international market. While the US model used to be more attractive to most developed countries, today China has taken the initiative and offered attractive investments, not wanting to interfere too much in the domestic policies of countries that accept its investments. However, the countries themselves must achieve institutional reforms that cannot be achieved "overnight", but through continuous work of several decades, in order to achieve goals such as the fight against corruption, freedom of the press and the realization of human rights. What needs to start immediately is to start economic growth in less developed countries, fight crime and reduce inequality. For now, neither the United States nor China has prepared a "package of advice" that it will offer to underdeveloped countries. In China itself, the development of infrastructure is extremely important, and that is what it advises and offers to other countries as tangible, visible and what remains for the future. For these reasons, many countries choose the Chinese approach because it offers money through the Belt and Road program, rather than advice, making visible improvements that make everyday life easier for locals. Also, China does not advocate interference in the internal affairs of the country whose economic development it encourages. For these reasons, if the United States wants to expand its influence in the world, it should have more attractive offers, ie behave more competitively,

also offering tangible goods such as improving the electricity network, water supply and sewerage systems, building roads and railways, investing in education, health, urban planning, wireless network improvement, and even modernization of production and processing. Thus, it creates a favorable infrastructure that can support the advancement of society in terms of science, education, technology and the reduction of inequalities. True, this was recently mentioned by US President Joe Biden, when he spoke about launching an infrastructure development project in Africa, Asia and South America. This is not unrealistic because the United States still has superior product quality compared to Chinese goods. In the United States, there is open talk of corporate taxation, public education, helping children, which is a different narrative from that advocated by US President Ronald Reagan and British Prime Minister Margaret Thatcher, who ruled the country from the 1970s until recently, until the world economic crisis in 2008. The rivalry between the USA and China, in terms of influence on the international scene, will be more and more pronounced in the next decade (Milanović 2021). In that decade, the world is waiting for recovery from the negative economic consequences of the COVID pandemic in the 19th decade, which the American Nobel laureate, economist Nouriel Roubini, called a "decade of stagflation". Stagflation is now mild, but there is a danger that it may be exacerbated by frequent negative shocks (Vojnović 2021). Although the dialogue between the United States and China is sometimes reminiscent of that of the Cold War, the one between the United States and the then Soviet Union in the twentieth century, this current dialogue of the twenty-first century, indicates that both countries are not giving up on the international economy. "He has to do something." Namely, both countries are working on the development of policies that should reduce income inequality in their own countries, but also in the world, despite disagreements over trade policies, intellectual property rights, and some strategic and military statuses of islands in the South China Sea. It must be emphasized that the growth of inequality in China was stimulated by profound structural changes during the transition from the communist mode of production to the capitalist one, as well as the urbanization of the country, ie. by transitioning from agriculture to industrial production and services. In China, inequality provoked numerous protests motivated by economic and social injustices, land expropriation, differences between urban and rural areas, and according to official Chinese data, in 2019,

about 300,000 cases of "disturbance of public order" were recorded[136]. China is increasing state intervention in the regional centers of western China, expanding high-speed trains, which facilitates the movement of the population from rural to urban areas and vice versa, although there is an aging population[137]. Then, China was saved from many controls, organizing monopolies and pressures from lobby groups representing technology giants that are slowing down changes in the United States. Both countries aim to establish control and order in those sectors that have economic and political power in their countries. At the same time, both believe that education should be competitive, attending the best schools is reserved only for the rich, and for these reasons social mobility in China is as low as in America. Both countries want to change such a situation, and it remains to be seen how successful they will be (Milanović 2021b).

Another major change that took place in the last decade of this century, although it has been developed intensively in the last six decades, has somehow suddenly become visible, and that is the development of information technologies with digitalization. The ubiquitous and visible to the naked eye development of information technologies has led to the application of digitalization in all spheres of life and work. Namely, with the outbreak of the COVID 19 pandemic, the implementation of work from home, electronic storage of documents, payment by electronic means, provision of banking services, purchase of goods over the Internet accelerated and increased. Digitization leads to the flexibility and efficiency of the company because thanks to it, new business models can be created. In science, the business world, but also in everyday life, with digitalization, information itself becomes even more important. Thus, Germany stated that its economy and society, thanks to digitalization, are going through a process of technological transformation, targeted financing of digital infrastructure expansion,

[136]The expropriation of land enabled "many owners of construction companies to get rich, opened space for embezzlement at the level of local government and deprived farmers of property rights." (Milanović 2021b).

[137]The new slogan of the Chinese authorities is "Prosperity for all", which should promote the elimination of inequality caused by the deep transformations that Chinese society has gone through in the last four decades, as well as the achievement of high growth rates (Milanović 2021b). By the way, this slogan has already been seen in the case of Germany and its industrial renewal. Namely, when Germany initiated the modernization of its state and established a model of social-market economy, it proclaimed the mentioned slogan, as opposed to the slogan of the model of neoliberal economy "Tax for all". The slogan that refers to well-being for all, meant the reduction of income inequalities, equal opportunities for treatment and education, as well as the introduction of rules on the market, contracts and competition (Maksimović 2021, 71).

encouraging digital education, data control and the creation of a modern regulatory framework (Annual Economic Report 2016).

INSTITUTIONS, STATE AND LIBERALISM

It is inevitable to talk about the importance of institutions nowadays, because each institution serves a specific purpose. "Efficient markets are structured by institutions that should have low transaction costs and give incentives to participants to compete through price and quality competition. This implies the separation of politics from the economy, as well as the rule of law" (Maksimović 2021, 19). The American economist Douglas North, divided the institutions into formal (constitution, laws and other positive legal regulations) that change faster and informal institutions that change more slowly (religion, culture, patterns of behavior, values, social behavior and mental models). Institutions determine the rules of the game in society and determine the way in which people organize relations in society economically, socially and politically (Maksimović 2021, 20-21). The supreme formal institution is the state, which makes rules and decisions for the entire community, but also exercises power over its community members, controls the defined territory and supervises the inhabitants[138]. Public policy is associated with cooperation and conflict, and it is conflict resolution that makes it dynamic and complex. A thorough scientific analysis of political life aims to understand and solve the problems of social life, through recognizing the causes of conflict, violence in society, so that such events can be prevented in the future. One of the important characteristics is sovereignty, which is expressed through the definition of the state as a fenced territory inhabited by a population that is obedient to one sovereign. There are many types of states. For example, a minimal state. Viewed through the prism of classical liberals, it provides individuals with freedom, but later it played a significant role in the regulation of economic life in the process of industrialization in the 19th century. In that period in Japan and Germany, the state played a developmental role and was thus called a "development state". Social democratic states influence the market in order to enable the restructuring of society, in order to respect the principles of justice, equality and social justice, eliminating the imbalances of the market economy. Thus, the developing and social

[138]"… The state is no one's collective property, which is secured as much as possible by either the liberal-democratic order or political unions." Thus, neither the territory nor the citizens are owned by the state, much less by individual governments that try to behave in this way. They can be imposed only by the force at their disposal (Gligorov 2021).

democratic state intervenes in economic life in order to support the private economy and the entire economic life. At that time, liberalism advocated the idea of the welfare state and its positive impact on all citizens, especially those endangered and marginalized sections of the population (Rai 2015). In the 20th century, a new division was made into totalitarian and democratic states. In totalitarian states, rule is based on repression, the abolition of civil society, the lack of democracy, the cult of personality of the ruler, visible censorship, and limited freedom of movement. An individual leader is a "master of the world" who has a small group of political elites who monopolize political power, not caring about the care of society and nature, in today's language, the environment. It seeks to control all spheres of social life (economy, education, private life and even the morals of citizens) and to change "the world and human nature". In that case, the state has absolute power and it mobilizes the entire population in order to achieve its goals (Totalitarianism, 2021). In democratic states, citizens have political rights, and can influence state policy, protests, organization of trade unions and various other interest groups, including political parties, are allowed. The administration has been developed and to that end, the state enforces laws and exercises power, imposes taxes, and over time takes on the role of organizer of public infrastructure and social security. Thus, the state is transformed into a welfare state, ie a political organization "that fulfills collective tasks and responds to the interests and needs of its citizens." Today, the welfare state is usually defined as a series of state programs that should correct market inequalities and "save" citizens from unforeseen life situations. In general, the welfare state includes those statutory or public de facto arrangements that absorb life risks such as illness, unemployment, old age and poverty, and through public programs provide or provide housing, education, social services and social protection to citizens." (Rai 2015, 23-25). There are organizations in it that contribute to public welfare, such as churches, professional organizations, trade unions and, finally, non-governmental organizations. After the Second World War, it became quite clear that observed through the scheme of evolution of civil, political and social rights, the welfare state was an institutional mechanism for ensuring the social rights of citizens. Class differences arise from other institutions, such as markets or property institutions, but also from various other factors such as education and the structure of the national economy. The last decades of the 20th century was marked by the emergence of the concept of citizenship, where it is insisted that citizens take on obligations for what they claim. There is no doubt that the welfare state has successfully mitigated the consequences of social inequality and minimized social risks over time,

while today, at the beginning of the 21st century, it insists on the institutions of morality and culture. What affects the welfare state today are: globalization (a reduction in social policy in the name of international competitiveness is required); structural changes in the economy and work (change in economic structure); change in age structure (demographic changes); and an increase in personal freedom, the occurrence of more divorces than before, an increase in domestic violence, a decrease in the income of the elderly, environmental issues (social change). A welfare state can only be established if the nation-state has opted for it (Rai 2015). Thanks to the welfare state, the European balance was maintained after the Second World War, and it was actually a point through which peace intersected in Europe, within European countries, but also between them[139]. Until the end of the eighth decade of the XX century, it was dominant in Europe, thanks to the strength and stability of the classical state as an institution, and then it was possible to make "corrections and upgrades" and thus lead the organization of society forward, making it a social state (Cvetićanin 2014). And just as the welfare state's reputation began to decline, economist Gunnar Myrdal received the novel's 1974 Peace Prize in Economics. He, along with his wife Alva Myrdal (Nobel Peace Prize in 1982), a sociologist, was actually active in the field of social policy in Sweden. It should be noted that in Sweden, the social democratic state was created in the 1930s, and the basic postulate was that welfare benefits both workers and the interest of capital. In their work, Gunar and Alva advocated for the investment of the employer and the state in workers and their children, because caring for children and investing in education will have positive effects on economic growth and labor productivity. For these reasons, they are not just a cost to the state and businesses. Thus, an integral part of the Scandinavian model of growth has become an item of social investment. Today, this is also known outside Scandinavia, because knowledge has become an element on which economies are based, it is an important factor in creating added value. Sometimes more important than capital. In fact, it has become a factor in adapting the welfare state to new social and economic risks known as changes in the economic, demographic and family structure. Scandinavian export competitiveness is achieved on the basis of product quality, and education and retraining are important in order to achieve product quality. People who invest in their skills in this model are rewarded, because the state protects the worker in case of job loss, because it wants to achieve a certain level of labor market

[139]Through that, each of them tried to solve the biggest political, economic and social problems.

flexibility. The feedback is that workers invest even more in their education. This only confirms the fact that only an educated workforce is not cheap labor and that it is capable of using more technologically advanced production equipment and thus producing more competitive goods. In contrast, the traditional interpretation of the welfare state points to its basic goal, which is to reduce antagonisms between employers and workers, but also workers and shocks coming from the market. In that context, social policies are a political necessity, as well as an economic investment that should be on the border of price competitiveness and expenditure in order to achieve higher economic growth (Avlijaš 2019). A functional welfare state is a state in which citizens have confidence in it, have stable democracy, and in which, in addition to economic rights, social rights are also exercised.

According to Ursula Huws (2020), the welfare state fought against "great evils" in one society in the middle of the 20th century, namely unemployment (unemployment), illness (health insurance), scarcity (unemployment benefits, child allowances), ignorance (education). and training) and neglect. This was supposed to create a social safety net for all, and for the payment of taxes, income taxes, inheritance taxes, taxes on the purchase of luxury goods and other expenses to be proportional to income. Although not everything was ideally designed, it meant that the rich pay higher taxes than the poor. Today, that has changed, and less and less income comes from corporations and the rich, and more and more from value added tax and other taxes of the "poor" (Huws 2020). The question justifiably arises, where does the money that is invested in health, education and social services end up? The answer is that it ends up being the profit of private companies that provide subcontracted services, they charge rent and charge the costs of private financial initiative contracts, which regulate public-private partnerships, or manage nursing homes or private academies. In such conditions, are workers paid below the real cost of living? Namely, on the labor market, the standard model of employment is slowly disappearing, as well as the rights of workers and protection that were part of the model from the middle of the 20th century. Today, job seekers find it difficult to find employment, compensation for work, which is reduced on the slightest occasion, and due to the market turmoil, it is abolished. Can we then talk about workers' rights at all? In the period from 2016 to 2019, the number of adults working on online platforms doubled and increased from 4.7% to 9.6%. It is understandable that since the beginning of the COVID 19 pandemic, this percentage has increased, due to the introduced social distance, which was justified in the protection of employees who come into direct contact with customers. In order to modernize

the welfare state, a reform of public services, a reform of the composition of tax breaks is needed; a new employment law that would offer universal rights to all workers and the self-employed; it is necessary to raise the minimum wage; and new public services (supported by digitization and platform technologies) to ensure quality care for the elderly and those in need of home care, as well as gender equality (Huws 2020).

At the beginning of the 20th century, governments decided to provide social benefits in order to eliminate the danger of mass demonstrations of workers, which could lead to a violent change of government, thus ensuring a certain level of development of democracy[140]. With the monetary reform which was a significant segment in the introduction of the social market economy in Germany, with the regulation of market competition conditions and with the mitigation of the negative effects of the market for the individual, which suited the unions, there was economic and social stabilization. Thus, workers, employers and the state united around one goal, and that was economic progress on the one hand and a dense network of social assistance and unemployment benefits on the other. With globalization, competition has become more intense and the role of the welfare state has not been so prominent, although its importance could and should have been greater than before. However, the recent crises in the form of the influx of migrants and the COVID 19 pandemic have forced states to resort to some of the mechanisms of the welfare state and protect citizens with additional revenues, public works and similar measures to preserve social peace (and ruling parties) (Arbutina 2008). Globally, it can be said that the welfare state, despite difficulties and challenges, has managed to survive in most developed economies, and its biggest task in the future will be to preserve the environment[141].

It is also important to emphasize the importance of (neo) liberalism in terms of defining the place and role of the state in modern society. When classical liberalism emerged as an ideology, it was the opposite of the aristocratic conservative hierarchy. Furthermore, the entire 18th, 19th and even 20th centuries were marked by liberal and anti-liberal struggles. Only after the Second World War, societies in Europe stabilized, through the synthesis of liberal and anti-liberal tendencies that found their synthesis in the welfare state (Cvetićanin 2014). Liberalism, as an order in the 19th century,

[140]By the way, the advocate of social insurance, which is an important factor in the welfare state, is Otto von Bismarck, who thus wanted to strengthen the control of the working class through social insurance.

[141]"What connects and holds strong relations between the environment, the economy and society is the concept of sustainability." (Maksimović 2020, 247).

implied a symbiosis of philosophy and economics as a view of the world, so that "natural law, private property and freedom of human action represent the foundation of a good society and provide potential for its development. The division of labor and the free market were to contribute to the most efficient economic outcome, and thus to the greatest possible prosperity of the community as a whole. Foreign trade based on absolute (Smith) and comparative advantages (Ricardo) allows the market to expand and thus contribute to prosperity." (Vujačić & Petrović Vujačić 2014, 215). The need for the presence of the state and the legal framework for the free operation of the market (contractual relationship) was emphasized, as well as limiting the power of rulers and certain interest groups (monopolists). Thus, the state regulated the work of the market with positive regulations, while the free market limited the arbitrariness of the state. The notion of liberalism is transformed over time into neoliberalism in the twentieth century, which was first used by members of the Freiburg School (Ordoliberals) between the two world wars. Neo-liberalism had the characteristics of strong state intervention and social policy, as well as a regulated market, the regulation of monopolies, which is supposed to negatively affect competition. With the activities of the Chicago School and Adam Smith in Chile, the original concept changes and the intellectual roots of this concept are denied. Namely, the original proponents of this term are the mentioned Freiburg School and the activities of the Mont Pelerin Society (founded in 1947), and paradoxically, Friedrich Hayek and Milton Friedman are mentioned as recognizable advocates of the new neoliberal ideology. The main goal of liberal theorists is to limit the arbitrariness of rulers, and neoliberal theorists try to implement their ideas in conditions when the institutional state regulation of the economy and society is branched, and their goals were to reduce excessive state regulation in the economy[142]. The latest revival of the notion of liberalism is related to the Washington Consensus and the reforms of US President Ronald Reagan and British Prime Minister Margaret Thatcher. It is not uncommon for them to be mentioned in the context of the profound transformations in China and the transition in the former socialist countries. This new neoliberal concept implies the free market as the most efficient mechanism for allocating resources and property rights and the privatization of state-owned enterprises[143]. In addition,

[142]Excessive market regulation was considered to hamper the creativity of the subjects.

[143]Only the privatization of state-owned enterprises, which was carried out carefully and systematically, could be considered a good privatization. Rapid privatization with poor estimates and at the same time 100% privatization of companies can be considered suspicious. For example, why would the state sell a company 100%, when it can sell a part and thus

this term is related to measures such as reduced price control and the abolition of state subsidies, only here the consumer is the bearer of demand. Also, the context of globalization is introduced, which offers state institutions a model of behavior that is more efficient. Thus, the reform of the public sector, in addition to customer orientation, implies the decentralization of government, but also the privatization of some public services and social protection systems. Thus, the reform of the economic sector and the economic system implies the privatization of state-owned enterprises, the deregulation of the economy and the liberalization of trade. Today, in the 21st century, the definition of neoliberalism includes ideology, way of governing and a set of social and economic reforms. Frequent criticisms directed at neoliberalism relate to the state's interference in the economic life of a country. However, when the state withdraws, space is left for political elites to manage economic resources. (Vujačić & Petrović Vujačić 2014, 217-221).

CONCLUSION

The study of the state and social order was the preoccupation of many philosophers, lawyers, economists, from Plato and Aristotle, to Hegel, Weber and many others. Some of them advocated the organization of society through institutions, the rule of law and democracy, the reduction of inequality, but also the payment of taxes. In each country, socio-political and economic circumstances determine what the social protection policy of the population will be. The old forms of social protection related to the risks associated with industrial work, as well as how to compensate for income due to illness or unemployment. Today, new social protection policies mainly apply to children and the elderly, and the creation of equal opportunities in the labor market for all. In addition to the change in the age structure, there are also gender changes in the labor market, then the emergence of non-standard jobs, more and more jobs that are done electronically, which complicates and changes social policy. In the case of the labor market, the motivation of people to work is important. Although the big question remains, how do institutions, whether formal or informal, influence human behavior and motivation? What is the quality of institutions and are they capable of leading to the rule of law? The quality of institutions is certainly influenced by the quality of government, which should be able to develop a society, mobilize the working class, protect the weakest

generate a part of the income, influence the management and direction of funds. It is well known in the profession that when a company is sold, the most important is the buyer who will fight for 51% ownership of the company, because he is the majority owner and the one who essentially manages the company.

sections of the population and provide human freedoms to all. Change in the world has always been and will always be, the only question left is how to successfully fight them, and the state will be the most important actor in the organization of society for a long time to come.

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DEVELOPMENT AND SECURITY OF SMALL STATES IN THE NEW GEOPOLITICAL WORLD ORDER

Elena Tilovska- Kechedji[144]
Dragana Cvorovic[145]
Darian Rakitovan[146]

Abstract
The world as we know it, is changing. We have eruption of pandemics, weakening of the EU with loosing its democracies into autocracies, the shift of power between the great and powerful states, development of new technologies, the shift from coal and oil to other energies. All of these changes and influences, have great impact on small states, because they have always depended either on international organizations or on bigger states to be helped and safeguarded economically and militarily. So, the questions that will be analyzed in this paper are: Can small states rely on themselves for their development and existence and protect themselves? And do they have any power and influence in the new geopolitical world order? Or, will they have to still depend on outside help?

Key words: *Development, security, small states, geopolitics*

INTRODUCTION

Today, in the world there are more small states, then big states, they consist the majority in the United Nations, and they are strong advocates of multilateralism which gives them the opportunity to be active players in the global arena. But, although small states influence has shifted from historical times and they became good drafters, negotiators, and leaders on different

[144] Associate professor, Faculty of Law,University "St. Kliment Ohridski" - Bitola, North Macedonia E-mail: elena.tilovska-kechegi@uklo.edu.mk
[145] Assistant professor, University of criminal investigation and police studies - Serbia; e-mail: dragana.cvorovic@kpu.edu.rs
[146] PhD, Notary public office, Alibunar, Republic of Serbia.

international issues, still many of them face many challenges on the path of advancing in their goals.[147]

The multilateral arena, such as the UN, offers small states the opportunity to have a role in the global affairs. Small states have become good multilateral players, as they can work fast and are flexible, without undergoing big bureaucratic procedures and rules. Small states are also strategic actors, because they are aware of the fact that they do not have large diplomatic teams and foreign ministries that can be present in the world and be able to cover all the issues on the global agenda so that is why they use and work only on strategic points of interest. This prioritization or "niche diplomacy" leads to success especially in regards to discussing and accomplishing big ideas on crucial issues.[148]

Furthermore, small states are interested in conducting foreign policy and being active players in the geopolitical arena because since the end of the Cold War, they have enjoyed peace and stability due to the interdependence and the transformed geopolitical environment. Also, with the growing significance of international organizations, small states have the opportunities to present their influence and act more independently in the international arena.[149]

WHAT ARE SMALL STATES

Small states are very diverse, they are diverse in their sizes, populations, economies, natural resources, and vulnerabilities. In the UN, the characterization of small states varies from a state having a population less than 10,000 to more than 10 million. Small states consist of the most and least developed nations, with a lot or no resources, and they can be islands or land states. Due to these characteristics small states have different priorities, ideas and perspectives.[150]

They use their needs, priorities, perspectives to shape their foreign-policy strategies. Depending on domestic and international conditions, they choose policies that best reflect their needs and achieve their foreign-policy goals. Small states face many challenges: economic, social, political, military threats, and non-traditional security challenges like terrorism, environmental disasters,

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[147] ANDREA Ó SÚILLEABHÁIN. "Small States at the United Nations: Diverse Perspectives, Shared Opportunities". May 2014. International peace Institute. Retrieved from: Layout 1 (ipinst.org)

[148] Ibid

[149] Živilė Marija Vaicekauskaitė. "Security Strategies of Small States in a Changing World". Journal on Baltic Security , 2017; 3(2): 7–15 Retrieved from: 01_Vaicekauskaite.indd (sciendo.com)

[150] ANDREA Ó SÚILLEABHÁIN. "Small States at the United Nations: Diverse Perspectives, Shared Opportunities". May 2014. International peace Institute. Retrieved from: Layout 1 (ipinst.org)

hybrid threats, cyber attacks and so on and all of these challenges require certain capabilities which small states usually don't have. Small states have small armies, small diplomatic resources, big economic problems or are politically dependent, and they have few or no means to deal with powerful states. Furthermore, small states besides the fact that they have their problems and weaknesses they still want to increase their influence on the global arena and in doing so to have their autonomy. But their influence does not always lead to benefit or an increase in their autonomy. Although the idea is that all actors in today's world should be active players no matter the size, still small states are usually not equal players in the decision-making process and sometimes they may be forced to decide or act upon actions which are not of their best interest, objectives or values. Therefore, small states lack security and influence and they need a peaceful system with security guarantees by powerful states or organizations in order to prosper. That is why international organization are very important to small states, because through them they can increase the security and influence in the international arena. Also, the rules and norms covered by international law and order provide them with the stability, security and allow them to have some foreign-policy independence. International organizations, serve as a platform for small states to exercise influence by placing them as equals with big states on a diplomatic and legal arena.[151]

But still the international system is dominated by great powers, where small states have little of a say in the big decision making, and although they are independent, due to their size and vulnerability they are dependent on others, so they cannot pursue an independent foreign policy without first being supported by the big ones. Their small economies are more vulnerable to instability in the global market, they are dependent on military alliances and need to compromise in order to gain protection, therefore, small states can not be rule-makers. It should be clear that in International relations especially in the Realist theory the realm of power belongs to the big and powerful, not in the small and weak. Although there are those who believe in the balance of power, still in international politics, only the great powers have the power to balance and influence all.[152]

[151] Živilė Marija Vaicekauskaitė. "Security Strategies of Small States in a Changing World". Journal on Baltic Security , 2017; 3(2): 7–15 Retrieved from: 01_Vaicekauskaite.indd (sciendo.com)

[152] Andrew W. Neal. "Security in a Small Nation Scotland, Democracy, Politics". Centre for Security Research University of Edinburgh. Open book publishers. 2011. Retrieved from: 633873.pdf (oapen.org)

DISADVANTAGES OF SMALL STATES

It is ineffective to analyze small states' foreign policies without considering the obvious disadvantages to being small, which shape the foreign policy choices and its outcomes. Small states have no or little structural power, with weak militarily power, with small populations and economies. They can invest little in research and development. Their military weakness together with the threats, leave small states vulnerable to external factors. They are unable to have big diplomatic forces, which limits the skills and capabilities to engage in foreign policies and negotiate. They struggle to form policies, on national and international level. Also, their size and capacities affects and limit the cooperation with other states. Poorly informed and resource lacking states are not valuable coalition partners to anyone not only to big states. Also, small states have different interests from their other small partners which prevents them from forming coalitions, but there is the fact that they all face a shared set of diplomacy challenges, and they certainly need a peaceful international system and the security guarantees of powerful states and international organizations.[153] Therefore, small states have a lot of obvious disadvantages, but they can use these disadvantages to their advantage and they can do that only if they wok together on common intensest and goals, otherwise they will not and can not be active players in the global arena.

SECURITY CHALLENGES OF SMALL STATES AND THE WAY TO CHANGE

Security is a fundamental concept at all levels big or small. In the new era of globalization, security as an element has a new form and character. Small states are more affected by the different forms of security threats than bigger states, but non the less the whole world is affected by it. Although, all small states are not in the same basket of vulnerability, still the degree of threat is much higher. Some small states can manipulate the interests of the bigger states due to their tradition, interests and wealth they possess usually due to rare resources and diplomatic capability. But many of them, especially the developing countries, are facing security challenges not only inner but outer as well. Most small states are victims of internal challenges like political

[153] Sverrir Steinsson and Baldur Thorhallsson. "Small State Foreign Policy". 2017. *The Oxford Research Encyclopedia of Politics* (Oxford University Press). Retrieved from: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiG8oSG3eH0AhVM-qQKHU31D2M4ChAWegQIAhAB&url=https%3A%2F%2Fosf.io%2F7mrj9%2Fdownload&usg=AOvVaw1q9AHDWXtwstOOXepuGcMH

instability, cultural, economic and environmental challenges, migration, Geo-strategic location and nationalism.[154] And then come the outside challenges that affect these states even more.

Small states face a challenging future in the global system which is changing very fast. By managing their own future, it would help them to overcome their vulnerabilities. They can enhance their prospects, by working together, arguing their cases together on the global stage. Good governance with political stability is a must, as well as economic development, education, diversification of the markets contributes to economic sustainability. Larger countries and multilateral organizations have a key role in establishing a reliable environment for the small states which can balance out the security challenges. They should also be encouraged to pursue active diplomacy and create a coherent, visible and assertive approach to certain issues. Sub-regional and regional collaboration and integration will help small states to speak with greater effect and influence on security, economic and other issues, as well as building coalitions with larger states.[155]

SMALL STATES AS INTERNATIONAL ACTORS

Small states are at big risk, if the international system changes into a model based on power politics and zero-sum games. Most small states as we seen so far are vulnerable in a world where international law is compromised and only the powerful are right. With small states most at risk, one would expect them to be defenders of the international order.[156]

The perspectives of small states in the international arena are very diverse, including their views on a size and diplomacy. While some small states diplomats believe that size does not matter and that there is no correlation between size and performance at international organizations like the UN, others believe that size has big implications and influences the way small states are seen on the international arena. Despite different opinions on size, small states share several common characteristics as international actors, one of which is excelling in multilateral diplomacy. Multilateralism and international

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[154] Bhimnath Baral. "Security Challenges of Small States". Journal of Political Science, Volume XVI. Retrieved from: (3) (PDF) Security Challenges of Small States (researchgate.net)

[155] Idris DEMİR. "NATIONAL SECURITIES OF SMALL STATES IN THE INTERNATIONAL SYSTEM". KMU İİBF Dergisi Yıl:10 Sayı:14 Haziran/2008. Retrieved from: NATIONAL SECURITIES OF SMALL STATES IN THE INTERNATIONAL SYSTEM (kmu.edu.tr)

[156] ADAM LUPEL AND LAURI MÄLKSOO. "A Necessary Voice: Small States, International Law, and the UN Security Council". International Peace Institute. 2019.Retrieved from:A Necessary Voice: Small States, International Law, and the UN Security Council (ipinst.org)

platforms give the chance of small states to be players in global affairs. Small states are contributing to multilateralism, because it is the only way to have their voice heard in world affairs. Small states are skilled at developing networks and groups, they are fast and good strategists and this mindset and positioning is very important in international organizations.[157]

But although they are players in the international arena still the question is what can small states do on the Security Council to defend commitments to the international order? Well, one must recognize the limitations of their participation, because they are not among the permanent members. Although the UN system is based on sovereign equality of small and large states, the Security Council was structured to provide a constitutional advantage to the big powers. The priorities of the founders, were "performance, unity, and control" and fairness and equality were not one of them. In order for international peace and security to continue, they decided the big permanent powers to operate on consensus. As a result, there are no small permanent states in the Council. Small states are limited to pursue their own independent decision making because they are bound to other states, economically or militarily. Like the Marshall Islands and Monaco who need to consult with the US and France, on their foreign policy decisions. These obligations are of course informal, but still they are based on economic dependence on aid or trade that leave small state vulnerable to pressure and to follow the vote of the bigger. Despite these disadvantages, small states can still prove effective and use their other qualities to their advantage like their size and the ability to maneuver quickly in policy debates, because they are less burdened by large bureaucratic procedures.[158]

Small states prefer multilateralism as influence and a means to restrain larger states. Small states are capable of developing issue specific power to make up for what they lack in aggregate structural power. Small states can develop power disproportionate relative to their size on issues of importance to them. They have employed strategies of coalition building and image building. Even though small state administrations lack the resources, their advantages are that they are informal, flexible, and the autonomy of their diplomats can prove advantageous in negotiations and within institutions.[159]

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[157] ANDREA Ó SÚILLEABHÁIN. "Small States at the United Nations: Diverse Perspectives, Shared Opportunities". May 2014. International peace Institute. Retrieved from: Layout 1 (ipinst.org)

[158] ADAM LUPEL AND LAURI MÄLKSOO. "A Necessary Voice: Small States, International Law, and the UN Security Council". International Peace Institute. 2019.Retrieved from:A Necessary Voice: Small States, International Law, and the UN Security Council (ipinst.org)

[159] Sverrir Steinsson and Baldur Thorhallsson. "Small State Foreign Policy". 2017. *The Oxford Research Encyclopedia of Politics* (Oxford University Press). Retrieved from:

SMALL STATES IN THE GEOPOLITICAL WORLD

Geopolitics reflects the interplay of geography, politics, and power. Geopolitics is an international arena where states apply their foreign policies with geopolitical reasoning. If large and powerful states have the means to create the geopolitical space then small states follow it. If great powers apply their geopolitical means, then small states have to use the tools to place themselves on their side. Therefore, we have an arena where states serve their interests in any way they can by constructing foreign policy narratives, establishing alliances and fulfilling their goals by implementing narratives to achieve goals. So small states are not just inactively standing in geopolitics, but are active players. For example, since its independence Estonia, it has pursued a foreign policy goal "never alone again" which means integration to be part of the West. Finland foreign policy is to have strategic relations with Russia, even though it is an EU member.[160] So even though they are small they still pursue their foreign policy interests in the way they know it can be accomplished.

Realists in International relations believe that small states have little manoeuvring chance and skills in foreign policy, and they balance in everything in order to ensure their survival. Their vulnerabilities in the political, military and economic sphere present the picture for the kind of foreign policy that is expected from small states. Small states are generally taken to be with a low profile and bound to global institutions and international law to achieve objectives. The external factors influence and restrict the choices of small states, but some say that they don't always have to be at the mercy of the powerful states and that they may direct their own fate. [161] Because, small states in the international arena can perform useful functions. For example, they can be buffer states, barriers, outposts, geopolitical gateways, resource-rich peripheries, diplomatic mediators and so much more.

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https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiG8oSG3eH0AhVM-qQKHU31D2M4ChAWegQIAhAB&url=https%3A%2F%2Fosf.io%2F7mrj9%2Fdownload&usg=AOvVaw1q9AHDWXtwstOOXepuGcMH

[160] MARI-LIIS SULG, MATTHEW CRANDALL. "Geopolitics: The Seen and Unseen in Small State Foreign Policy". Journal of Regional Security (2020), Online First © Belgrade Centre for Security Policy

2020. Retrieved from: (3) (PDF) Geopolitics: The Seen and Unseen in Small State Foreign Policy (researchgate.net)

[161] Babak Mohammadzadeh. Status and Foreign Policy Change in Small States: Qatar's Emergence in Perspective. THE INTERNATIONAL SPECTATOR, 2017 VOL. 52, NO. 2, 19□36. Routledge Taylor and Francis group. Retrieved from:RSPE_A_1298886.indd (iai.it)

Therefore, small states can be useful in the international arena and be independent in their decision-making process. [162]

CONCLUDING REMARKS

It can be concluded that although small states have a lot of weaknesses especially economic, political and security vise, and they usually depend on large states for protection and aid, in the past century it has to be acknowledged that their status has changed especially with their active and "equal" role in the intentional arena. They have taken an equal and significant part in international organizations and they feel the security presented from international law and legislation. Furthermore, they have become active players through their few but non the less important characteristics and begun to change the international influence and presence. Therefore, with the awareness of their qualities they have become strong advocates of multilateralism which gives them the opportunity to be active players in the global arena. And they can be even stronger if they combine their interests and find a common ground on different issues on regional and international level and with that acknowledgment, present themselves in the world now more then ever as strong and equal players, hand in hand with the strong and powerful actors in the global arena.

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WHO'S (STILL) AFRAID OF STAKEHOLDER ENGAGEMENT?

Senior Lecturer Flaminia Stârc-Meclejan
Faculty of Law, West University of Timișoara, flaminia.starc@e-uvt.ro

Abstract
Commonly debated by jurists and the general public, since the 1940s (in the US), the question of corporate citizenship rises to prominence again as the European Parliament adopted, on 10 March 2021, a draft directive on mandatory corporate supply chain due diligence. The directive aims at ensuring that companies operating in the internal market fulfil their duty to respect human rights, the environment and good governance, and do not cause or contribute to risks to their stakeholders, but it is at the same time intended to enable stakeholders to hold companies accountable and liable in accordance with national law, and victims to have access to legal remedies. A question, however, still remains open to discussion: who can or should make sure that companies' duties to their stakeholders are enforced – state (courts), the market or society?

Key words: corporate citizenship, duty to respect human rights, the environment and good governance, legal v. market, social enforcement, stakeholders.

> "To live in modern culture—which sees itself, as it's simultaneously being itself—one needs what the poet John Keats called "negative capability." The ability to hold two contradictory ideas in one's head without searching after fact or reason. We are rank, and yet we have beauty. We can produce kindness, and yet our systems of living can also become factories of pain. We are selfish, but most of us cannot tolerate a life without one another. We are racist, though we can transcend these instincts or at least protect against them with the law" (J. Freeman, Dictionary of the Undoing, MCD x FSG Originals, 2019)

> "To achieve a just society we have to reason together about the meaning of the good life, and to create a public culture hospitable to the

disagreements that will inevitably arise" (M. J. Sandel, Justice. What's the Right Thing to Do, Farrar, Straus and Giroux, 2009)

Rebuilding the relation of state, market, and society is the juridical task of times of "estrangement" like this (Michael Walzer), when the most important interface between the three parties – i.e. law - is (still) a closed and, consequently, distrusted system. Things such as the blurred boundaries between the public and the private, and the rise of the digital are merely examples pointing to the "interesting turn" this relation has taken, in recent years, with the rise of the global society, and to its important implications for the roles and responsibilities of all the involved parties: state authorities, companies, and stakeholders (A. Rasche, M. Morsing and J. Moon, The Changing Role of Business in Global Society: CSR and Beyond, Corporate Social Responsibility, Cambridge University Press, 2017, 3), posing a challenge to conventional legal reasoning.

Traditionally, corporate governance (i.e. the system by which companies / corporations are directed and controlled) theory has been based on shareholder primacy, professing that the purpose of a corporation is to generate returns for the shareholders, and that decision-making should be focused on the single goal of maximizing shareholder value (L. Palladino, K. Karlsson, Towards Accountable Capitalism: Remaking Corporate Law Through Stakeholder Governance, 2019, https://corpgov.law.harvard.edu/). But we do all agree that decoupling profit from social benefits has not been a viable solution. The COVID-19 crisis alone has exposed more of the severe drawbacks of corporate arrangements and the ease with which certain corporations are able to shift, both directly and indirectly, negative impacts of their business activities to other jurisdictions, in particular outside the Union, without being held accountable (Preamble to the draft directive on corporate due diligence and corporate accountability). Promoters of a new model of business would point to such huge influence corporations have on civil society and, consequently, to the need for their accountability to those whose lives they affect. A new, stakeholder primacy theory of corporate governance has thus been proposed, refocusing on the effect of corporate activity on all the stakeholders of the corporation. "Stakeholders" appeared in 1980 as a concept designating "any group or individual who can affect or is affected by the achievement of the organization's objectives" (R. E. Freeman, Strategic Management: A Stakeholder Approach, Pitman Publishing, 1984, p. 31) (but this subject will be developed a little bit later in the paper).

Witnessing to the fact that the company only seeking rapid prosperity for the shareholders is no longer an ideal, the question of corporate citizenship, broadly understood, as "the company's wider influence on society for the benefit of the company and the society as a whole" (J. Andriof and C. Marsden, J. Andriof and C. Marsden, Corporate Citizenship: What Is It and How to Assess It?, WP Corporate Citizenship Unit, Warwick Business School) has become a top priority on Europe's agenda, beginning with the year 2000, in its "most juridical" facet, corporate social responsibility ("CSR"). Defined as a "concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders" (COM(2001)366), CSR came into focus in the European Union through the European Commission Action Plans of 2003 and 2012, after the major corporate failures of the previous years, with the aim of restoring stakeholders' confidence in the integrity of the market and corporate conduct. The principle of responsibility, at the heart of CSR, which implies taking into account the social and environmental impact of the companies' activity, made these initiatives part of the broadest EU goal of sustainable development, envisioning, in its turn, the consideration of environmental and social issues equally with economic and financial objectives. And, accordingly, sustainable development has imbued CSR with its new values of long-term involvement of investors, integrated decision-making, fair prosperity and, ultimately, accountability.

In its resolution of 6 February 2013 on corporate social responsibility, the European Parliament stressed the idea that corporate responsibility must not be reduced to a marketing tool, and that the only way to develop it to the full, accordingly, is to embed it in a company's overall business strategy. Initially understood as a "voluntary" initiative (COM(2001)366), to be adopted, at the companies' option, CSR was soon ready to take a different way, closer to law, pursuant to Directive 2014/95/EU of the European Parliament and of the Council (also called the Non-Financial Reporting Directive or "NFRD"), applicable at present. NFRD imposed on corporations (with more than 500 employees) the obligation to report on the policies they pursue in relation to environmental, social, employee-related, anti-corruption and bribery matters and respect for human rights or, where the corporation does not pursue policies in relation to one or more of those matters, to provide a clear and reasoned explanation for not doing so in the non-financial statement. In the viewpoint of the European Commission, NFRD would thus help investors, civil society organisations, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large corporations

and encourage these corporations to develop a responsible approach to business (https://ec.europa.eu/). Aiming as such to connect the norms of corporate conduct to societal expectations, NFRD has opted for the "comply or explain" principle, inducing companies to feel constrained to produce the required statements and continue to nurture the dialogue and engagement with stakeholders, without further liability concerns (H. S. Birkmose and K. Sergakis, Introduction, in H. S. Birkmose and K. Sergakis (eds.), Enforcing Shareholders' Duties, Edward Elgar Publishing, 2019, 12).

This is the bigger picture in which the question of corporate citizenship, and specifically, social responsibility has risen to prominence again after the European Parliament adopted a draft directive on mandatory corporate supply chain due diligence (Directive of the European Parliament and of the Council on Corporate Due Diligence and Corporate Accountability) in March 2021. The directive does not come as such a surprise as complaints that voluntary due diligence standards have limitations and have not achieved significant progress in preventing human rights and environmental harm and in enabling access to justice have existed all along the development of CSR, and, especially, if we have in mind EU's priority to achieve harmonisation, legal certainty, and a level playing field within the internal market (Preamble to the draft directive). Besides that, in some member states, the need to make corporations more responsive to human rights and to environmental and good governance concerns has already led to the adoption of national due diligence legislation: in the Netherlands, The Child Labour Due Diligence Act; in France, The law on the Duty of Vigilance of Parent and Outsourcing Companies; in Germany, Supply Chain Due Diligence Act, and many other member states are currently considering the adoption of such legislation, including Sweden, Austria, Finland, Denmark, and Luxembourg. According to the European Parliament, further harmonisation is, thus, crucial now in order to prevent the creation of unfair competitive advantages.

But before considering the changes that will be (possibly) brought by the directive, we should first introduce the issue of the "missing judicial backing" (Leyens 2019, 161) of the CSR discussion that, so far, has quasi-entirely focused on the companies' governance and societal role and, correspondingly, ignored the part played by the other relevant actors and, especially, state courts. It is an understandable aspect of CSR, up to a point, having regard to the fact that it has been conceived as a soft law instrument, that implies a completely different mechanism of operation than that of hard law. The primary purpose of soft law is to stimulate the parties to do something that general interest intends to achieve, without threatening, like traditional

law, with the constraining intervention of the courts, in case of non-compliance with the voluntarily assumed standards by the parties.

Normally, CSR strategies are decided at board level, and are introduced in corporate stewardship codes that reflect the importance of responsibility for the company (European Parliament resolution of 6 February 2013 on corporate social responsibility, par. 23). In accordance with the renewed EU strategy for corporate social responsibility, respect for applicable legislation is a prerequisite for meeting that responsibility, but to fully meet their corporate social responsibility, companies should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, (A renewed EU strategy 2011-14 for Corporate Social Responsibility COM/2011/0681 final). There have been proposed several criteria for classifying "stakeholders" in respect to that end, among which, the most relevant in the field of CSR is, in our opinion, that of the legitimate expectations of the parties to a legal relationship established with the company. The relationship may be the result of a contract concluded with the company or of a subjective right conferred by law. Legal authors normally distinguish between two categories in that regard: institutional and contractual stakeholders. Institutional stakeholders (according to economic theory, primary stakeholders) are those related to the company by a right conferred by law. We can find here, in principle, employees, the state, non-governmental organizations, and the shareholders. Conversely, the category of contractual stakeholders (according to economic theory, secondary stakeholders) includes all the natural or legal persons related to the company by a contract. There are three subcategories of contracts that can be envisaged here. The first includes those contracts that are related to the activity of the company, including employment contracts, services, supply etc. The second one encompasses contracts relating to the company's capital and concerns, as such, the shareholders, either natural or legal persons. Lastly, the third subcategory comprises the contracts concerning the representation of the company on the basis of a mandate. Here we can find the president of the company, the general manager and the directors or auditors, as the case may be. The two categories of institutional and contractual stakeholders can, however, overlap, and one and the same person can be part of both (see also J. Igalens, S. Point, Vers une nouvelle gouvernance des entreprises. L'entreprise face à ses parties prenantes, DUNOD, Paris, 2009, 43 *et seq*.). What needs to be especially emphasized, at this point, is that, even though stakeholders' legitimate expectations are delimited by the company's articles of incorporation, they are actually the

expression of an objective will (which is not the result of the contracting parties' agreement, but is rather arising from their compliance with a set of foreseeable obligations), which means that these expectations are not necessarily, either explicitly or implicitly, included in the parties' "agreement" (see also H. Lécuyer, Le contrat, acte de prévision, in Mélanges Terré, Dalloz, 1999, 643 *et seq*.). Practically speaking, the so-called doctrine of "legitimate expectations" requires courts, in the name of natural justice and procedural fairness, to sanction not only the violations of individual rights or interests, expressly protected by law, but any and all act that is inconsistent with a person's legitimate expectations, by resorting to a statutory interpretation that could be qualified as "contextual" (A. Bennini, Le voile de l'intérêt social, Université de Cergy-Pontoise / LEJEP, 2013, 309-310). In the field of state company laws, it is the board's duty of loyalty that could provide an implicit legal basis for court actions based on the stakeholders' legitimate expectations. It is true that, so far, there is no universal consensus on the board duties to implement CSR goals beyond the statutory standards of behaviour. According to the principles of corporate governance, the members of the board will exercise their mandate with loyalty, in the best interest of the company, so weighing up possible options is part of their business judgment (Leyens 2019, 158 and 170). For this reason, stakeholder court actions are hardly a means of constraining the board in implementing CSR.

There are, however, court decisions that demonstrate that corporations' false statements about their voluntary commitments and accomplishments can be successfully challenged in courts, witnessing to the increasingly blurred line that separates voluntary standards, on the one hand, and mandatory, legally binding standards, on the other (M. Kerr, R. Janda, C. Pitts, Corporate Social Responsibility. A Legal Analysis, LexisNexis, 2009, 478-479). The famous judgment of the California Supreme Court in *Nike v. Kasky* (539 U.S. 654, 2003) sets an example that could be followed in the future. Very briefly speaking, in this case, Marc Kasky, a California resident, sued Nike for unfair and deceptive practices under California's Unfair Competition Law. Kasky alleged that Nike made "false statements and/or material omissions of fact" concerning the working conditions under which its products were manufactured. Nike filed a demurrer, contending that Kasky's suit was absolutely barred by the First Amendment. The trial court dismissed the case, and the California Court of Appeal affirmed. In reversing, the California Supreme Court found that Nike's messages were commercial, not political speech. As such, they were subject to California's false advertising legislation (https://www.oyez.org/cases).

In European countries, stakeholders are, theoretically, given specific rights to sanction violations of disclosure duties. For example, the German Bundesgerichtshof (Federal Court of Civil Matters) decided, in 2009, in two cases, that the annual shareholder resolution on the approval of directors' actions can be invalidated on grounds of a false or misleading annual corporate governance statement (Leyens 2019, 169-170). The German judgments show that "comply or explain" principle can be subject to judicial analysis, even when the statement is included in a soft law instrument like a non-statutory code of conduct (Leyens 2019, 170). The French Court of Cassation established, moreover, that the corporate code represents a standard of professional conduct and, so, it qualified misleading environmental claims ("greenwashing") included in the code as criminal unfair commercial practices (Cass. crim. 6 October 2009, Cass. Crim. 17 May 2011)). At present, in particular, the Unfair Commercial Practices Directive 2005/29/EC ("UCPD") protects the consumers from commercial practices, such as breaches of codes of conduct containing environmental commitments, that may also be considered misleading actions (https://ec.europa.eu/):

> A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise and it involves non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where: the commitment is not aspirational but is firm and is capable of being verified; and the trader indicates in a commercial practice that he is bound by the code" (article 6(2) (b) of the Directive 2005/29/EC).

It is not clear, however, whether and in which cases courts will accept a suit brought on the basis of incorrect CSR reporting (also, Leyens 2019, 170). Generally speaking, judicial decisions remain isolated, in the field, pointing to an attachment of the courts to an interpretation of corporate conduct which is rather a product of another time, with the obvious consequence of a hermetic closure of law in relation to many real and crucial public concerns ((M. Amstutz, The Letter of the Law: Legal Reasoning in a Societal Perspective, German Law Journal, Vol. 10, Issue 4: The Law of the Network Society. A Tribute to Karl-Heinz Ladeur, 1 April 2009, 380).

In any case, where a company still did not take a CSR approach, it would have to bear the consequences, as long as the "comply or explain" principle supposes that a company declares its option publicly or, failing that, presents explanations. It follows, as it has been emphasized, that normally corporate actors will carefully consider the viability of their CSR policies already *ex ante* and that, *ex post*, they will probably be reluctant to deviate from them, and directors of large corporations, especially, will hardly risk that their corporation is ranked within a group of low-level market participants (Leyens 2019, 168). The need to consider the social or environmental effects of an activity in the business strategy is, thus, also determined by the fact that companies risk otherwise to be exposed to the judgment of public opinion.

All in all, these legal instruments taken together did not succeed in helping to prevent the general perception, described by the preamble to the draft directive on corporate due diligence and corporate accountability, of the failure to provide protection to victims of human rights and environmental adverse impacts and with access to justice and remedies, because of their non-judicial and (quasi-)voluntary nature. In the next four paragraphs, we will point out some of the most relevant provisions of the draft directive on mandatory corporate supply chain due diligence concerning European Parliament's proposals for filling the regulatory gaps.

According to the directive, the primary duty to protect human rights and provide access to justice lies with states, and the lack of public judicial mechanisms to hold corporations liable for damages occurring in their value chains should not and cannot adequately be compensated by the development of private operational grievance mechanisms (whereas such mechanisms are useful in providing emergency relief and fast compensation for small damages, they should be closely regulated by public authorities and should not undermine the right of victims to access justice and the right to a fair trial before public courts).

The directive lays down the value chain due diligence obligations of corporations under its scope as primarily a preventative mechanism that requires undertakings to take all proportionate and commensurate measures and make efforts within their means to identify and assess potential or actual adverse impacts and to adopt policies and measures to cease, prevent, mitigate, monitor, communicate, address, remediate them, and account for how they address those impacts. The due diligence strategy should be duly integrated into the undertaking's overall business strategy. It should be evaluated annually, and revised whenever this is considered necessary as a result of such evaluation. Companies should be required to produce a document in which

they publicly communicate, with due regard for commercial confidentiality, their due diligence strategy with reference to each of those stages. The new legal framework will rely on existing international standards on due diligence i.e. the United Nations Guiding Principles on Business and Human Rights (UNGPs), the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration), and the OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guidance). The directive strategies should be aligned with the SDGs and Union policy objectives in the field of human rights and the environment, including the European Green Deal.

The directive is applicable to all companies, including SMEs (with special provisions), and should focus on direct suppliers to companies, rather than companies further down the supply chain. It establishes company-level grievance mechanisms, state-based non-judicial mechanisms, and also aims to ensure that corporations can be held accountable and liable in accordance with national law for the adverse impacts on human rights, the environment and good governance that they cause or to which they contribute in their value chain, and aims to ensure that victims have access to legal remedies.

Thus, corporations shall provide a grievance mechanism, both as an early-warning mechanism for risk-awareness and as a mediation system, allowing any stakeholder to voice reasonable concerns regarding the existence of a potential or actual adverse impact on human rights, the environment or good governance. In their turn, member states shall assure extra-judicial remedies, including as a result of mediation via the grievance mechanism. The remedy shall be determined in consultation with the affected stakeholders and may consist of: financial or non-financial compensation, reinstatement, public apologies, restitution, rehabilitation or a contribution to an investigation. Corporations shall prevent additional harm being caused by providing guarantees that the harm in question will not be repeated. At the same time, each member state shall designate one or more independent national competent authorities responsible for the supervision of the application of the directive. They shall provide for proportionate sanctions applicable to infringements of the national provisions adopted in accordance with the directive and shall take all the measures necessary to ensure that those sanctions are enforced. The sanctions provided for shall be effective, proportionate and dissuasive and shall take into account the severity of the infringements committed and whether or not the infringement has taken place repeatedly (and consist, in particular, in proportionate fines calculated on the basis of a corporation's turnover, temporarily or indefinitely exclusion from public procurement, from

state aid, from public support schemes, seizure of commodities and other appropriate administrative sanctions etc.). Member states shall also ensure that they have a liability regime in place under which corporations can, in accordance with national law, be held liable and provide remediation for any harm arising out of potential or actual adverse impacts on human rights, the environment or good governance that they, or corporations under their control, have caused or contributed to by acts or omissions. That liability regime shall be such that corporations that prove that they took all due care in line with the directive to avoid the harm in question, or that the harm would have occurred even if all due care had been taken, are not held liable for that harm.

Everyone admits that CSR's effective success depends on its public monitoring and enforcement. We are, besides, all familiar with the fact that, in observing its sustainable development goals, EU has integrated ethics and responsibility into formal law, so that companies have already been imposed, before the drafting of the directive on corporate due diligence and corporate accountability, more statutory duties that form part of CSR. According to Art. 3.3. TEU," The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth (...)". And so, in the definition of CSR put forward in the renewed EU strategy for corporate social responsibility, the Commission does away explicitly with the dichotomy between voluntary and compulsory approaches:

> respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.

As it has been noticed (Kerr *et alii* 2009, 476), a choice between voluntary and obligatory regulation should be a false choice, even now, before the adoption of the directive, *as long as voluntary commitments are binding commitments subject to a variety of internal and external constraints* (emphasis added). It seems, nevertheless, that the reporting duties provided for at present do not sufficiently mandate corporate social responsibility, in the absence of sanctions. For this reason, mandated due diligence requirements, already enforced in some EU countries and widely debated in others, have been included in the draft directive that is to be soon adopted at the level of the EU. The scope of accountability and liability of companies should,

however, be clearly defined and should not be designed in a way to discourage businesses from engaging with risky markets (https://www.cambre-associates.com/mandatory-due-diligence-will-the-new-framework-work-for-or-against-eu-companies/).

The draft directive also buttresses something that has always been recognized by a part of legal scholarship, namely that state remains a vital, necessary player in the regulation and control of corporate conduct. Stimulating private role in enforced self-regulation is possible only" in the shadow" of a powerful state (foremost) because of the monopoly of state publicly sanctioned force, through the court system (Kerr *et alii* 2009, 494-495). Civil society actors remain, at the same time, equally vital, ideally acting in partnership with governments and corporations, to ensure that neither state power nor corporate self-legislation result in democratic deficit for the stakeholders (Kerr *et alii* 2009, 494-497). For, as it was noticed, "the market is a political place" and, armed with the power of choice and unprecedented access to information, stakeholders become also political actors able to "vote" for changes in corporate policies and practices through their behaviour (Kerr *et alii* 2009, 494-497), giving as such effect to what Pierre Rosanvallon calls "counter-democracy", i.e. the ways in which we are able to check or hold to account the government, irrespective of the electoral process (P. Rosanvallon Counter-Democracy: Politics in an Age of Distrust, Cambridge University Press, 2008).

It is now acquired that the company, by far a mere vehicle aiming to earn profit for the shareholders, has become, on the contrary, a crucial factor in helping civil society and governments address some of the most pressing global problems, starting from healthcare, education, innovation to connectivity of people around the world. Whilst the role of solving public problems remains one of the most promising and interesting developments of corporate social responsibility, it is, indeed, not without risks and can impact peoples' rights (in often unforeseen ways) (Rasche *et alii* 2017, 2). If the company's legitimacy was formerly only derived from governments delegating powers to it, it now certainly also needs acceptance from the stakeholders, whose engagement must begin, according to the directive, from the very first step in establishing and implementing the due diligence strategy.

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RESPECT FOR HUMAN RIGHTS AS AN IMPORTANT ASPECT OF THE DEMOCRATIC FUNCTIONING OF CIVIL SOCIETY

Mojca Rep, PhD candidate at the European Faculty of Law, Associate judge at the District Court Celje, Mediator in criminal cases at the High Court in Ljubljana, mojca_rep@yahoo.com

Abstract
Monitor Civicus is a research project that assesses and monitors respect for fundamental freedoms in 196 countries. More than 20 organizations are involved in the project. Its purpose is to provide a database on which measures to improve the functioning of civil society are developed. The Monitor is also concerned about the encroachment on media independence and the deteriorating working conditions for journalists. The activities of civil society in 196 countries are categorized on the basis of a methodology that combines data on freedoms of association, peaceful assembly and expression. The state of the civil society space of an individual country is measured after one year of regular and thorough monitoring. Slovenia is assessed as a country with a narrowed state of civil society, which is not an isolated case. Monitor Civicus found that similar restrictions on civil society and the media are occurring in other European countries.

Keywords: research, human rights, independence, civil society, media

INTRODUCTION

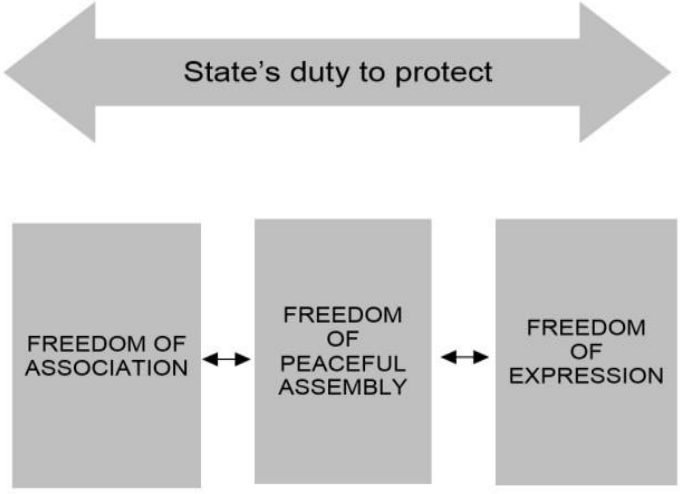
The pandemic tested the existing routines and practices of international cooperation and found countries to be undesirable, as countries took unilateral measures that exacerbated the emergency. Each year, CIVICUS publishes a State of Civil Society Report, which analyses how current events and trends affect civil society and how civil society responds to the main issues and problems of today. The report builds on a number of in-depth interviews and online consultations with civil society partners, leaders and experts, and others close to the big stories of the year. CIVICUS is a research tool that provides real-time data on the state of civil society and civil liberties in 196

countries. The data are obtained in collaboration with more than 20 civil society research partners and on the basis of a number of independent human rights assessments. The 2021 report is also based on the ongoing CIVICUS research, analysis and advocacy program as well as the work of its members, networks and partners, in 196 states.

CIVIUS RESEARCH METHODOLOGY

The CIVICUS monitoring methodology is to provide a comprehensive assessment of the conditions for civil society in countries and over time. Civic space is defined as respect for freedom of association, peaceful assembly and expression in politics and practice. The state has a fundamental duty to protect these rights. As the diagram below shows, the CIVICUS monitor designs conditions for civil society as compliance with these four indicators. The monitor currently offers ratings for all United States member states and others.

Tabel 1: Monitor conceptualisation of civic space (CIVICUS Monitor Methodology-Paper 2018, 1).



The CIVICUS methodology is a combination of several independent data sources. These sources include updated assessments of civil society organizations and reports from national, regional and international civil society organizations with relevant information on the four civil space indicators mentioned above. These external analyses are then combined with CIVICUS' own analysis to achieve country estimates for all assessed countries and territories. In line with the mission of CIVICUS, the methodology

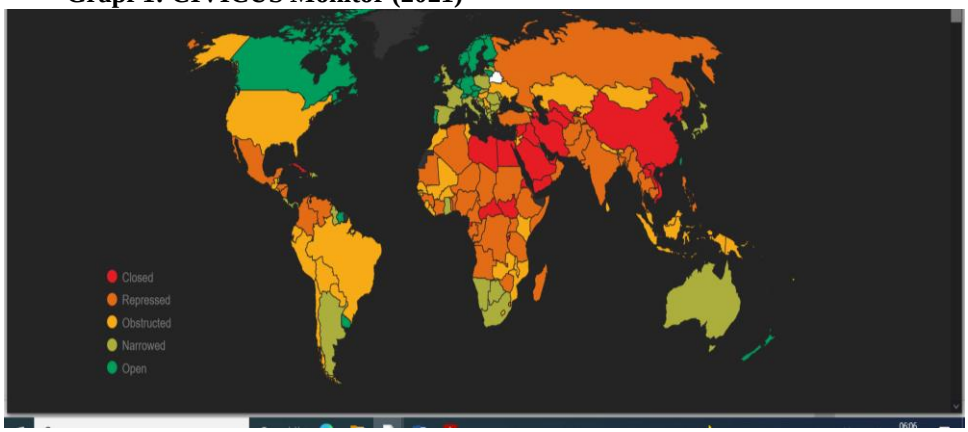
prioritizes information that is generated closer to the source in order to reduce bias. Simply put, this means that the information of civil society groups on the ground is the most accurate and credible. The inputs obtained from primary and secondary surveys are divided into two separate categories: 1) basic result and 2) live adjustment result. As an attempt to move away from traditional annual indices, CIVICUS Monitor uses data from its research network to continuously update the country's credit rating. The basis for all assessments is a numerical assessment, which determines the country assessment. The diagram below shows the distribution of data sources and the numerical limits for each estimate. Ratings are on a scale of five categories, defined as: open, constricted, obstructed, repressed, and closed. These assessments are designed as broad, so there may be different civic experiences within any assessment category. The aim of the assessments is to offer comparisons between countries and over time that are robust but responsive to current events. To ensure the accuracy and precision of all data sources used, an independent team of eleven experts evaluates changes in country estimates. Key analysis reports are prepared by national, regional or international civil society organizations.

Whenever possible, these reports are obtained by members of CIVICUS or another reputable organization. The key results of the assessment derive from the three international assessments of the civic space, which are combined to form a basic assessment. Key ratings are taken from Freedom Houses, Freedom in the World Index, The Political Terror Scale and Reporters Without Borders, World Press Freedom Index. CIVICUS draws on each of these data sources each year to update country estimates on a regular basis. This section describes each of the three components in the key assessments. The assessment is based on the following three questions, which are assessed by experts and together contribute to a scale from 0 (least free) to 12 (most free): 1. Is there freedom of assembly, demonstration and open public debate? 2. Is there freedom of NGOs? 3. Are there free trade unions and farmers' organizations or equivalent bodies and is there effective collective bargaining? Are there free professional and other private organizations? It measures the level of political violence and terror the country has experienced over a five-year period. The scale ranges from 1 (minimum) to 5 (maximum) political violence and is based on Amnesty International's annual reports, US State Department state reports on human rights practices, and Human Rights Watch global reports (CIVICUS Monitor Methodology-Paper 2018).

Tabel 2: Research partner coding form for CIVICUS Monitor updates (CIVICUS Monitor Methodology-Paper 2018, 9)

Since the last update, has the quality of civic space:	
Seriously worsened	-2
Worsened	-1
Remained the same	0
Improved	+1

Grapf 1: CIVICUS Monitor (2021)



RESULTS OF THE REPORTS

This chapter encompasses the results of the latest report (State of Civil Society Report 2020).

- Civil liberties: More and more people are living in 'closed', 'repressed' and 'hindered' countries. Among the countries with a lower score are the USA, the Philippines, Guinea, Slovenia and Iraq. Major violations include: detention of protesters, censorship, and attacks on journalists.
- Freedom of speech, association and peaceful assembly deteriorated during the COVID-19 pandemic. A new report, People Power under Attack 2020, shows that the number of people living in countries with significant restrictions on civic space is increasing year by year. 87% of the world's population now lives in countries rated "closed", "repressed" or "obstructed", more than 4% more than last year. More than a quarter of people live in the worst-rated countries, prisons, where state and non-state actors are usually allowed to imprison, injure and kill people for trying to exercise their fundamental freedoms. China, Saudi Arabia, Turkmenistan and 20 other countries fall into this category. Holding protesters and the excessive use of

force against them is the most common tactic used by government authorities to restrict the right to peaceful assembly. Although this was a common violation last year, the authorities used the pandemic as an excuse to further restrict this right. Censorship, attacks on journalists, and harassment and intimidation of human rights defenders were also common tactics documented during the year. CIVICUS has noted that across Europe, in countries such as Hungary, Poland and Serbia, there will be restrictions on civil society organizations in the media, where authoritarian leaders use COVID-19 as an excuse to curtail freedoms. More than twenty organizations are participating in the CIVICUS monitor to provide a basis for action to increase civic space on all continents.

In 2020, 43.4% of people lived in countries with an estimated repressed civic space, which is the percentage of people living in countries with obstructed civic space, from 15.8% to 18.3%. While the number of people living indoors is used, largely due to some guests, limited improvements in DR Congo and Sudan, the number of people living in countries with real restrictions has increased, so now about 87% of the world's population lives in countries that are assessed as closed, oppressed, or obstructed. In 2020, only 12.7% of people worldwide lived in countries with an open or restricted assessment of civic space, the percentage having decreased compared to the 17.6% known in 2019. The last update of the CIVICUS assessment in November 2020 to civil society continues to operate in a hostile environment. The data show that there are 23 countries with closed civic space, 44 countries with repressed space and 47 within these spaces, which means that 114 countries have serious limitations on civic space. By comparison, 40 countries are limited by limited civic space, and only 42 countries have an open assessment. Since the previous report, published in December 2019, it is a story of further regressions: several countries have moved to obstructed and repressed categories, and little has improved in the civic space. Progressive governments are working closely with human rights defenders and civil society to stop this downward spiral and respond to authoritarian forces at work. Human rights defenders and civil society, not deterred by restrictions, continue to act, adapt and resist. Mass protests were often a key factor leading to positive change. More than twenty organizations are participating in CIVICUS to provide a basis for action to improve the civic space on all continents. Over the past year the Monitor has published more than 500 civic space updates, which are analysed in People Power under Attack 2020. Civic space in 196 countries is categorized as closed, suppressed, obstructed, and

narrowed (State of Civil Society Report 2020, State of Civil Society Report 2019).

SITUATION IN SLOVENIA

The CIVICUS Monitor is a research collaboration that evaluates and observes the monitoring of fundamental freedoms in 196 countries; prudential changes are made after thorough assessments of the state of civil liberties in the country and come after one year of regular monitoring. Due to the deterioration of civil liberties, Slovenia decreased from "open" to "narrowed". A reduced rating for the civic space means that democratic freedoms, such as freedom of expression, peaceful assembly and association, are increasingly being violated (State of Civil Society Report 2020). Slovenia was reduced due to the decline of the civil space for civil society under the government of Prime Minister Janez Janša. CIVICUS is particularly concerned about the restrictions on free media in Slovenia, including threats against journalists and independent media. They are also concerned about attacks on civil society groups involved in culture, human rights, media freedom and the environment. In a protest against the government's repression of civilian space every Friday, the protesters were also subject to intense police surveillance (State of Civil Society Report 2020; Dnevnik 2021). Following the protests on 12 June 2020, Amnesty International Slovenia called on the police chief to review the alleged excessive use of police powers. One case concerned two protesters who were allegedly beaten and threatened with a verbal threat while they were already connected and under the full control of the authorities. The organization also called on the Ombudsman to look into the matter. It should not be forgotten a peaceful rally on 15 April 2021 in front of the court in support of one of the three students who protested aiming for the reopening of schools on 9 February 2021 and were the first to appear before a magistrate. At a protest on February 9, 2021, police-imposed fines on six people and ordered three minors to appear before a judge for alleged violations of the Infectious Diseases Act. All three minors are students of II. Gimnazija Maribor High school (M.Z. 2021). The principal of the school, Ivan Lorenčič, said: "These are young people who have demanded nothing more than the right to education. All regulations were followed and there were no riots (AS 2021). The indictment was dismissed. Peaceful protests, freedom of expression and assembly are constitutionally protected rights, so they may only be restricted by a strict test of necessity, proportionality and adequacy (Mavčič 2002). Attending rallies and organizing them is a right, not a privilege. No state permit is required to exercise this right."

CIVICUS is also concerned about the deteriorating independence of the media and the working environment for journalists. The government has taken steps to reduce the independence of the media; online media such as Nova24 TV, Nova24 Online and Planet TV are increasingly funded by parties close to Hungarian authoritarian Prime Minister Viktor Orban, a close ally of Janša known for repressing independent media. Recently, the Slovenian government presented a package of three media laws that open the door to political interference, as it can now influence the appointment of media management in the Slovenian Press Agency. Journalists have repeatedly faced attacks by the Prime minister and the leading Slovene Democratic Party (SDP), to the extent that the Council of Europe has had to intervene, issuing a warning against harassment and intimidation of journalists. In addition, both areas of effort use COVID-19 as a condition for further limiting the space for civil society organizations by reducing funding and burdening environmental NGOs with further barriers to their work. In the last attack on civilian space, in the middle of the second wave of the COVID-19 pandemic, 18 non-governmental organizations on Metelkova faced an unexpected loss of space for their operations (MonitorTracking civic space Slovenia).

CONCLUSION – CHALLENGES FOR THE FUTURE

So much has happened in the 10 years since CIVICUS published its first Civil Society Status Report. The protests flooded every inhabited continent as the number of people demanded a huge number of democracy and human rights. As a result, long-entrenched dictators have collapsed in countries such as Sudan and Tunisia. Movements under banners such as Black Lives Matter, Me Too and Ni Una Menos have rolled around the world to challenge the built-in exclusion and demand radical reckoning with systemic racism and patriarchy. These movements have led to a change in discourse and changed political priorities, as well as youth climate movements, with mass protests and individual direct actions won the recognition that climate change is a crisis and urgent action is needed. Our successes have put us on the firing line. International institutions are working to protect the rights that have been increasingly attacked and undermined by the unjust. For ten years now, there has been a major conflict between civil society forces seeking human rights, democratic freedoms and social justice, and those determined to stop them. No matter where, the responses were achieved, but the power of collective action is proven. Looking back, it's time to look ahead. Where the world is today is not what many would have hoped for 10 years ago. Meanwhile, the general conditions for civil society experienced both gains and

losses, but the prevalent conditions are deteriorating. Too many people around the world are being denied rights. Many struggles remain unfulfilled and many campaign leaders for change are lost due to repression or imprisoned. Multilateral institutions and practices are weakened, serious human rights violations, war crimes and crimes against humanity often go unpunished. Any strategy to preserve rights and gain gradual change not only within its borders but internationally is more than welcome. For a long time, Slovenia was the only country in the wider region of Central and Eastern Europe that respected human rights and citizenship. Unfortunately, that changed in March 2020. Under the pretext of government action against COVID, legislation and regulations have been enacted that have a significant impact on freedom of association and expression, while public funding for civil society organizations has been reduced or withheld in some areas without good reason. The year 2020 will be remembered.

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STATE AND SOCIETY: TWO APPROACHES OF SOCIAL ORDER

Nikola Lj. Ilievski, PhD (c)
Libertania - Center for Contemporary Politics - Bitola, North Macedonia
nikolaljilievski@gmail.com

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

Abstract
The paper represents a theoretical journey into the phenomena of state and society, through analysis of two basic approaches of achieving social order. The goal of the paper is to examine both opposite approaches of social order, and their conceptual manifestations in a social context. The research methodology of the paper consists of content analysis and systematization of various theoretical interpretations of these two approaches. The first general approach is the spontaneous approach, which appears in socio-philosophical thought also as bottom-up, grass root, voluntary, natural right, decentralized, individualistic, economic (social), natural, horizontal, liberty etc. The second one is the supramative, opposed to the first one and based on power, *condign* or political power, specifically, also appearing as top-down, political, coercive, positivistic, centralized, collectivistic, artificial, vertical, imposed (planned), etc. The both approaches would be analyzed through philosophical, sociological and political prism, as well as their manifestations in a social context, represented on the both extremes, as stateless society or anarchy, and a total control state or totalitarian state.

Keywords: state, society, social order, liberty, power

INTRODUCTION

The paper represents a theoretical journey into the phenomena of state and society, through an analysis of two basic approaches of achieving social order. The goal of the paper is to examine both opposite approaches of social order, and their conceptual manifestations in a social context. The research methodology of the paper consists of content analysis and systematization of various interpretations of these two approaches.

The first general approach is the liberty approach, which appears in socio-philosophical thought also as bottom-up, grass root, voluntary, natural right, decentralized, individualistic, economic (social), natural, horizontal, spontaneous etc. The second approach, opposed the first one is the one based on power, *condign* or political power, specifically, which could also be named as top-down, coercive, positivistic, centralized, collectivistic, political, artificial, vertical, imposed (planned), etc.

The both approaches would be analyzed through philosophical, sociological, political and economic prism, as well as their manifestations in a social context, represented on the both extremes, as stateless society or anarchy, and a total control state or totalitarian state.

The state as a main subject of the approach, can vary from totalitarian state, which is establishing the supramative approach, in its fullest theoretical manifestation, till stateless society, which enables spontaneous approach on regulating and managing society.

The paper involves thinkers and intellectual representatives such as Aristotle, John Locke, Adam Smith, Jean Jacque Rousseau, Pierre Joseph Proudhon, Frederic Bastiat, Max Weber, Franz Oppenheimer, Alfred Jay Nock, Ludwig von Mises, Karl Popper, Friedrich Hayek, Erwin Laszlo, Murray Rothbard, John Kenneth Galbraith, Ayn Rand, Don Lavoie, Mohammed Bamyeh and other thinkers which have contributed explicitly or implicitly to the foundations of the distinction in the approaches towards social order.

HUMAN NATURE

Before involving in the further discussion on the both approaches regarding the process of developing a social order, a prior simple examination on the nature of human beings, as a main subject in the social order, is needed.

A human being is born and dies alone, however in a meantime he is *acting*, and is part of relations with other human beings and their official or non-official groupings. One of the social conceptions determines it as concrete being of the individual and its (social) existence (Laszlo, 1963) with other

individuals, or within the society, or the social interactions, relations he is developing or appearing in. The action towards establishment of interhuman relations within the social context is pointing to the human being as ***homo agens*** (Mises, 1998).

In its social existence, human beings are acting *rationally* in general, or dominantly, with an aspiration of preserving and upgrading their lives and interests. Adam Smith, almost perfectly described it in *The Wealth of Nations*: "It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest" (Smith, 2018). This statement about its human nature determines it as ***homo economicus***.

Beside its essential clarification as homo economicus, a human has a need to get into interactions with other beings, to act, care and resolve problems within society and be part of different communities. Since "he is not a wolf, nor a God to live alone," (Aristotle, 1999) it needs to *exist socially* and be a ***zoon politikon***.

On the other side a human being is also ***homo ludens*** (Huizinga, 2016) in the sense of Johan Huizinga. Accordingly, human beings have an asspirations to develop and engage into games, on a socially micro and macro level. The most important issue here is the nature of the relations in the game and the potential guarantee of his choice to *exit* the game, when the game is not fitting with his perspective, and the functionality of the game in regards to the wellbeing of the subjects involved in it.

Thus, human life is not guaranteed, and a human needs to keep and upgrade his life, simply to act, with the goal to survive and have a *happy* and/or *fulfilled* life.The preserving and upgrading its life presupposes achieving certain goals, satisfying certain needs and solving certain problems. Almost in all its history, and furthermore in the last 3 centuries, he is facilitating the processes of achieving its goals, satisfying its needs and resolving its problems, within a social framework, interacting with other human beings. The mentioned processes are of great complexity and there is a need of establishing rules and norms of acting, and thus a social system, as a framework that will chanalize and furthermore inspire social interactions, achievement of personal goals, satisfactions of needs and solvings of problems.

According to that, the human being as homo agens, in the sake of being homo economicus, has a substantial need to be zoon politikon, with a purpose to upgrade its life, through utilizing his labor and engaging in interactions, under a certain normative framework.

NEEDS AND PROBLEMS

Franz Oppenheimer, a German social philosopher and a physician, in the beginning of the 20th century, in his work *The State: Its History and Development, Viewed Sociologically*, is upgrading the *Conquest theory of the state*. In the beginning of the book, he establishes two basic means for satisfying human needs. Namely, these are "work and robbery, one's own labor and the forcible appropriation of the labor of others" (Oppenheimer, 1926). *Work* as a method involves labor, free possession and enjoyment of the fruits of it, and voluntary exchange of the fruits. Contrary, robbery, means *involuntary* or *coercively* taking of one's fruit of labor or pushing into exchange under the pressure of coercion.

Murray Rothbard defines coercion narrowly as "the invasive use of physical violence or the threat thereof against someone else's person or (just) property." (Manley, 2014) (Rothbard, 1998). Friedrich Hayek goes further and determines it widely, namely it "occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose." (Manley, 2014) and concludes that "the threat of force or violence is the most important form of coercion… they are not synonymous with coercion, for the threat of physical force is not the only way coercion can be exercised."(Manley, 2014)

Based on the examination of coercion, or the usage of physical force or the threat with using force, Oppenhaimer developed the distinction among the means, and generalized them into *political* means, identified with robbery and coercion, and *economic* means, identified with work and voluntarism.

Frederic Bastiat, in his famous work *That Which is Seen, and that Which Is Not Seen*, is making the crucial difference between two principles, methods and means of human relations, namely that which is *compulsory* and that which is *voluntary*. (Bastiat, 1850) He defines the society as a sum of voluntary and compulsory or coercively human relations.

This could be regarded as the basic distinction and the starting point in the further examination and analysis of the both opposite approaches of developing and/or projecting social order.

HUMAN BEING AND SOCIAL EXISTENCE

The term society is a wide and an abstract concept, around which numerous dilemmas arise in the process of its determination and description, and thus emerges the division among various socio-political and ideological tendencies.

In a wider connotation, the concept of society could be determined as a sum of relations (interactions) among the human beings that are part of it.

Erwin Laszlo, in his work *Individualism, Collectivism & Political Power*, determines the ontological conception of society as a sum of concrete subjects (human beings) and *causal factor of the relations* (sum of social, economic, cultural and other types of relations). (Laszlo, 1963) The concept of human being is explained as a *concrete being*, and the sum of relations it develops or enters - *social existence*. (Laszlo, 1963)

Depending on the causality and the judgement of the relation *human being - social existence*, Laszlo derives two general combinations, which serve as the base for distinction among two, opposite socio-political ideas, which plays a huge role in the process of defining the approaches towards social order.

In the first combination, the concrete being is primar, while the social existence is secondary. The concrete being has a tendency to determine and develop its social existence, and the society is a sum of social existences, deriving from the beings (Mises, 1998) and their social interactions. This combination is called *individualism*. (Laszlo, 1963)

The second one is the one where the *social existence is primary*, while the being is secondary, and the society has a tendency to determine the beings. This combination is called collectivism.

Since these combinations are theoretical settings, it can be concluded that both of them could be true. The society understood as a network of social existence, is a final result of the beings acting. The concept of collectivism could be regarded as a *closed idea*, which does not leave space for exit of the *social determination*, noted in the phrase „the being is a product of society." On the other side, the notion of individualism is *open* (Poper, 1945) and promotes self-defining, individual initiative and supports the creation of "new societies."

Individualism and collectivism are general and initial ideas perceiving the relation of *individual* and *society*, and they are framed in each ideology with a tendency to produce social order. The idea of individualism is manifested in liberalism, individual anarchism, libertarianism and other -isms which posit the individual as a goal, while the collectivism is projected in socialism, collectivist anarchism, nationalism, uniform utopianism, authoritarianism, totalitarianism and all of the -isms which are utilizing the individual as a mean for achieving *higher social goal*. (Karadzov, 2019)

SOCIETY AND POWER

The power is a concept of a crucial meaning for the social sciences and thus the question of social order. Besides its primal determination, society

could be also perceived as a milieu in which the subjects are practicing power, in order to pursue their goals, satisfy their needs as well as solve their problems.

Max Weber, a founding father of the disciple of sociology, in his work *Theory of the Modern State*, qualifies the power as a *possibility* and *capability* to assert one's will (Weber, 2014) on the behavior of others. The one that exercises the power is the *subject of power*, while the one the power is directed to is the *object of power*. John Kenneth Galbraith, popular economist and diplomat, provides one of the most substantial typology of the power, in his masterpiece *Anatomy of the power*, defining three types of power, namely *condign*, *compensatory* and *conditioned* power. (Galbraith, 1985) Condign power is the power of the *stick*, or the power of physical violence or threat with physical violence. Compensatory is the one where the assertion is based on a property compensation that the subject is providing to the object of power, or vice versa. Conditioned power is the *power of the word*, and the assertion in this type is based on *persuasion* on the object of power, delivered by the subject. Worth considering, for the paper's analysis is that the first type of power (condign power) is based on physical force or violence, while the rest are not. Also, these types almost never are manifested as pure as in the theoretical typology, however, they are part of more complex constellations of power.

There are other typologies of power that could be linked to the one of Galbrait, namely the typology of Alfred Jay Nock (and Murray Rothbard), Ayn Rand and the broader thinkers within the tradition of classical liberalism and contemporary libertarianism. Alfred Jay Nock in his famous *Our Enemy, The State* develops a distinction between political power and a broader, or social one. (Jay Nock, 2014) The political power is the one deriving from *coercion* and metaphorically represents the *power over humanity*, while the social power is *the power over nature*. (Rothbard, 2009) In the same conceptual line is the typology of Ayn Rand, appearing in her collection of essays *Capitalism: The Unknown Ideal*, where she is drawing a division line between political and economic power (Rand, 1986), corresponding to the political and social power in Jay Nock's typology.

All these typologies could be summarized in one, in which the first type of power is *based on violence* or use of physical force, against one's self-ownership, and the second type of power that is opposite to the first one, is based on voluntary and consensual relations in an absence of violence. The second one is determined as a negation of the first one, or absence of violence in the power relations. In the case of the second power, violence could be

exclusively legitimate and justified, if it is utilized as a means of a defence of one's self-ownership (self-defence) or as a punishment or restitution for a previous violation.

TOWARDS SOCIAL ORDER

Social order is a complex phenomenon, but simply could be described as a particular social setting in a concrete time. It is a conceptual time cut, or a time freeze, or best described as a *momentum* of the sum of human relations in society as well as their tendencies. It involves a politico-institutional framework which performs a great influence on the particular social momentum and thus on the quality and quantity of human relations. The momentum, or the order is in a certain way a manifestation of the politico-institutional framework. This description or conceptual interpretation of the social order is the *neutral one*, which is not going to single parameters or indications of the one.

Also, a social order determined in a good sense is the one in which a *functional economy* operates, *low crime* level exists, the level of *violence is at a minimum*, the level of *poverty tends to decrease*, and the people represented through all of the individuals in the context, could pursue *individual well-being* without great obstacles. On the contrary a social order opposite to the good one is the one in which all of these parameters are hardly to be achieved.

The main question arises here, namely which politico-institutional setting is more likely to produce a good social order, based on the mentioned parameters. There are mainly two opposite tendencies in the search for the answer of the question. The first tendency is adopting the spontaneous approach on social order, while the second one, the supremative approach on social order.

SPONTANEOUS APPROACH OF SOCIAL ORDER

The spontaneous approach on achieving personal goals, satisfying human needs and solving human problems, has a strongly decentralized character, regarding the initiatives for the goals, needs and problems. This approach introduces a *horizontal society* (Barnett, 2014), or a society emerging *bottom-up*, and based on individual initiatives.

Initial points of these approach could be found in the philosophy of Lao Tzu (Dorn, 2008), 600 BC, and later it was established in the European context of Enlightenment, through John Locke, and his natural rights theory, which claims that the highest values are *life*, *liberty* and *property* (Locke, 1988).

In the 20th century, classical liberalism was revitalized through contemporary libertarianism. In this updated form of liberalism, the central principle is that of *self-ownership* (Kuznicki, 2012), (Long, 2001). Murray Rothbard, one of the most important protagonist of these principles and the wider approach, in his book *For a New Liberty: The Libertarian Manifesto* determines it as an absolute right of each man, which is deriving from his being, to own his body, free from any form of coercion (Rothbard, 1973). It basically means that each human possesses its body, as well as the fruits of its labor and the trades he has engaged into, in a form of *property*. It is sovereign in the actions he takes, since it is not violating other individual sovereignties (Ilievski, 2015), through physical expression of force or any kind of fraud.

The legal foundations of this approach of regulating social affairs is the ***contract***, or the ***agreement*** between the parties of the affairs. In order for the contract to be legitimate and valid, it is needed for all of the concerned parties to *explicitly express their* ***consent*** regarding the relations they are establishing or entering, operationalized legally in a contract. A negative effect of this approach could be that it may not provide an immediate solution to certain types of social problems, which require emergency and social mobilization. However, it can provide long term *sustainable solutions* to these types of problems.

The social manifestation of this approach is the spontaneous order, which involves a multitude of centers (Ilik & Ilievski, 2018) of social or non-political power within a society, regulated by the market. The theoretical extreme of this approach is a stateless society, or an anarchy.

SUPREMATIVE APPROACH OF SOCIAL ORDER

The suppremative approach of social order is based on *political power*, the belief in *social determinism*, and is actualized through a center of power, which regulates the behavior of individuals and executes the regulations. It starts with the idea that human relations, and thus lives, could be and would be better regulated through a single center of power. The impetus of this idea was given in the period in which the intellectuals were underestimating the power of free markets, and proposed that its *imperfections* could be solved with further political interference and central planning. Usually these periods are after an economic crisis, potentially caused by previous government intervention, and unfortunately prolonged with more interference. In such periods, the opinion that free market economy is the reason behind the crisis, was popular among intellectuals (Hayek, 1949), both among social and natural science.

The suppremative approach generates, as Randy E. Barnet notes, a vertical (Barnett, 2014), or hierarchically structured, *top-down* society. This approach follows a logic, that the social relations and their effects are better regulated through one center of power. A focal point of it could be a *common* or a *social good* (Rousseau, 1762) which in Rousseau's and Plato's tradition, is not simply the *will of the majority*, but it also has an objective existence (Osterfeld, 1986). In correspondence, the supremative approach develops a tendency for *conscious* creation of order, or planned order from a political center, and that tendency is operationalized through the agency of the social order, identified in the ***state*** or political authority, or political system or the government. The state is the main subject and leading actor in the social processes and it is planning and establishing the order on a top-bottom scale. The power and the action of the state are justified with the concepts of sovereignty and legitimacy. The legal base of this approach is the ***command***, contrary to the spontaneous one, of which is the *contract.* The command, manifested to various types of legal acts, originates from the central political authority, or the state, and is directed to other subjects of the social processes. It does not necessarily dictate with the subjects' consent, and is also unconditional and absolute. The process of articulating political power involves central planning of social relations through *norming*, *planning & executing* them, and *punishing* behavior out of the normed one. The main actor of the approach is ***the state***, in various forms it can appear. It is defined as a "human community which successfully claims a legitimate monopoly of physical force" (Weber, 2014).

Don Lavoie distinguishes two main problems the supramative approach is facing, namely, the *knowledge problem* or the *economic problem*, and the *totalitarian* or the *moral problem* (Don Lavoie, 2016). The knowledge problem is related to the lack of efficient economy and generating social intelligence, while the totalitarian problem is related to the various direct violations of the principle of self-ownership. The individuals have limited place for action and participation in the social order.

The socio-philosophical traditions that are more or less adopting this approach could be found in the thought of Plato, as well in the period of Enlightenment in the works of Jean Jacque Rousseau and the utopist and socialist Sen Simon. Also, Karl Marx and Friedrich Engels are probably the greatest philosophers of this approach, and their ideas were operationalized in the 20th century, in a lot of places around the world. Scientific progress and technological innovations served as a base for the idea that humans can control the broader social processes and the illusion that can balance their negative

effects. The greatest manifestations could be identified with the existence of Nazi Germany and Soviet Union. In German and Soviet society, their states succeed, temporarily, to establish a top-down approach for satisfying human needs and solving social problems. Of course, these regimes, crucial for the approach, faced the both problems Don Lavoi was writing about and they collapsed after a certain time. The citizens of the both, primarily, and a huge number of foreigners, felt the consequences of the regimes, and thus, the effects of realization of a supremative approach for social order.

In contemporary social context, the supremative approach is manifested through a *softer* (*female*) form (as opposed to the male or Orwelian totalitarianism) (Goldberg, 2016) developed through a fiscal framework. It is operationalized in overwhelming *welfare states* and *nanny states*, with a strong tendency to control the society, plan the economy and redistribute the wealth, through a top-down and centralized approach. Also, there is a *harder* (*male*) form of this approach, which can be identified with conservative, military authoritarian states.

ON SPONTANEOUS ORDER

The spontaneous order is a product of the actualization of the idea of individualism and adoption of the spontaneous approach for initiating social order. It is based on free and sovereign individuals (Ilievski, 2015), which are acting in accordance to their goals (Smith, 2008) and are engaging in social relations on a consensual basis. The legitimate type of power in the spontaneous order is the social, according to Nock's typology, or economic, in Rand's typology, or non-condign (compensatory or conditioned) power, in Galbraith's. Guarantee of this order is the right to exit (Hirschman, 2011) from any given social relation. The spontaneous order originates from the interactions of the individuals, it represents something to which everyone contributes, from which everyone benefits, and everyone normally takes for granted, but people rarely understand it (Tao, 2012).

A lot of authors have worked, implicitly or explicitly, on the phenomenon of spontaneous order. The most important of them are John Lock, Adam Smith, David Hume, Pierre Joseph Proudhon, Ludwig von Mises, Friedrich von Hayek, Don Lavoe, Hans Herman Hoppe, etc.

Adam Smith, almost brilliantly described the functioning of the market economy with its *invisible hand*. He proclaimed that liberating the individuals to pursue their interests within the market will result in an economic order marked with increased wealth and benefits for everyone who is lucky enough to be part of it (Smith, 2018). He called this economic order a *market order*.

Pierre Joseph Proudhon has formulated the order in his phrase "Liberty is the mother of order, not its daughter," (Proudhon, 1863) which means that sustainable and stable social order could be achieved through granting freedom to individuals, and it would arise as a product of their voluntary relations.

Ludwig von Mises, one of the most important thinkers and inspirations among libertarian academicians and activists, notes that the actions of the people are motive and goal driven. In that sense, the analysis of economic and broader social processes should be based on general theory of choice and motives. Accordingly, Mises notes that economics is not enough as a science, in order to investigate the action of humans, and there is a need for more general and universal science - praxeology, a science of human action. (Smith, 2008)

Fridrich Hayek have named it *catallaxy*, deriving from the Greek world καταλλαξία, with its literally meaning *to exchange*. Also, it denotes each theory that gives an answer to the question how the markets regulate the prices and the exchanges in a society. It is basically the science of exchange (Mises, 1998). Furthermore Hayek, inspired by Adam Ferguson (Liberty Fund), described the order as a result of human actions, rather than human design and called it a *polycentric order* (Hayek, 1960), since there are multiple centers of power within the order (Ilik & Ilievski, 2018).

Mohammed Bamyeh, an author of the book *Anarchy as Order*, describes it as an *unimposed order* (Bamyeh, 2010), which is a voluntary order, based on *practical authorities*. The practical authorities are temporal, as opposed to the political ones, and are raised through human action, as a part of specific social relations.

Hans Hermann Hoppe, in his book *Democracy: The God that Failed*, is writing about the same phenomenon in society, or in his words - *natural order* (Hoppe, 2001), which is an outcome of the natural (consensual) relations among individuals.

All of these conceptions of order are practically very similar, if not identical, and all of them are perceiving a social result, or a social momentum. That momentum is inspired by individualistic ideas, initiated by a spontaneous approach, through respect of the principle of self-ownership, voluntary or consensual social relations and existence of multiple centers of unimposed, non-political, natural or practical authorities or power, which are acting within the order, are performing particular influence on it, but lack the capacity to create it arbitrary.

The phenomenon of spontaneous order, beside its narrow meaning in economics, can be found in the broader social processes, but also in the

biological processes with living organisms. In all of these contexts, the individuals are correspondingly acting, even though there is no central authority to regulate and manage the processes. Examples of this phenomenon in society are the development and sustainability of languages across the world, the founding of Anglo-Saxon law tradition, but also in the natural world, such as the bee communities, etc. (Strogatz, 2004)

CONCLUSION: STATE AND SOCIETY

Both approaches that are the subject of the paper are producing a concrete type of order. Namely, the spontaneous approach stimulates spontaneous, economic, natural, horizontal, polycentric or unimposed order, while the supramative approach stimulates conscious, political, artificial, vertical, monocentric or imposed order. Both types of order could be graphically expressed on a vertical axis, on which *the most* spontaneous order is located on the top up point, while *the most* supramative order is positioned on the top down point.

The most important specific indicator pointing to the distinction among these two types of order is ***the state***, particularly its *existence (size)*, or the passive perspective on the state, and its *attitude*, or its active perspective. Theoretically, on the top down point on the axis is located a *totalitarian state*, which tends to establish totally supramative order, while on the top up point is located a spontaneous society, or society without a political center or a state, which is basically a stateless society, or an anarchy. In the contemporary social contexts around the world, the extremes are not present, however, the order can vary and can be positioned on the axis, depending on the *existence (size)*, and the *attitude* of the state.

The axis can be generally divided in 5 conditions of society, 4 of them with a particular state present in their context. Up on the top appears the total state, with its overwhelming size and strongly violent attitude. Above the totalitarian is located the authoritarian type of state, which has a smaller size and shows less violent attitude than the totalitarian, but greater than the other types of state, on the middle and top of the axis. Also, the authoritarian state can perform politics that are associated with left or right wing. On the middle point on the axis, can be located a welfare, or a nanny state, which practices authorities in the areas of welfare, educational and health policies. On the right side, next to the welfare state, can be located the strongly bureaucratized nation-state. Above the welfare state can be located the *night-watchman state* which performs duties strongly limited to the protection of human life, freedom and property, as well as guaranteeing the rule of law in society. On

the top of the axis is a stateless society, on which the services that are usually provided by the state, are privately provided by agencies or companies, which are market based, and are operating within a system of competition.

The states and their governments in the contemporary international and national context are appearing somewhere between the extremes on the axis. Their specific spot on the axis can be located through an analysis of specific indicators such as the size and attitude they are showing towards their citizens and the relations they are part of.

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REGIONAL COOPERATION IMPORTANT FACTOR FOR WESTERN BALKAN INTEGRATION

Zoran Vasileski, PhD (c)
zorvas74@gmail.com

Abstract
The development of regional cooperation is in the interest of any country, especially the countries of the Western Balkans. It is a key factor for the integration of countries to establish economic security, security and political stability. That is why the countries of the Western Balkans have entered the process of expanding and strengthening cross-border cooperation with numerous projects funded by the European Union. This is in order to create a broader consensus for the purposes of cooperation and integration, especially in the political field, but also in the process of approaching the European Union. In the last few years, there is a new phase of regional cooperation, especially in the field of defense and security, in which the states themselves initiate initiatives and activities. In fact, regional cooperation should create conditions for the issue of territorial integrity within the security borders to lose its essential importance, and to focus on integration by increasing mutual trust, cross-border cooperation and meetings, joint projects in various fields. There is no single way to regionalism, but different mechanisms are developing, which depend on a number of factors.
Keywords:regional cooperation, integration, security, stability.

INTRODUCTION

Regional cooperation policy is a whole, a strategy that aims to affect economic growth, improve the quality of people and balanced regional development. Regional policy is one of the oldest common policies of the European Union and the main investment policy of the EU, which contributes to increasing security, creating new jobs, improving the quality of life of citizens and increasing overall economic development as in the member states. so does the EU as a whole. The aim of regional policy is to reduce economic and social disparities between member states and is thus an expression of solidarity, as support is directed to less developed regions and EU member states in order to enhance security, the social, economic and territorial

cohesion of the Union. The two main goals of the EU cohesion policy in the period 2014-2020 were the investments for growth and jobs and the European territorial cooperation which was realized and emphasized through transnational, cross-border and interregional cooperation.

Cross-border cooperation programs, which are an instrument of the European Union, significantly contribute to the promotion of security, socio-economic, cultural and historical potentials of the border areas of neighboring countries. These programs are financial support for cooperation in the border territories of neighboring countries - cross-border cooperation or cooperation of parts or entire countries - transnational cooperation in order to enhance the socio-economic, cultural and historical potential of those areas.[163]

Otherwise, the basic idea of the EU is to ensure the most balanced development within its borders of each of the countries as a separate region and on the principle of solidarity to pay special attention to the less developed regions. This model is the basis where by respecting all the specifics of the member states (economic, social, cultural, etc.) and priorities, for each country to regulate the issue of regional policy and regional development.[164]

The aim is to ensure the development of a system of good governance at all levels through the implementation of regional policy, development of local self-government, inter-municipal, regional, cross-border as well as all other forms of cooperation and achieving greater cohesion within the EU.

The concept of "new regionalism" in the Western Balkans arrived a little later, due to the unpleasant events of the 1990s. Initially, it was seen as a kind of post-conflict security and peace strategy, which was quickly offset by a wave of regional initiatives such as the Stability Pact and the South East European Cooperation Process (SEECP) format, which includes a group of non-Western countries. Balkans, and it continues to this day.

However, full-fledged regional co-operation in the Western Balkans became possible after the Agreement on Regional Representation of Kosovo in 2012, as well as after the First Agreement on the principles governing the normalization of relations between Serbia and Kosovo in 2013, which enabled the launch of the Berlin Process in 2014. year, which in turn shaped regional cooperation in the format of the "six from the Western Balkans".

Regional co-operation has therefore become a tool for assessing the countries of the Western Balkans on their path to EU integration, but also for

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[164] Stojkovic, D. & Mratinkovic, Dobrila Sudimac. 2019. „ Regional policy and cross border cooperation with environmental countries“. II Internacional scientific conference „ Regional development and cross border cooperation“. Pirot.

regional integration between neighboring countries. All regional organizations and initiatives aim to align with EU accession programs and policies, which treat regional co-operation as one of the key benchmarks for the Western Balkans in their EU integration process. However, the numerous regional initiatives that have been established in the Western Balkans so far and which continue to emerge in recent years and are generally insufficiently implemented, due to lack of capacity and therefore bring very limited changes in regional cooperation.

The essence of the regional development of each country, especially in the Western Balkans, is perceived through the definition of goals, priorities and principles, as well as through the prism of the strategic, legal and institutional framework in each of the indicated areas.

The countries of the Western Balkans, which are candidates for EU membership, have laws that regulate regional development and certain strategic documents. It tends for each country to harmonize and approximate the national and strategic goals of the EU through national regulations.

REGIONAL SECURITY COOPERATION INITIATIVES

An important cooperation mechanism is the establishment of the Joint Contact Centers (JCCs) to strengthen cross-border cooperation, which contribute to the fight against cross-border crime and terrorism, through the rapid exchange of information between border and customs agencies. Although several such centers have been established between different neighboring countries both within the EU and in the Western Balkans region, and the exchange of information between their members has significantly increased, the need remains to initiate such exchange of information between neighboring countries. As a legal regulation that would be applied for such an ambitious initiative is the Convention on Police Cooperation of Southeast Europe, which has already been presented and generally accepted. An initiative is needed to prepare an Implementation Cooperation Agreement for the establishment and operation of Joint Contact Centers. By concluding such an agreement, the conditions for the application of the relevant articles of the Convention would be specified, legal certainty in data exchange processes would be strengthened and the current cooperation that is already being implemented between the established contact centers would be improved. More importantly, the implementation of such a legal act would encourage the establishment of joint centers between neighboring countries, which as a mechanism for cooperation can have a significant positive impact on the overall effectiveness of operational cooperation.

An ongoing initiative related to the management of migration flows is the implementation of the EU Asylum and Migration Pact.[165] The document has been adopted by the European Commission to some extent and refers to the countries of our region.

"In this regard, we asked the International Center for Migration Policy Development to analyze the Pact in terms of its impact on our countries. I believe that the joint action of "third" countries as they "like" to call us will be essential for ourselves, especially if we want to build a common position on all issues related to migration management, including return and readmission issues.[166] (Oliver Spasovski, Minister of Interior).

THE "MINI SCHENGHEN" INITIATIVE

In October 2019, the leaders of Northern Macedonia, Serbia and Albania in a parallel process launched the "Mini Schengen" initiative, with the aim of free movement of people, goods, services and capital in the Western Balkans. At first, Kosovo did not agree to be part of the Mini Schengen, as did Montenegro and BiH.

An additional meeting was held on December 21, 2019 in Tirana, Albania, to discuss the achievement of "four freedoms", including the achievement of the framework agreement on the state of civil emergency, known as the Durres Protocol.[167]

But after September 4, 2020, after the Washington summit, Kosovo's views changed and it agreed to be part of the initiative. With US support, the initiative is gaining momentum, despite the EU's opposition to it.[168]

The Multi-Annual Regional Economic Area Action Plan (PAP REP) was developed at the request of the Prime Ministers of the Western Balkan countries for a "common approach to promoting economic cooperation in the Western Balkans" within the framework of the Berlin Process.

The initiative that developed after the so-called "Mini Schengen is the Common Regional Market (CAP) at the Berlin Process Summit in Sofia in November 2020, which would address similar issues, primarily those related to the 'four freedoms with the ultimate goal of creating a regional market based on the EU'. rules and procedures by bringing the Western Balkans closer to the single European market. All countries in the Western Balkans share the

[165] https://mvr.gov.mk/ vesti/ 16226/ visting 23.08.2021
[166] Speech by the minister od interior Oliver Spasovski, source mol.
[167] https:// vlada.mk/node/19902/. Government of RSM „ Press conference of the leaders of the WB in Tirana, December 26.2019“
[168] Regional cooperations in the WB. BPRG.2021.s.6

ambition to join and join the EU as well as readiness for regional cooperation, but due to bilateral disputes and unresolved conflicts lead to significant mistrust in the region or a source of instability, which would undermine further cooperation in regional initiatives. Therefore, the Western Balkans will have to work on many fronts, including resolving bilateral issues and improving relations as a key precondition for progress in regional co-operation in the region.

In addition, work needs to be done to improve the capacity to implement co-operation, and regional co-operation must have a higher place on the political agenda of all governments in the Western Balkans. Recommendations in achieving regional cooperation of the Western Balkan countries would be:

- coordination and support of a common regional agenda and avoidance of unilateral processes;
- setting priorities in resolving bilateral disputes between countries, as a precondition for successful and enhanced regional cooperation; and
- increasing the institutional capacity building of regional institutions and organizations.

The governments of the Western Balkan countries should work on identifying key areas, mechanisms and places for establishing regional cooperation that would be implemented and would bring significant changes for the citizens of all countries.

The following steps have been taken so far within the "Mini Schengen":

- Memorandum for free movement of people only with ID card (LC) and simplification of procedures for issuing work permits for all citizens of the Western Balkans;
- Border controls for phyto-sanitary and veterinary controls operate 24 hours,
- Agreement between the Customs Administrations of the Republic of Northern Macedonia, the Republic of Serbia and the Republic of Albania for the system are in one place at one border crossing (BCP) in order to become a system of continuous operation - BCP without stopping.

The countries of the Western Balkans within the Mini Schengen should work more on the reconstruction of programs, especially in the field of agriculture, which will strengthen the regional markets, in order to improve the business environment, quality, competition. A burning problem is solving the problem of shortage of skilled labor, which goes to European countries. Extreme attention should be paid to human potential in the Western Balkans for proper economic integration.

OPEN BALKANS - NEW NAME AND NEW FORM FOR REGIONAL COOPERATION

The United States strongly supports the continued efforts of the Western Balkans to deepen and comprehensively strengthen regional economic integration, in line with EU rules and standards. Asked about the US position on the Open Balkans Initiative, accepted by Albania, Serbia and Northern Macedonia and viewed with skepticism by other countries such as Kosovo, Montenegro and BiH, the US State Department encouraged leaders in the region to "yes. "they try to find opportunities to reduce trade barriers, increase economic competitiveness and build integrated, dynamic economies at the service of their citizens."[169]

According to the President of Serbia Aleksandar Vuќiќ, this is the first time that someone raises something that is good for the countries in the region and therefore the Open Balkans Summit in Skopje is historic, because it is a great opportunity, hope, but also a responsibility for the countries to create policy. and another future, not waiting for anything to fall from the sky, for anyone to bring a gift that would be paid more than its value. "We do not have an easy road ahead of us, these are fantastic ideas with a great vision, we have to work hard, we have to convince our people to be diligent and the results to be delivered on time."[170]

The Prime Minister of RSM Zoran Zaev believes that Skopje has opened new perspectives for countries, peoples, economies and societies. "The Balkans have been surrounded by walls for a long time. Instead of walls, today we built new bridges. The Open Balkans Initiative is a platform that the region needs. The Macedonian people, the Albanian and Serbian people have the same path in front of them, we have the same vision and the same values. "These are European values. We are following the same path together."[171]

Thus, three documents were signed, which enable the facilitation of imports and exports, the movement of goods between the three countries, free access to jobs and a joint fight against natural disasters. The goal is for the three countries to become members of the EU, to participate in the common European market, to have no borders for people, goods, capital, services.

Regarding the Open Balkans Initiative, EF Professor in Belgrade Ljubodrag Savic says it is good, but believes that there is nothing new outside the Mini Schengen regional cooperation. "With the three memorandums

[169] US State Department for Top Channel - source Nova TV – „The US supports the Open Balkans in line with EU rules and standards“. 13.08.2021
[170] https://aa.com.tr./mk visting 26.08.2021
[171] The same

signed in Skopje, they probably wanted to reaffirm the previous agreements, and elections were also held soon. "When the initiative was signed, the fear in Serbia was that it would be flooded with labor from Albania, but that did not happen."[172]

At least five things can be concluded from the conference of Rama, Vućі и and Zaev. First of all, that the Balkan countries are tired of waiting, that everyone enters the cooperation with their own interests, that the question is How long can Macedonia wait to join the EU ?, that comparisons are made with the Visegrad Group and finally what does Europe think about this cooperation? ?

Perhaps a sufficient fact for this is that just a few days before the Open Balkans Gathering in Skopje, a conference of the NATO Defense College Foundation was held in Rome, where it was very clearly stated that the wrong policies of the EU and the US are the biggest culprits for destabilizing The Balkans.

It is a fact that the Open Balkans is by no means an alternative to the EU, but it is interesting how European officials and leaders of the Open Balkans initiative will react to the announced departure of the borders from January 1, 2023, which is still a security challenge in terms of migrant crisis, drug trafficking and human trafficking.

It is obvious that the initiative was launched in order to fill the space while waiting for the EU entry of the Western Balkan countries. If the EU remains indifferent on this issue, it might be a big geopolitical mistake for it.

CONCLUSION

The common regional agenda of the Western Balkan countries is part of the process of developing regional cooperation and stems from the commitment undertaken by the three countries at the EU Western Balkans summits in Zagreb and Thessaloniki. Regional cooperation is a special requirement of the Stabilization and Association Agreement. Although the communication and cooperation in the Western Balkans have been facilitated in recent years, there have been no great results so far. The level of rapprochement with the EU has not been raised, ie the social, political and economic environment has not improved. Above all, there are partial results. The main problem is the settlement of bilateral disputes, but also the adjustment of regional policy with the framework provided by the EU, ie the

[172] https:// danas.rs/ekonomija/ Ljubomir Savic statement. Visting 25.08.2021

faster adjustment of strategic documents at all levels to achieve the goals of European policy.

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2021 - AND BEYOND- NEW CHALLENGES OF THE STATES AND SOCIETIES

Zoran Ilieski, Msc. in Social sciences
Faculty of Law, University of "St. Kliment Ohridski" – Bitola
zoranilieski@hotmail.com

Mladen Karadjoski, Full Professor
Faculty of Law, University of "St. Kliment Ohridski" – Bitola
mladen.karadzoski@uklo.edu.mk

Abstract
The COVID-19 pandemic has changed the world, and its effects will last. There are numerous factors that government leaders should keep in mind as they prepare for the next normal. In the past thirteen months governments have spent much drastic measures to adapt to extraordinary circumstances. This paper will consider government behaviors referred between public health and fundamental democratic principles, exploring why some democracies were willing to constrain individual freedoms and concentrate power more than others during the pandemic's first wave. The main methods which will be used in this paper are the descriptive and comparative methods. The main conclusions which will be drawn from the paper will relate to the answer of the question: did the new establish practices of governments will interfere the citizen freedoms and democratic principles?

Keywords: emergency, public, health, policies, COVID 19, democracy

INTRODUCTION

While the fight against the COVID-19 pandemic is not yet won, with a vaccine insight, there is at least a faint light at the end of the tunnel - along with the hope that another train isn't heading our way. The next normal arrives, the new trends that will define actions not just for a 2021 but beyond. But let's observe several aspects that new normal have effect on democracy, freedom, economy and employment, did the states have been prepared for emergency response to those impacts aiming to save own citizens and society?

Mandatory lockdowns brought restrictions on personal freedoms. Many people understood the temporary need for these measures, consistent with states' duty to protect people's lives, but as they entailed additional constraints on civic space, they made it harder to scrutinize decision-makers and hold them accountable.

Democracy and freedom mirrored in civic are needed now more than ever, the citizens represented by their Civil Society Organizations (CSO's) can play proper role in pandemic response and scrutinizing decisions taken in response to the crisis, help ensure the lessons are learned and become equal partners in post-pandemic reconstruction. In the immediate period of virus response, measures to protect public health should respect human rights. The challenge censorship, restrictions on access to information and infringements of personal privacy, and expose overreach by governments, such as illicit surveillance. The restriction measures can't disable citizens to advocate for people's right and to express their democratic dissent. We need to demand that all emergency measures stand the test of proportionality and necessity, in line with international law and the principles enshrined in the Universal Declaration of Human Rights, and are withdrawn as soon as possible.

Economic activity slowed down, hurting the most vulnerable people and increasing demand for our essential services, but also constraining our resource bases. Lockdowns interrupted planned programmes, demanding urgent negotiation with funders and calling into question the resilience of many civil society organisations (CSOs). CSOs needed to find new ways of supporting their staff and looking after their physical and mental health.

Despite the protections enshrined in international law and national constitutions, people were already being excluded on the basis of their identities.

Overreach in the emergency powers and restrictions introduced included censorship, limitations on access to information and violations of the right to privacy, and threats, arrests and detentions of civil society activists, journalists, frontline workers and other concerned people who disclosed information about the pandemic, questioned their government's response, or exposed failings. In multiple cases, security forces used violence against people deemed to have violated lockdowns, while for human rights defenders in detention, the risks of infection were alarming.

Lockdown measures halted much economic activity, casting many more people into precarious living conditions. People lost their jobs or were furloughed, had to take pay cuts or saw their small enterprises, built up through years of striving and saving, shuttered.

The virus laid bare the fact that people our society's most rely on – medical personnel, emergency responders, transport staff, people who sell and deliver food – are among the least rewarded, and many routinely experience lives of economic hardship and struggle. In contrast, the wealthiest had little to contribute to tackling the crisis.

While it was true that anyone could catch the virus, those most at risk of infection and most likely to be impacted on by it were impoverished and excluded people. People already living in economic hardship were vulnerable because their work most exposed them to danger, because they had least access to medical services and because their living circumstances made physical distancing and access to decent sanitation hardest. Civil society's role was more vital than ever. CSOs, always on the frontline of crisis response, provided healthcare, food, shelter and other essentials to those in need. The kind of solidarity that civil society nurtures and mobilizes, from the local to the global levels, proved critical in getting people through the crisis. Societies saw an overwhelming voluntary response as people came forward to help their neighbors, sustain their communities and reinforce the frontline.

As many people became isolated, they came to appreciate the value of human interaction, community and solidarity, within and across borders: fundamental principles that animate civil society. CSO's also worked to model responses to the crisis that supported staff and families and upheld employment rights, including by developing a social security protocol for civil society workers. Civil society continued to work to hold governments to account, often in difficult conditions, asking probing questions about the quality of response, highlighting failings, insisting that rights be respected and any restriction of freedoms will be temporary.

The world will emerge changed by the virus, but it is up to us to try to make sure it changes for good. There should be no attempt to return to the pre-pandemic world marred by the profound problems that the crisis exposed and deepened, and that made its impacts so much worse.

RESPECT CIVIC RIGHTS AND DEMOCRATIC FREEDOMS

Civic rights and democratic freedoms are needed now more than ever. In the immediate period of virus response, measures to protect public health should respect human rights. We need to challenge censorship, restrictions on access to information and infringements of personal privacy, and expose overreach by governments, such as illicit surveillance. We need to demand that all emergency measures stand the test of proportionality and necessity, in line with international law and the principles enshrined in the Universal

Declaration of Human Rights, and are withdrawn as soon as possible. Looking ahead, we will need to promote new strategies to combat disinformation and new models of inclusive and accountable leadership.[173] Civil society will keep pushing for open civic space, and will urge governments to adopt people-centered and partnership approaches to reconstruction that satisfy the demand for positive change.

RETHINK ECONOMIES

Now is the time to rethink how economies are structured. Any attempts to reassert harsh austerity policies or priorities the needs of big business in recovery must be avoided, as the impacts would fall disproportionately on those who have already suffered the most. Rebalancing power and building solidarity between employers and workers, creditors and debtors, and property owners and tenants will be key.[174] State provision of public goods and greater democratic oversight of essential services can help ensure these best serve recoveries, along with intervention to regulate the prices of essentials and prevent profiteering and illicit financial speculation.

Many workers deemed essential during the pandemic-such as those in eldercare, supermarkets, and distribution warehouses are unable to make ends meet even in good times. And during the COVID-19 crisis the threat of serious illness has been added to low pay. Employers have required people to report to work in meat-packing plants and restaurants at grave risk to themselves and their families; their only recourse is to walk away from their jobs, risking their livelihoods.[175]

COVID is much more than an economic crisis, with deep social and human costs and consequences. In order to understand and address the COVID crisis and any future crises consequent upon COVID-like events, economists will be required to re-draw the disciplinary boundaries that conventionally demarcate the discipline of economics from other scientific disciplines.

THE IMPACT OF COVID-19 ON HUMAN RIGHTS

The COVID-19 pandemic came fast and hit hard. After the virus spread in China in early 2020, it did not take long until Italy, as the first European country, had to deal with a strong rise in daily SARS-CoV-2 infections. When the situation got out of control, Italy's Prime Minister Giuseppe Conte

[173] Civicus, State of civil society report 2020, 15
[174] Ibid, 16
[175] https://www.imf.org/external/pubs/ft/fandd/2021/03/rethinking-economics-by-samuel-bowles-and-wendy-carlin.htm

proclaimed a nation-wide lockdown. Most European countries followed suit, and in mid-May 2020, most people found themselves in a country with closed borders, closed schools and businesses, and restricted freedom of movement.

In democracies, the pandemic puts governments in a difficult position. High uncertainty caused by COVID-19 pushes them towards adopting measures that, during normal times, contradict fundamental democratic principles. Decision-makers are confronted with the dilemma of weighting public health goals against democratic norms, rights and freedoms (Zwitter 2012). This trade-off plays out at two levels: First, the need for quick reaction creates strong incentives to concentrate power on the national executive and thus to weaken other institutions. Second, the policies to counter the outbreak of COVID-19 are extraordinary themselves, as they aim at "social distancing" and thus restrict fundamental rights such as the freedom of movement or assembly.

From a legal perspective, governments are entitled in times of crises to take extraordinary measures to protect public interests, even if those measures restrict fundamental rights, but only if specific conditions are met, and if the measures are proportional, limited in time and non-discriminatory (e.g. ICCPR, art. 12 (3);).[176] In reality, however, evaluations of what is proportional can vary over countries, governments and citizens.

There are two main types of measures against COVID-19 that are in conflict with democratic principles.

- First**,** we consider all measures that restrict individual freedom to slow down the spread of the virus by reducing the physical contact between individuals, but are in conflict with fundamental civil and political rights such as freedom of movement (ICCPR Article 12, Art. 2 of Protocol 4 to the ECHR) or freedom of assembly (ICCPR Article 21, ECHR in Art. 11). Such measures contain the restrictions of international or domestic travelling, the ban of public gatherings or strict "stay-at-home" policies.
- Second, we look at power concentration, i.e. the transfer of legislative powers from parliament to the government in order to strengthen the executive's ability to effectively implement the measures to fight COVID-19. Such measures to overcome restraints during periods of national distress are at odds with the principle of separation of powers that apply in normal times. Additionally, in some countries, the power of the executive has been further strengthened by a control of the public

[176] https://www.tandfonline.com/doi/full/10.1080/01402382.2021.1900669

sphere and thus, by weakening the fourth pillar of democracy – the media. The introduction of so-called fake news laws, restricting media coverage on COVID-19 and the governmental responses to it, contradicts the fundamental right of freedom of expression and information (ICCPR Article 19, ECHR Art. 10).

The variation between democracies is not simply the result of pandemic-related factors such as the epidemiological situation of a country or its health care capacity, but the strength of democratic institutions influences how democracies handle the democratic trade-off. The degree to which democratic principles are protected and respected in a country during "normal" times explains the government's willingness to constrain the freedom of individuals and to limit institutional cheques and balances when confronted with COVID-19.

We were not equal before the pandemic, and we have not been equal in the face of it. Those who were poor before it has become poorer; those who were disadvantaged now face even greater disadvantages.

The case of older people is emblematic. In many countries they have paid the highest price, not only because of the health vulnerabilities necessarily associated with age, but also because of the social settings in which many of them live. Those living independently have also suffered because of the lockdown measures that have further isolated them from their families and the rest of the community.

The pandemic has also shone a light on the structural problems affecting health systems in many countries. Years of austerity measures have led to a clear erosion of public health infrastructures, personnel and means.

The pandemic has also exposed the ubiquity of gender inequality. This is evident in the workplace, where deep-rooted societal attitudes keep women in a subordinate role, the persistence of violence against women and the increasing attempts to limit women's sexual and reproductive health and rights, which are the result of ingrained patterns of inequalities between women and men. Cases of domestic violence have increased exponentially during the lockdowns imposed in many European countries.

Another field in which the pandemic has shown that we are still not all equal is access to the Internet. This is particularly worrying at a time when school closures in some countries have compelled millions of students to rely on the Internet to study and build the foundations of their future. A recent UN report estimates that two thirds of school-age children worldwide have no

internet at home. The Executive Director of UNICEF has talked about it being a "digital canyon" rather than a digital divide.[177]

THE IMPORTANCE OF THE CIVIL SOCIETY DURING THE PANDEMIC

In often difficult conditions and even as civic space was being further tightened by new measures, civil society stepped up, filling gaps left by state and market failures, providing help to people most in need and defending rights. Civil society organisations (CSOs) quickly responded with vital support, distributing cash, food, medicines and sanitary supplies, sharing accurate information on the virus and providing healthcare and psychological services. When gender-based violence soared under lockdown conditions, CSOs set up helplines, worked to provide quarantine-compliant safe spaces and championed access to the legal system. Multiple new voluntary efforts formed to mobilize and share community and neighborhood level mutual support. CSOs worked to ensure that support programmes were administered fairly and reached the most excluded people, and strived to push back against excessive state restrictions, expose abuses and challenge impunity.[178] Civil society was at the forefront of developing and promoting ideas for a more just and sustainable post-pandemic world.

Around the world, civil society proved its value and made a difference. People's experience of the pandemic would have been much worse without this civil society response. The lesson must be that an enabled civil society is a vital part of the social fabric and a source of resilience in times of crisis, and should be nurtured rather than repressed.

HOW TO MOVE FORWARD

States are generally obliged to take appropriate measures to prevent spread of the pandemic. All rights may be limited except the right of life (according to the ECHR), the right to prevent torture and slavery, the right of freedom of expression and the right to freedom of religion.[179]

Defending and promoting human rights is about the big and the small actions we all take every day, however. If we want society to function more in

[177] https://www.coe.int/en/web/commissioner/news-2020/-/asset_publisher/Arb4fRK3o8Cf/content/the-impact-of-covid-19-on-human-rights-and-how-to-move-forward?_101_INSTANCE_Arb4fRK3o8Cf_viewMode=view/
[178] Civicus, 2021 State of Civil Society Report, 6
[179] https://www.osce.org/files/f/documents/1/9/480413.pdf

line with human rights standards and principles, we must all make an extra effort and move out of our comfort zones.

For a start, the human rights community – including international organisations - should take a long hard look at itself. It is partly our fault if many people have lost interest in, or become dissatisfied with, human rights. We have not been sufficiently effective in ensuring that everybody understands why human rights are important for all. For instance, violations of certain human rights, especially some economic and social rights, should probably be given more prominence on our agenda. We must become more inclusive in the way we defend human rights. We deliver a public service in the interest of society, but we do not own that service. We talk about, for and sometimes with people who have suffered human rights violations. But we rarely empower them to speak for themselves. They should take part in decision-making processes as much as possible. We should learn to listen more and leave them space to tell their stories and shape the policies and laws that concern them.

Lawyers, scholars, intellectuals and concerned citizens must enter the arena of public debate on human rights and engage with society at large to overcome misrepresentations and dispel prejudice.

Civil society should be enabled not only as a vital provider of services, but in all its legitimate roles that were needed under the pandemic, including to help people participate in decision-making and advance alternatives, and to scrutinize choices made by states.

For change to come, two things must occur.

- First, civic freedoms, including the right to peaceful assembly, must be defended and respected, so that people can mobilize in numbers to demand change. Looking back even further, all major historical transformations, including the right of women to vote, decolonization and self-determination, racial equality laws and declarations of climate emergency, only came about after mass mobilizations urged them to happen. And yet the very states in which those changes were won are now delegitimizing and suppressing protests.

  The more democratic states need to set examples by holding a strongly permissive line on peaceful assembly domestically and urging other countries to follow suit in their bilateral and multilateral diplomacy. Temporary restrictions imposed under the pandemic must be reversed at the earliest opportunities. The international system needs to do more to uphold norms on the right to protest. Big business must be called to account and hit in the pocket wherever they side with authoritarian leaders over people's movements. People need to be brave to protest,

but they should not have to do so at the risk of being thrown behind bars, or facing brutal, even lethal, violence.

- Second, more numbers than ever are needed so that protests become overwhelming. People need to get out and keep protesting a masse. The lesson of the past 10 years is that no change comes without being demanded, and that huge numbers can make a difference. Once a pandemic that made it so much harder to mobilize in crowds is over, let us hope for a reaction that is an outpouring of people joining together: joyfully, to celebrate that to be human is to be social, and righteously, to insist that the world must be better for everyone.

The immediate and pressing current priority must be the public health task of recovering from the Covid-19 pandemic, and ensuring that the vaccines being made available are produced in sufficient quantity and administered equitably across the globe. This itself has already proved to be an enormous logistical challenge, and both the distribution and safety of the vaccines have become the subjects of geopolitical disputes and confrontations. But recovery from the pandemic, when it comes, will not mean that economies will emerge unscathed or unaltered, nor that they will simply return or "bounce back" to some pre-pandemic "normal".[180]

CONCLUSION

The pandemic offered a stress test for political institutions, and most were found wanting. The inadequacy of many systems of healthcare and social support was revealed, and the ways in which economies fail to work for many people were once again demonstrated. The world was not ready: international cooperation was needed to respond to a global challenge, but was lacking as governments asserted narrow self-interest, birthing the dismal practice of vaccine nationalism. Vast disparities in vaccination rates between economically powerful states and the rest exposed an ugly reality in which the value of a human life depends on the lottery of birthplace.

We thus postulate that the quality of democracy explains the variation of COVID-19 responses across democratic countries, i.e. the higher the democratic quality the lower the restriction of individual freedoms and the concentration of power on the national executive. More specifically, we expect that the protection of individual liberties, strong institutional cheques and balances, and a firmly established rule of law during normal times are most important. Where individual liberties are strongly protected by constitutional

[180] https://www.tandfonline.com/doi/full/10.1080/21681376.2021.1919191

provisions and respected during normal times, governments fear that they will be held accountable for their actions by other institutions such as courts or the parliament at a later point, and they might feel a stronger necessity to justify the measures towards citizens and civil society organisations. The rule of law and the strength of mutual constraints (i.e. the control of the executive) further increase the likelihood that governments anticipate reactions of other democratic institutions, such as the courts and parliament, when measures go too far. Hence, the stronger these democratic provisions, the more likely will governments respond with a more moderate public health strategy with fewer interventions in fundamental democratic principles.

2020 may go down in history as one of the worst years for human rights in Europe. Or it might be remembered as the year of the turning point, when more and more people demanded a central role for human rights in public policies. Let's work together to make this happen.

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THE ROLE OF PUBLIC PROCUREMENT IN HEALTH CARE INSTITUTIONS

Dragan Spirkoski, Msc. in Economy
Faculty of Law, University of "St. Kliment Ohridski"- Bitola
dragan_dar@yahoo.com

Mladen Karadjoski, Ph.D., Full Professor
Faculty of Law, University of "St. Kliment Ohridski "- Bitola
mladen.karadzoski@uklo.edu.mk

Abstract
The public sector is an important market segment of a country. Consumption from national and local budgets, as well as from public enterprises where the state has a dominant influence in the management, and thus in the spending of their funds, is huge in all countries in the world. The health system, as a specific element of the public sector, is a major consumer of the policyholders' money. The main goal of this paper will be to explore the role of public procurement in health care institutions and the main methods which will be used in this paper are descriptive and comparative method. The conclusions which will be drawn from the paper will be oriented towards improvement of the effectiveness and efficiency of public procurement system.

Keywords: public, procurement, management, health, institution

INTRODUCTION

The business environment in which organizations operate today is very complex. It constantly puts pressure on the work of organizations, demanding from them better quality products and services, better customer service, lower prices, environmental protection, fast and timely deliveries. The pressure is exerted by the growing globalization which intensifies the competition between the organizations, but also the increasingly intense need for the application of new technology. The management structure of the organizations takes measures to increase profitability, increase revenue, growth of organizations and capture a larger share of the market.

In conditions of transformation of the healthcare in the Republic of North Macedonia, the management of the public procurements in this sphere occupies an increasingly important place. The growing need for better health care, and thus the provision of better health care materials and resources, on the one hand, and the increasing competition from private health organizations, on the other hand, makes public procurement more important.

SUBJECT OF RESEARCH

The trend of the developed countries and the countries of Southeast Europe, as well as the process of approaching the Republic of North Macedonia towards the European Union, has led to the establishment of a modern, efficient system of public procurement. Public procurement and their legal framework, as well as the consistent implementation of the laws governing this issue are one of the most important barriers to corruption, organized crime and misappropriation of state money.

The subject of research is the role of public procurement in the health care institutions in the Republic of North Macedonia.

Health management is a process that ensures the health service in the best possible way to use all available resources to achieve the most important goal - preserving and improving the health of the community.

In this context, good public procurement ensures proper allocation of limited public funds in the health system to obtain the best value for money.

PUBLIC PROCUREMENT MANAGEMENT IN HEALTH INSTITUTIONS IN REPUBLIC OF NORTH MACEDONIA

Modern management in the health system is complex and very different from what is applied in other social and productive systems, although the basic concepts and principles as well as the roles of managers are identical.

Health management is a process that ensures the health service in the best possible way to use all available resources to achieve the most important goal - preserving and improving the health of the community.

Health systems are constantly evolving. The impetus for health system reform may come from the need to reduce health care costs, universal coverage, or the efficient use of funds, or from trying to meet the needs of the consumer or health care professional more effectively.

Health is an investment commodity. Deteriorating health leads to discomfort, feelings of diminished well-being, and measurable loss of income due to reduced working hours or reduced working capacity. Health as a consumer good means undertaking activities that will improve the quality and

enjoyment of life, will prevent discomfort or disease. A healthy population is not only a benevolent social goal, but an essential element for the development of a strong economy. A healthier population provides better workers and contributors to economic growth.

Financial resources in healthcare are limited, making it often impossible to make a simple choice when allocating them. All health professionals and health planners should have a basic understanding of health economics and the ways in which economic stimulus and disincentives affect supply, demand, and ultimately health care costs. Health care, offering improvement of health condition and extension of life, is a value in terms of the means used.

Public procurement management in the health sector is very specific. The final result of the provided health service will largely depend on the way of public procurement management. When it is known that the end result of the service provided by the health institutions is health, the importance of quality and timely procurement is even more emphasized.

The Law on Public Procurement, in the field of public procurement management in health, provides competition among economic operators, equal treatment and non-discrimination of economic operators, transparency and integrity in the process of awarding procurement contracts and rational and efficient use of funds in procedures for awarding public procurement contracts.

The efficiency, of course, should be present in the daily provision of certain health services to the citizens, as well as in the preparation of the laws and bylaws, which of course is reflected in the public procurement. The reflection is seen through the regular supply of the necessary materials, but of course also through the cost of the certain service.

The analysis of statistical indicators only confirms the huge importance of public procurement in the field of health as a specific category. Only with proper management of public procurement in health will be achieved optimal results in the use of health money, on the one hand, and will contribute to improving the general health of the population, on the other hand. This would reduce the cost of sick leave and absence from work, which funds would be retroactively included in the health system, would increase the budget allocated to health and would achieve much greater results.

In order for the health institutions to be able to perform their activity, they must have at their disposal an appropriate, as a rule, very wide, range of products, starting from those used in the basic activity (medicines and medical supplies, materials used in diagnostics, etc.).), to those that are used in order to provide conditions for uninterrupted performance of the basic activity

(heating, propellant, means for maintaining hygiene, spare parts for medical devices and materials for technical maintenance, office materials, etc.) . All these materials should be procured: on time, at affordable prices and in compliance with the prescribed quality standards.

Public procurement in every organizational system, even in health care institutions, has two basic tasks:

- to ensure continuity of the basic activity; and
- to ensure economy in the supply of all necessary materials for performing the basic activity.

In order to perform the stated basic tasks, the public procurement system must realize the following partial tasks:

- to provide information on the state and tendency of the market (prices, characteristics of suppliers, delivery times, payment terms, etc.)
- to provide information on the condition of the stocks in the warehouses, as well as data on the deviations of the actual from the optimal stocks;
- to harmonize the procurement plan with the work plan, on the one hand, and the financial plan, on the other;
- to ensure the maintenance of stocks at an optimal level;
- to minimize the procurement period;
- to maintain effective coordination with the holders of the core activity; and
- to cultivate good business relationships with suppliers.

CONCLUSION

Today, healthcare facilities operate in a business environment that is very complex. Organizations are under constant pressure to ensure better quality products and services, better services for patients, environmental protection and so on. Also, the pressure is exerted by the growing globalization that intensifies the competition between health organizations, but also the intense need for the application of new techniques and technology.

For the success of healthcare facilities to be complete, they must integrate closer to their suppliers. Through this integration, the procurements are integrated, which become more efficient and of better quality.

Procurement is a process of different type of supply of the institution with all necessary materials for its operation. Therefore, we can define public procurement as "a set of activities performed by the health institution to acquire goods, receive services or perform works, to ensure its functioning."

The public procurement system in the Republic of North Macedonia is now in a sensitive phase due to the implementation of the law from 2019 and

the relevant bylaws. As the law introduces a number of new institutes, there is a great need to strengthen the capacity of the entire public procurement system, including public procurement in health care facilities, in order to achieve full harmonization with European Union law in practice. Additional measures should be taken to prevent possible irregularities and corruption during the procurement cycle and to ensure a more effective public procurement system, following the principles of transparency, equal treatment, free competition and non-discrimination.

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THE ROLE OF THE INTERNATIONAL CRIMINAL TRIBUNAL (HAGUE TRIBUNAL) IN DETECTING AND SANCTIONING WAR CRIMES IN THE FORMER YUGOSLAVIA AND IN PARTICULAR IN THE REPUBLIC OF KOSOVO – CHALLENGES, EXPECTATIONS AND EFFICIENCY

Adem Spahiu, M.Sc.
Lecturer
Higher Education Institution Heimerer College Prishtina, Kosovo
&
Doctoral student at Faculty of Law Kicevo
University "St. Clement Ohridski "Bitola, North Macedonia
ademsp@gmail.com

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

Abstract
With the outbreak of bloody conflicts in the former Yugoslav federation, accompanied by numerous violations of the 1949 Geneva Convention, such as the establishment of concentration camps, extrajudicial killings, rape of women, mass arrests based solely on nationality and the persecution of prisoners, with UN Security Council Resolution 827 was established the International Criminal Tribunal for the former Yugoslavia, based in The Hague, the Netherlands. The Hague tribunal has made a historic turn in bringing many suspects to justice, regardless of their political and social status. In that direction is the basic intention of this paper - to make a more detailed study of the role of the Hague Tribunal in determining the responsibility and punishment of persons suspected of having committed war crimes in the former Yugoslavia, with special reference to the situation in the Republic of Kosovo. The role of the Hague Tribunal in this area will be presented through

the analysis of cases related to suspected and accused citizens of the Republic of Kosovo, interviews with them and some of the victims of such crimes, as well as through appropriate statistical indicators. We hope that with this analysis we will convey the voice of the victims and their families to the general public, but also the message to the current and potential perpetrators that crimes of this kind will not go unpunished.
Key words: International Criminal Tribunal for the former Yugoslavia (Hague Tribunal), war crimes and crimes against humanity and international law in the former Yugoslavia, situation in the Republic of Kosovo

INTRODUCTION

The problematic history of the Balkans dates back to the beginning of the state-building doctrines for the national liberation of the Balkan nations in the XIX century and continues to this day. They, together with historical, economic and religious factors, have been the cause of numerous conflicts in this region.

The Socialist Federal Republic of Yugoslavia (SFRJ) was a non-rough federation composed of six republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. In addition to the six republics, the two regions of Kosovo and Vojvodina had the status of autonomous provinces within Serbia. As a mixture of ethnic groups and religions, the communist government led by Tito sought to prevent national-religious tensions by recognizing all nationalities (UNICTY, The Conflicts 2017). Unfortunately, these tactics were the main reason that led to rising tensions after the fall of communism and its collapse (Kayongo, J.K. 2017). After Tito's death in 1980, the nationalists, who had hidden tactics, began working openly to overthrow the federation. In this regard, Serbian nationalism was at the forefront, which through the use of the Yugoslav People's Army (JNA) started a series of conflicts against other nations in the Federation, who legally demanded secession from the common state and independence of their state entities.

During those years of conflict, the brutality of the war, resulting in bloodshed, displacement, and genocide against entire ethnic communities, was demonstrated, not only in derogation from national law, but also in gross violation of international military and civil law. As a result, the need arose to establish the UN International Criminal Tribunal for the former Yugoslavia (UNICTY), known as The Hague Tribunal, which was established in February 1993. It happened at a time when the two republics of SFRJ, Croatia and Bosnia and Herzegovina, were at the heart of the war, which ended in 1995,

and there were already reports of serious war crimes in Kosovo. But has the Hague tribunal fulfilled its mission to bring justice to the victims of the wars in the former Yugoslavia, especially to civilians? This is the central theme of this paper, which seeks to answer the question of how well this Court has met the expectations of the international community, but above all of the citizens of the former Yugoslavia, who were most affected by the military conflicts and how much it has contributed to the establishment of international law on these territories.

FROM SLOVENIA TO KOSOVO - DISSOLUTION OF THE YUGOSLAV FEDERATION

The first of the six republics to officially leave the SFRJ was Slovenia, which declared independence on 25 June 1991, following the victory of the Slovenian forces, with the JNA withdrawing its troops and equipment from its territory (UNICTY, The Conflicts 2017). There is a general belief that SFRJ, more precisely Serbia, were themselves interested in removing Slovenia from the federation, because that way they would have one less enemy (Zeynulahi, V. 2016).

Croatia declared independence on the same date as Slovenia. But if Slovenia's withdrawal from the Yugoslav federation was relatively painless, it did not happen to Croatia. Serbs as an ethnic minority openly rejected the authority of the newly proclaimed state, calling for their rights to remain within Yugoslavia. With the help of the JNA and Serbia, the Croatian Serbs revolted, declaring almost a third of Croatian territory under their control as an independent Serbian state. Croats and other non-Serb citizens were expelled from its territory in a violent campaign of ethnic cleansing. Heavy fighting in 1991 led to the shelling of the old town of Dubrovnik, although it was under UNESCO protection, as well as the siege and destruction of Vukovar city by Serb forces. Despite a United Nations (UN) peacekeeping observation of the ceasefire, which took effect in early 1992, Croatian authorities were determined to impose their authority on their territory and used their own resources to develop and equip its armed forces. In the summer of 1995, the Croatian army launched two major offensives to retake all of its territory except a small part of the region of Eastern Slavonia. As a result, in the Great Exodus, tens of thousands of Serbs fled their homes and settled in parts of Bosnia and Herzegovina, which were under the control of Serb forces, as well as in Serbia, many of which were also settled in Kosovo. With the end of the war in Croatia in the autumn of 1995 and the annexation of the region of Eastern Slavonia in 1998, this country finally regained control of its entire

territory, following a peaceful transition under UN administration (UNICTY, The Conflicts 2017).

Bosnia and Herzegovina during the SFRY had a mixed government, which had the ethnicity of the population with 43% Muslims, 33% Serbs, 17% Croats and 7% other nationalities. But its central geographical location in the federation has made this republic an object of Serbian and Croatian appetites to dominate part of its territory. In March 1992, in a government - sponsored referendum on the country's future, which was boycotted by Serbs, more than 60% of Bosnia and Herzegovina citizens voted for independence. Almost immediately afterwards, in April 1992, Bosnian Serbs revolted and, with the support of the JNA and Serbia, declared the state of Republic Srpska. Shortly afterwards, the Croats did the same and, with the support of Croatia, proclaimed the Republic of Herceg Bosnia. With that, the conflict became inevitable and soon turned into a war for territories, where civilians of all three ethnicities became victims of horrific crimes (Zeynulahi, V. 2016). In that regard, one of the most horrific events is the Srebrenica genocide in which more than 8,000 Bosnian Muslims, mostly boys and men, were killed. (Arbutina, Z. 2017). Thus, the conflict in Bosnia and Herzegovina was the bloodiest during the break-up of the Yugoslav federation. It ended with the peace agreement, which was signed in Dayton in November 1995.

In Kosovo, the Albanian opposition to the denial of freedom of self-determination was not born all at once, but was functionally linked to the unjust decisions of various peace conferences, as well as to the constant repression of regimes of different Yugoslav (or more precisely Serbian) provenance (Mustafa, R.R. 2012). Albanians, even in the new communist Federation that presented itself as synonymous with justice, brotherhood and alliance, continued to be treated as an unwanted community. From pre-World War II Serbian politics, the Yugoslav Communists inherited projects to clean up areas inhabited by Albanians, Hungarians and Germans. This project of persecution of Albanians from Kosovo, especially came to the fore after the so-called Turkish-Yugoslav agreement on migration of Albanians to Turkey (Mustafa, R.R. 2012). All Yugoslav regimes, right or left, were infected with anti-Albanianism, which constantly forced Albanians to oppose and not give up the fight against this policy of isolation in order to defend their survival on this territories. This process began to create an illegal movement of resistance, the common point of which was the question of national deliberation. Against the actions of these movements, the Yugoslav government reacted in two ways - increased repression or the gradual acceptance of Albanian demands for equality within the then system (Mustafa, R.R. 2012). On 2 July 1990,

members of the Kosovo Parliament adopted a constitutional declaration for independency of the Kosovo state, fully equal to the other constituent units of Yugoslavia. The Milosevic regime reacted to this legitimate act of the members of the Assembly of Kosovo by suspending the autonomous institutions of Kosovo. After this suspension, Albanians began to create a parallel educational, health, cultural, informational, sports and political order (Mustafa, R.R. 2012). In 1998, the Kosovo Liberation Army (UÇK), which enjoyed the support of the majority of the Albanians, staged an open revolt against the Serbian government, which resulted in the deployment of military and police forces to suppress the rebels. In their campaign, Serb forces attacked civilians by bombing villages and forcing Kosovo Albanians to flee their homes, and the Serbian state continued its acts of violence, massacres, deportations and the burning of homes (Zeynulahi, V. 2016). Throughout the resistance process, patience, internal cohesion, a clear pro-Western policy, unequivocal solidarity of the Albanians, respect for international military conventions by the UÇK, created a positive image for Albanians and exposed the irrationality of Serbian politics, which had already been compromised from every aspect (Mustafa, R.R. 2012). Although the international community has repeatedly responded to this crisis, the violence and terror continued until it was classified as genocide, prompting the international community to intervene to stop the violence, which could turn into a larger international conflict. This paved the way for UN humanitarian intervention, which legitimized NATO intervention as necessary to prevent further mass violations of human rights guaranteed by international law. The Kosovo war ended with NATO intervention and the signing of the Rambouillet agreement, after which a temporary administration was set up in Kosovo by the UN.

THE ROLE OF THE UN INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA IN ESTABLISHING INTERNATIONAL LAW - CONTRIBUTIONS, CHALLENGES AND DEFICIENCIES

The UN and the European Union (EU) have been following developments in the former Yugoslavia continuously and with growing concern. At their initiative, several ceasefire talks were held between Croatia and Serbia in September 1991, but they quickly failed. Security Council Resolution 713, adopted in September 1991, reaffirmed the efforts of the EU and the Organization on Security and Co-operation in Europe (OSCE) to foster dialogue and ensure peace between the warring parties. In this regard, more

than 20 countries have submitted information to the UN on violations of international humanitarian law in the former Yugoslavia (O'Brien, J.C. 1993). In response to the failure of the ceasefire, the UN Security Council imposed an embargo on arms sales to all parties to the conflict. This embargo particularly hurt Croats and Bosnian Muslims, as the JNA, which was predominantly under Serbian control, was already more than armed with aviation and heavy weapons.

On 6 October 1992, the UN Security Council adopted Resolution 780 establishing an Expert Commission to investigate and collect evidence of "Serious Violations of the Geneva Conventions and Other Violations of International Humanitarian Law" in the Conflict in the Former Yugoslavia (Bassiouni, M.C. 1996, pp.61).

At the same time, the war was intensifying in Bosnia and Herzegovina, which made the UN particularly concerned about the ethnic cleansing that was taking place. The above-mentioned expert commission published its first interim report on 22 February 1993, stating that the establishment of an ad hoc international criminal court was necessary. The governments of Croatia and Bosnia and Herzegovina have expressed support for the establishment of the Tribunal with the assistance of the CSCE, while the Federal Republic of Yugoslavia has opposed its establishment (O'Brien, J.C. 1993, pp.639, 59).

The International Criminal Tribunal for the former Yugoslavia (UNICTY) was established by the UN Security Council by Resolution 827 on 25 May 1993. There are speculations that Security Council members viewed the creation of the tribunal as a geostrategic interest that would provide them with politically free resources to respond to calls for international action in the former Yugoslavia. But the resolution clearly states that the UNICTY was established "with the sole purpose of prosecuting those responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and the date set by the Security Council for the return of peace." (UNICTY, The Conflicts 2017). The tribunal's interim mandate was left open because the conflict was still going on. The seat of the Tribunal was stated to be in The Hague (Burns, P. 1996).

Exercising its powers under Chapter VII of the Charter of the UN, the Security Council adopted a resolution establishing the UNICTY for the purpose of dealing with four types of crimes: serious violations of the 1949 Geneva Convention relative to the protection of civilian persons in time of war, breach of the laws or customs of war, genocides , crimes against humanity (Yacoubian, G.S. 1998, pp.48-55).

In order to file charges of serious misconduct, violation of the laws or customs of war, or a crime against humanity, the prosecutor had to show that there was a state of war, which according to the genocide charge was not necessary. Article 7 (1) of the Resolution 827 provides that a person who "plans, promotes, orders, performs or otherwise assists and promotes the planning, preparation or commission of a crime" is individually responsible for the crime (UNICTY, The Conflicts 2017). However, the resolution does not specify the level of participation in crime. In addition, the sentences the tribunal may impose on those found guilty do not include the death penalty (Barria L.A. & Roper, S.D. 2005, pp. 349-368).

The Hague tribunal, during its two-and-a-half-decade work, has filed 161 charges of serious violations of international humanitarian law in the former Yugoslavia, while nine people are being held in UN custody and convicted. and 90 people were sentenced to prison terms, of which 7 are awaiting transfer to serve their sentences, 16 prisoners were transferred to other prisons, 9 convicts died shortly after the trial or while serving their sentences. In addition, there are two appeals cases to be enforced by the Mechanism for International Criminal Tribunals, as well as 15 acquittals (UNICTY Cases, 2017).

The tribunal, as the first international criminal court since World War II, played a major role in the development of the international justice system. Not only has it changed the way we think and react to impunity, but it has also served as a powerful catalyst for the formation of other international courts and tribunals. Although it is a unique and important mechanism for international justice, the mission of the Hague Tribunal to prosecute the perpetrators of the most serious crimes committed on the territory of the former Yugoslavia is only partially fulfilled. The tribunal managed to bring to justice the biggest perpetrators of the crimes, but showed shortcomings by postponing the proceedings against some of the defendants, who were in custody. In the absence of evidence, some notorious criminals were acquitted, although there was ample evidence that their guilt was true, as was the case with Serbian war criminal Jojic and two others person for whom Serbia had not yet issued arrest warrants. In addition, the procedures are too slow and take three to five years, which is contrary to standards and international regulations, but also to national legislation. As a result of these delays, former Serbian President Slobodan Milosevic died in custody in Scheveningen before the trial began, although prosecutors presented a number of facts, more than 350 witnesses and 5,700 documents totaling 150,000 pages, which spoke of his criminal responsibility.

During the research work for the realization of this scientific paper, we were confronted with a series of hypotheses, such as: the influence of politics in the work of the court, whether all those who committed crimes were tried and punished, why only individuals were tried and not states who started the war in the former Yugoslavia, whether the court has achieved its basic goal since its inception, which is the impact of court decisions on the future, and whether it has given clear messages that the international community and international law will not tolerate such crimes in the future, possible conflicts.

Although it generally managed to administer justice in a number of cases, the Court still faced many obstacles and political influences. In this regard, the President of the Tribunal (Judge Fausto Pocar from Italy, President of the UNICTY from 2005 to 2008), in the report given to the Security Council in New York, pointed out that they had a systematic institutional problem with international justice, and that was the influence of politics. The Hague tribunal has generally brought some justice to only a certain number of victims. He has shown that he can fight what he calls a culture of impunity by bringing to justice former presidents, senior officials and senior military officials.

Of course, the expectations were much higher, especially from the point of view of the victims. However, an "ad hoc" court, such as the UNICTY, could not do more in this regard. It is especially emphasized that this court with the final verdicts especially documented the case in Srebrenica and managed to prove it as an international crime of genocide, which will remain in history and no one will ever be able to deny it. Although not everyone is happy with his decisions, we still wonder what the situation would be like in the region and especially in the former Yugoslavia, if this tribunal did not exist. There are speculations that he contributed to the reconciliation of the peoples of the former Yugoslavia. In this regard, the Hague Tribunal has contributed to some of the facts and by creating its own archive to document the horrific war crimes in the former Yugoslavia, which in the future can serve to reconcile the warring parties, because the first step of reconciliation is - the parties that were in mutual enmity and conflict to accept the facts. However, the truth is that such an ad hoc Court cannot undertake a very complex process, such as the reconciliation process, which history has proven many times so far that it lasts for decades and that its mission in this regard is not fully fulfilled. Many of those convicted of war crimes and genocide, who returned to their home countries after serving their sentences, have been hailed as heroes by the relevant societies or peoples to which they belong, and in some cases are part of the leading structures of the state and practice their public and political professions.

In any case, the importance of the tribunal and giving a completely different point of view to international justice has aroused the curiosity and interest of many theorists from different areas of the world. For example, international law experts and civil society representatives in Kosovo estimate that much more was expected from The Hague tribunal, although in their view justice is somewhat satisfied. However, Kosovo lacks proper treatment and a real study of the impact and importance of the Tribunal's work on our political and social lives. Kosovo and its citizens were victims of horrific crimes committed during the wars in the former Yugoslavia. The allegations against the UÇK army leaders are reason enough to reconsider the tribunal's work. Since the UÇK was formed by the people as a result of the hostile behavior of the Yugoslav and Serbian regimes, it is necessary to clearly see the function and role of its leaders and to question whether this Court really punishes the real perpetrators of crimes against humanity. For example, the Rečak massacre in Kosovo was added by tribunal prosecutors to the amended indictment, but was later removed from the case due to a lack of evidence to support the indictment.

About the hypotheses, that the UNICTY tried only individuals and not states who started the war in the former Yugoslavia, UNICTY argued that the Court has consistently adhered to the principles that defendants are prosecuted for individual criminal responsibility and that no nation bears collective responsibility for the crimes of their leaders. But also, all people have a right to know what has been done on their behalf by their political and military leaders. Progress and reconciliation require the acceptance of clear historical facts, however unpleasant they may be. Without a fair and impartial trial, without political interference and without imposing institutional responsibility on states whose leaders have committed serious crimes against humanity, the court cannot be considered to have achieved the goals for which it was created.

CONCLUSIONS AND RECOMMENDATIONS

Despite the importance of the UNICTY in achieving the international legal order, it is still an example of the clash between theory and practice. As there is no unified standard for measuring the effectiveness of international courts, it is quite difficult to answer the question of the effectiveness of The Hague tribunal. The UNICTY was set up to prosecute individuals responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia and as a result of a UN assessment that they had committed serious crimes against humanity, endangering world peace and contrary to Chapter VII of the UN Charter. It is indisputable that its formation and action will have a preventive effect on possible future violators of the international

legal order. He was also to contribute to the maintenance of world peace and security, as well as to provide justice for the victims. The message that the crimes committed are held accountable, regardless of who committed them and in what social position the perpetrator is, is the strongest code that the UNICTY has tried to send to the world. In that regard, punishing some of the perpetrators of the Srebrenica genocide is an important step in establishing international justice. However, the perpetrators of other massacres, such as those in Kosovo, did not receive the punishment they deserved. But his critics say the UNICTY has done nothing to prevent violence and war crimes. The ongoing violence in Syria and many other countries seems to be fading the message sent by the creation of such a court. The implementation of international justice in the world requires equal treatment of states regardless of political interests and the creation of mechanisms completely independent of politics and the great powers. States that have committed international crimes must take responsibility to prevent such acts in the future.

ABREVIATION

SFRJ – Socialist Federal Republic of Yugoslavia (Socijalistička Federativna Republika Yugoslavija)
UN – United Nations
OSCE - Organization on Security and Co-operation in Europe
UNICTY - United Nations International Criminal Tribunal for the former Yugoslavia
EU – European Union
JNA – Yugoslav People's Army (Jugoslovenska Narodna Armija)
UÇK – Kosovo Liberation Army (Ushtria Çlirimtare e Kosoves)

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(NON)APPLICATION OF PRINCIPLE OF "EQUAL REMUNERATION FOR EQUAL WORK AND/OR WORK OF EQUAL VALUE" WITHIN THE JUDICIAL BRANCH OF POWER IN REPUBLIC OF SERBIA - CASE OF JUDGES OF MAGISTRATES COURTS

Dušan Milošević LL.M.
Judge and Deputy of the President of the Magistrate Court in Kruševac
PhD student at the Faculty of Law University of Belgrade
dmilosevic037@gmail.com

Abstract
In the Republic of Serbia, Judicial Power belongs to courts of general and special jurisdiction. *Inter alia*, the last category involves both Magistrate Courts and Magistrate Court of Appeal. Anyhow, all courts perform identical tasks within their own scopes of jurisdiction, which refers to judges and Presidents of Courts too. More or less, they should have equal treatment in the legal system with due respect to their hierarchical position. Unfortunately, judges of Magistrate Courts and Magistrate Court of Appeal have been underestimated in comparison with their counterparts both in general and special jurisdiction, which particularly manifests in terms of salaries. Therefore, principle of "Equal Remuneration for Equal Work and/or Work of Equal Value" is neglected totally, besides it presents discriminative treatment too. In this regard, one should consider the relevant legal framework, while some of these findings could serve as indicators for detection of unlawfulness and its removal from the legal system.

Key words: judge, misdemeanor, Equal Remuneration, Equal Work, Work of Equal Value, discrimination

INTRODUCTION

Republic of Serbia (hereinafter: Serbia) is based on Division of Power, while Judicial Power as one of three Branches of Power is unique for the overall state and belongs to the courts of general and special jurisdiction. More or less, they perform identical tasks within their own scopes of jurisdiction,

which includes, *inter alia*, hearing procedure and passing of decisions that may be reconsidered, only, by authorized higher court. On a personal level, aforementioned tasks are carried out by judges who are conducting and deciding in concrete cases. *Mutatis mutandis*, above mentioned statements refer to Presidents of Courts (hereinafter: Presidents) who are judges too, but on the positions of the heads of courts. Anyhow, these are very important public functions with numerous obligations and rights. In this regard, their salaries have to be adequate with their dignity and responsibility too in order to promote and preserve judicial independence with due respect to their hierarchical position.

Also, Serbia concluded many international contracts that resulted with implementation and promotion of certain legal principles and standards within its legal system, such as principle of "Equal Remuneration for Equal Work and/or Work of Equal Value" as well as "Prohibition of Discrimination". In a certain sense, aforementioned principles have been neglected within Serbian Judicial Power, especially in terms of judges salaries, because judges of Magistrate Courts (hereinafter: MCs) and Magistrate Court of Appeal (hereinafter: MCA) have been underestimated in comparison with their counterparts both in general and special jurisdiction. Therefore, one has to analyze relevant legal framework and practice in order to consider key problems and finally remove unlawfulness from the legal system.

BRIEF HISTORICAL OVERVIEW

In the Serbian legal system, misdemeanor presents one of punishable actions,[181] while officially it is defined as an unlawful culpably committed act that is stipulated as misdemeanor by Law or other general legal acts with a misdemeanor sanction. Mostly, this is a complex category that is consist of two separated parts - substantive and penal according to which first one presents a description of the misdemeanor act and second one is consist of penalty, although there are examples in which substantive part is repeated within the penal part (Vuković 2016, 40). In recent past, misdemeanor proceeding had been conducted before autonomous *quasi* administrative bodies established in forms of Authorities in first and Councils in second instance.[182] Meanwhile, the term court started to be officially used in titles of the above-mentioned institutions, although their specific legal nature and organizational structure remained. For ages, relevant law used the term judge

[181] More about: Vuković 2016, 34-7.
[182] More about: Bosanac 2004, 19; Rakić, Vodinelić, *et al.* 2012, 80; Vuković 2016, 22-3.

for persons who performed and decided in misdemeanor proceeding both in first and second instance regardless of that they had been in a totally different legal regime in comparison with judges in other "real" courts. Namely, they were appointed and not elected, while appointment procedure, initially, had been divided between Local and Central State Assemblies, but later it was, totally, allocated to the Central State Government. Pretty much, the situation was identical with their "heads" who were officially and literally defined by the aforementioned term in relevant first instance institutions, while in the second instance there were Presidents on top positions.

However, ratification of European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) was a trigger for new approach.[183] *Inter alia*, "Right to Liberty and Security" prescribes that a person may be in detention, only, after court`s conviction. From the beginning, relevant law recognizes prison sentence as one of the misdemeanor penalties regarding natural persons and similar legal entities,[184] although fine is the most present one in the legal system. Even more, unpaid fines may be substituted, entirely or partially, by some other penalties, including with the prison sentence as *ultima ratio* option too. Thus, misdemeanor matters needed to become "court matter" in order to harmonize the Serbian legal system with the ECHR. First official step had been undertaken by the adoption of the National Strategy of Judicial Reform from 2006, which went, even, a step forward by promoting the idea of formation of specialized courts for misdemeanor cases. Still, implementation of the new paradigm had to wait for the adoption of the new Constitution of Republic of Serbia (hereinafter: Constitution).

DE LEGE LATA - CRITICAL ANALYSIS

The highest legal act makes distinction between courts of general and special jurisdiction, which is further elaborated in lower general legal acts, such as Law on Organization of Courts (hereinafter: LOC) and Law on Headquarters and Territories of Courts and Public Prosecutor Offices

[183] More about: Delić, and Bajović 2018, 148.

[184] It is an entrepreneur, which presents an officially registered natural person that performs certain economic activity with typical characteristics for all business entities. Briefly, it is responsible with its personal property for rights and obligations acquired within registered economic activity, and it is liable for misdemeanor committed in performing its registered economic activity if misdemeanor liability has been predicted for the aforementioned type of offender. Furthermore, cessation of entrepreneurship has no impact on misdemeanor proceedings, since it would start or carry on against a natural person as a founder of a concrete entrepreneur. Stefanović 2017, 181-3; Delibašić 2008, 159.

(hereinafter: LHTCPPO). According to the relevant law, courts within general jurisdiction are dealing in criminal, civil and labor law disputes, while the aforementioned category involves Basic Courts (hereinafter: BCs), High Courts (hereinafter: HCs), Appeal Courts (hereinafter: ACs) and, even, Supreme Court of Cassation (hereinafter: SCC).[185] Contrarily, special jurisdiction presents heterogeneous group of specialized courts that are competent in various legal areas, such as misdemeanors, administrative and commercial disputes. Currently, these are Administrative Court, Commercial Courts (hereinafter: CCs), Commercial Appeal Court (hereinafter: CAC), MCs and MCA. Also, the above-mentioned courts may be further differentiated both in terms of their functional competencies as well as on territorial grounds too. For instance, MCs, BCs, CCs are typical first instance courts, while MCA, ACs and CAC present typical second instance courts. However, HCs and Administrative Court are in very specific positions. Namely, the first ones may be characterized as "hybrid" courts, because they can proceed both within first and second instance depending on type of concrete dispute, while Administrative Court is, entirely, competent for deciding in administrative disputes and there is no possibility to lodge the appeal against its decisions.[186] On the other side, Administrative Court, ACs, CAC and MCA have been established as courts on Central State level (hereinafter: CS), while MCs and BCs can be determined as "local courts", since they have been established, mostly, for territories of Local Self Government Units (hereinafter: LSGU). Finally, CCs and HCs have regional character, because they encompass territories of more LSGUs.

Currently, MCs in first instance and MCA in second instance are conducting and deciding in misdemeanor proceeding, but originally second instance court had been titled as High Magistrate Court (hereinafter: HMC), while later it was renamed in MCA in order to be harmonized terminologically with other second instance courts established on CS level, because all of them contain term "appeal" in their titles. Even more, misdemeanors related to the public procurements were outside court`s jurisdiction in a certain sense too. Until recent, legislator opted for *sui generis* combined approach according to which Republic Commission for Protection of Rights in Public Procurement Procedures as independent institution conducted and decided in first instance

[185] It is unclear why LOC classified SCC within the courts of general jurisdiction, especially after repetition of constitutional provision of its highest position in judicial hierarchy. Namely, the aforementioned court must be above any kind of classification, since it reconsiders decisions of all courts regardless of type of jurisdiction.
[186] More about: Milkov 2011, 137; Tomić 2010, 29-30.

on misdemeanor proceeding within the aforementioned legal area, while their decisions could be challenged by appeal before HMC or, later, MCA. Meanwhile, full court`s jurisdiction has been established, since MCs became competent in first instance in cases related to public procurements.[187]

Generally, judge may become every person that fulfill certain cumulative conditions, such as citizenship, completion of Faculty of Law and Bar Exam, "general conditions for work in State Organs", relevant work experience in legal profession after completion of Bar Exam,[188] competence and credibleness, but there is a constitutional distinction between "first election" and "permanent election" on judicial function too. Briefly, "first election" refers to persons who are elected as judges for the first time and they are on *sui generis* probation period of three years and after that period they could be permanently elected for aforementioned function. In this regard, High Judicial Council (hereinafter: HJC), only, propose candidates for the "first election" to the National Assembly (hereinafter: Assembly) that will, definitely, decide about concrete proposals, but HJC would decide solely on "permanent election" after expiration of above-mentioned probation period. On the other side, "heads" of all courts have been signified by a unique term President and may be elected, only, among "permanently elected" judges within concrete type of court or some of hierarchical higher courts on maximally two adequate terms,[189] while election procedure is, pretty much, the same like "first election" in terms that Assembly decides upon the HJC`s proposal. Pretty much, judges in all courts perform identical tasks within their own scopes of jurisdiction, which means that they act as public authorities in accordance with strict procedure and after a comprehensive evaluation of evidence conduct and decide in concrete proceedings in order to regulate as well as to end certain legal situations. Of course, aforementioned statements refer to misdemeanor proceedings too in which one should decide on (non) existence of misdemeanor liability of a concrete legal entity.

No doubt, judges as well as Presidents perform very important public functions with numerous obligations and rights. *Inter alia*, many domestic and

[187] More about: Ristanović, *et al.* 2021, 7-11.

[188] Concretely, it is two years for a judge of MC and six years for a judge of MCA. On the other hand, it is three years for judges of BC, six years for judges of HC and CC and nine years for judges of AC, CAC and Administrative Court. Finally, it is twelve years for a judge of SCC.

[189] Oppositely, the President of a directly higher court in the hierarchy should appoint the Acting President of the concrete court in a situation when the former President ceases to hold the aforementioned function. Paradoxically, the Acting President could be appointed, even, among "firstly elected" judges not, only, between "permanently elected" ones.

international legal documents mention Principle of Material Independence of Judges according to which their salaries have to be adequate with their dignity and responsibility in order to promote and preserve judicial independence. So, judge`s salary is more than the economic category, because it has to guarantee its independence too (Kandić 2015, 251). However, one should consider many other relevant legal principles and standards that have been implemented in the Serbian legal system too. Primarily, it is "Prohibition of Discrimination", which is directed to the elimination of every unjustified or unequal treatment as well as omission that reflects in exclusion, restriction or giving priority of the others in an overt or covert manner according to the existing or presumed personal characteristics (Paunović, *et al.* 2018, 58). Also, "Equal Remuneration for Equal Work" as well as "Equal Remuneration for Work of Equal Value" must be mentioned too. *Stricto sensu*, equal work encompasses identical or similar work in great sense without differences in activities, working process, environment, equipment, etc.,[190] while work of equal value involves work on different jobs of the same importance with an accent on their contents not on their titles.[191] In essence, differentiation between the aforementioned notions is not significant, because both of them have the same goals in order to prevent and eliminate unequal payment. Therefore, it should be considered as whole with the purpose of focusing on its aim regardless of excessive nuances.

Per legem, judges and Presidents are classified in five salary groups. Surely, two highest positions belong to the President and judges of the SCC, while below them are their colleagues in AC, CAC and Administrative Court. Afterwards, Presidents and judges of MCA, CC and HC are put together in the next lower group. Finally, Presidents and judges of BC and MC are classified on the lowest positions, but in two different groups. Obviously, judges and the President of MCA are not in the same group with their colleagues from other CS courts as typical second instance courts. Contrarily, they have been put in the same line with HCs and CCs that are, more or less, courts of regional character as well as hierarchically lower rank courts, since CCs are typical first instance courts, while HCs either can proceed within both instances depending on type of concrete dispute. On the other side, judges and Presidents of MCs are "isolated" in a separate group and, even, positioned below their colleagues in BCs regardless of the fact that both of them are typical first instance local courts.

[190] More about: Petrović 2009, 207; Grgurev 2006, 1120.
[191] More about: Ivošević, and Ivošević 2020, 249; Grgurev 2006, 1120.

Therefore, the aforementioned classification has been criticized by many eminent experts,[192] although numerous illogicalities are evident even for a layman, such as unequal financial positions of the judges and Presidents of MCs and MCA with their counterparts both within courts of general and special jurisdiction. Namely, it is neglected that judges of the above-mentioned specialized courts perform totally identical tasks within their own scope of jurisdiction like their other colleagues. Moreover, they must be familiar with a lot of regulations much more than other judges, because misdemeanors are prescribed in various legal areas within many general legal documents adopted by relevant institutions on levels of CS, Autonomous Provinces and/or LSGUs that are frequently changing, which requires additional caution in monitoring, interpretation and application too. In a certain way, a crucial argument in favor of *status quo* may be the lower level of relevant work experience for election as judges of MCs and MCA in comparison to their counterparts, but it should be treated as nonsense rather than a key argument. Meanwhile, some of the Representatives of the ruling coalition had been encouraged to officially propose adequate amendments to the Assembly. *Inter alia*, the aforementioned proposal recombined existing classification by putting the judges and Presidents of MCs and MCA in the same salary groups with their colleagues from BCs and other CS courts, which had been followed by mutual equalization of relevant work experience for election as judges too. However, it would be much more preferable to add a provision in which one would, only, state that already elected judges within the above-mentioned courts continue with work in order to avoid misunderstanding and potential problems. Pretty much, this proposal was acceptable and, even more, it had been included in the agenda of the concrete sitting of the Assembly, but it was mysteriously withdrawn from further procedure by proposers without mentioning any reasonable explanation in favor of such an act.

CONCLUSION

Recently, misdemeanors have been involved within Judicial Power, which had many implications on status, organizational and procedural terms. *Inter alia*, one opted for the formation of specialized courts for misdemeanor cases, such as MCs in first instance and MCA in second instance. Anyhow, both of them perform identical tasks like other relevant courts within their own scopes of jurisdiction, which refers to judges who are conducting and deciding in concrete cases as well as to the Presidents too who are nothing else than

[192] More about: Cornu, *et al.* 2008, 8-9.

"upgraded" judges on the positions of the heads of courts. Even more, judges of the aforementioned specialized courts must be familiar with a lot of regulations, since the misdemeanors are prescribed in various legal areas that are frequently changing too.

Unfortunately, judges and Presidents of MCs and MCA are underestimated in comparison with their counterparts both within general and special jurisdiction, which particularly manifest in terms of their unequal financial position. Namely, judges and the President of MCA are not in the same group with their colleagues from other CS courts as typical second instance courts, while judges and Presidents of MCs are positioned in a separate group below their colleagues in other first instance local courts *i.e.* BCs. Therefore, current state cannot be legally sustainable in the long run due more than obvious non-application of "equal pay" for "equal work and/or work of equal value" that can be, even more, characterized as discrimination too. Yet, it is still not too late for adequate reaction, although a great opportunity has been missed in the meantime.

LIST OF ABBREVIATIONS

Assembly - National Assembly;
AC - Appeal Court;
AP - Autonomous Province;
BC - Basic Court;
CC - Commercial Court;
CS - Central State;
CAC - Commercial Appeal Court;
HC - High Court;
HR - Human Rights and Freedoms;
HJC - High Judicial Council;
HMC - High Magistrate Court;
LSGU - Local Self Government Unit;
MC - Magistrate Court;
MCA - Magistrate Court of Appeal;
President - President of Court;
SCC - Supreme Court of Cassation.

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CONFLICT BETWEEN COLLECTIVE AND INDIVIDUAL RIGHTS - WHY ARE ECtHR JUDGMENTS SO IMPORTANT FOR BOSNIA AND HERZEGOVINA?

Benjamin Nurkić, MA Law
University of Tuzla, Bosnia and Herzegovina
EMAIL: bnurkic@bih.net.ba

Abstract
The Constitution of Bosnia and Herzegovina contains provisions that do not comply with human rights standards, as was ruled in the European Court of Human Rights (ECtHR) judgments in the *Sejdić and Finci*, *Zornić*, and *Pilav* cases. Although those are three different judgments, the core of these judgments is that the current model of constituent peoples in Bosnia and Herzegovina conflicts with the concept of human rights. The constituency of peoples represents the exclusive collective political right of ethnic communities in Bosnia and Herzegovina provided as a constitutional category by the current Constitution of Bosnia and Herzegovina. The exclusive political status of the constituent peoples is in contradiction with international democratic standards regarding the electoral rights of citizens. The current Constitution of Bosnia and Herzegovina is self-contradictory, because while one part of the Constitution prohibits any form of discrimination, the other part of the Constitution provides state institutions exclusively reserved for citizens who belong to the constituent peoples. All other citizens of Bosnia and Herzegovina who do not belong to any of the constituent peoples do not stand for elections to the Presidency of Bosnia and Herzegovina and the House of Peoples. These discriminatory provisions ended a brutal conflict marked by genocide and ethnic cleansing, and the concept of constituent peoples was necessary to ensure peace after a brutal conflict. The ECtHR decided in the above cases that the tragic conflict and long period of peace, there could no longer be any reason for the maintenance of the discriminatory constitutional provisions. In this paper, we will examine what impact the Bosnian model of consociational democracy has on meritocracy and economic development.
Keywords: consociational democracy, ECtHR, human rights, the rule of law, constituent peoples, meritocracy.

INTRODUCTION

The Constitution of Bosnia and Herzegovina simultaneously guarantees a group of individual and collective rights, which do not have to conflict, but in Bosnia and Herzegovina they do, as the ECtHR defined in the *Sejdić and Finci v. BiH, Zornić v. BiH, Pilav v. BiH, Šlaku v. BiH* cases. The basic idea of the above ECtHR judgments is that the current model of the constituency of peoples is not in line with international human rights standards (Banović 2021; Begić 2021). The current model of the constituency of the peoples in Bosnia and Herzegovina creates exclusive rights for members of the constituent peoples, to guarantee certain functions or positions only for members of the constituent peoples, namely Bosniaks, Serbs, and Croats. Specifically, only members of the constituent peoples can stand for the presidential elections and be elected to the House of Peoples of BiH. In this sense, the Constitution of Bosnia and Herzegovina creates exclusive rights for members of the constituent peoples, and thus discriminates against minorities, as well as all other citizens of Bosnia and Herzegovina who refuse to declare themselves as members of the constituent peoples.

The provisions of the Constitution of Bosnia and Herzegovina, besides being discriminatory against people of different ethnic affiliations (Article IV and Article V of the Constitution), are also an example of consociational democracy. As Goran Marković points out, the elements of consociational democracy are evident at the state level, whereas at the lower levels of government, the elements of consociational democracy are less noticeable. In particular, the Presidency of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina are institutions in which we see parity representation as the element of consociational democracy. Also, in both of these institutions, the right of veto can be exercised for protection of vital national interests, as stated in the Constitution of Bosnia and Herzegovina. If we talk about the House of Peoples of Bosnia and Herzegovina most delegates have veto powers that block any decision that is identified as a threat to the vital interest of the entity or group they represent. Unlike the House of Peoples of Bosnia and Herzegovina, each member of the Presidency, in case they do not agree with a certain decision, can declare it to be destructive of a vital interest of the Entity (Marković 2012; Trnka 2006). Therefore, Bosnia and Herzegovina is a state that contains elements of consociational democracy, but at the same time discriminates against citizens who are not members of the constituent peoples. This is somewhat understandable, because as McCrudden and O`Leary point out, liberal critics of consociational democracy claim that

consociational democracy inevitably violates the rights of some groups and the rights of some individuals. In this sense, the liberal criticism of consociational democracy finds that consociational democracy violates the right of individuals to prohibit discrimination (McCrudden, O`Leary 2013). In this context, the BiH legal system contains all the elements of ethnic nationalism or, as Hayden calls it, constitutional nationalism. Hayden defines constitutional nationalism as a constitutional structure and legal order that privileges the members of an ethnic nation over other residents in a particular state (Rangelov 2014). So, Bosnia and Herzegovina is at the same time a state of consociational democracy and constitutional nationalism. In the ECtHR judgments it is stated that there is no longer a legitimate reason to maintain discriminatory norms, thus in the judgment *Zornić v. Bosnia and Herzegovina*, and referring to the previous judgment in *Sejdić and Finci v. Bosnia and Herzegovina*, the ECtHR found: "In Sejdić and Finci the Court observed that when the impugned constitutional provisions were put in place a very fragile ceasefire was in effect on the ground and that the provisions were designed to end a brutal conflict marked by genocide and "ethnic cleansing" (see ibid., § 45). The nature of the conflict was such that the approval of the "constituent peoples" was necessary to ensure peace (ibid.). However, now, more than eighteen years after the end of the tragic conflict, there could no longer be any reason for the maintenance of the contested constitutional provisions. The Court expects that democratic arrangements will be made without further delay. In view of the need to ensure effective political democracy, the Court considers that the time has come for a political system which will provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples of Bosnia and Herzegovina without discrimination based on ethnic affiliation and without granting special rights for constituent people to the exclusion of minorities or citizens of Bosnia and Herzegovina" (ECtHR 2014). In this regard, there is no longer a legitimate reason for maintaining the current model of constituent peoples, because the stable peace period after the establishment of the constitutional order based on the Dayton Agreement has, in the ECtHR's view, made the current discriminatory provisions unjustified. In this sense, Bosnia and Herzegovina is closer to constitutional nationalism than to consociational democracy, which usually exists in deeply divided and post-conflict societies.

Bosnia and Herzegovina is often, wrongly, and probably maliciously, presented as a state with a historically divided society, but as Noel Malcolm states, there is no historical evidence that Bosnia and Herzegovina has historically been divided based on ethnic affiliation, but that this division was

more based on affiliation with different strata of society (Malcolm 2011). Therefore, the consociational model of democratic government established in Bosnia and Herzegovina is not the result of a deeply divided society, but of the armed conflict that took place between 1992-1995 in Bosnia and Herzegovina and resulted in ethnic cleansing and ultimately genocide. The primary reason for the establishment of constitutional order was to stop the armed conflict, and therefore compromises were made to the detriment of the individual rights of citizens. After the establishment of peace, as it was stated in the ECtHR judgments, there was no longer a legitimate reason to maintain discriminatory provisions, and according to Bardutzky, the Constitution of Bosnia and Herzegovina, which was drafted as a part of the peace agreement, is a kind of transitional constitutional model. This means that Bosnia and Herzegovina must improve the constitutional order to guarantee the same rights to all citizens regardless of ethnicity (Bardutzky 2010). Consequently, Bosnia and Herzegovina is no longer a consociational democracy because, according to the ECtHR, the legitimate reasons underlying the consociational democracy, such as a post-conflict situation or a deeply divided society, does not exist in Bosnia and Herzegovina, so that Bosnia and Herzegovina is a state with a system of constitutional nationalism.

The system of government in Bosnia and Herzegovina cannot be considered a true democracy as long as the ECtHR judgments are not implemented, nor could it be considered a state where the rule of law exists. This paper does not discuss the conflict between individual rights and the rights of ethnic groups in Bosnia and Herzegovina, in terms of the development of democracy and the rule of law, but it will focus on the existence of meritocracy, which certainly indirectly affects the development of democratic institutions. So, this paper will examine the relationship between meritocracy and ethnic representation, focusing on the assurance of special rights to ethnic groups, where we will explore how ethnic representation affects the development of meritocracy in Bosnia and Herzegovina, and whether a system based on meritocracy, as the rule of the most capable, can be developed with ethnic representation at all.

MERITOCRACY, DEMOCRACY AND THE RULE OF LAW

Joseph Chan defines political meritocracy as “the idea that a political system should aim to select and promote leaders with superior ability and virtue.” (Chan 2013). John Skorupski defines pure meritocracy as:

> A political order with a constitution that vests ultimate sovereignty in a ruling group solely on the grounds that that group has relevant

> competence and virtue. The only constitutional requirement on the method by which members of the group are selected is that it should be defensible as leading to selection on merit. The members of the group may, for example, be selected by examinations administered by existing members or by examiners appointed by them (Skorupski 2013).

Meritocracy is not necessarily compatible with democracy and the rule of law, but it is not, *per se*, the opposite of democracy. There are two types of meritocracies, authoritarian meritocracy and democratic meritocracy. According to Baogang He and Mark E. Warren, political meritocracy is not a better alternative to liberal democracy because theoretically, it is a mistake to compare meritocracy with democracy as meritocracy is an ideal of leadership selection without a theory of power, while democracy is a regime type that includes a theory of power. Meritocracy, in that context, is not a regime type of government, but an aspirational ideal in which political leaders should be appointed to their functions based on their merit (He, Warren 2020). Therefore, meritocracy is neither specific to democracy nor authoritarianism because modern authoritarian regimes, unlike the absolute autocratic regimes that have existed throughout history, require the most capable people in leadership positions so that power can be legitimized, both domestically and internationally. Thus, modern authoritarian regimes are legitimized by bringing individuals to leadership positions based on their competence, and no other criteria, which are not inherent in meritocracy.

Meritocracy is an element of the ideal liberal democratic society, where liberal and democratic principles have a symbiotic relationship. An ideal-typical regime would be a political regime where the government is elected democratically, however, the power would be limited by higher principles, such as the rule of law. The democratic government itself, with no limitations, can become the "tyranny of the majority", while power based only on a liberal concept can turn into the rule of the aristocratic elite (Ballestrem 1998). Therefore, meritocracy is an element of the liberal democratic order, and in this respect, John Stuart Mill expresses his awareness that the will of the majority must have supremacy, but the test of the correctness of a particular policy cannot be contained only in the majority's will but in "the good of the people". Mill also stresses that people should be persuaded, not coerced, to set certain limits for unlimited exercise of power (Skorupski 2013). Liberal democracy and meritocracy, assuming meritocracy is understood as one principle and not order, are compatible. It is therefore important to distinguish between functions specified only for democratically elected representatives

and for those that are elected based on certain abilities. Elections for the legislature and the head of state in direct elections are based on democratic principles, and meritocratic criteria play a role only if voters think the abilities of political candidates are important. Apart from this, candidates for all other functions in the state, namely administrative, bureaucratic, and judicial functions, should be elected on the candidate's merit for the particular position. In this context, the rule of law is similar to meritocracy, because one of the basic principles of the rule of law is equality before the law, and in this regard, Friedrich Hayek emphasizes that "the great aim of the struggle for liberty has been equality before the law" (Asemoglu, Wolitzky 2020). Equality before the law is a principle in which the state treats citizens equally, without discrimination on any grounds. Thus, when appointing or hiring certain individuals to certain positions, the state should not discriminate on any grounds, and the only criteria that should exist are the ability and competence of a certain candidate for a certain position. Of course, there are some shortcomings in the way the principle is applied in practice and then we are talking about positive discrimination, but theoretically, the act of choosing individuals based on their ability and competence for certain functions is the closest to the ideal principle of equality before the law. The rule of law and meritocracy are compatible, because, with equal treatment of individuals, the best and most competent individuals should be appointed to administrative and judicial positions, so that the state institutions could function in the best possible way and the interest of the people.

Proof of this can be found in the "Meritocratic Democracy: Learning from the American Constitution", where Stephen Macedo explains that the US founding fathers also considered that besides the government being democratic, the government should also be based on meritocratic principles (Macedo 2013). The essence of democracy and the rule of law is the fact that the state, a political entity designed to serve for the common good of all, is governed by the most competent individuals so that these goals of general welfare could be met.

CONSOCIATIONAL DEMOCRACY AND MERITOCRACY

Unlike majoritarian democracy, where the "one person, one vote" principle applies, consociational democracy guarantees certain collective rights to protect certain collective interests in order to preserve peace and stability within a certain state and society. According to McCrudden and O`Leary, consociational democracy limits individual rights to some extent. In this part of the paper, we will analyze how consociational democracy affects

meritocracy and whether, based on meritocratic principles, individuals can be elected to certain positions in the consociational democracy.

First, when we talk about consociational democracy, one element of consociational democracy that may be contrary to meritocratic principles is proportional and parity representation (McCrudden, O`Leary 2013). Proportional and parity representation implies that the representation of a specific group in public institutions should be proportional to the share of that same group in the total population, i.e., parity representation means that an equal number of representatives of each collective should be represented within a certain state institution. The question is whether the consociation principle applies only to functions elected in direct elections or to all functions, including administrative and judicial. In practice, consociational democracy usually refers to the appointment of individuals in all state authorities, including those that are not elected to the office through direct elections, but are appointed based on their capabilities or some other criteria. Having this in mind, a question arose whether protecting collective rights under consociational democracy could jeopardize meritocratic principles. The problem the consociational democracy faces is that this type of democracy is not satisfied with the principle of equality before the law, as a principle that guarantees the same rights to all persons, but additionally requires that certain collective groups within the state have equal rights, which could jeopardize the equality of individuals before the law. Therefore, to protect collective rights, consociational democracy may jeopardize meritocratic principles, or rather, meritocratic principles may be set aside, and the collective affiliation of the individual may be brought to the fore. In such a system, where one of the major criteria for appointment into the office is the affiliation to a certain group, meritocracy does not exist or exists to a minimal extent.

Depending on the type of consociational democracy, we can determine whether that model of consociational democracy will violate meritocratic principles. Thus, corporate consociational democracy emphasizes the importance of ethnic affiliation in the functioning of political life, while liberal consociation does not support the affiliation to a certain collectivity and accepts the protection of individual rights (Banović 2021). Therefore, the less weight is put on the collective affiliation as a criterion for participation in public life, the more prominent become meritocratic criteria and *vice versa*. The collective affiliation must be almost non-existent in administrative and judicial functions for meritocracy to exist in consociational democracy, because administrative, and especially judicial functions, must be performed by the most competent individuals, so they could effectively limit the will of

the majority in those segments that are not, as Mill calls it, following "the good of the people". In order to avoid the "tyranny of the majority" and protect people against the arbitrary power of rulers, persons allowed to limit their power must be the most competent in order to do their job properly and under the rule of law and constitutional rule. The judiciary is the guardian of liberal segment in a democracy, so if that branch of government is not elected on meritocratic principles, there is a danger that the liberal component of the liberal democracy could become weaker, which could lead to "tyranny of the majority".

BOSNIA AND HERZEGOVINA, CONSOCIATION DEMOCRACY AND MERITOCRACY

As already stated, consociational democracy is one characteristics of the current constitutional order of Bosnia and Herzegovina. It was already pointed out in this paper that the consociational model of democracy visible at the state level is in the institutions of the Presidency of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina. The ECtHR has ruled that both institutions discriminate without legitimate reason against all those citizens of Bosnia and Herzegovina who do not declare themselves as members of the constituent peoples. In meritocracy, the election of the head of state and delegates to the House of Peoples of Bosnia and Herzegovina is indisputable, as officials in both institutions are elected following the principles of democracy, and meritocracy only depends on the will of voters and weather they consider candidates competent for the function. Therefore, whether or not an election for these institutions is discriminatory or not, it does not significantly affect meritocracy. But the consociational model of democracy, or rather in this context, ethnic exclusivism, is not only visible during the "democratic" election for the authority functions.

The consociational model of parity and proportional representation in Bosnia and Herzegovina is also visible in the administrative and judicial authorities. Thus, Article 2 (2) of the Law on Civil Service of Bosnia and Herzegovina reads: "The structure of civil servants within the civil service shall generally reflect the ethnic structure of the population of Bosnia and Herzegovina in accordance with the last census" (Law on Civil Service in the Institutions of Bosnia and Herzegovina). Similarly, Article 2 of the Law on Civil Service of the Federation of Bosnia and Herzegovina reads:

> "(1) The Bosniaks, Croats, and Serbs, as constituent peoples, along with Others and the citizens of Bosnia and Herzegovina, shall be proportionally represented."

"(2) Being a constitutional principle, such a proportionate representation shall be based upon the Census 1991 until the full implementation of Annex 7."

"(3) The Government of the Federation of Bosnia and Herzegovina and the cantonal governments shall perform supervision over the representation of civil servants in the civil service authorities referred to in paragraph 1 of this article."

It is similar with judicial functions, so Article 4 (11) of the Constitution of the Federation of Bosnia and Herzegovina reads: "Constituent peoples and Others shall be proportionally represented in cantonal and municipal courts. Such a representation shall be based upon the 1991 census until Annex 7 is fully implemented in accordance with Article IX.11.a of this Constitution." (Constitution of the Federation BiH). The spirit of consociational democracy can be seen in the constitutional system of Bosnia and Herzegovina, where such democracy is not explicitly prescribed. Article VI(1)(a) prescribes the manner of election of judges for the Constitutional Court of Bosnia and Herzegovina and reads as follows: "Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency" (The Constitution of BiH). The only criteria for the election of the Constitutional Court judge is that it should be "prominent lawyer of high moral standing", which in the legal context is a very broad provision and can have extensive interpretations.

Unlike the provisions of the Constitution of Bosnia and Herzegovina, the institutions of Bosnia and Herzegovina, namely the House of Representatives of the Federation and the Assembly of the Republika Srpska, have established additional ethnic criteria for the election of judges of the Constitutional Court of Bosnia and Herzegovina. Thus, the unwritten constitutional rule was established that two Bosniaks and two Croats were elected from the Federation of Bosnia and Herzegovina, while two Serbs were elected from the Republika Srpska. According to Harun Išerić, the unwritten constitutional rule here established is *contra constitutionem*, because it discriminates against all other possible candidates for the position of a judge of the Constitutional Court of Bosnia and Herzegovina who are not members of the three constituent peoples (Išerić 2017). And as we have already stated, the ECtHR has already ruled that there is no legitimate reason for discrimination based on ethnicity in the constitutional system of Bosnia and Herzegovina. So, consociational democracy is also present in those segments

of the constitutional system in Bosnia and Herzegovina where it is not explicitly prescribed. Of course, the consociational practices of electing individuals to administrative and judicial authorities also affect meritocracy, because the first, or basic condition for placing an individual in a certain position is their ethnicity. The first and foremost criterion in job openings and selection of candidates for the institutions at all levels of authority in Bosnia and Herzegovina is the candidate's ethnicity. This is contrary to meritocratic principles, where the first and basic criterion is the ability and competence of the candidate.

In the Expert's Report on Rule of Law issues in Bosnia and Herzegovina (hereinafter: Report) it is stated that ethnic affiliation should be considered last for the appointments, promotions, and career advancement of judges if two candidates are equally qualified. On this issue the Report points:

> "Appointments, promotions and career advancement of judges and prosecutors by the HJPC should primarily follow a non-ethnic approach and be based on merit. The problem of ethnic approach in the ranking lists is particularly acute in the case of court presidents and chief prosecutors. While general representation of constituent peoples and others is a constitutional principle, the prevailing standard for judicial appointment should be that of merit. Ethnic affiliation should be considered only at the very end of any selection if there is a choice between two equally ranked candidates. Appointment decisions need to be more thoroughly motivated, according to predetermined criteria. This is only one example where improvements can be made immediately. Although the decisions need to be open to judicial review, this is not yet possible under the current legislation" (Expert's Report on Rule of Law issues in Bosnia and Herzegovina).

The rule of law is closely related to the meritocratic selection of judges and prosecutors. Only the most professional and authoritative officials will implement and protect the rule of law. Unfortunately, as we can see, the basic criteria for the appointment of officials in both administrative and judicial authorities is their ethnicity, followed by their expertise and competence. This does not meet the standards of meritocracy, which requires that the first and basic condition for appointment to a certain function is candidate's expertise. Meritocratic standards are not significantly jeopardized during the democratic elections for offices in consociational democracy, because these positions are not elected based on expertise, but on the people's will, so even in liberal democracies, "democratic authorities" are not elected on meritocratic norms.

However, in order to protect the rule of law, individuals for judicial and administrative positions must be selected primarily on the principle of meritocracy rather than their ethnicity, which can be a criterion only in the end if the two candidates are equally qualified and skilled.

WHY ARE ECtHR JUDGMENTS SO IMPORTANT FOR BOSNIA AND HERZEGOVINA?

So why are the ECtHR judgments so important for the meritocracy? As already mentioned in this paper, the ECtHR has established that there are no reasons for ethnic discrimination in the constitutional system of Bosnia and Herzegovina, and that officials should not be appointed based on ethnic exclusivism. For example, the unwritten rule of constitutional practice for the election of the Constitutional Court judges is contrary to ECtHR judgments, and at the same time contrary to meritocracy. This means that, by erasing ethnic discrimination, as required by the ECtHR, it also creates the preconditions for meritocratic governance, where people are moved into positions of influence based on their demonstrated abilities and merit, without taking into consideration their ethnic affiliation. This means that by implementing the ECtHR judgments in Bosnia and Herzegovina, in addition to achieving full democracy and the rule of law it would consequently lead to meritocratic governance. The ethnic representation must not be the core value for the election into political and legal institutions, which consequently endangers the rule of law since people in charge of its protection are not primarily selected based on their abilities but on their ethnic affiliation.

In this context, the ECtHR judgments are a driver that establishes not only democracy and the rule of law but also meritocracy simultaneously erasing ethnic discrimination and representation in the state's political and legal systems, where advancement is based on individual's capabilities and merits rather than based on their ethnicity. This would bring Bosnia and Herzegovina closer to the ideal-typical model of liberal democracy, where liberal and democratic principles have a symbiotic relationship. In such a society, the people elect the government in democratic elections, and judicial and administrative authority is elected based on expertise and competence, so the “tyranny of the majority” could be effectively prevented.

CONCLUSION

The ECtHR judgments are not only important in securing democracy and the rule of law. As presented in this paper, erasing ethnic discrimination in the constitutional system of Bosnia and Herzegovina, and respecting the

suggestions set out in the Report, Bosnia and Herzegovina would not only secure the rule of law but also meritocratic governance in judicial and administrative authorities. Ethnicity must not have precedence, either politically or professionally, as is clearly stated in both the ECtHR judgments and the Report. Thus, to achieve meritocratic governance, Bosnia and Herzegovina must achieve the principle of true equality before the law for all the citizens regardless of their ethnicity, which will consequently lead to meritocracy.

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THE VICTIM`S RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE IN BOSNIA AND HERZEGOVINA LAW

H. Avdić Faruk, Bachelor of Law, MA
Independent Researcher
ORCID id: https://orcid.org/0000-0001-7567-5588
E-mail: hadziavdicfaruk@gmail.com

Abstract
The right to contest a decision not to prosecute is one of the most crucial rights of the victim in criminal proceedings, who is entitled to effective criminal prosecution concerning serious violations of his human rights. The paper aims to show that the right to challenge such a decision in Bosnia and Herzegovina criminal legislation satisfies neither the formal requirements laid out in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime nor the requirement of effectiveness stemming from the jurisprudence of the European Court of Human Rights. The analysis also seeks to confirm that the victim of crime in B&H cannot effectively contest a decision not to prosecute because of his marginalized role in criminal proceedings and limited participatory rights.

Keywords: criminal proceedings, prosecutor, victim, review, decision not to prosecute.

INTRODUCTION

The legal standing of the victim of the criminal offense has long been marginalized given that contemporary legal systems, as well as contemporary criminal procedural scholarship, have been focused on the main procedural subjects - the court, the prosecutor, and the persons against whom criminal proceedings are being conducted, that is to say, on their rights and duties. However, the legal standing of the victim of the criminal offense when it comes to the European continent has been significantly enhanced as a result of the (legislative) activities of the European Union, and the (judicial) activities

of the European Court of Human Rights (hereinafter: the ECtHR). In this connection, among the most significant and consequential decisions brought in criminal proceedings are the decision not to institute criminal proceedings and the decision to discontinue criminal proceedings, that is to say, the decisions not to prosecute. Observed from the perspective of the victim of serious human rights violations, the decision not to prosecute may violate his right to an effective investigation derived from international legal instruments dealing with human rights and the standards developed in the jurisprudence of the ECtHR (Kamber, 2017; Ochoa, 2013; Seibert-Fohr, 2009). If the prosecuting authorities decide not to initiate criminal proceedings or desist from criminal prosecution during criminal proceedings, different mechanisms aimed at being the corrective of such decisions ending the criminal proceedings may exist in the form of: (1) limited possibilities of private persons to initiate or overtake criminal prosecution as authorized prosecutors in the role of private or subsidiary prosecutors; (2) independent review of the decision not to prosecute carried out by the same or different body upon the request from the victim or sometimes even *ex officio* – regardless of the request of the victim or any other person; and (3) multiple, independent public prosecution agencies with independent authority to bring charges for the same wrongdoing, which is a peculiarity of the criminal justice system of the United States of America (Brown 2018, 861-862).

The European Parliament and the Council of the European Union have adopted the Directive 2012/19/EU of the European Parliament and the Council of the European Union of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter: the Directive). The right of the victim of the criminal offense to request the review of the decision not to prosecute occupies a prominent place in the Directive in question bearing in mind that Article 11 of the Directive is devoted to the rights of the victim in the event of a decision not to prosecute (Article 11 of the Directive). In the first place, according to article 11 of the Directive, member states have the obligation to ensure that victims have the right to a review of a decision not to prosecute, albeit this obligation is ought to be fulfilled in accordance with their role in the relevant criminal justice system. However, the Directive does not deal with the establishment of the procedural rules for such a review since this is a task of national legislators (Article 11, paragraph 1 of the Directive). In the second place, the Directive devotes special attention to the victims of serious crimes. Thus, the victims of such crimes must have the right to a review of a decision not to prosecute even in where, in accordance with

national law, the role of the victim in the relevant criminal justice system will be established only after the decision to prosecute the offender has been taken (Article 11, paragraph 2 of the Directive). The procedural rules for such a review shall be determined by national law (Article 11, paragraph 2 of the Directive). In the third place, member states must ensure that the victim is notified without unnecessary delay of their right to receive and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request (Article 11, paragraph 3 of the Directive). In the fourth place, the Directive takes into account the hierarchical structure of the public prosecution service. Therefore, where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority (Article 11, paragraph 4 of the Directive). In the fifth place, if the decision not to prosecute results in an out-of-court settlement, in so far as national law makes such provision, the victim, with the exception of the victim of the serious crime, does not have to be provided with the rights stemming from the Article 11 of the Directive (Article 11, paragraph 5 of the Directive). With regard to the body that should exercise control on the initiative of the victim, according to the Directive, this must be a different person or authority from the one which made the original decision (Recital 43 of the Directive). While the Directive does explicitly require that control must be carried out by the court, nevertheless, the control may be carried out within the framework of another body guaranteeing impartiality and independence (Novokmet 2016, 91). However, the right to the review of the decision not to prosecute refers to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts (Recital 43 of the Directive). Nonetheless, on the other hand, the decision terminating criminal proceedings includes situations where the prosecutor decides to withdraw charges or discontinue proceedings (Novokmet 2015, 413) (Recital 44 of the Directive). Hence, from this, it can be concluded that the victim of the criminal offense should be given the right to request the review of the decisions of the court that is the result of desistance from criminal prosecution.

While the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention) does not contain provisions with regard to the legal standing of the victim of the criminal offense in criminal proceedings since this legal instrument deals primarily with the rights of the person subjected to criminal proceedings, the ECtHR, nonetheless, as a result of the progressive interpretation and application of the

Convention, has significantly enhanced the legal standing of the victim of the criminal offense and afforded the victim of the criminal offense certain rights under the Convention. In the case *Armani Da Silva v. the United Kingdom* decided by the Grand Chamber, the ECtHR took into account the review mechanisms of the decision not to prosecute. From the information available to the ECtHR, it would appear that leaving aside the question of private prosecutions, in at least twenty-five Contracting States the decision to prosecute is taken by a public prosecutor (*Armani Da Silva v. the United Kingdom* [GC], § 175). In a further twelve contracting states, the prosecutorial decision is first taken by a public prosecutor before being put before a judge and/or a court (*Armani Da Silva v. the United Kingdom* [GC], § 175). The ECtHR observed that the decision not to prosecute is susceptible to some form of judicial review or appeal to a court of law in at least eighteen contracting states albeit in limited circumstances (*Armani Da Silva v. the United Kingdom* [GC], § 181). In at least seven contracting states, the decision of the prosecutor is normally contested before a hierarchical superior in the prosecution service with the final decision being susceptible of judicial review (*Armani Da Silva v. the United Kingdom* [GC], § 181). Finally, in at least twelve contracting states there is no possibility of judicially reviewing the decision not to prosecute, although in some cases the decision may be contested to a hierarchical superior in the prosecution service (*Armani Da Silva v. the United Kingdom* [GC], § 181). On the other hand, there are states which do not permit the judicial review of the decision not to prosecute (*Armani Da Silva v. the United Kingdom* [GC], § 181). According to the information available to the Court, the decision not to prosecute is susceptible to some form of judicial review or appeal to a court of law in at least twenty-five Contracting States and in these countries, albeit the standard of review varies considerably (*Armani Da Silva v. the United Kingdom* [GC], § 279). In seven of these countries, the decision must first be contested before a hierarchical superior in the prosecution service (*Armani Da Silva v. the United Kingdom* [GC], § 279). In twelve countries, the decision of the prosecutor may only be contested before such a hierarchical superior (*Armani Da Silva v. the United Kingdom* [GC], § 279). Consequently, it cannot be said that there is any uniform approach among member states with regard either to the availability of review or, if available, the scope of that review (*Armani Da Silva v. the United Kingdom* [GC], § 279). However, it is worth emphasizing that the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests (*Hanan v. Germany* [GC], § 208). Albeit the procedural requirement as regards the duty to conduct an effective

investigation does not impose an obligation on national legislators to establish a judicial review of investigative decisions (*Hanan v. Germany* [GC], § 220), it is undeniable fact that the procedural mechanism standing at the disposal of the victim must fulfill the requirements of the effectiveness of the investigation to provide the victim with a realistic possibility to successfully dispute the decision not to prosecute brought in criminal proceedings (*Isayeva v. Russia*, §§ 209-223).

THE MAIN FEATURES OF THE CRIMINAL PROCEDURE OF BOSNIA AND HERZEGOVINA AND THE PRINCIPLE OF LEGALITY OF CRIMINAL PROSECUTION

The legal system of Bosnia and Herzegovina is a complex legal system consisting of the legal systems of the state of Bosnia and Herzegovina and those of its entities - the Federation of Bosnia and Herzegovina and the Republic of Srpska, and the legal system of the Brčko District of Bosnia and Herzegovina which is the *sui generis* administrative-territorial unit under the direct jurisdiction of Bosnia and Herzegovina. In Bosnia and Herzegovina, there are four laws in force governing the criminal procedure of the abovementioned legal systems. The criminal procedure of the state of Bosnia and Herzegovina is governed by the Criminal Procedure Act of Bosnia and Herzegovina[193] (hereinafter: the CPA) that took effect in 2003. The composition of the criminal procedure is following. From the normative point of view, the criminal procedural legislation of Bosnia and Herzegovina recognizes and governs the four distinct stages of the criminal proceedings - the investigation, indictment proceedings, the main hearing, as well as proceedings on ordinary and extraordinary legal remedies (Sijerčić-Čolić 2012b, 21). However, from the structural point of view, the criminal procedure of Bosnia and Herzegovina consists of the pre-trial procedure comprising the investigation and the indictment proceedings, the main hearing, that is to say, the trial, and proceedings on legal remedies (Bubalović 2008, 1133).

[193] The Criminal Procedure Act of Bosnia and Herzegovina governs the criminal proceedings before the Court of Bosnia and Herzegovina. The Criminal Procedure Act of the Federation of Bosnia and Herzegovina governs the criminal proceedings before the courts of the Federation of Bosnia and Herzegovina. The Criminal Procedure Act of the Republic of Srpska governs the criminal proceedings before the courts of the Republic of Srpska. The Criminal Procedure Act of the Brčko District of Bosnia and Herzegovina governs the criminal proceedings before the courts of the Brčko District of Bosnia and Herzegovina.

In Bosnia and Herzegovina, the function of criminal prosecution is executed by the (public) prosecutor exclusively. The public prosecution service in Bosnia and Herzegovina is organized as an autonomous and independent, hierarchically structured, monocratic judicial body, which is authorized and obliged to act against perpetrators of criminal offenses and to execute other duties in accordance with the law (Turković 2008, 266). In this connection, it is worth observing that Bosnian criminal procedure legislation, as well as the legislation of most other countries of the European-continental legal circle, traditionally accepts the principle of legality of criminal prosecution, under which the prosecutor has the duty to prosecute if there is enough evidence that the criminal offense was committed unless otherwise provided by the law governing the criminal procedure. The principle of legality of criminal prosecution obliges the prosecutor to undertake criminal prosecution if all the preconditions prescribed by law for that are fulfilled, regardless of his attitude on whether or not criminal prosecution is necessary (Sijerčić-Čolić 2012a, 93). In other words, the principle of legality of criminal prosecution obliges the prosecutor to institute and stay in the criminal proceedings as long as requirements for criminal prosecution exist (Bayer 1972, 167). The purpose of this principle of criminal procedural law is to ensure that the prosecutor and other public authorities responsible for criminal prosecution treat all perpetrators equally in undertaking criminal prosecution in order to avoid discrimination motivated, for example, by the social status of the perpetrator or external influences or other circumstances (Krapac 2015, 99). Therefore, the principle of legality of criminal prosecution protects citizens from the arbitrariness of the criminal procedure bodies entrusted with the execution of the function of prosecution. Besides the legality principle, the criminal procedural legislation of Bosnia and Herzegovina also adopts the principle of mutability under which the prosecutor may desist from prosecution if some of the factual or legal assumptions for prosecution cease to exist during proceedings (Pavišić 2013, 192; Simović & Simović 2016, 170). Nonetheless, notwithstanding the fact that the prosecutor in Bosnia and Herzegovina is the professional bestowed with the constitutional guarantees of independence and autonomy, bound by the principle of legality of prosecution, he may still wrongly (intentionally or unintentionally) assess the requirements for prosecution and violate the rights of the victim if he opts to: 1) not institute criminal proceedings; 2) or desist from criminal prosecution (Novokmet 2017, 378-379).

THE DECISION NOT TO PROSECUTE IN THE INVESTIGATION

The investigation is the first and only obligatory procedural stage not only within the ordinary criminal proceedings but also within certain special procedures, such as the penal order proceedings (the so-called abbreviated criminal procedure) and the procedure against legal persons. Besides considerably minimizing the role of the suspect in the first stage of the criminal proceedings - the investigation (Dodik 2012, 30), the reform of the criminal procedural legislation of Bosnia and Herzegovina also marginalized the procedural legal standing of the victim[194] of the criminal offense (hereinafter: the victim) in each stage of the criminal proceedings considering that the role of the victim is practically confined to the role of the witness provided that the prosecutor deems that it is necessary to hear the victim in that capacity (Dautbegović & Pivić 2010, 13-32). In this connection, the present-day criminal procedural legislation does not definite the term of the victim. The term victim is only sporadically mentioned in a few provisions of the CPA. It is worth observing that the victim can participate in the criminal procedure only in the capacity of the injured party who is defined as a person whose personal or property rights have been threatened or violated by the criminal offense (Article 20(h) of the CPA). The notion of the injured party refers to the natural, as well as the legal person (Sijerčić-Čolić 2012a, 231). As a consequence of the reform of the criminal procedure of Bosnia and Herzegovina, despite the fact that one of its main aims was the democratization of the criminal procedure as a whole and the enhancement of human rights of its participants, the victim has been deprived of the right to acquire the party capability in the criminal procedure in the roles of the subsidiary prosecutor and the private prosecutor since the (public) prosecutor has completely monopolized the function of criminal prosecution (Novokmet 2015, 416). The procedural institution of the subsidiary prosecution allows the victim to independently and autonomously prosecute the case before the competent

[194] The Criminal Procedure Act of Bosnia and Herzegovina, the Criminal Procedure Act of the Federation of Bosnia and Herzegovina, the Criminal Procedure Act of the Brčko District of Bosnia and Herzegovina contain identical provisions with regard to the procedural standing of the victim of the criminal offense in the event of the decision not to prosecute. The procedural solutions examined in this paper are those of the Criminal Procedure Act of Bosnia and Herzegovina. Still, this analysis is relevant to the criminal procedural legislation of the Federation of Bosnia and Herzegovina and those of the Brčko District of Bosnia and Herzegovina. However, the procedural solutions contained in the Criminal Procedure Act of the Republic of Srpska are different in that respect. Hence, the analysis of this paper and its conclusion do not refer to the legal system of the Republic of Srpska since its legal system grants the victim of the criminal offense different (broader) rights in the event of the decision not to prosecute.

criminal court in the role of the authorized prosecutor if the (public) prosecutor is not willing to do so (Kamber 2017, 469). As a result of the aforementioned possibility, the injured party could transform himself into an authorized prosecutor with the possibility to act as a counterbalance and corrective as regards the monopoly of the prosecutor over the prosecution (Krapac 2015, 226).

The diminished legal standing of the injured party is obvious when one considers the procedural rights belonging to the injured party under the CPA in the event when the prosecutor decides not to prosecute. In this connection, the decision not to prosecute appears in the investigation in the two procedural situations. As a correlation of his right and duty to issue the order to conduct the investigation, the prosecutor also has the right to issue the order not to conduct the investigation. Besides, only the prosecutor has the right and the duty to discontinue the investigation (Simović & Šikman 2017, 381). It is worth observing that grounds for the nonconduction and the discontinuation of the investigation are factual and legal (Sijerčić-Čolić 2012b, 35-36, 55). When the prosecutor orders that the investigation shall not be conducted, he must notify the injured party and the person who reported the offense within 3 (three) days of the fact that the investigation shall not be conducted, as well as the reasons for not doing so (Article 216, paragraph 4 of the CPA). After receiving the notification that the investigation shall not be conducted, the injured party and the person who reported the offense have the right to file the complaint with the chief prosecutor's office within 8 (eight) days (Article 216, paragraph 4 of the CPA). Moreover, the same procedure regarding the complaint follows after the prosecutor brings the order to discontinue the investigation albeit the person who reported the offense does not have the right to file the complaint in this case (Article 224, paragraph 2 of the CPA).

Unfortunately, the legislator has regulated the complaint inappropriately and superficially since a number of issues related to this legal remedy are not included in the CPA (Barašin & Hasanspahić 2009, 513) even though they should be included by all accounts. Specifically, when dealing with the complaint against the order not to conduct the investigation and the order to discontinue the investigation, the criminal procedural legislation prescribes only: 1) persons entitled to file the complaint - the injured party and the person who reported the offense, while the right to file the complaint against the order to discontinue the investigation belongs exclusively to the injured party; 2) the duty of the prosecutor to notify in writing the aforementioned subjects of the reasons for the non-conduct and the discontinuation of the investigation within (3) three days from the day of

issuing the order on non-conduct, ie discontinuation of the investigation; 3) the body to which the complaint is submitted which is the office of the chief prosecutor; 4) the deadline for filing the complaint, which is eight days from the day of delivery of the notification that the prosecutor has decided not to conduct the investigation or that he has decided to discontinue the investigation (Janković 2018, 217). However, the complaint against the decision not to prosecute brought during the investigation is susceptible to critiques for numerous reasons. Firstly, the CPA remains silent when it comes to the issue within whose competence is to decide upon the submitted complaint of the injured party. In this connection, the CPA only prescribes that the complaint is to be submitted to the office of the chief prosecutor, but from this, it cannot be concluded that rendering the decision regarding the complaint is the exclusive responsibility of the chief prosecutor under the existing provisions of the CPA (Dodik 2012, 27-28). Therefore, the CPA does not ensure that the complaint of the injured party is examined objectively and impartially. As a result, the law of Bosnia and Herzegovina is not in line with the Directive whose provisions require that the authority or the official person exercising review of the decision not to prosecute is different from the authority or the official person making such a contested decision in the first place (Novokmet 2015, 418). Secondly, the CPA also does not set the deadline within the body, or the official person is required to make the decision as regards the submitted complaint. Thirdly, the provisions of the CPA also do not establish and regulate the procedure following the submission of the complaint. Fourthly, the CPA does not contain provisions that would be dealing with the admissibility and the groundedness of the complaint submitted on the part of the injured party. Fifthly, an additional shortcoming of the criminal procedural legislation of Bosnia and Herzegovina is that the prosecutor is not obliged to notify the injured party about the outcome of his complaint, meaning that the injured party, as a complainant, is left in the state of uncertainty in view of the fact that the injured party remains in complete darkness with regard to the outcome of the complaint. Sixthly, the CPA does not determine whether the prosecutor must render the formal decision upon the submitted complaint of the injured party; and what is the form of such a decision, specifically, is it the decree or the order. Consequently, the procedure triggered by the submission of the complaint of the injured party is essentially the administrative one since all of these (missing) issues related to the complaint are left to each individual prosecutor's office to determine by its internal regulations (Grubač 2005, 535). Accordingly, there is no doubt that such an approach of the legislator regarding the complaint is unacceptable

since the complaint is the only form of control over the decision not to prosecute in the investigative stage of the criminal proceedings. Thus, having in mind all these omissions of the Bosnian legislator as regards the procedure following the submission of the complaint, the complaint, as a legal remedy standing at the disposal of the injured party, does not satisfy the requirement of an effective legal remedy. In addition to the abovementioned, it is noticeable that the criminal procedural legislation does not govern the legal destiny of the submitted complaint. Moreover, it is worth pointing out that the complaint, as envisaged by the Bosnian legislator, for the purpose of Article 35 of the Convention, is considered an ineffective legal remedy in light of the provisions of the Convention and the jurisprudence of the ECtHR. Namely, under the well-established case-law of the ECtHR, as regards a complaint to a higher prosecutor, such a hierarchical complaint does not give the person making it a personal right to the exercise by the state of its supervisory powers (*Horvat v. Croatia*, § 47, *Belevitskiy v. Russia*, § 59). The ECtHR opined that a hierarchical complaint is nothing more than an information statement followed by a request to that authority to make use of its power to order an additional inquiry if it seems appropriate to do so. In addition, the higher prosecutor does not have to hear the complainant, and the proceedings triggered by the submission of the complaint are entirely a matter between the supervising prosecutor and those being subordinated to him. As a result, the complainant does not have a role of a party to any proceedings and only has the right to obtain information about the way in which the supervisory body has dealt with his hierarchical complaint (*Belevitskiy v. Russia*, § 60). Thus, after comparing the provisions of the CPA related to the complaint, on the one hand, with the abovementioned views of the ECtHR as regards the nature of the complaint, one may righteously conclude that the complaint directed against the order not to conduct the investigation, that is, the complaint directed against the order not to discontinue the investigation is not an effective legal remedy that would allow the victim to effectively and successfully contest the decision not to prosecute brought in the investigation.

Moreover, under the standards of ECtHR, the victim of serious human rights violations has the right to be informed of the decision not to prosecute and be provided with access to the investigation and court documents, so that the victim may partake effectively in proceedings aimed at challenging the decision not to prosecute (*McKerr v. the United Kingdom*, §§ 111-115; *Ramsahai and Others v. the Netherlands* [GC], § 349). In this connection, the Bosnian law definitely does not satisfy requirements stemming from the jurisprudence of the ECtHR since the injured party is not entitled to inspect

the case file, and the decision not to prosecute brought in the investigation does not have to be delivered to the injured party nor this procedural subject has the right to request to be provided with the copy of such a decision. For instance, in the case of *Khamzayev and Others v. Russia*, the ECtHR found the violation of the right to life as regards an effective investigation since the applicants were only informed of the outcome of the criminal proceedings, while they were not provided with access to the decision not to prosecute (*Khamzayev and Others v. Russia*, §§ 205-207). Furthermore, the ECtHR took the view in the same case that the applicants could have hardly identified possible defects in the investigation and brought them to the attention of a domestic court, or presented, in a comprehensive complaint, any other arguments that they might have considered relevant. In other words, considering all the circumstances of the case in question, the applicants were deprived of a realistic opportunity to effectively challenge the decision not to prosecute (*Khamzayev and Others v. Russia*, § 205). Likewise, in the case of *Anık and Others v. Turkey,* the ECtHR found the violation of the procedural obligation regarding an effective investigation because the applicants were left without the possibility of successfully challenging the decision not to prosecute since they were only provided with access to their own statements made in the criminal proceedings, whereas they could not inspect any other documents contained the investigation file (*Anık and Others v. Turkey*, §§ 75-79). Moreover, the procedural solution under which the injured party does not have the right to receive the decision not to prosecute and to access the case file is not consistent with Article 11, paragraph 3 of the Directive establishing the obligation of the state to provide the victim with sufficient information to decide whether to request a review of any decision not to prosecute (Article 11, paragraph 3 of the Directive). Therefore, having in mind the abovementioned considerations, the complaint against the order not to conduct the investigation, as well as the complaint against the order to discontinue the investigation, are nothing more than the dead letter of the law (Novokmet 2015, *loc*. *cit*.). Moreover, it could be said that the right to file the complaint is the right of a purely declarative nature that does not affect the outcome of the criminal proceedings in any way (Halilović, Adžajlić-Dedović & Budimlić 2019, 84).

THE DECISION NOT TO PROSECUTE IN THE INDICTMENT PROCEEDINGS

When the prosecutor decides to complete the investigation, he shall prepare and refer the indictment to the preliminary hearing judge (Article 226, paragraph 1 of the CPA). Preparing and referring the indictment to the

preliminary hearing judge present the termination of the investigation and the commencement of the next stage of the criminal proceedings - the indictment proceedings. In this connection, the prosecutor may apply the principle of mutability throughout the indictment proceedings, and desist from criminal prosecution pursuant to the principle of mutability. During the indictment proceedings, the prosecutor desists from criminal prosecution through the withdrawal of the indictment. The conditions, as well as the consequences of the withdrawal of the indictment, are stipulated in Article 232 of the CPA under which the prosecutor may withdraw the indictment without prior approval before its confirmation, and after the confirmation and before the commencement of the main hearing, only with the approval of the preliminary hearing judge who confirmed the indictment in question. Therefore, the withdrawal of the indictment is possible before the indictment is confirmed, as well as after the indictment is confirmed on the part of the preliminary hearing judge. However, bearing in mind the possibility of withdrawing the indictment, there is no doubt that conditions for the withdrawal of the indictment are not the same considering that the withdrawal of the indictment after its confirmation is conditioned upon the approval of the preliminary hearing judge who previously confirmed the indictment in question. Namely, before the indictment is confirmed, the prosecutor has the right to withdraw the indictment by simply filing the request for the withdrawal with the court without the obligation to provide reasons for doing so. On the contrary, after the confirmation of the indictment, the prosecutor has the duty to state the reasons for the withdrawal since providing reasons for withdrawal allows the preliminary hearing judge to determine whether this prosecutorial action is in line with the law (Sijerčić-Čolić 2012b, 79). However, the outcomes of the withdrawal are the same in both cases since the court does not have any other option but is forced to issue the decree discontinuing the criminal proceedings, which is, among others, delivered to the injured party (Article 232, paragraph 2 of the CPA). In this connection, the question arises whether the injured party is entitled to file the appeal against the decree discontinuing the criminal proceedings. Nevertheless, the injured party cannot file the appeal against the aforementioned decree due to the fact that the law in question does not bestow the injured party with such a right (Halilović, Adžajlić-Dedović & Budimlić 2019, 85).

THE DECISION NOT TO PROSECUTE IN THE MAIN HEARING

The principle of mutability under which the prosecutor is entitled to desist from criminal prosecution is also applicable during the main hearing, that is to say, the trial, which is the central stage of the criminal procedure (Sijerčić-Čolić 2012b, 101). As regards the possibility of the prosecutor to resort to the use of the principle of mutability in this stage of the criminal proceedings, the prosecutor has the right to desist from criminal prosecution before the end of the main hearing (Article 38 of CPA). During the main hearing, the prosecutor desists from prosecution by dropping the charge. When the prosecutor drops the charge, the court is forced to hand down the judgment rejecting the charge (Article 283(b) of the CPA). Considering that the prosecutor may drop the charge throughout the main hearing, it is necessary to determine when this stage of the criminal procedure commences and terminates. While the main hearing commences with the reading of the indictment (Article 260, paragraph 1 of the CPA), the end of it is associated with the closing arguments. Upon the completion of the evidentiary proceedings, the judge or the presiding judge shall call for the prosecutor, injured party, defense attorney, and the accused to present their closing arguments (Article 277, paragraph 1 of the CPA). After all entitled procedural subjects present their closing arguments, the judge or the presiding judge shall declare the main hearing closed, and the court shall retire for deliberation and voting for the purpose of reaching the verdict (Article 278 of the CPA). Accordingly, starting from the analysis of the provisions of the criminal procedural legislation of Bosnia and Herzegovina pertaining to the commencement and the closing of the main hearing, the prosecutor has the right to desist from criminal prosecution after reading of the indictment and before giving his closing argument (Sijerčić-Čolić *et al*. 2005, 726). Therefore, taking into account the abovementioned, the prosecutor has the right to drop the charge when presenting his closing argument in view of the fact that the main hearing is still not closed in this procedural moment (Simović & Simović 2014, 160).

In addition to having the right to desist from criminal prosecution in each stage of the criminal proceedings held before the first-instance court, the prosecutor may also desist from prosecution during the criminal proceedings held before the court of the second instance (Sijerčić-Čolić *et al*. 2005, *loc*. *cit*.). Pursuant to the provision of Article 38 of the CPA stipulating the principle of mutability, the prosecutor may desist from criminal prosecution during the proceedings before the second-instance panel, upon the condition that such a possibility is envisaged by the CPA. Nonetheless, the

CPA does not offer an unequivocal answer as regards the possibility of the prosecutor to drop the charge in the second-instance proceedings. Nevertheless, the provisions of the CPA governing the main hearing in the first instance proceedings also apply to the hearing in the second instance proceedings (Article 317, paragraph 1 of the CPA). Consequently, the prosecutor has the right to desist from criminal prosecution throughout the second-instance proceedings upon the condition that the hearing is being held in this stage of the criminal proceedings.

When the prosecutor drops the charge during the main hearing, the court cannot proceed with the main hearing since one of the main requirements for the conduct of the criminal proceedings - the request of the authorized prosecutor does not exist anymore. Moreover, the accused also cannot request from the court to proceed with the main hearing even though the accused may have a legitimate interest do so. Also, the injured party does not have any procedural instruments at his disposal to prevent the prosecutor from desisting from criminal prosecution. Thus, bearing in mind the above considerations regarding the right of the prosecutor to drop the charge during the main hearing, there is no convincing reason why the withdrawal of the indictment after its confirmation is conditioned upon the prior approval of the preliminary hearing judge, while, one the other hand, the dropping of the charge that has the same consequence is deprived of any constraints or control even though the dropping of the charge comes into play immediately after the indictment is read (Grubač 2005, 540). Besides, under the consistent jurisprudence of the ECtHR, the procedural obligations stemming primarily from Article 2 and Article 3 of the Convention oblige national authorities to initiate and carry out an investigation capable of leading to the establishment of the facts and identifying and – if appropriate – punishing those responsible for serious human rights violations prescribed by the Convention (*Sabalić v. Croatia*, § 96). Furthermore, in the case when the official investigation has resulted in the institution of criminal proceedings before the national courts, the proceedings taken as a whole, including the trial stage, must fulfill the requirements derived from Article 2 and Article 3 of the Convention (*M.C. and A.C. v. Romania*, § 112; *Sabalić v. Croatia*, § 96). Thus, the notion of an effective investigation developed in the jurisprudence of the ECtHR does not apply only during the investigation; on the contrary, each phase of the criminal proceedings, including indictment proceedings, the main hearing, and proceedings before the court of the second instance, that is to say, appeals proceedings, must conform to the requirement of an effective investigation (Đurđević 2014, 75). Therefore, the right of the prosecutor to unilaterally desist from criminal

prosecution throughout the main hearing deprived of any form of external control obviously contradicts the requirement originating from the positive procedural obligation of an effective investigation that applies during the entirety of the criminal procedure (*Öneryildiz v. Turkey*, § 95), including the trial stage (Seibert-Fohr 2009, 137). Also, bearing in mind that Recital 44 of the Directive stipulates that the decision ending criminal proceedings includes situations where the prosecutor decides to withdraw charges or discontinue proceedings, the law of Bosnia and Herzegovina does not satisfy the Directive because the CPA does not grant the injured party the right to challenge the decision of the court ending the criminal proceedings that is a consequence of desistance from prosecution during the indictment proceedings and the main hearing.

CONCLUSION

After analyzing the provisions of the criminal procedural legislation of Bosnia and Herzegovina dealing with the right of the victim to challenge the decision not no prosecute, the following conclusion can be reached. In this connection, the law of Bosnia and Herzegovina does not satisfy the requirements stemming from the Directive and the jurisprudence of the ECtHR. The reason for such a conclusion is that criminal prosecution has become the monopoly of the public prosecutor deprived of effective internal or any form of external control. As we have seen, during the investigation, the only legal remedy at the disposal of the injured party to challenge the decision not to prosecute brought in this stage of the criminal proceedings is the complaint. However, the complaint, as constructed in the legal system of Bosnia and Herzegovina, is not an effective legal remedy in light of the jurisprudence of the ECtHR. Additionally, the law of Bosnia and Herzegovina is not in line with the Directive whose provisions require that the authority or the official person exercising review of the decision not to prosecute is different from the authority or the official person making such a contested decision in the first place. Besides, the law of Bosnia and Herzegovina does not provide the injured party with the right to inspect the case file, nor this procedural subject has the right to obtain the copy of the decision not to prosecute brought in the investigation even though this requirement clearly stems from the standards of the ECtHR and the Directive.

Moreover, after the completion of the investigation, the situation is even worse from the perspective of the injured party in view of the fact that the law does not provide any procedural instrument that the injured party may use to challenge the decision not to prosecute. Before the confirmation of the

indictment, the prosecutor has the right to unilaterally withdraw the indictment, and in doing so, he desists from criminal prosecution, while such a procedural action (the withdrawal of the indictment) is not susceptible to control or review. After the confirmation of the indictment, and before the main hearing commences, the withdrawal of the indictment is susceptible to judicial control since the prosecutor may desist from criminal prosecution only upon the prior approval of the preliminary hearing judge. However, this form of judicial control over the decision not to prosecute does not have any practical significance since the prosecutor may desist from criminal prosecution without any restrictions in the subsequent stages of the criminal proceedings - the main hearing (the first-instance proceedings) and the hearing in the second-instance proceedings. Hence, the possibility of the prosecutor to unilaterally drop the charge during the main hearing without any form of external control is contrary to the requirement stemming from the positive procedural obligation of an effective investigation that applies during the entire criminal proceedings, including the trial stage. Furthermore, when the prosecutor withdraws the indictment or drops the charge, the fact that the injured party does not have the right to request the review of the decision of the court ending the criminal proceedings is not in accordance with the Directive. Namely, pursuant to the Directive, the decision terminating criminal proceedings includes situations where the prosecutor decides to withdraw charges or discontinue proceedings. Hence, from this, it can be concluded that the victim of the criminal offense should be given the right to request the review of the decision of the court that is the result of desistance from prosecution made by the prosecutor.

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CONTEMPORARY EU ENLARGEMENT PROCESS AND NORTH MACEDONIA'S PRE-ACCESSION

Emilija Stefanovska-Davkova, MA
emmasteff1@yahoo.com

Abstract
In legal, political and socio-economic terms, the EU at the time being is no longer that to which the CEESs acceded in 2004. The European integration currently is a highly complex integration between the EU's accession criteria, the aspiration of EU integration, the impact of domestic member states and international politics. EU enlargement is less than before the result of a consensus of the common EU interest and transformative power of accession. It is now more strongly influenced by the domestic political agendas of EU member states and affects efficacy and the EU's credibility. This paper analyzes the various trends and commitments of the EU members towards the current enlargement and the specific efforts, challenges and weaknesses referring to the pre-accession process of the Republic of North Macedonia.

Key words: EU Enlargement, North Macedonia's EU Pre-Accession

INTRODUCTION

The permanent enlargement of the European Union is a process that has lasted for over half a century, which testifies to its great importance for the European Union as a whole and for all countries aspiring to its membership. The motives for enlargement lie in all spheres of social functioning of both the EU and the aspirant countries, in which the economic, security, political and infrastructural ones are dominant.

However, at different times the motivation for enlargement has changed its intensity as a result of a series of specific political processes in both the EU and the aspiring countries, which were different in time, and this produced the enlargement process to become complex and problematic, meaning burdened with difficulties, challenges and uncertainties. This especially refers to the last period of enlargement, which includes the countries of the Western Balkans, so in this paper we will review the significant political, economic and social activities and conditions that characterize this process.

ENLARGEMENT OF THE EUROPEAN UNION (EUROPEAN ECONOMIC COMMUNITY) AND CRITERIA FOR ENLARGEMENT

EU ENLARGEMENTS

Since the high contracting parties to the Treaty of Rome came together in1957, the original Community of six Members has gone through seven rounds of enlargement, as it follows:

First enlargement – 1 January 1973: Denmark, Ireland, United Kingdom
Second enlargement – 1 January 1981: Greece
Third enlargement – 1 January 1986: Spain and Portugal
Fourth enlargement -1 January 1995: Austria, Finland and Sweden
Fifth enlargement – 1 May 2004: Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia
Sixth enlargement – 1 January 2007: Bulgaria, Romania
Seventh enlargement – 1 July 2013: Croatia[195]

The former group of enlargements, covering the four rounds conducted between 1973 and 1995 strongly differs from the latter group of enlargements, from 2004 onwards. In the preceding group of enlargements there was not a strategy or "policy of pre-accession." In this period, difficulties for the applicant in adapting to the *acquis* were commonly resolved during the transitional measures included in the accession treaty, therefore taking place after the accession. But, in the lead-up to the 2004 and ensuing enlargements of the CEECs, a true strategic pre-accession process unfolded on the basis of the 1993 Copenhagen criteria including numerous legislative, institutional, economic and political adaptations. This was a consequence of the fact that the complexity and volume of the *acquis*had significantly grown between the 1970s and 1990s, but more importantly because the new candidate countries, mainly from the Central and Eastern Europe, former socialist countries, were less convergent to the West European countries, former EU member states, thus through more significant adaptations was expected the increase of convergence to ensure a successful enlargement for both parties.[196]

EUENLARGEMENT CRITERIA

The criteria for new members to enter the EU, adopted in June 1993 at the Copenhagen European Council, are as follows:

[195]Vooren B., Wessel A., EU EXTERNAL RELATIONS LAW, text cases and materials, Cambridge University Press, 2014, p.517
[196]Ibid, p. 525

The first criterion is the political conditionality and stability of institutions, which includes human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as well as minority rights.[197]

The second criterion is the aspirant country to have a functional, competitive market economy, which is very important for the country to have a benefit, otherwise it would harm the country itself, but it is also important for the Union, because failure to meet the second criterion leads to danger of undermining the Union's single market. The market economy requires a balance between supply and demand, a well-developed and stable legal system in which property rights are regulated and implemented, macroeconomic stability and a degree of consensus on the most important economic policy issues, well-developed financial sector and the absence of significant financial barriers, as well as output assistance to improve the efficiency.[198]

The third criterion is to assume the rights and responsibilities of the legal and political system of the Union.[199] First, the applicant must fully adopt EU Legislation, which is a broad term that includes the principles and political objectives of the treaties, their application, as well as the application of the case law of EU courts, soft legal methods such as the adoption of declarations, resolutions and international policy agreements concluded between the Union and the Member States.[200] Then, by assuming the obligations of membership, the candidate country must effectively implement EU legislation through the legal and administrative framework in both the public and private sectors.
The fourth criterion is the absorption capacity that has been introduced to ensure the momentum of European integration.[201]

EUROINTEGRATION DEVELOPMENTAL TRENDS

STABILIZATION AND ASSOCIATION AGREEMENT BETWEEN THE REPUBLIC OF MACEDONIA AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

This agreement establishes an association between the European Community and its Member States on the one hand and the Republic of

[197] C. Hillion,'The Copenhagen Criteria and their Progeny' in Hillion (ed.), EU Enlargement: a Legal Approach (Heart Publishing, 2004), p.3
[198] Commission Opinion on Hungary's Application for Membership of the EU, Doc. 97/13, 15 July 1997 (no page numbering, see title 2/2).
[199] European Commission, Europe and Challenge of Enlargement, 24 June 1992, Bulletin of the EC, supplement 3/92, p.11.
[200] Ibid
[201]Vooren B., Wessel A., EU EXTERNAL RELATIONS LAW, text cases and materials, Cambridge University Press, 2014, pg.524

Macedonia on the other, and its goals are: providing a framework for political dialogue, developing economic and international cooperation and harmonization of the Macedonian legislation with that of the Community, as well as promotion of economic relations and free trade zone and fostering regional cooperation in all fields. International and regional peace and stability, as well as good neighborhood relationship, are essential to the Stabilization and Association Process.[202] The Republic of Macedonia is committed to establish good neighborhood relationship with the countries in the region, by making certain concessions regarding the movement of people, goods, capital, services, as well as the development of joint projects that will contribute to the stability and development of the region.[203] The association will be fully achieved within 10 years, during a transition period.[204]

The political dialogue between the EU and the Republic of Macedonia will continue to develop and intensify, and is intended to increase the convergence of the parties regarding international issues, regional cooperation and improvement of good neighborhood relationship, improvement of security and stability in areas of external common and EU security policy. [205] Customs duties on imports of products will be abolished as soon as the Agreement enters into force, also quantitative restrictions on imports and measures for products originating in the Republic of Macedonia will be abolished. As well customs duties on goods originating in EU will be abolished within 10 years, with some minor exceptions.[206] This Agreement prohibits tax discrimination. The workers, who come from RM and are employed in the Member States, will be equated in occupational treatment with the domicile workers. [207]

Social security will be established for the workers from the Republic of Macedonia employed in the Member States as well as for their families by providing pensions and family allowances for the family members. The Republic of Macedonia will grant similar treatment to EU workers employed on its territory. RM will grant equal treatment to companies from third

[202]ЗАКОН ЗА РАТИФИКАЦИЈА НА СПОГОДБАТА ЗА СТАБИЛИЗАЦИЈА И АСОЦИЈАЦИЈА МЕЃУ РЕПУБЛИКА МАКЕДОНИЈА И ЕВРОПСКАТА ЗАЕДНИЦА И НЕЈЗИНИТЕ ЗЕМЈИ ЧЛЕНКИ,Службенвесникна Р.М. – Меѓународни договори,бр.28. 13 април, 2001,Article 3

[203] Ibid. Article 4
[204] Ibid. Article 5
[205] Ibid. Article 7
[206] Ibid. Article18
[207] Ibid. Article 44

countries as to their own companies.[208] The Stabilization and Association Council will examine the ways for mutual recognition of the qualifications of the citizens of the Republic of Macedonia and the Community.[209]

The parties should ensure the free movement of capital for direct investment in enterprises established in accordance with the laws of the host country, as well as the profits derived from them, and the free movement of capital for loans related to commercial transactions.[210]

Restrictive measures on investment-related transfers, or any revenue arising from there, shall not be applied.[211]

The parties will pay special attention to strengthen the institutions and the rule of law, independent and efficient judiciary, as well as training of staff from the legal professions.[212]

The parties agree to co-operate to control illegal migration.[213]The Parties agreed to establish a framework for prevention and combating crime and other illicit activities, in particular against organized crime such as trafficking in human beings and arms, smuggling, terrorism, illicit economic activities such as corruption, illicit transactions, trade with industrial and radioactive waste, counterfeit and pirated products.[214]

The Parties will co-operate to modernize and restructure industry and strengthen the private sector under condition to respect environmental protection.[215] The parties aim to strengthen small and medium-sized enterprises in the private sector.[216]

The parties will cooperate in order to raise the level of professional qualifications and education, especially that referring to strengthening democracy, rule of law and economic reform.[217] The authorities of the Republic of Macedonia will draw up a plan for the adoption of Community legislation referring to the development of the information society and digital era, the attraction of foreign investment and interoperability of networks and services.[218]

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[208] Ibid. Article 48
[209] Ibid. Article 52
[210] Ibid. Article 59
[211] Ibid. Article 65
[212] Ibid. Article 74
[213] Ibid. Article 76
[214] Ibid. Article 78
[215] Ibid. Article 85
[216] Ibid. Article 86
[217] Ibid. Article 91
[218] Ibid. Article 96

The parties will strengthen the cooperation in the field of traffic, so that it can be modernized in the area of infrastructure. [219]The cooperation will be particularly reflected in the development of the market economy and energy, which includes: formulation and planning of energy policy, better access to the energy market and modernization of infrastructure, training for the energy sector and encouraging energy efficiency savings and renewable energy, as well as study the impact of energy production and consumption on the environment and the restructuring of energy facilities.[220]

According to the Agreement, both the agriculture and agri-industrial sector, as well as the water management and rural development, should be modernized and restructured; fishery and forestry should be developed. The veterinarian and phytosanitary legislation should be gradually harmonized with the standards of the Community.The parties will strengthen the cooperation for protection and against degradation of the environment. In order to achieve the goals of this Agreement, the Republic of Macedonia will benefit financial assistance from the Community in the forms of grants and loans, as well as loans from the European Investment Bank.[221]

From the provisions of this Agreement, it can be seen that a framework for cooperation between the Republic of Macedonia and the EU has been established, which covers a huge part of the social areas and a number of modes of such cooperation, which should be further developed through the legislation and the specific projects, which is a significant step in the European integration processes.

DEFINING THE GOALS, PRINCIPLES, WAYS AND METHODOLOGY OF CONDUCTING THE NEGOTIATIONS FOR ACCESSION OF THE REPUBLIC OF MACEDONIA TO THE EU AND DETERMINING THE STATE AUTHORITIES THAT WILL BE INVOLVED IN THE PROCESS[222]

This is the next step in the European integration process undertaken by the Republic of North Macedonia.

[219] Ibid. Article 98
[220] Ibid. Article 99
[221] Ibid. Article 104
[222]Institutional platform and principles for conducting the accession negotiations of the Republic of Macedonia to the European Union, Government of the Republic of Macedonia, Skopje, November 2007

GOALS, PRINCIPLES, WAYS AND METHODOLOGY OF CONDUCTING THE NEGOTIATIONS FOR ACCESSION OF THE REPUBLIC OF MACEDONIA TO THE EU

Immediate and priority goal of the Republic of Macedonia as a candidate country for membership is to start negotiations for membership in the European Union. To that end, strong and sustained support from the highest political level is needed. The support of the process by the key ruling and opposition parties refers to conducting both the internal and foreign policy.

-Informing the public is the key to support the negotiation process, in order to amortize the expected decline after starting the negotiations.

-The continuous building of human resources and the significant strengthening of the capacities involved in the accession process are of crucial importance.[223]

From the experience of the European Commission referring to the previous enlargements, the following specifics are taken into account:

1.The Union proclaims the principle of consolidation of commitments, which means that it will respect the commitments taken, but will be careful in taking on new commitments and making new promises. The political conditions in the Union have changed significantly, which significantly affects the climate for further enlargement.

2.The EU Enlargement Strategy is based on rigorous conditionality, especially in strengthening the compliance of the monitoring system.

3.*Acquis* changes, which implies that it should be followed - the corpus of acts becomes larger.

4.The political criteria play a more important role in the negotiations. The specific economic and social conditions in the candidate countries should be taken into account, but in a way that it will not compromise the implementation of the *acquis.*[224]

Accession implies acceptance of the rights and duties of the *acquis* or more precisely harmonization of the national legislation with the European legislation.

Acquis communitaire contains:

а)the content, principles and political objectives of the treaties on which the Union is based

б)the legislation of the European Communities and decisions taken in accordance with the Treaties, the relevant legislation for implementation and

[223] Ibid, pg. 3

[224]Ibid,pg. 5

the administrative practices in the Member States, as well as the jurisprudence of the Court of Justice. [225]

Analytical examination of the compliance of the domestic legislation with the *acquis* is performed through screening. The screening is a formal and technical operation carried out by the European Commission in order to prepare the negotiations for membership and is an analytical presentation of the situation in the candidate country in relation to the chapters of the *Acquis* . The purpose of the screening is to enable the Commission and the Member States to evaluate the degree of preparation of the candidate country for EU accession. The screening lasts one year.[226]

In terms of negotiation methodology, the candidate country should fully accept the *Acquis*, but for some of the legal acts can be negotiated for a transitional period.[227]

STATE AUTHORITIES IN CHARGE FOR NEGOTIATIONS WITH EU

National delegation

а)At the level of ministers - it is composed of the Deputy Prime Minister of the Republic of Macedonia in charge of the European Affairs, who is the head of the delegation, the Minister of Foreign Affairs and the members of the Negotiating Team, and in the broadest composition it also includes the Chairmen of the working groups.

б)At level of deputies - composed of the head and members of the Negotiating Team, and if necessary the Chairmen of the working groups.

Its role at the ministerial level is to participate in intergovernmental conferences.

Negotiating team, composed of representatives of the key ministries in charge of negotiations and other bodies responsible for the chapters.

The negotiating team is responsible for the preparation and conduct of the negotiations. Its task is to leadthe negotiations.[228]

Chief negotiator

The chief negotiator plays the most important role in the negotiation process. The chief negotiator shall:

-manage the negotiating team and coordinate its work

[225]Ibid,pg. 4
[226]Ibid,pg. 5
[227]Ibid,pg. 6
[228]Ibid,pg. 15

-provide coordination and harmonization of all state bodies in charge of the negotiations
- conduct negotiations with the EU,
- present and explain the negotiating positions and results before the Government,
- establish continuous communication with the public.[229]

Working groups for preparation of the negotiating positions. These are inter-ministerial groups by chapters on the preparation of the National Program for Adoption of the *Acquis* and the preparation of draft negotiating positions.[230]

The Parliament of the Republic of Macedonia

It adopts the laws and ratifies them if they come from the European Union as legislation.

Secretariat for European Affairs

-Provides expert and administrative support to the Government in the field of European integration and specifically in the negotiation process
-Provides expert and administrative support to the Head of the National Delegation, the negotiating team and the head of that team, and the Committee of Chairmen of the Working Groups.
-Organizes and coordinates the creation of national strategic documents.[231]

Ministry of foreign affairs

-Provides regular information for the positions of the Member states and the positions of the European Commission regarding the negotiations.
-Makes assessments of events and circumstances in the EU and member states that have an impact on the negotiation process.
-Provides permanent information and gives instructions to the diplomatic and consular missions regarding the negotiations
-Participates in the work of the National Delegation and the Negotiating Team
-Participates in defining negotiating positions.

The Mission of the Republic of Macedonia to the European Communities - Brussels

- Provides continuous information on the activities of the state authorities of the Republic of Macedonia regarding the accession process to the EU,
- Establishes permanent contacts with the European Commission and presents the views of the Republic of Macedonia regarding the accession process,
- Provides support to the negotiating team,

[229]Ibid,pg. 15
[230]Ibid,pg. 12
[231]Ibid,pg. 16

- Provides professional, administrative and logistic support to the bodies under the Stabilization and Association Agreement.[232]

EU ACTIVITIES TOWARDS WEST BALKANS' EUROINTEGRATION

SUPPORT OF THE PROCESS IN GENERAL

After Stabilization and Association process in May 1999, finalized at the Zagreb Summit in November 2000, enlargement was considered as the most successful foreign policy of EU and it was then when the Western Balkan countries entered in negotiation with EU. Three years afterwards, on the European Council in Thessaloniki (2003), the member states reiterated its "determination to fully and effectively support the European perspectives" of the countries of the region.[233]

SUPPORT OF THE PROCESS BY FINANCING CANDIDATES' ACTIVITIES

EU, which has invested €12,2bn in the region over the past 12 years and earmarked €7,1bn for the period 2014-2020 under IPA II, i.e. financing the activities of the Western Balkan countries pertaining to the Copenhagen criteria, such as rule of law, judicial system, rural development, etc. remains formally committed to the Thessaloniki Agenda.[234]

SUPPORT OF THE PROCESS THROUGH FAVORABLE ECONOMIC POLICIES TOWARDS WB COUNTRIES

The European Union, in accordance with its enlargement goal, conducts an economic policy towards the countries of the Western Balkans that is very favorable to them, which intensifies their economic development, in that direction facilitates their accession to the EU, by introducing exceptional trade measures for them, i.e. for the countries and territories participating or related to the Association and Stabilization process (Serbia, Montenegro, Albania, Bosnia and Herzegovina, Macedonia, the territory of Kosovo, and at that time Croatia). They have the opportunity of unlimited export of goods without duties (customs duties and import tax) in EU

[232]Ibid,pg. 17
[233] Presidency Conclusions of the Thessaloniki European Council. 19-20 June 2003
[234]Marciacq F., Where to now for Enlargement? Key Challenges to Western Balkans' accession into a Brexiting European Union, Policy Paper, Centre international de formation européenne, February 18, 2019, p.2

countries, with the exception of export through quotas or contingents, such as the WB export of fresh grape wine, where the EU import from the countries of the Western Balkans (including the Republic of Macedonia) is limited to 50,000 hectoliters of wine per year.[235] Consequently, economically, EU is the main trading partner in the region; it has doubled the foreign direct investment with share of 73%. This trade expansion occurred when trade agreements were concluded in accordance with the country's Stabilization and Association agreements. Western Balkans is fully integrated into the producing chain and connected to Trans-European Networks.[236]

DIFFICULTIES AND OBSTACLES WITHIN THE EU ENLARGEMENT PROCESS

Western Balkans have always been an integrative part of Europe's geography, and by the end of 2013, 5,7 million people originating from the Western Balkans lived abroad, mostly in the EU, many had arrived as Gastarbeiter in the 1970s or refugees in the 1990s.[237]More than half of the young Albanians, Bosnians, Kosovars and (North) Macedonians express the wish to leave their country, but it also appeared in Croatia after entering in 2013, in order to settle mostly in the EU. In political terms and with regards to security, the countries of the Western Balkans have bound firmly to the EU. All political parties in the region support EU enlargement on paper, regardless their genuine feelings about it.[238]

However, EU enlargement with the wave in 2004 and 2007 involving Romania and Bulgaria has dampened the union's enthusiasm for further enlargement, but it did not fall apart. This is due to several reasons.

First, there were some significant events in the course of 21st century that focused the attention of the EU highest authorities imposing priority in their resolution. Those were the financial crisis in the late 2000s, the outbreak of

[235]Прописите на ЕУ според Европскиот Парламент и Советот, од 13ти декември, 2011 година, Службен весник на ЕУ, Л 347/.1, 30.12.2011,чл.1

[236]Böhmelt, T. and T. Freyburg.2018. *Forecasting candidate states' compliance with EU accession rules, 2017 2050.* Journal of European Public Policy. Vol. 25(11)

[237]Vracic, A. May 2018. The Way Back: Brain Drain and Prosperity in the Western Balkans. ECFR Policy Brief 257

[238]Marciacq F., Where to now for Enlargement? Key Challenges to Western Balkans' accession into a Brexiting European Union, Policy Paper, Centre international de formation européenne, February 18, 2019, p.1

wars in its eastern and southern neighborhoods in the early 2010s, migration crises in the mid-2010s, Brexit and Euroscepticism in the past few years.[239] Second, the erosion of the EU's enthusiasm went hand in hand with the slackening of the reforms in the region, the persistence of bilateral issues and cultivation of ethnonational politics. CEE countries, with larger administrative capacities and no post-conflict legacy, estimate that it would take decades the WB countries to adopt and implement the *Acquis communitaire*, but for Albania and Bosnia Herzegovina it would not be possible to reach it until 2050 year.[240] As well, rule of law is problematic field in the WB countries, such as Bosnia Herzegovina, and the economic convergence remains a long-term goal.GDP per capita today in WB countries is at the same level as twenty years ago measured in relation to CEE (40 to 60%) and it would take 60 to 200 years for the WB countries to catch up with the average of the EU, depending on growth rates.[241]Serbia (since 2014) and Montenegro (since 2012) are moving slowly towards EU, for example Montenegro finished only 3 out of the 35 chapters in 8 years, which overlaps with the whole accession negotiations process for Croatia to fully enter in EU (2013).[242] The Republic of Macedonia have adopted a lot of regulation from EU, but it has failed to implement it. It is well known the Report of the group of independent experts led by Reinhard Priebe, commissioned by the European Commission in 2015, in which Priebe's group presented a lot of shortcomings and weaknesses in the functioning of the state authorities thus violating the Copenhagen criteria, including violation of the fundamental rights of the individuals, apparent direct involvement of senior government and party official in illegal activities including electoral fraud, corruption, abuse of power and authority, conflict of interest, blackmail, extortion, etc.[243] Even in 2020, after a lot of criticism by the EU competent authorities on one hand and a lot of expert and financial

[239]Marciacq F., Where to now for Enlargement? Key Challenges to Western Balkans' accession into a Brexiting European Union, Policy Paper, Centre international de formation européenne, February 18, 2019, p.1

[240]Böhmelt, T. and T. Freyburg.2018. *Forecasting candidate states' compliance with EU accession rules, 2017 2050.* Journal of European Public Policy. Vol. 25(11)

[241]Sanfey, P. and J. Milatovic. February 2018. *The Western Balkans in transition: diagnosing the constraints on the path to a sustainable market economy. Background Paper for the 2018* Western Balkans Investment Summit.

[242]Fouéré, E. *The EU's enlargement agenda is no longer fit for purpose,* EC - Audiovisual Service, 12 Jan 2021
https://www.ceps.eu/the-eus-enlargement-agenda-is-no-longer-fit-for-purpose/

[243]The Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, pg. 6

assistance by EU on the other, regarding the ability to assume the obligations of membership, Republic of North Macedonia continues to be moderately prepared in most areas, including the areas of competition, public procurement, statistics, financial control, transport, energy. The country shows a good level of preparation in areas such as company law, customs union, trans-European networks and science and research. The country is at an early stage of preparation in areas such as free movement of workers as well as financial and budgetary provisions. Over the coming period, more focus is also needed on administrative capacity and effective implementation. The country has continued to improve its alignment with the EU common foreign and security policy.[244]

Third, the enlargement policy has been characterized with the gradual re-nationalization of decision-making mechanisms at the expense of community forces. Atinstitutional level, mechanisms to restrain the enlargement process have been introduced at all stages in several member states, for e.g. in France, Austria, and the Netherlands, where national referendums have been posited as "constitutional requirements" for the ratification of future accession treaties. In Germany, the powers of the Bundestag have been extended in 2009 through the Federal Act on EU Cooperation in order to decisively influence the Council's decisions in situation of reaching enlargement e.g. granting candidate status or opening negotiations.[245]Germanyremains a key supporter of enlargement, but opposes relaxing conditionality (like the Netherlands, Finland and Sweden), France prefers small Europe, Hungary and Poland are Eurosceptical and they are reviving the British position of widening as a bulwark against deepening, and 5 member states do not recognize Kosovo as an independent state. There is a popular opposition to enlargement in most EU member states (47% of EU citizens on average) as well as opposition at all levels of EU governance.[246]

Fourth, the lengthiness of the accession process is likely to be amplified by a series of new, additional criteria, such as good neighborhood relations and reconciliation, for instance, that have recently been introduced as a

[244] European Commission. Commission Staff Working Document. North Macedonia 2020 Report. 2020 Communication on EU Enlargement Policy. Brussels, 6.10.2020 SWD(2020) 351 final

[245]Marciacq F., Where to now for Enlargement? Key Challenges to Western Balkans' accession into a Brexiting European Union, Policy Paper, Centre international de formation européenne, February 18, 2019, p.3

[246]Marciacq F., Where to now for Enlargement? Key Challenges to Western Balkans' accession into a Brexiting European Union, Policy Paper, Centre international de formation européenne, February 18, 2019, p.3

"prerequisite for accession". Positing these issues in the enlargement apparatus means providing opportunities to enlarge the veto-players than to produce the penetrating effect that is intended.[247] That is the case where Bulgaria imposed veto over North Macedonia's start of the negotiations for EU membership. Bulgarian government issued a unilateral statement that was annexed to the March Council conclusions that set out conditions which should be fulfilled before North Macedonia meets negotiation process. It was signed by all political parties in the republic of Bulgaria and included an acceptance by North Macedonia that its language had Bulgarian roots, and that the 'Macedonian language' or ethnicity did not exist before 1944,as well as denying the Macedonian minority in Bulgaria, which is one-sided interpretation of the region's history. The minority issue was particularly egregious as it flew in the face of repeated judgments by the European Court of Human Rights in Strasbourg recognizing the existence of Macedonian minority groups on its territory.[248]This Bulgarian veto jeopardized EU's overall approach to the Western Balkans and its European perspective.

"That the Bulgarian veto was allowed to block a Council decision for the start of accession negotiations with North Macedonia is not only another abuse of the unanimity rule by a member state, it also shows the complete lack of understanding within the EU of the complexities of Western Balkan politics and the heavy weight of history".[249] EU supported Bulgaria's one-sided stand against a candidate country, but fortunately the Czech and Slovak governments reacted at the attempt by Bulgaria to include the notion" falsifying the history". Bulgarian government is inserting history into the accession process in that way undermining the criteria for accession and ignoring the vast experience of the EU in over 70 years of overcoming the legacy of the past and promoting a process based on reconciliation and the rule of law. Instead of promoting the values of the EU it has played since its entry in EU (2007) the nationalist card dictated by domestic agenda reminiscent of 19th century empire politics.[250]
Fifth, another EU obstacle towards enlargement is lying in the debate "widening vs. deepening". Enlargement strategy is categorical: "the Union must be stronger and more solid, before it can be bigger". Behind this is the

[247]European Commission. 6 February 2018. *A credible perspective for and enhanced EU engagement with the Western Balkans.* COM(2018) 65 final
[248]Fouéré, E. *The EU's enlargement agenda is no longer fit for purpose,* EC - Audiovisual Service, 12 Jan 2021
https://www.ceps.eu/the-eus-enlargement-agenda-is-no-longer-fit-for-purpose/
[249] Ibid
[250] Ibid

French President Macron, who says that he will support an enlargement after introducing first deepening and reform in Europe.[251]

EU's credibility is questioned by Western Balkan citizens where one fourth of the citizens do not believe that their country will ever join the EU. The external factors or other influential world powers have increased their engagement in the region, extending their economic, diplomatic and cultural linkages, such as China, which has granted billions of dollars of state-to-state loans in the region (primarily to Serbia and Bosnia) for the construction of energy or transport infrastructures.[252] Also, Russia is undermining regional cooperation with fake news. Turkey has extended its repression against the Gulen movement supporters in the region.

Accordingly, the road to accession for the Western Balkans will be long and uncertain.[253]

CONCLUDING REMARKS

In 1957 the European Economic Community was established, composed of six European countries – Belgium, France, Italy, Luxembourg, the Netherlands and West Germany, whose initial aim was to bring about economic integration, including a common market and customs union. Being a part of Western Europe, as a regional community, it needed enlargement that will include the other countries of the region in order to enlarge the common market area that will provide opportunities for more intensive economic growth. The development of the economic cooperation tended to introduce cooperation in many other fields that was gradually being introduced in the common functioning. In 1993 a complete single market was achieved and the same year the European Union was established as a political and economic union.

The first enlargements were initially linked mainly to the countries of the Western Europe that had a great convergence - economic, political, in respect to the rule of law, respect of human rights, social values, and many other components of the overall social system with the countries founders of EEC and the enlargements were accompanied by a considerable enthusiasm on both sides respecting the benefits of the ensuing common cooperation. Consequently, they were achieved usually in a fast and routine manner although some opposition to the enlargements occasionally appeared as that of

[251]B92. 17 April 2018. French president*: EU must first reform, Balkans can wait.*
[252]Stumvoll, M. and T. Flessenkemper. February 2018*. China's Balkans Silk Road: Does it pave or block the way of Western Balkans to the European Union.* CIFE Policy Paper 66.
[253] Ibid, p. 66

France upon the entry of UK in EEC. In this period, covering the first four enlargements, 1973-1995, difficulties in adapting to the *acquis* were commonly resolved during transitional measures included in the accession treaty, which took place after accession. But, the next rounds of enlargement when the Central and Eastern European countries, former socialist or communist countries, together with Cyprus and Malta, aspired to enter the EU, entering criteria or the Copenhagen ones were introduced (1993) in order the candidate countries to adapt to the numerous legislative, institutional, economic and political differences they should face after entering EU. It was the matter of convergence between the then EU countries and the candidate countries since the most of the latter in the previous period (1945-1990) had been operating in different economic and political systems and the differences between these two parties at the time of the latter countries aspiring to enter EU were still considerable.

After the accession of Bulgaria and Romania in 2007 the process of enlargement became even more difficult and uncertain. In this period there were already 26 EU countries with their own differences in all respects and the next candidates were Western Balkan countries which came into the 21st century after a sequence of mutual military and political conflicts bearing negative historical inheritance and the level of enthusiasm for their accession was decreased. The circumstances of significance that focused the energy of EU authorities were the financial crisis, the outbreak of wars in EU neighborhoods, migration crises, Brexit and Euroscepticism. At the same time the WB countries were characterized with the processes of slackening of the reforms, persistence of bilateral issues and cultivation of ethnonational politics that had a negative impact on the enlargement process. Among the EU countries there was not unanimity as concerning enlargement where national interests and political doctrines prevailed against the common goals in many EU countries marginalizing the benefits of enlargement. In that context was the position of the Republic of North Macedonia which from internal viewpoint was hesitant and slow in its juridical, political and other reforms on the one hand and was under foreign pressure, from Greece and later on Bulgaria, which required identity concessions from (North) Macedonia thus laying obstacles in its EU accession process, on the other. Therefore, the expert opinions occurred regarding that the road to EU enlargement is long and uncertain.

Anyhow, Germany, that is the leading actor in the Union, strongly supports the enlargement as well as the majority of EU member states. US, as a leading country of NATO, supports the enlargement process finding that

completely united EU i.e. EU that covers WB countries, belonging to NATO at the same time, can resist more effectively the influences from China and Russia, therefore US political might and influence are a factor that reduces the uncertainty of the enlargement process.

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DRUG CONTROL STRATEGY FOR A BETTER FUTURE

Kenan Shabedin, PhD (c)
Doctoral Student at the
Faculty of Law Kicevo
University "St.Clement Ohridski"Bitola
kenan_elitt@hotmail.com

Abstract
We are all aware of the relentless impact of illicit drug trafficking. Illegal trade and trade-related violence threaten to overwhelm criminal justice systems, disrupt the health care system, and even undermine democratic political systems. In recent years, all signals have indicated the threat posed by drug trafficking. Drug trafficking not only endangers numerous lives, but, through its links to terrorism and other international activities such as money laundering, corruption, arms and the illegal transfer of nuclear, biological and chemical materials, threatens the security and stability of the international community. Drug trafficking is a problem that must be addressed only through coordinated action taken nationally, regionally and internationally.

Keywords: drug trafficking, notion of drugs an its types, security, threat, strategies to prevent drug trafficking, international regulation.

INTRODUCTION

Organized crime and drug trafficking are not mutually exclusive because drug trafficking organizations regularly participate in other criminal groups, street gangs and some terrorist organizations are also involved in drug-related activities. For example, drug trafficking organizations are involved in corrupting U.S. law enforcement officials, kidnapping, torturing, and killing in order to keep their drug trafficking operations running smoothly. Mexican drug trafficking organizations use street gangs to kill rivals and distribute drugs across the United States. Russian organized drug gangs involved in drug distribution across the United States have been linked to US La Cosa Nostra in sophisticated financial fraud, money laundering and other sophisticated criminal schemes. Colombian drug trafficking organizations contact and cooperate with terrorist organizations.

When large drug trafficking organizations lose a burden on narcotics, they kidnap, torture, and often execute those involved. If the individual responsible for the loss escapes, the organization kidnaps them and threatens close family members until the culprit surrenders. Most organized crime groups use facilitated overseas travel and the latest advances in telecommunications and technology to transfer large segments of their criminal activities to the US market (Мајкл Д. Л., Гари В.П. 2009, p.217).

The link between drug traffickers and violent street gangs is well known. Street gangs continue to spread their illegal activities and strengthen ties with domestic and international criminal organizations. Although gangs engage in a wide range of criminal activities, drug trafficking remains a major source of revenue. These criminal organizations are deeply rooted in the regions near large transport points, cargo terminals or large warehouses. Such groups are responsible for transferring stolen cargo and high-tech products to other countries, and then these shipments of high-tech products become available for use by large criminal organizations.

About 300 to 400 tons of cocaine and the same amount of marijuana are illegally imported to the United States each year. These quantities cover a small part of the legal purchase and sale transactions and are therefore very difficult to detect. 25-40% of cocaine is visible, heroin can be hidden much more easily and the detection rate of heroin transfer reaches up to 10%. Despite the constant development of new technologies for drug detection, techniques for covering up illegal goods are also being developed. The number of individuals involved in drug trafficking can not be estimated at all, and the number of those arrested is very small. The possibility of detecting any illegal drug intake is very small (Router P. 2002, p.18).

DEFINITION AND TYPES OF DRUGS

In the production and trade of drugs, the criminal aspect arises from the abuse, ie. the use of various psychoactive substances, outside the permitted use for certain scientific and medical purposes. The means of abuse here are the production, distribution and use of various opiates, psychotropic substances and stimulants.

The World Health Organization in its 1974 report clearly defines the term drug as: "A product or substance of natural or artificial origin which acts, that is, has the ability to interact with living organisms, causing a state of physical or mental dependence or both."

An intoxicating drug, on the other hand, means a substance that is used for medical and non-medical purposes, and has properties, introduced into the body, to cause a state of mental and / or physical dependence.

There are many views on the classification of drugs by those who deal with this problem. Physicians have one view, pharmacologists another, and so on. all these views have their justification and purpose of appropriate classification. This is because every entity that deals with this substance sees drugs from its own perspective in order to be able to apply its measures of treatment, prevention, detection or taking preventive-repressive measures (Николовски М., p.470).

Depending on whether the drug use leads to a state of mental or psychophysical dependence, drugs can be divided into two groups, namely:

- drugs that lead to psychological dependence: hashish, cocaine, LSD, mescaline, amphetamine, etc. and
- drugs that lead to psychophysical dependence: opium and its derivatives (heroin), barbiturates and certain sedatives.

Accordingly, the mode of action of the drugs can be divided into:

- narcotics (opiates - opium alkaloids, as well as all other morphine-like substances);
- depressants (barbiturates and sedatives);
- stimulants (cocaine, amphetamines);
- gallucinogenic drugs (marijuana, hashish, LSD).

-LSD / Acid (Lysergic acid diethylamide)

LSD was synthesized by Albert Hoffmann in 1938 from ergotamine, which is derived from a special type of fungus that survives on cereals. It was a promising drug in the beginning, but proved to be a "good" hallucinogenic substance. The CIA believed that the brain could finally be controlled, but in vain. LSD disturbs the perception of reality and causes hallucinations. The effects can be so pronounced that they turn into a panic attack or a paranoia attack. Dealers sell it as capsules, liquid or film strips that are absorbed under the tongue. Unpredictable effects that can last up to 12 hours are called "trips" and are quite worrying because they easily turn into delusions. Elevated body temperature, as well as heart rate, blood pressure, loss of appetite and insomnia. Death from LSD overdose has not been documented in science, but users of this narcotic are at increased risk of harming themselves and others around them with irrational behavior that is a product of the drug. The urban

legend of Albert Hoffman, who died at the age of 102, is that LSD extended his life.

- "Calabrian" drugs

This so-called group of narcotics includes ecstasy (MDMA), methamphetamines, ketamine, GHB and others. All are synthesized in the laboratory. They are most often consumed by young teenagers or adolescents during concerts, nightclubs or simply at a party. They are known by their derivative names as vitamin E, candy, m & m, or just as E. Calabrian drugs have different effects and each is a story in itself. That is why most often those who take it, even those who sell it, do not know what is at hand and what kind of drug it is. They simply consume it because it is cheap and quite effective. Ketamine impairs perception and creates a feeling of separation from drugs, while GHB has a sedative effect. Ketamine in high doses causes delirium and amnesia, and GHB if mixed with alcohol can be lethal. The effect of MDMA is subjective and that makes it quite popular. If you ask five people in ecstasy what the effect is, they will give you five different answers. The most common are feelings of inner peace, increased empathy, melting inside, expressed desire to express love, increased self-confidence, increased control, energy, alertness, which can turn into long-term insomnia. But as tempting as these drugs may sound, they have a number of side effects, both acute and chronic. From the acute we will single out the rapid rises in blood pressure, headaches, anxiety and paronyxia, loss of balance control and jaw stiffness or trismus. Dehydration is especially worrying because it can lead to collapse, shock, and even death. Chronic effects are yet to be seen by scientists because these are relatively new drugs. Nearly 80% of those who chronically enjoy MDMA have a high degree of depression, generalized anxiety as well as up to 30% reduced judgment and memory with an increased level of suicide. They are neurotoxic and cause irreversible brain damage.

-Cocaine

Cocaine is obtained from the herb Erythroxylum coca, and has been consumed since ancient times by the peoples of South America. It is a powerful stimulant of the central nervous system, and is consumed by sniffing, smoking or injecting. Crack is a crystalline form of cocaine that is consumed through smoking. Street names are known as white, snow, coca and others. The effects of consuming pure cocaine last from 30 minutes to 1 hour. Increased euphoria and vigor, as well as an outpouring of ideas and talking, make this drug unique. But high blood pressure, increased heart rate, abdominal cramps, and nausea

are side effects. Overdose can be dangerous and can lead to cardiac arrest. Chronic consumption leads to atrophy of the nasal mucosa, increased risk of stroke, increased risk of infarction, disturbed sleep accompanied by daily lethargy, chest pain, shortness of breath and hemoptysis (coughing up blood).

-Heroin

Heroin is a narcotic drug derived from morphine, which in turn is derived from poppy. It is a white-yellowish powdery substance that is consumed by injection, sniffing or smoking. It is known by the street names Horse, Tar, Skunk, Junk, etc. Heroin is by far the most addictive of all narcotics. The short-lived feeling of great euphoria and well-being at the first consumption leads to rapid tolerance and futile departure after the first feeling by increasing each subsequent dose, which eventually leads to overdose and death. Chronic complications are constipation and abdominal cramps that are so severe that only a new dose can calm them down. Heroin addicts are in a very unenviable state and are the ones who need medical care the most. Abstinence crises are dramatic for these patients and always require hospitalization. It should be noted that the risk of HIV, hepatitis B and other blood-borne infectious diseases is many times higher among heroin users.

-Marijuana

Marijuana and its active ingredient tetrahydrocannabin (THC) is the most commonly abused illegal substance in the world. It is consumed by smoking the flowers of the Cannabis sativa / indica plant, drinking it as a tea or making cookies. It is available in liquid form as extracted and purified THC. It is widely distributed throughout the population, and the enjoyers are of all ages. It is known for many street names, the most popular of which is grass. The effects start a few minutes after consumption and last up to several hours. Short euphoria, impaired perception, poor memory, slow reaction in thinking and making clumsy decisions lead to a subjective feeling of expressed mood and an abundance of laughter, for whatever reason. There are no proven chronic effects on the body other than indirect disorders of relationships with others, lack of interest and productivity initiative. This is also the reason why it becomes legal in some countries, but do not forget - not in our country.

-Methamphetamine

Methamphetamine is a highly addictive substance that is similar to amphetamines. It is toxic to dopamine receptors in the Central Nervous System. It is white and in powder or tablet form. It is consumed by sniffing, as

a pill, by injection or smoking. It is known as street or crystal meth. Their action is similar to that of cocaine, but it differs in that it has much worse harmful effects, the worst of which is the popularly said brain frying. Toxicity to nerve endings is irreversible and over time leads to permanent mood disorders, violent behavior refractory to therapy, confusing states and states of anxiety and depression. But this is not all. Toxicity also causes so-called amphetamine psychosis, which resembles schizophrenia, as well as an increased risk of Parkinson's disease, heart disease, and increased suicide rates. Methamphetamine mouthwash is a condition of the oral cavity caused by prolonged dehydration and poor oral hygiene accompanied by bruxism (tooth rubbing) which leads to decay of almost all teeth and is a problem for dentists (Николовски М., p.475-480).

DRUG TRADE AS A TRANSNATIONAL CRIME

Drug crime is an international crime that knows no borders, and it involves criminal organizations from the same continents, connecting in the illegal drug trade. These criminal organizations include people of many nationalities and from many countries, which imposes on the world organization the need for constant international cooperation in detecting and preventing drug abuse, and in order to successfully achieve that goal, the services should coordinate activities (Буџаковски С. 2002, p.279).

One of the most typical forms of transnational crime is the illicit movement across one or more national borders of psychoactive substances controlled under three instruments of international law, known as drug control conventions. This is commonly known as "illicit drug trafficking". Although for most types of crime, the transnational dimension is still the exception rather than the rule, drug trafficking has had a critical transnational element since the beginning of the international drug control system in the early 20th century. For almost a century, illicit drugs were traded from the "producer" to the "consumer countries", usually involving a number of criminal groups from the countries along with the trafficking chain. Of course, drug trafficking is more than a century old, but 2 centuries ago, there was no distinction between legal and illegal drugs and therefore, there was no such thing as drug trafficking. Although the gap between producing and consuming countries has blurred over the last few decades, there is no doubt that drug trafficking continues to exist and has gained considerable importance over the last three decades.

The substances that are under international control, as well as the degree of control that is applied to each substance, are given in the international drug conventions. Conventions have been developed through a

multilateral process and can be amended through such a process. The parties to the conventions (US member states) can decide whether to block or exclude a particular drug from the control system or reduce the degree of control over a particular drug. The 1961 Single Convention on Narcotic Drugs deals with the control of the production, distribution and use of opium, cocaine and related substances, and cannabis. The 1971 Convention on Psychotropic Substances covers the control of hallucinogenic substances, such as LSD, stimulants, such as amphetamines, and hypnotic sedatives, such as barbiturates. The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances covers the control of a number of chemicals consistently used in the manufacture of drugs (also called "raw chemicals") such as ephedrine (used to produce methamphetamine), P-2-P (1-phenyl-2-propanone, for amphetamine production), potassium permanganate (for cocaine production) and 3,4-MDP-2-P (3,4-methylenedioxyphenyl-2-propanone, same so known as BMC or benzylmethyl ketone, for the production of ecstasy) (Рајкел Ф. 2009, p.178-179).

DRUG CONTROL STRATEGY

One of the most important problems with illicit drugs is the violence associated with them. Unfortunately, drug-related violence often spreads to neighborhoods where innocent people can be injured or killed. A number of other negative consequences can be noticed. For example, some people fear that some parts of cities are turning into the beds of the next generation of organized crime. Drug-related street offenses, such as burglaries and carjackings, are on the rise in many areas. In addition, drug irresponsibility threatens the health of the population, economic well-being and family stability.

Over the years, various police departments in the country have implemented various legal initiatives to control drug trafficking. Some have been more successful than others, but researchers Moore (1990) and Kleiman (1988) have developed six suggestions for alternative strategies for approaching the drug problem in its endangered neighborhoods.

Strategy 1: Explicit enforcement of laws

Basically, strong law enforcement is a law-enforcement strategy that suggests that more police resources be devoted to drug problems and that the number of people arrested for related offenses is maximized. This is achieved by expanding the powers and resources of the Narcotics Bureau to the point where it becomes more productive. In addition, the patrol department should

be further staffed and encouraged to increase the number of arrests for such offenses.

Strategy 2: Strategy Mr. Golemec

Mr. Golemec's strategy emphasizes high-level distributors. The primary tactics in this strategy consist of the application of sophisticated investigative procedures - wiretaps, informants and undercover operatives. Free money is also needed to buy drugs or pay for informants. The premise of this strategy is to assume that the immobilization of high-level smugglers will have greater and more lasting consequences for smuggling networks than the arrest of lower-level people who can be easily replaced.

Strategy 3: Gang control

This strategy addresses one of the most pressing aspects of current drug problems. Gangs are responsible for the significant increase in homicide rates in cities where they operate and resort to violence not only to discipline their own workers but also to intimidate individual citizens who resist their intrusion. One of the approaches to dealing with drug-related gangs is to treat them in the same way as juvenile gangs in the past and to adopt similar strategies of coercion. The strategy in the past was not aimed at eliminating gangs, but at taking an aggressive position against their members, clubs and activities. A second approach is to look at gangs as organized criminal alliances and use all the techniques that have been developed to deal with more traditional organized crime. These techniques include the use of informants, electronic surveillance, witnesses, long-term surveillance with the help of undercover agents, and special criminal regulations punishing conspiracy, extortion, or participation in criminal activities.

Strategy 4: Expand the fight for law enforcement at street level, at city level

This strategy disrupts open dealerships by pushing for it to be done behind closed doors or markets being forced to engage so often that buyers and sellers would find it difficult to find each other. Typical tactics are traditional buy-and-in-abs techniques, on-the-spot arrests in drug sales, and arrests of users appearing on the market to buy drugs.

Strategy 5: Breaking the neighborhoods

If communities are reluctant to commit to street-level law enforcement alternatives, police can crack down on drug offenders in neighborhoods who

want to join the police in countering drug abuse. In some cases, neighborhoods are just beginning to feel invaded by drug dealers, while other neighborhoods have long been occupied, but are now at a stage where they are determined to clear the streets of drugs and dealers. The clearing areas could include a park through which the police do not patrol often enough and from which other citizens are expelled. Other areas may be abandoned houses that have been turned into shelters for drug dealers and their use or buildings whose owners want someone to pay rent but do not notice that new tenants come without furniture or clothing but with lots of guns.

Strategy 6: Prevention of drug abuse

The last strategy is to prevent drug abuse that focuses on the drug addict, not the dealer. As part of these efforts are operations to forcibly suppress drug trafficking in and around schools. The other part consists of drug education, under the auspices of the police, intended as information and as discouraging drug use. The third component is the attempt to create a partnership between the police, parents and schools, to determine the acceptable limits for drug use, as well as to establish a predictable community response to drug abuse.

It should be noted that not all of these strategies work equally well in all communities. The factors that influence the success or failure of any drug control strategy depend on the demographic composition of the community; population density; urban, suburban or rural context; and so on. In addition, the way citizens view local police may also have some impact on how many members of the community respond to or complain about local drug control attempts. As a result, a number of police departments across the country approach the drug problem based on the community's approach (Мајкл Д. Л., Гари В.П. 2009, p.247-249).

Other control strategies

Other possibilities have been considered in the fight against drug abuse. Some have been shown to be more effective in the short term, while others require more time to demonstrate their effectiveness. One possibility is to **control the country's yield - the source of the drug**. Many policy strategists argue that the best way to control the production of illicit drugs is to limit the raw materials used to produce them. This strategy also includes controlling foreign opium and coca production and restricting foreign and domestic marijuana cultivation. Efforts are mainly being made on two fronts: governments are either trying to persuade farmers to stop producing illegal

crops, or they are trying to locate and destroy any illegal crops that can be found. In other cases, the illegal proceeds are bought and destroyed before they fall into the hands of illegal smugglers. Aerial spraying and land-based search and destruction missions are also used to eradicate illegal crops. Problems arise in the implementation of these methods because it seems that there is no shortage of areas where these crops can be harvested, which makes it more difficult, if not impossible, to significantly reduce their production. If one country stops producing illegal crops, another country will inevitably start producing them to fill a market vacuum. Moreover, foreign countries cannot always be expected to pursue a policy of destroying crops. In many such countries, such as Myanmar and Thailand, many areas of cultivation of these crops are located in remote locations beyond government control. In other cases, corruption by public officials has hampered crop extermination efforts. Because of all these problems, such actions can only be accepted as part of some short-term strategy, even when efforts to control these crops are indeed implemented.

Another control strategy is **exclusion**. This strategy relies on the view that foreign countries are not effective in preventing the production of illegal drugs, so the supply of drugs into the country must be prevented at the US border. Because US agencies have strong claims of harassment and border seizures, it can be said, at least in theory, that a significant portion of illicit drug trafficking is detected upon entry. Agencies such as the U.S. Customs Service, the U.S. Immigration and Naturalization Service, the U.S. Border Patrol, and the U.S. Coast Guard are involved in checking people, building plans, aircraft, cars, and commercial cargo at entry. But this exclusion task faces one primary problem - the size of the task itself. More than 12 miles of border line need to be inspected daily, and more than 420 billion tonnes of products each year and more than 270 million people (Мајкл Д. Л., Гари В.П. 2009, p.249-250).

CONCLUSION

Manufacturers and traffickers are very important in the field of organized crime, because they greatly endanger the human security of individuals and produce wider socially negative consequences. In certain situations, there is a possibility of infiltration of their structures in the institutions of the state. Then their "elimination" is very difficult and they become a parallel government ("state within a state") with opportunities to achieve their goals.

The various forms and types of illicit production, processing and trade in narcotics from the producing countries, are transported by all types of means of transport (by sea, land, river and air), and is an international phenomenon that seriously endangers and undermines the foundations not only of regional but also of national security. It is therefore completely understandable that the prevention of these illegal, socially dangerous phenomena must be dealt with by the competent state authorities in each individual state.

The legal systems of all countries contain a series of provisions that prescribe responsibility and punishment for the illicit activities of individuals and groups, which are undertaken due to narcotic drugs and psychotropic substances. But all those countries have to conceptualize their individual programs and strategies on the basis of the relevant international legal acts (primarily conventions and resolutions adopted within the United Nations and its bodies) or the regional organizations to which they are members.

However, experts and the public do not trust the effectiveness of the crime disabling system. Despite these methods of struggle, very rarely they prove to be successful, drug sales do not decrease but on the contrary increase, because it is very easy to find or replace people who would do this job.

The possibility of finding and stopping the channel through which drugs are procured in one environment is approximately equal to zero, but even if that happens, its replacement is very easy. As long as there are buyers of what is being sold, there are ways to offer it to the market, even though this sale is in the most dangerous crime market. If an organization is destroyed, a new one will always appear in its place, which may not be as effective as the previous one, but it will still satisfy the needs for what is required.

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PHENOMENOLOGICAL CHARACTERISTICS OF THE CRIME "ENDANGERING SECURITY" UNDER ARTICLE 144 PARAGRAPH 4 OF THE CRIMINAL CODE OF THE REPUBLIC OF NORTH MACEDONIA FOR THE PERIOD FROM 2014 TO 2020

Oliver Risteski, MSc
Faculty of Security - Skopje
e-mail: *olisristeski@yahoo.com*

Mite Kjesakoski, MSc (c)
Faculty of Security - Skopje

Angelina Stanojoska, PhD
Associate Professor at the Faculty of Law, UKLO – Bitola
e-mail: angelina.stanojoska@uklo.edu.mk

Abstract
The development of the social order, globalization, and technological changes that follow modern society has led to the intensive use of information technology in every segment of life. Information technologies have become everyday that on the one hand facilitate the functioning of man, but on the other hand, bring their risks and challenges. The development and mass use of communication technology and information systems have created and opened up opportunities for new forms of crime.
The paper covers research on the forms, scope, dynamics, and prevalence in the Republic of Macedonia for a period of six years for the crime "Endangering security" under Article 144 paragraph 4 of the Criminal Code.
The purpose of this research paper is to contribute to the timely recognition of new manifestations of this crime, to improve the effectiveness and efficiency in combating this crime by applying digital-forensic analysis, providing electronic evidence under criminal-procedural provisions, and international cooperation to identify and prove the perpetrators of this crime.

Keywords: threat, security, threats, information system, research, electronic evidence.

INTRODUCTION

With the development of information technology and the use of the Internet, in all spheres of human life, in conditions of rapid modernization, total global connectivity, mutual communication through information systems has become a driving force that moves the world towards new changes. New trends in communication and other interactions on the Internet, in addition to the advantages, have led to an increase and modification of the risks and threats that lurk in cyberspace.

The development of the information society, globalization, and social platforms have led to the intensive use of information technology. Social media has become commonplace for people, on the one hand, they facilitate human functioning, information reaches end users very quickly but on the other hand, they bring new sources of danger for endangering basic human rights and freedoms, risks, and security threats. The development and mass use of social media has opened up opportunities for new forms of crime.

With the new information technologies, the commission of crimes through the information system has become a trend. This in itself entails the need for efficient and effective detection and appropriate sanctioning of the perpetrators of these crimes to deter them in the future and to act preventively to reduce online threats through the information system.

Due to the topicality of this issue, the main purpose of this research is to deepen the knowledge about the socially negative phenomena of the crime "Endangering security" through the information system, their harmful consequences and to raise awareness among Internet users. as well as increasing information security in the Republic of Macedonia, to build a secure information society.

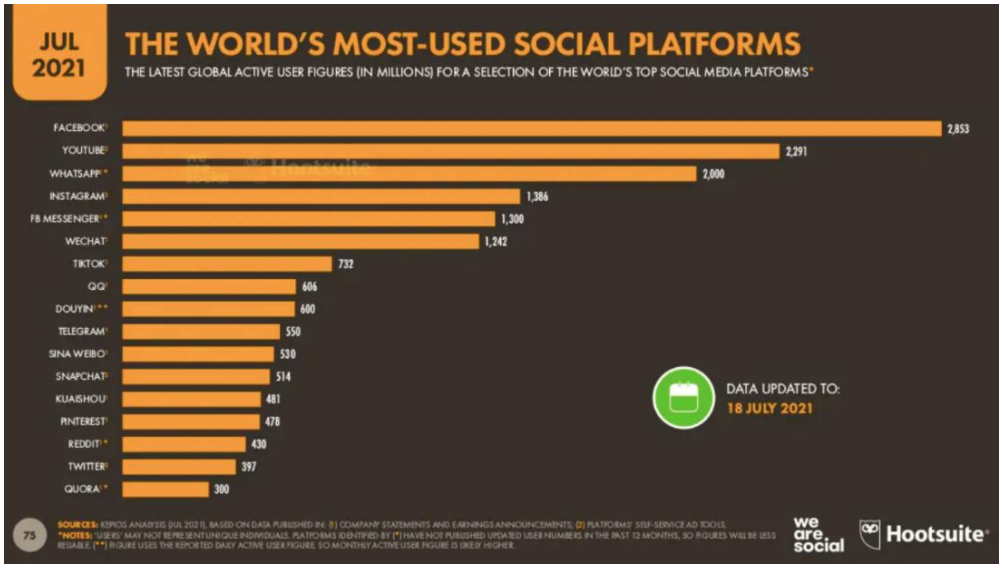
Since the use of information technology and the Internet are used more widely in all spheres of the information society, and thus this type of crime in the last few years has grown significantly, so it is necessary on the one hand to determine the criminal - legal aspects of this criminal on the other hand to determine the criminal aspects of the criminal investigation in detecting and proving this crime.

Through this research, the legal and other legal norms in the Republic of North Macedonia will be identified, analyzed, and commented. In Macedonia, empirical knowledge will be used about the criminal investigation and proving of the crime "Endangering security" through an information

system. Regarding the manifestations, the manner of committing this crime, the investigative actions were undertaken by the competent authorities to fully detect, document, and prove this crime and its perpetrators will also be elaborated.

According to the report of Smart Insights[254], 57.6% of the world's population use social media and spend an average of 2 hours and 27 minutes a day. The most popular among social networks is Facebook, followed by YouTube, Whatsapp, Instagram.

Also, according to this research, the use of online activities since the start of the Covid-19 pandemic has increased by an average of 15% listening to a podcast to a 54% increase in time spent watching movies or streaming services. Increased time spent on social networks by 43%. This in itself increases the vulnerability of Internet users.



DETERMINING AND DEFINING SECURITY THREAT

The freedoms and rights of man and citizen, as inviolable and inviolable, are guaranteed by the Constitution of our country. Human rights and freedoms are also enshrined in several international documents such as the Universal Declaration of Human Rights, the UN Charter, the European

[254] https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/

Convention on Human Rights, and others that with their ratification are part of the legal order of our country.

With the growth of information technology and the use of information systems, the awareness that there is a greater possibility of human rights and freedoms being endangered should grow proportionally, which imposes the need to expand criminal protection from new sophisticated forms of crime.

The criminal offense "Endangering Security" is provided for in Chapter Fifteen of the Criminal Code, more precisely in criminal offenses against the freedoms and rights of man and citizen. According to the object of protection, it belongs to a subgroup of crimes against freedoms.

As a separate criminal offense is legally defined by Article 144 of the Criminal Code of the Republic of North Macedonia, as follows:

(1) A person who endangers the security of another with a serious threat to attack his life or body or the life or body of a person close to him, shall be punished with a fine, or with imprisonment of up to six months.

(2) A person who commits the crime from item 1 while committing domestic violence, shall be punished with imprisonment of three months to three years.

(I) The punishment from item 2 shall be imposed on the person who commits the crime from item 1 against an official person in the performance of the service or several persons.

4) A person who, through an information system, threatens to commit a criminal offense for which a prison sentence of five years or a heavier sentence is prescribed against a person due to their belonging to a certain gender, race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, marital or marital status, property status, state of health, or on any other grounds provided by law or a ratified international agreement shall be punished by imprisonment of one to five years.

(5) The prosecution for the crime from the item (1) shall be undertaken upon a private lawsuit.

By its nature, the crime of "endangering security" precedes other more serious incriminations of human rights and freedoms, such as the crimes of murder, grievous bodily harm, bodily injury.

In addition to the basic crime "Endangering safety" which is provided in Article 144 paragraph 1 of the Criminal Code and for which the prosecution is undertaken in a private lawsuit, there are three more serious forms of crime provided in paragraph 2 - endangering safety in domestic violence, paragraph 3 - endangering the security of an official while performing the service and

paragraph 4 - endangering the security through an information system, for which more serious forms the legislator provided to prosecute them ex officio.

The paper covers the criminal offense "Endangering Security" provided in Article 144 of the Criminal Code with special reference to the more serious form of the offense provided in paragraph 4.

The existence of the special, more severe form of threat through the information system (paragraph 4) contains the following special elements, which distinguish it from the basic work: threat through the information system; the threat of committing a more serious criminal offense; and the motivation for such a threat about the victim's affiliation with a particular national, ethnic or racial group, religion or other discriminatory ground. For this form of crime to exist, all special conditions must be: cumulatively met, as well as to establish a cause-and-effect relationship ("because") between the threat and the victim's affiliation with a certain group (discrimination)[255].

ACTIVE SUBJECT - EXECUTOR

The term perpetrator or perpetrator is understood as a direct perpetrator of the crime, as well as other persons who participated in its perpetration. The legislator for the crime "Endangering security" through an information system, in his legal being specified that the perpetrator of the crime can be any natural person (citizen of the Republic of Macedonia, foreigner or stateless person) who knows how to use and has available information system.

From the legal nature of this crime for all incriminations (it includes from paragraph 1 to paragraph 4), it is specified that the perpetrator can be any person ("the one who ..."), ie the so-called general offenses (delicta communia)[256]. For this crime, the legislator prescribed criminal liability only for natural persons.

PASSIVE SUBJECT - VICTIM

According to Article 122 paragraph 22, a victim of a crime means any person who has suffered harm, including physical or mental injury, emotional suffering, material loss or other injury or endangerment of his or her fundamental freedoms and rights as a result of a crime committed.

[255] Academic Kambovski Vlado, Commentary on the Criminal Code of the Republic of Macedonia, Second Amended Edition, Skopje 2015, page 750

[256] Kambovski, V., general quotes., p.104

The term victim differs from the term damaged by a crime which encompasses a broader concept, ie the term damaged includes other harmful consequences that are not specified in the legal nature of the crime, but are directly correlated with the act of commission and the consequence of the crime[257].

As passive subjects of this crime "Endangering security" in the more severe form provided in paragraph 4 through the information system may be individuals whose threat will cause a feeling of fear, insecurity, endangering the peace of the victim due to her gender, race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, marital or marital status, property status, health status, or on any other basis provided by law or a ratified international agreement.

OBJECT OF PROTECTION

The criminal offense "Endangering Security" belongs to the group of crimes against the freedoms and rights of man and citizen, where the object of protection are the fundamental freedoms and rights of man and citizen, and in the subgroup belongs to acts against freedoms.

The object of protection is the mental peace of man, his serenity as a precondition for his other freedoms. Man feels free only when he is not afraid for his existence, when he is not in danger when he is safe.

PHENOMENOLOGICAL CHARACTERISTICS OF THE CRIME ENDANGERING SECURITY

The research of the phenomenology of the criminal act Endangering the security through the information system aims to enable the description of the phenomenon through its scope, structure, dynamics, structure, spatial and temporal distribution. Our paper covers a longer period of 6 (six) years, namely from 2014 to the beginning of January 2020. During our research on the scope of the criminal offenses "Endangering Security" from Article 144 paragraph 4 of the Criminal Code, statistical data from the Ministry of Interior of the Republic of North Macedonia were used, for a period of 6 years, for the entire territory of the Republic of North Macedonia and according to the

[257] Kambovski, V., general quotes., p.106

organizational units of the Ministry of Interior. The same can be seen through the tables that are presented in tabular and graphical form[258].

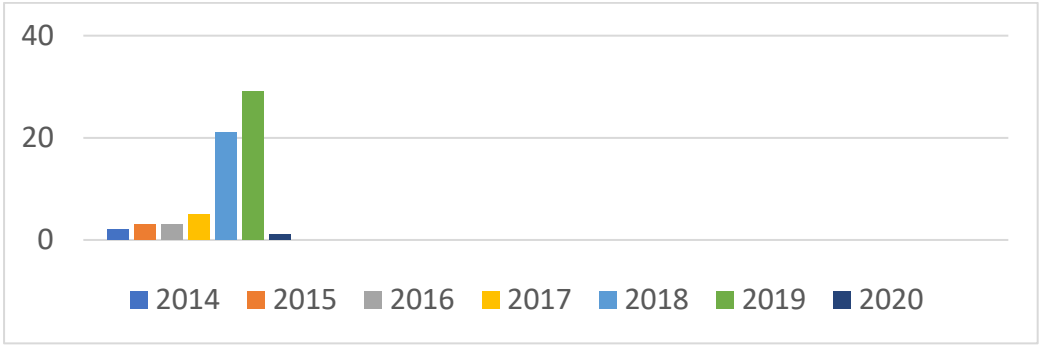
Table 1: Number of registered crimes and perpetrators per year, and per Sectors of interior affair

Criminal offense "Endangering security" under Article 144 paragraph 4 of the Criminal Code by organizational units	2014 year		2015 year		2016 year		2017 year		2018 year		2019 year		2020 year, January	
	Registered crime	Perpetrators	Registered crime	Perpetrators	Registered crime	Perpetrators	Registered crime	Perpetrators	Registered crime	Perpetrators	Registered crime	Perpetrators	Registered crime	Perpetrators
SIA Skopje	1	1	1	0	1	0	3	0	2	2	5	0		
SIA Bitola									1	1	2	2		
SIA Veles					1	0	1	1	2	1	3	3		
SIA Kumanovo			1	1	1	1			1	0	2	2		
SIA Ohrid							1	1	4	4	5	5	1	1
SIA Strumica									1	1				
SIA Tetovo	1	1	1	1					1	10	4	4		
SIA Stip									4	0				
Department for combiting organized crime									5	5	8	8		
Total	2	2	3	2	3	1	5	2	21	24	29	24	1	1

Source: Ministry of Internal Affairs

[258] The source of the data is from the Ministry of Interior of RNM

Graph 1: **Number of registered crimes per year**



The data provided by the Ministry of Interior of the RNM refer to the number of registered crimes by organizational units for the entire territory of the Republic of North Macedonia for the period from 2014 to January 2020.

The analysis concluded that from 2014 to January 2020 there is a continuous increase in the total number of registered crimes due to grounds for suspicion of a crime Endangering security under Article 144 paragraph 4 of the Criminal Code, except for 2016 when we have stagnation, more precisely the same number of registered crimes as in the previous 2015.

The analysis of the total number of registered crimes for the period from 2014 to January 2020 can be seen that the dynamics of the crime under Article 144 paragraph 4 of the CC shows a tendency of a significant increase in 2018 and 2019. Organizational units participate as a percentage in the total number of registered crimes, but most are registered by the Department for Suppression of Organized and Serious Crime in the period 2018 and 2019. During 2018, there was an increase in registered crimes in all organizational units of the Ministry of Interior except in the organizational unit SIA Skopje where there is a slight decline. While in 2019 there was an increase of registered crimes in all organizational units of the Ministry of Interior except in the organizational unit SIA Stip where there is a decrease in registered crimes.

From the table presentation, it can be concluded that in 2018 and 2019 there is a tendency of significant increase among the perpetrators of the crime Endangering security under Article 144 paragraph 4 of the Criminal Code.
Despite the tendency of increase of registered crimes due to grounds for suspicion of having committed a crime Endangering security through an information system, due to the high "dark number" of this crime, the number of crimes committed under Article 144 paragraph 4 is much higher.

Phenomenological characteristics of the crime The endangerment of security through an information system, in addition to its identification as a phenomenon and its dynamics on the territory of our country, can explain its etiology.

According to our research, there is a tendency for a significant increase in the crime of endangering security through the information system in a period when our country was facing and when major political issues such as changing the name of our country with the Prespa Agreement were resolved, then in a period when there is a change of central and local government, the period when there are elections when there is an increase in interethnic tensions, as well as during a health crisis caused by covid 19 and other socio-economic, political and social factors.

PROVIDING ELECTRONIC EVIDENCE

The criminal act "Endangering security" through the information system is prosecuted ex officio, as the purest way to commit it is the use of cyberspace, ie the use of social networks. To timely provide electronic evidence in legal proceedings, it is necessary to take action on measures that can be grouped as follows:

1. Providing evidence without an order from the Public Prosecutor or a Pre-Trial Judge from the so-called open sources.

2. If logs are submitted from the server, their analysis is performed to determine the log that is owned by the suspect profile. From the analysis of the logs we will get the IP address from the place where the CD was made with the exact date and time when the same thing happened;

3. If a URL is submitted from a website, it is necessary to determine the IP address of the server where the WEB page is hosted (hosted), as well as to determine which domain the WEB page is on. This is determined by searching databases freely available online, such as https://who.is/, http://www.whois.domaintools.com/ , http://www.ip-adress.com/whois/

4. If the website belongs to the "mk" domain, in that case, the web will be searched on the MARNET WEB page http://www.marnet.mk , in the section "register" information about the WEB user can be obtained page, IP address of the server, page admRegisteror, its contact, etc. This information is required in case a request is submitted to the Public Prosecutor or a Pre-Trial Judge (according to Article 194 and Article 198 of the LCP[259]) for issuing an

[259] Law on Criminal Procedure, Official Gazette of RM, no. 150 dated 18.11.2010, available at:

order requesting the owner or the administrator of the site to provide us with logs from where the abuse took place. Logos should contain information about IP address, date, time, and time zone.

5. After receiving the IP address with the correct date and time, internet checks are performed to determine whether that IP address originates from the Republic of North Macedonia or is from abroad and which Internet Service Provider (ISP) owns that address. This is determined through databases freely available online, such as http://www.ripe.net , http://www.ip-adress.com/iptracer/ and the like.

6. Providing evidence by applying for a court order.

If the IP address from where the crime was committed, originates from the Republic of North Macedonia, and after determination through the ISP of its owner, a request is submitted to the Public Prosecutor or Judge of the preliminary procedure (Article 194 and Article 198 of the LCP) for issuing an order with which ISP will provide us with the user's IP address information. The order should contain information about the ISP from where the information will be requested, for which IP address it is the exact date and time.

If the IP address is from abroad, international police cooperation through Interpol will be used, as well as the procedure for international cooperation in criminal matters under Article 294 of the LCP, in which case the competent public prosecutor office is notified to initiate a special report with a request for international help.[260]

CONCLUSION

In our country, it can be concluded that in the crime of endangering security through the information system in recent years there has been a tendency to increase throughout the territory. Information systems and their mass use in communication have created and opened opportunities for new forms of crime, which impose the need to conceptualize an active preventive policy and criminal methodology for their prevention and suppression. Therefore, in our country, there is a need for continuous complex scientific research that will provide an explanation of its etiology and based on that to create a policy for more successful suppression, prevention, and prevention of this crime.

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http://jorm.gov.mk/wpcontent/uploads/2016/03/Zakon_za_Krivicna_postapka_150_18112010-2.pdf (accessed 21 September 2021)

[260] STANDARD OPERATING PROCEDURES FOR COMPUTER CRIME - October 2013, Skopje, p.6.

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